

Contents

	Page
Committee Members	
Summary	
1. Introduction	1
2. The principle of the proposed Order	4
3. Matter 6.1	9
4. Matter 6.2	15
5. Biodiversity	21
6. Excepted Matters	23
Annex 1	National Assembly for Wales (Legislative Competence) (No.2) Order 2007 and Explanatory Memorandum
Annex 2	Consultation Letter
Annex 3	List of Consultation Responses Schedule of Oral Evidence
Annex 4	Letter from Jane Davidson AM, Minister for Environment, Sustainability and Housing 1 October 2007 Letter from Alun Ffred Jones AM, Chair of Committee, to the Minister for Environment, Sustainability and Housing, 23 October 2007 Letter from Jane Davidson AM, Minister for Environment, Sustainability and Housing 25 October 2007 Letter from Jane Davidson AM, Minister for Environment, Sustainability and Housing 14 November 2007

Proposed Environmental Protection and Waste Management LCO Committee

Committee Membership

Alun Ffred Jones (Chair)	Plaid Cymru	Arfon
Lorraine Barrett	Labour	Cardiff South and Penarth
Mick Bates	Welsh Liberal Democrats	Montgomeryshire
Sandy Mewies	Labour	Delyn
Darren Millar	Welsh Conservative Party	Clwyd West

Summary

The conclusions and recommendations of the Proposed Environmental Protection and Waste Management LCO Committee are as follows:

- We agree in principle that legislative competence in the areas identified within the proposed Order should be conferred on the National Assembly.
- We recommend that the Welsh Assembly Government amends Matter 6.1 to make it clear that it covers the minimisation or reduction of waste.
- We recommend that the Welsh Assembly Government does not amend Matter 6.1 to exclude radioactive waste from its scope.
- We recommend that the Welsh Assembly Government amends Matter 6.2 to clarify the areas of environmental protection that it covers.
- We recommend that the Welsh Assembly Government amends Matter 6.2 to make it clear that it covers the enhancement or improvement of the environment, enabling Measures to be brought forward to enhance or improve the environment (within the scope of the Matter), as well as to protect it.
- We strongly recommend that the Welsh Assembly Government brings forward a Legislative Competence Order covering biodiversity and related issues at the earliest opportunity.
- We are content with the excepted matters provided in relation to Matters 6.1 and 6.2.
- We are content with the presentational change proposed in relation to Schedule 5 to the *Government of Wales Act 2006*, so that in future, all

excepted matters relating to a specific Matter are contained within a table at the end of Field 20.

- We would encourage the Welsh Assembly Government to ensure that Explanatory Memoranda which accompany proposed (and draft) Orders explain clearly the reasons for including any excepted matters and the purpose of those excepted matters.

1. Introduction

Background

1. On 19 June 2007, the Minister for Environment, Sustainability and Housing¹, Jane Davidson AM ('the Minister'), laid the proposed *National Assembly for Wales (Legislative Competence) (No.2) Order 2007* ('the proposed Order') and Explanatory Memorandum, in accordance with Standing Orders 22.13 and 22.14. Copies of these documents are attached at Annex 1. The Minister made a statement about the proposed Order in plenary on 19 June.²

2. On 3 July, the Business Committee agreed to refer the proposed Order to a committee for detailed consideration. It agreed that the committee must conclude its consideration and report on the proposed Order no later than 23 November 2007 (this date was subsequently extended by the Business Committee to 30 November³).

3. Following a resolution in plenary on 4 July, the Proposed Environmental Protection and Waste Management Legislative Competence Order ('LCO') Committee was established (in accordance with Standing Order 21) to consider the proposed Order.⁴

4. The role of the committee, as set out in Standing Order 22.19, was to consider and report on the proposed Order.

¹The Minister's title on laying of the proposed Order was the Minister for Sustainability and Rural Development

² RoP p39-67, 9 June 2007. See also Welsh Assembly Government, Minister for Sustainability and Rural Development, *Environmental Protection and Waste Management - Legislative Competence Order*, Cabinet Written Statement, 18 June 2007

³ Agreed by the Business Committee on 6 November 2007

⁴ RoP, p22-24, 4 July 2007

Scope of the Committee's scrutiny

5. We agreed the scope of our scrutiny on 11 July⁵ as set out below:
- (i) to decide whether the general principles of the proposed Order, i.e. that legislative competence as specified in Matters 6.1 and 6.2, be conferred on the Assembly and that the suggested modifications are made to Matter 5.10 and after Field 20;
 - (ii) to decide whether the proposed Order provides an appropriate framework for the delivery of the policy agenda on environmental protection and waste management, in particular, are the terms of the proposed Order too broadly or too narrowly defined.

Evidence

6. We issued a general call for evidence and invited organisations within the environment field to submit evidence to help inform our work. A copy of our consultation letter is attached at Annex 2. We also took oral evidence. A list of consultation responses, together with the details of oral evidence sessions are attached at Annex 3.

7. We also exchanged correspondence with the Minister and copies of all relevant letters are attached at Annex 4.

8. Under Standing Order 22.21, in preparing our report we must, so far as is reasonably practicable, take into account any recommendations made on the proposed Order by:

- (i) any other committee of the National Assembly for Wales; and
- (ii) any committee of the House of Commons, the House of Lords or any Joint Committee of both Houses of Parliament.

⁵ The scope was discussed at informal and formal meetings on 11 July 2007.

No such recommendations have been made in respect of the proposed Order.

9. The following report and recommendations represent the conclusions we have reached based on the evidence received during the course of our work.

2. The principle of the proposed Order

Background

10. The purpose of the proposed Order is to confer legislative competence on the National Assembly for Wales ('National Assembly') in the Field of the Environment (Field 6, Schedule 5 to the *Government of Wales Act 2006* - 'the 2006 Act') by inserting two new matters in the areas of environmental protection and waste management:

Matter 6.1 Collection, management, treatment and disposal of waste

Matter 6.2 Environmental protection, including pollution, nuisances and hazardous substances

11. The competence to be conferred by Matters 6.1 and 6.2 is subject to a number of excepted matters, which are contained within a table of excepted matters.

12. This table of excepted matters represents a presentational change to Schedule 5 to the 2006 Act, to be brought into force by means of the proposed Order. In future, excepted matters within the scope of a Matter are not to be listed under each Matter but are to be included in a table under the heading '*Excepted matters in Part 1 fields*'. The table is to be inserted after Field 20. It includes a list of excepted matters in the first column, with the second column identifying the Matters to which the excepted matter applies. As a consequence of this change of approach, the existing excepted matters already included in Part 1 of Schedule 5—in relation to Matter 5.10—also appear within the table, although they do not relate to the competence being conferred under Matters 6.1 and 6.2.

13. The conferral of legislative competence on the National Assembly by this proposed Order would allow the Welsh Assembly Government ('Assembly Government'), Assembly Members and Assembly Committees to

bring forward proposals for legislation, in the form of Assembly Measures, within the scope of Matters 6.1 and 6.2.

*Explanatory Memorandum*⁶

14. In its Explanatory Memorandum, the Assembly Government explained that it already has significant executive and secondary legislative competence in the areas of environmental protection and waste management.⁷ However, the Assembly Government considers that in a number of areas its existing powers are constrained.⁸

15. The new powers to be conferred by the proposed Order would allow the Assembly Government to bring forward proposals for Measures, based on Welsh priorities and timescales.⁹ In particular, the Assembly Government identified three specific areas in which it intends to use the powers:

- improving local environmental quality;
- increasing recycling and improving waste management; and
- strengthening pollution controls.¹⁰

16. These issues were highlighted as requiring action during the Assembly Government's consultation on its long term strategy for the environment of Wales,¹¹ which was subsequently published in May 2006.¹²

Evidence

17. There was broad support for the proposed Order amongst those responding to the consultation exercise, with many respondents specifically

⁶ Welsh Assembly Government, *Memorandum from the Minister for Sustainability and Rural Development, National Assembly for Wales (Legislative Competence) (No.2) Order 2007, Proposal for a Government Legislative Competence Order relating to Environmental Protection and Waste Management*, June 2007

⁷ Ibid paragraph 7

⁸ Ibid paragraph 12

⁹ Ibid paragraph 11

¹⁰ Ibid paragraph 13

¹¹ Ibid paragraph 9

¹² Welsh Assembly Government, *Environment Strategy for Wales*, May 2006

welcoming it. A range of views were put forward for supporting the proposed Order. Wales Environment Link said that:

“...it will aid the Welsh Assembly Government in achieving the Environment Strategy’s vision of an environment which is clean, healthy, biologically diverse and valued by the people of Wales.”¹³

18. Environment Agency Wales said that the proposed Order:

“...will provide the opportunity to introduce a mechanism to deliver a strategic and joined-up approach to the management of waste and the protection of the environment in Wales.”¹⁴

19. More specifically, Keep Wales Tidy noted that the National Assembly’s current powers prevent it from introducing additional statutory duties aimed at reducing nuisance and said that the proposed Order “would provide the Assembly with a full range of powers to tackle problems that are specific to the needs of Wales.”¹⁵

20. A few organisations did express some reservations about the breadth of the powers being conferred by the proposed Order. While stating that the proposed Order will bring advantages in terms of some issues at “a local Wales level” such as fly-tipping, littering and waste management, the Confederation of British Industry Wales expressed some concerns that the proposed Order:

“...may give powers to the Assembly to address matters that we think would be best dealt with at a UK or even an international level...”¹⁶

¹³ Wales Environment Link, Written Evidence, EPWM3

¹⁴ Environment Agency Wales, Written Evidence, EPWM8

¹⁵ Keep Wales Tidy, Written Evidence, EPWM5

¹⁶ RoP, paragraph [151], 2 October 2007, Proposed Environmental Protection and Waste Management LCO Committee

21. On a slightly different note, while being in favour of the proposed Order in principle¹⁷, the Welsh Local Government Association expressed the view that:

“In terms of environmental protection, we are not clear what Measures would be introduced because recent research by the Assembly Government clearly shows that, at the moment, there is not a deficit in legislative provision on environmental protection. The real issue that we face in Wales is one of changing behaviours and fully utilising the powers that we have at present, which is a resource issue. Therefore, I am not clear about the gaps that the LCO, as currently drafted, would cover.

Having said that, in our evidence we did say that we would like the LCO introduced to be clear about its coverage of enhancement of the environment.”¹⁸

22. The Minister provided an illustrative list of the topics that the Assembly Government considers are covered by the scope of the proposed Order.¹⁹ She re-iterated why the request for legislative competence was being made, stating that within each of the topics listed “there are areas where our powers do not go far enough”.²⁰ She also acknowledged that the proposed Order could potentially allow the Assembly to pass Measures that cover the emissions of greenhouse gases (for example by reducing waste and improving resource efficiency).²¹ The Minister also explained that the powers would enable public concerns about waste and local environmental issues, highlighted in the Environment Strategy for Wales, to be addressed.²²

¹⁷ RoP, paragraph [226], 25 September 2007, Proposed Environmental Protection and Waste Management LCO Committee

¹⁸ RoP, paragraphs[170-1], 25 September 2007, Proposed Environmental Protection and Waste Management LCO Committee

¹⁹ Letter from Jane Davidson AM, Minister for Environment, Sustainability and Housing, *Proposed Environmental Protection and Waste Management LCO*, 25 October 2007

²⁰ RoP, paragraph [8], 6 November 2007, Proposed Environmental Protection and Waste Management LCO Committee

²¹ Letter from Jane Davidson AM, Minister for Environment, Sustainability and Housing, *Request for information by Environmental Protection and Waste Management LCO committee*, 1 October 2007

²² RoP, paragraph [10], 6 November 2007, Proposed Environmental Protection and Waste Management LCO Committee

Our view

23. We have noted the broad support that exists for the proposed Order and in particular that no organisation has opposed, in principle, the conferral of legislative competence in the areas identified within the proposed Order. We have also noted and acknowledge the reasons put forward by the Minister for seeking such legislative competence. **We agree in principle that legislative competence in the areas identified within the proposed Order should be conferred on the National Assembly.**

24. While agreeing in principle that competence should be conferred, in considering whether the proposed Order is too broadly or narrowly drawn and having considered the evidence, we believe that the specific drafting of Matters 6.1 and 6.2 needs to be re-considered. Paragraphs 25 to 55 of this report consider these issues.

3. Matter 6.1

Waste minimisation - evidence

25. Many consultation respondents and witnesses commenting on Matter 6.1 suggested that it should be re-drafted to add the word 'minimisation' or 'reduction'.

26. Cylch, the Wales Community Recycling Network, said that:

"We believe that without the inclusion of the term 'reduction' the LCO will not allow for the implementation of an effective policy agenda on waste management, i.e. one that has the principle of sustainability at it[s] heart."²³

27. Environment Agency Wales reminded the Committee that:

"...we can only achieve sustainable waste management by following the principles of the waste hierarchy, the most important of which is waste minimisation. Minimising the amount of waste produced will prevent and reduce waste and associated emissions....It is important to highlight that waste minimisation is not recycling. Recycling, whilst beneficial once the waste is produced, cannot achieve as much benefit to the environment as if the waste was not produced in the first instance."²⁴

28. Environment Agency Wales went on to suggest that Matter 6.1 should be re-drafted to include the word 'minimisation'.²⁵ Subsequently, Environment Agency Wales suggested that 'production' is a better word

²³ Cylch, Written Evidence, EPWM1

²⁴ Environment Agency Wales, Written Submission, EPWM8

²⁵ Ibid

because “there should be a strong emphasis on not producing waste in the first place.”²⁶

29. The Welsh Local Government Association noted that the absence of reference to ‘minimisation’ or ‘reduction’ in Matter 6.1 made it appear “that the focus of any ensuing Measures would be on tackling the symptoms rather than preventing the problem.”²⁷

30. Keep Wales Tidy suggested that omitting reference to the reduction of waste from Matter 6.1 would prevent the Assembly Government “from developing holistic policies to tackle the problem of waste and may necessitate another LCO in the future.”²⁸

31. The Minister explained that in drafting the proposed Order, the wording was carefully chosen to follow the wording used in Schedule 7 to the 2006 Act^{29 30}, although she acknowledged that in relation to Matter 6.1, the word ‘treatment’ had been added to “to give scope to the Welsh Assembly Government to legislate, for example, on recycling, composting and the treatment of food waste.”³¹

32. The Minister said that waste reduction “will definitely be covered by the LCO as drafted.”³² She explained that she would be “happy in principle” to add ‘reduction’ to Matter 6.1 if that would put beyond doubt the Assembly Government's intention to have legislative competence in relation to the amount of waste produced, although she would need to be sure that

²⁶ RoP, paragraphs [17] and [21], 2 October 2007, Proposed Environmental Protection and Waste Management LCO Committee

²⁷ Welsh Local Government Association, Written Evidence, EPWM2

²⁸ Keep Wales Tidy, Written Submission, EPWM5

²⁹ RoP, paragraph [17], 25 September 2007, Proposed Environmental Protection and Waste Management LCO Committee

³⁰ Following a successful referendum, Section 108 and Schedule 7 to the 2006 Act set out the extent of the National Assembly's legislative competence to pass Acts.

³¹ RoP, paragraph [62], 25 September 2007, Proposed Environmental Protection and Waste Management LCO Committee

³² RoP, paragraph [30], 25 September 2007, Proposed Environmental Protection and Waste Management LCO Committee

the inclusion of such a word would not compromise the scope of the proposed Order.³³ She also stated that the Assembly Government is:

"...not resistant in any way to adding words to help Members and the public to understand the full panoply of powers that will be available...However, you always want to ensure that you have legal advice on whether any perverse outcome results from adding particular phraseologies."³⁴

33. Subsequently, the Minister explained:

"I have had the opportunity to consider a more explicit reference to waste prevention in Matter 6.1 and initial legal advice is that "waste reduction" is more established as a legal concept than "waste minimisation" and would encapsulate waste minimisation. However, further consideration of changes to the drafting of Matter 6.1, along with discussion with Whitehall, is needed to ensure that inclusion of this term does not compromise the scope of the LCO."³⁵

Waste minimisation - our view

34. We have noted the strong calls from consultation respondents and witnesses for the inclusion of a specific reference to waste minimisation or reduction in Matter 6.1. We consider that the inclusion of such a reference would add clarity and we agree with the Welsh Local Government Association that amending Matter 6.1 in this way would focus attention on the prevention of waste, rather than tackling waste once it has been produced. We have noted Environment Agency Wales view that reference should be made to 'production'. However, advice from National Assembly lawyers suggests that such a term can be interpreted more narrowly than

³³ RoP, paragraph [30], 25 September 2007, Proposed Environmental Protection and Waste Management LCO Committee

³⁴ RoP, paragraph [62], 25 September 2007, Proposed Environmental Protection and Waste Management LCO Committee

³⁵ Letter from Jane Davidson AM, Minister for Environment Sustainability and Housing, *Proposed Environmental Protection and Waste Management LCO*, 25 October 2007

either 'minimisation' or 'reduction'. We have noted that the Minister is considering a change to Matter 6.1 on this point and acknowledge that, in so doing, it is necessary to ensure that the impact of any changes does not result in any unwanted outcomes. To avoid any doubt, we recommend that the Welsh Assembly Government amends Matter 6.1 to make it clear that it covers the minimisation or reduction of waste.

Radioactive waste - evidence

35. We sought clarification from the Minister about which waste streams are not covered by the proposed Order.³⁶

36. The Minister replied that:

"The intended scope of the LCO is to cover all waste streams...with the exception of radioactive waste. We are not currently seeking to deepen the scope of our powers in respect of radioactive waste given that Welsh Ministers already have extensive powers regarding radioactive waste which allow us to fulfil our policy aims. This includes nuclear waste, radioactive discharges and other radioactive substances including e.g. sealed sources for industrial or educational purposes."³⁷

37. When subsequently questioned on this point, the Minister provided further clarification:

"Under the current drafting of matter 6.1, radioactive waste would appear to be included. However, it is not our intention that it would be within the scope of the LCO, so further consideration needs to be given in relation to the inclusion of a specific exception."³⁸

³⁶ Letter from Alun Ffred Jones AM, Chair of the Proposed Environmental Protection and Waste Management LCO Committee, *Proposed Environmental Protection and Waste Management LCO*, 23 October 2007

³⁷ Letter from Jane Davidson AM, Minister for Environment Sustainability and Housing, *Proposed Environmental Protection and Waste Management LCO*, 25 October 2007

³⁸ RoP, paragraph [14], 6 November 2007, Proposed Environmental Protection and Waste Management LCO Committee

38. In a subsequent letter to the committee, the Minister also explained that excepted matter number 16 in the table of excepted matters i.e. the 'carriage of dangerous goods (including transport of radioactive material)', "is not really relevant to the issue of whether radioactive waste is included within the scope of this LCO or not".³⁹ This is because radioactive waste is specifically excluded from the definition of radioactive material⁴⁰, although they are both classed as radioactive substances.

39. The Minister also expanded on the reasons for not seeking legislative competence in respect of radioactive substances:

"Management and regulation of radioactive substances is carried out to ensure the highest degree of safety for human health and the environment and there is no evidence that additional powers for Wales would increase the degree of safety. Welsh interests in this area are covered by consultative arrangements between the UK Government and the devolved administrations and the regulators. Separate Welsh legislation would cut across these longstanding arrangements."⁴¹

Radioactive waste - our view

40. As the Minister has indicated, radioactive waste currently falls within the scope of Matter 6.1, and we note that it is her intention to amend Matter 6.1 to exclude it. We have noted that Welsh Ministers already have extensive devolved functions relating to radioactive waste. While we have noted the Minister's reasons for seeking to exclude radioactive waste from the scope of this proposed Order, because this change has become apparent towards the end of our scrutiny, we have not had the opportunity to hear the views of witnesses on this issue. Nonetheless, we have considered the

³⁹ Letter from Jane Davidson AM, Minister for Environment, Sustainability and Housing, *Proposed Environmental Protection and Waste Management LCO*, 14 November 2007

⁴⁰ *Ibid*; See also *Radioactive Substances Act 1993*, s1 & s2

⁴¹ Letter from Jane Davidson AM, Minister for Environment, Sustainability and Housing, *Proposed Environmental Protection and Waste Management LCO*, 14 November 2007

provisions of paragraph 6 of Part 1 of Schedule 7 to the 2006 Act and have noted that in the event of a successful referendum, under these provisions the Assembly would have legislative competence in respect of radioactive waste. On that basis, we recommend that the Welsh Assembly Government does not amend Matter 6.1 to exclude radioactive waste from its scope.

4. Matter 6.2

Environmental protection - evidence

41. The scope and interpretation of Matter 6.2 was a key issue for most consultation respondents. In particular, the word "including" was interpreted by many respondents to mean that the scope of Matter 6.2 in relation to environmental protection was wider than just "pollution, nuisances and hazardous substances". Indeed many organisations offered similar, but to some extent varying, views on the scope of Matter 6.2.

42. The Royal Society for the Protection Birds ('RSPB') considered that "the scope of the term 'environmental protection' is very unclear".⁴² They also stated that the everyday usage of the term 'environmental protection' and its use in previous legislation suggested that its scope is considerably broader than the examples given in the Assembly Government's Explanatory Memorandum at paragraphs 12 and 13.⁴³ Like a number of organisations, they argued that environmental protection could include many of the subjects listed in paragraph 6 of Part 1 of Schedule 7 to the 2006 Act.⁴⁴

43. In commenting on the Explanatory Memorandum, the RSPB suggested that it contains conflicting messages:

"...as to whether the interpretation of 'environmental protection' is wide or restricted to a narrow agenda of 'environmental nuisances' (e.g. waste, pollution, cigarette butts and fly tipping)."⁴⁵

and made the point that:

"No attempt is made to define 'local environmental quality', but clearly all environments are local to someone and, therefore, this

⁴² Royal Society for the Protection of Birds, Written Evidence, EPWM6

⁴³ Ibid

⁴⁴ Ibid

⁴⁵ Ibid

could cover any aspect of environmental management, and indeed all the matters specified in Section 6, Schedule 7 of [the Government of Wales Act] 2006.”⁴⁶

44. The Countryside Council for Wales said their main concern with the proposed Order was that it does not define ‘environmental protection’.⁴⁷ They said:

“...we would like to see the definition of environmental protection covering what I think is classically accepted as the definition, which includes restoration, maintenance and enhancement of the environment so that it covers environment in the round.”⁴⁸

and that:

“The purpose for including not just protection, but restoration and enhancement as well, is because, over a long timescale, that has been the meaning of environmental protection, which has never been restricted purely to just protection—it has always been about putting right the damage caused, and about taking the opportunity to make things even better.”⁴⁹

45. In the Countryside Council for Wales view, environmental protection covers “nature conservation, including biodiversity, because other, Westminster legislation assumes that, and we operate under that legislation.”⁵⁰

46. The Countryside Council for Wales also said that if protection does not cover enhancement, it should be added because protection would “only

⁴⁶ Royal Society for the Protection of Birds, Written Evidence, EPWM6

⁴⁷ RoP, paragraph [90], 2 October 2007, Proposed Environmental Protection and Waste Management LCO Committee

⁴⁸ RoP, paragraph [91], 2 October 2007, Proposed Environmental Protection and Waste Management LCO Committee

⁴⁹ RoP, paragraph [108], 2 October 2007, Proposed Environmental Protection and Waste Management LCO Committee

⁵⁰ Ibid

potentially maintain the status quo and would not look at improving local environment quality, which we understood to be the basis for the LCO.”⁵¹

47. Environment Agency Wales said they “would see environmental protection as minimising pollution risks”⁵² but also that “we can see why some arguments are being put forward that it should encompass improvement as well.”⁵³

48. The Minister explained that in the context of the proposed Order the definition of environmental protection is “limited in its effect by the words that follow it”.⁵⁴ She clarified this point in a letter to the committee, stating:

“Legal advice is that the word “including” in Matter 6.2 engages the *expressio unius est exclusio alterius* rule of statutory construction, which limits the definition of “environmental protection” only to the words which follow, in this case “pollution, nuisances and hazardous substances”. The effect of the rule is that where the legislation mentions a broad area “including” specific topics, it is assumed that there was no intention to include other topics. Matter 6.2 therefore covers environmental protection in relation to pollution, nuisances and hazardous substances and does not include, for example, nature conservation or biodiversity which both fall outside of the scope of this LCO.”⁵⁵

49. National Assembly lawyers agreed with this legal advice. Nevertheless, in a subsequent letter, the Minister acknowledged that the drafting of Matter 6.2 had led to “some different interpretations” and said

⁵¹ RoP, paragraph [111], 2 October 2007, Proposed Environmental Protection and Waste Management LCO Committee

⁵² RoP, paragraph [37], 2 October 2007, Proposed Environmental Protection and Waste Management LCO Committee

⁵³ RoP, paragraph [45], 2 October 2007, Proposed Environmental Protection and Waste Management LCO Committee

⁵⁴ RoP, paragraph [38], 25 September 2007, Proposed Environmental Protection and Waste Management LCO Committee

⁵⁵ Letter from Jane Davidson AM, Minister for Environment, Sustainability and Housing, *Request for information by Environmental Protection and Waste Management LCO committee*, 1 October 2007

that its wording was being reconsidered “with a view to clarifying that it covers only those environmental protection functions which relate to pollution, nuisances and hazardous substances”.⁵⁶

Enhancement - evidence

50. As the evidence already presented above shows⁵⁷, there was support from consultation respondents and witnesses for the inclusion of a reference to enhancement of the environment in Matter 6.2. However, what organisations felt the term ‘enhancement’ covered was dependent on the context in which it was used and open to interpretation. For example, Environment Agency Wales suggested that ‘enhancement’ could be included in Matter 6.2 or as a separate Matter.⁵⁸

51. As with their comments in respect of Matter 6.1, the Welsh Local Government Association again suggested that Matter 6.2 was “dealing with an issue once it has happened” and to illustrate the point, suggested that local authority funds should be spent on “improving the local environment and investing it in services rather than clearing up after people.”⁵⁹

52. While making the connection with Schedule 7 to the 2006 Act, the Minister suggested that she was not opposed to use of the word ‘enhancement’, again subject to the caveat that its inclusion did not lead to unwanted outcomes.⁶⁰ However, she also expressed the view that the term ‘environmental protection’ was broad enough to “include the notions of enhancing and improving the environment”.⁶¹

⁵⁶ Letter from Jane Davidson AM, Minister for Environment, Sustainability and Housing, *Proposed Environmental Protection and Waste Management LCO*, 25 October 2007

⁵⁷ For example, see paragraphs 21 and 46 above.

⁵⁸ RoP, paragraph [68], 2 October 2007, Proposed Environmental Protection and Waste Management LCO Committee

⁵⁹ Welsh Local Government Association, Written Evidence, EPWM2

⁶⁰ RoP, paragraphs [62] and [66], 25 September 2007, Proposed Environmental Protection and Waste Management LCO Committee

⁶¹ RoP, paragraph [39], 6 November 2007, Proposed Environmental Protection and Waste Management LCO Committee

Clarity of intention - evidence

53. As is evident from the above paragraphs, a key theme to emerge in our scrutiny of Matter 6.2 was the need for clarity of intention. Wales Environment Link saw legal clarity as being "vital for the voluntary sector and the public to understand the devolution settlement" and to guard against disenfranchisement.⁶² Similar sentiments were expressed by the Welsh Association of Chief Police Officers who said "we want absolute clarity and the removal of ambiguity".⁶³

Our view

54. We agree with respondents who have suggested that Matter 6.2 lacks clarity as to its specific intention. In our view, this lack of clarity has arisen because it was not clearly explained that the word 'including' is being used in a statutory sense rather than in the sense that would be expected in everyday usage. It also perhaps stems from the terminology used to describe the purpose of the proposed Order, namely to improve the local environment, which may be perceived as being different from protecting it. We therefore welcome the Minister's intention to reconsider the wording of Matter 6.2. **To avoid any doubt, we recommend that the Welsh Assembly Government amends Matter 6.2 to clarify the areas of environmental protection that it covers.**

55. While we note the Minister's view that environmental protection covers enhancement or improvement, we have taken the view that Matter 6.2 should be drafted in such a way as to make this point clear. **We recommend that the Welsh Assembly Government amends Matter 6.2 to make it clear that it covers the enhancement or improvement of the environment, enabling Measures to be brought forward to enhance or**

⁶² RoP, paragraph [241], 25 September 2007, Proposed Environmental Protection and Waste Management LCO Committee

⁶³ RoP, paragraph [31], 9 October 2007, Proposed Environmental Protection and Waste Management LCO Committee

improve the environment (within the scope of the Matter), as well as to protect it.

5. Biodiversity

Evidence

56. In seeking views as to whether the scope of the proposed Order was drawn too broadly or too narrowly, we received submissions from a number of consultation respondents who suggested that biodiversity should be included within the scope of the proposed Order.

57. The RSPB said the addition of a new Matter on biodiversity would “help address continuing declines in wildlife in Wales.”⁶⁴ Wales Environment Link was “convinced of the need for urgent action” in respect of biodiversity and saw the proposed Order as “an opportunity for Wales to secure the powers needed to bring about action for biodiversity in the integrated way that is set out in the Environment Strategy.”⁶⁵

58. Wales Environment Link further justified their call for inclusion of biodiversity by stating that:

"If the measure deals with local environmental quality, in its broadest sense, then biodiversity should definitely be included in that definition."⁶⁶

and by agreeing with a suggestion that biodiversity issues are related to environmental protection.⁶⁷

59. Support for including a new Matter on biodiversity in the proposed Order also came from the Countryside Council for Wales⁶⁸ and Environment

⁶⁴ Royal Society for the Protection of Birds, Written Evidence, EPWM6

⁶⁵ Wales Environment Link, Written Evidence, EPWM3

⁶⁶RoP, paragraph [255], 25 September 2007, Proposed Environmental Protection and Waste Management LCO Committee

⁶⁷ RoP, paragraphs [256-7], 25 September 2007, Proposed Environmental Protection and Waste Management LCO Committee

⁶⁸ RoP, paragraphs [124] and [144-5], 2 October 2007, Proposed Environmental Protection and Waste Management LCO Committee

Agency Wales⁶⁹. In addition, the Welsh Association of Chief Police Officers offered support, making the point that much of the existing legislation relevant to biodiversity was at least 25 years old and in need of updating.⁷⁰ To support their view, they submitted further written evidence outlining 33 suggestions as to how legislation relating to biodiversity could be improved, 22 of which would require legislative competence.⁷¹

60. The Minister indicated that she did not intend to broaden the scope of the proposed Order to cover biodiversity since that would take its scope “beyond its original intention”.⁷² Furthermore, the Minister said that “it would be extremely hard to argue that biodiversity should be brought in without nature conservation and sites of special scientific interest.”⁷³ However, the Minister acknowledged that biodiversity is a major responsibility and priority for the Assembly Government.⁷⁴

Our view

61. We have considered carefully the calls for biodiversity to be included within the scope of the proposed Order. We accept the Minister’s view that if biodiversity were to be included, it would make sense to include related issues as well but recognise that we have not fully tested such an approach in our scrutiny. Nonetheless, we consider that we have received strong evidence to suggest that it would be of benefit to the environment in Wales for the National Assembly to acquire legislative competence in relation to biodiversity. **Therefore, we strongly recommend that the Welsh Assembly Government brings forward a Legislative Competence Order covering biodiversity and related issues at the earliest opportunity.**

⁶⁹ RoP, paragraph [71], 2 October 2007, Proposed Environmental Protection and Waste Management LCO Committee

⁷⁰ RoP, paragraphs [33-4], 9 October 2007, Proposed Environmental Protection and Waste Management LCO Committee

⁷¹ Welsh Association of Chief Police Officers, Supplementary Written Evidence, EPWM7

⁷² Letter from Jane Davidson AM, Minister for Environment Sustainability and Housing, *Proposed Environmental Protection and Waste Management LCO*, 25 October 2007

⁷³ RoP, paragraph [53], 6 November 2007, Proposed Environmental Protection and Waste Management LCO Committee

⁷⁴ RoP, paragraph [76], 6 November 2007, Proposed Environmental Protection and Waste Management LCO Committee

6. Excepted Matters

Evidence

62. Many consultation respondents and witnesses sought clarification on the excepted matters, in particular in relation to numbers 1 (road freight transport services), 2 (use of motor vehicles), 12 (shipping), 15 (harbours, docks, piers and boatslips), 16 (carriage of dangerous goods) and 18 (energy conservation). Specific issues raised included: whether excepted matters 1 and 2 would restrict the National Assembly's ability to legislate to tackle road traffic pollution⁷⁵; whether excepted matters 12 and 15 would restrict the National Assembly's ability to tackle waste from shipping and fishing activities⁷⁶ and clarification on the intention behind excepted matter 18.⁷⁷ Some consultation respondents suggested that the inclusion of Matter 5.10 in the table of excepted matters was confusing.⁷⁸

63. National Assembly lawyers advised us that the wording of the excepted matters was taken from Part 1 of Schedule 7 to the 2006 Act.

64. The Minister explained the rationale for each of the excepted matters, which all relate to non-devolved matters⁷⁹ and said she was satisfied that the excepted matters would not undermine the effectiveness of any proposed Measures brought forward under Matters 6.1 and 6.2.⁸⁰

65. In explaining the reasons for the presentational changes to Schedule 5

⁷⁵ Wales Environment Link, Written Evidence, EPWM3

⁷⁶ Ibid

⁷⁷ Environment Agency Wales Written Evidence, EPWM8; RoP, paragraph [79], 25 September 2007, Proposed Environmental Protection and Waste Management LCO Committee

⁷⁸ For example, Wales Environment Link, Written Evidence, EPWM3

⁷⁹ RoP, paragraphs [110-137], 25 September 2007, Proposed Environmental Protection and Waste Management LCO Committee; Letter from Jane Davidson AM, Minister for Environment, Sustainability and Housing, *Proposed Environmental Protection and Waste Management LCO*, 25 October 2007; RoP, paragraphs [23-29] and [89-117], 6 November 2007, Proposed Environmental Protection and Waste Management LCO Committee; Letter from Jane Davidson AM, Minister for Environment, Sustainability and Housing, *Proposed Environmental Protection and Waste Management LCO*, 14 November 2007

⁸⁰ RoP, paragraphs [88-9], 25 September 2007, Proposed Environmental Protection and Waste Management LCO Committee

to the 2006 Act, the Minister said that:

“The table format was therefore created as an efficient drafting device that enables exceptions to be applied to multiple matters and fields in Schedule 5, without repeating the exceptions each time.”⁸¹

Our view

66. We have noted and accept the reasons put forward by the Minister for the inclusion of the excepted matters in relation to Matters 6.1 and 6.2. Therefore, we are content with the excepted matters provided in relation to Matters 6.1 and 6.2.

67. We are content with the presentational change proposed in relation to Schedule 5 to the *Government of Wales Act 2006*, so that in future, all excepted matters relating to a specific Matter are contained within a table at the end of Field 20.

68. However, we have noted that some consultation respondents were unclear about the excepted matters in relation to the proposed Order. We also note that the Explanatory Memorandum in relation to the proposed Order provided no information about the presentational change to Schedule 5 to the 2006 Act or about the individual excepted matters in relation to Matters 6.1 and 6.2. The excepted matters cover complex issues and need to be explained clearly to ensure that there is full understanding of the extent of the legislative competence being conferred on the National Assembly by a particular proposed (or draft) Order. Therefore, we would encourage the Welsh Assembly Government to ensure that Explanatory Memoranda which accompany proposed (and draft) Orders explain clearly the reasons for including any excepted matters and the purpose of those excepted matters.

⁸¹ RoP, paragraph [110], 25 September 2007, Proposed Environmental Protection and Waste Management LCO Committee



Annex 1

Draft Order laid before the National Assembly for Wales and Parliament under section 95(5) of the Government of Wales Act 2006, for approval by resolution of the Assembly and of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2007 No.

CONSTITUTIONAL LAW

DEVOLUTION, WALES

National Assembly for Wales (Legislative Competence) (No.2) Order 2007

Made - - - - - ***

Coming into force in accordance with Article 1

At the Court at Buckingham Palace, the *** day *** of *** 2007

Present

The Queen's Most Excellent Majesty in Council

In accordance with section 95(5) of the Government of Wales Act 2006(a), a draft of this Order has been laid before, and approved by resolution of, the National Assembly for Wales and each House of Parliament.

Accordingly, Her Majesty, in pursuance of section 95(1) of the Government of Wales Act 2006, is pleased, by and with the advice of Her Privy Council, to order as follows:—

Citation and commencement

1. This Order may be cited as the National Assembly for Wales (Legislative Competence) (No.2) Order 2007 and it comes into force on the day after the day on which it is made.

Amendments to the Government of Wales Act 2006

2.—(1) Part 1 of Schedule 5 to the Government of Wales Act 2006 is amended in accordance with this article.

(2) In matter 5.10 of field 5 (education), omit the second paragraph including sub-paragraphs (a) to (o).

(a) 2006 (c.32).

Annex 1

(3) In field 6 (environment), insert –

“Matter 6.1

Collection, management, treatment and disposal of waste.

Matter 6.2

Environmental protection, including pollution, nuisances and hazardous substances.”

(4) After field 20, insert –

“Excepted matters in Part 1 fields

The matters specified in the first column of the table below (excepted matters) are not included within the matters in the fields of this Part specified in the corresponding entry in the second column.

TABLE

1. Road freight transport services, including goods vehicles operating licensing.	Matters 6.1, 6.2
2. The regulation of the use of motor vehicles on roads, their construction and equipment and conditions under which they may be so used.	Matters 5.10, 6.1, 6.2
3. Road traffic offences.	Matter 5.10
4. Driver licensing.	Matter 5.10
5. Driving instruction.	Matter 5.10
6. Insurance of motor vehicles.	Matter 5.10
7. Drivers’ hours.	Matter 5.10
8. Traffic regulation on special roads, pedestrian crossings, traffic signs and speed limits;	Matter 5.10
9. Public service vehicle operator licensing.	Matter 5.10

Annex 1

<p>10. The provision and regulation of railway services, apart from financial assistance which—</p> <ul style="list-style-type: none"> (a) does not relate to the carriage of goods, (b) is not made in connection with a railway administration order, and (c) is not made in connection with Council Regulation (EEC) 1191/69 as amended by Council Regulation (EEC) No. 1893/91 on public service obligations in transport. 	Matter 5.10
<p>11. Transport security.</p>	Matter 5.10
<p>12. Shipping, apart from financial assistance for shipping services to, from or within Wales.</p>	Matters 5.10, 6.1, 6.2
<p>13. Navigational rights and freedoms, apart from regulation of works which may obstruct or endanger navigation.</p>	Matters 6.1, 6.2
<p>14. Technical and safety standards of vessels.</p>	Matters 5.10, 6.1, 6.2
<p>15. Harbours, docks, piers and boatslips apart from—</p> <ul style="list-style-type: none"> (a) those used or required wholly or mainly for the fishing industry, for recreation or for communication between places in Wales (or for two or more of those purposes), and (b) regulation for the purposes of protecting the environment. 	Matters 5.10, 6.1, 6.2
<p>16. Carriage of dangerous goods (including transport of radioactive material).</p>	Matters 6.1, 6.2
<p>17. Registration of local bus services, and the application and enforcement of traffic regulation conditions in relation to</p>	Matter 5.10

Annex 1

those services.	
18. Energy conservation, apart from the encouragement of energy efficiency otherwise than by prohibition or regulation.	Matters 6.1, 6.2

”

Clerk to the Privy Council

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends Schedule 5 to the Government of Wales Act 2006 (“the 2006 Act”). The effect of the Order is to extend the legislative competence of the National Assembly of Wales to make new laws for Wales by Measure under section 93 of the 2006 Act.

Article 2 inserts new matters 6.1 and 6.2 and a table of excepted matters into Part 1 of Schedule 5 to the 2006 Act. The new matters are inserted by article 2(3). Matter 6.1 is about the collection, management and treatment and disposal of waste. Matter 6.2 is about environmental protection, including pollution, nuisances and hazardous substances. Any provision of an Assembly Measure relating to the new matters 6.1 and 6.2 will be within the legislative competence of the Assembly by virtue of the terms of those matters and section 94(4) of the 2006 Act.

The table inserted by article 2(4) sets out excepted matters and connects them to specified matters under the fields in Part 1 of Schedule 5 to the 2006 Act. The table has effect so that the matters specified in the first column (“excepted matters”) are not included in the matters in the fields identified in the second column. The Assembly will not be able make provision in an Assembly Measure under section 94(4) of the 2006 Act about anything in the first column, even if it would otherwise relate to the matters in the fields specified in the second column. The excepted matters in the first column will be outside the scope of the matters specified in the corresponding entry in the second column.

Article 2(2) makes an amendment to matter 5.10 which is consequential on the insertion of the table of excepted matters.

Annex 1

MEMORANDUM FROM THE MINISTER FOR SUSTAINABILITY AND RURAL DEVELOPMENT

National Assembly for Wales (Legislative Competence) (No.2) Order 2007

Proposal for a Government Legislative Competence Order relating to Environmental Protection and Waste Management

Introduction

1. This Memorandum has been prepared and laid in accordance with Standing Order (SO) 22.14. It sets out the background to the provisions in the attached government proposed Legislative Competence Order (LCO) which would confer additional legislative competence upon the National Assembly for Wales (“the Assembly”). The LCO is laid in accordance with SO 22.13 and this Memorandum explains the scope of the powers sought through the LCO.

2. The constitutional context to this request is set out by the Government of Wales Act 2006 (the 2006 Act) and the UK Government’s policy. The UK Government’s White Paper “Better Governance for Wales” published in June 2005 set out the UK Government’s commitment to enhance the legislative powers of the Assembly, as a democratically elected institution with its own detailed scrutiny procedures.

3. Section 95 of the 2006 Act empowers Her Majesty, by Order in Council, to confer competence on the Assembly to legislate by Assembly Measure on specified Matters. These Matters may be added to the Fields contained within Schedule 5 to the 2006 Act. Assembly Measures may make any provision which could be made by Act of Parliament (and therefore can modify existing legislation and make new provision), in relation to matters, subject to the limitations provided for in Part 3 of the 2006 Act. An Order in Council under section 95 of the 2006 Act is referred to as a Legislative Competence Order (LCO) in this Memorandum.

4. Matters may be inserted into the Fields contained in Schedule 5 to the 2006 Act, by either an Act of Parliament or an LCO, the latter having been approved by the Assembly and both Houses of Parliament. The latter route enables the Assembly to initiate the process for conferral of such competence, via an LCO.

5. The proposed LCO would confer further legislative competence on the Assembly in the field of Environmental Protection (Field 6 within Schedule 5 to the 2006 Act).

Background

6. New legislative powers in respect of the specified “matters” will enable the Assembly Government, Assembly Members and Assembly Committees to bring forward proposals for legislation, in the form of Measures, which are based on

Annex 1

Welsh priorities and timescales. These Measures will be subject to thorough scrutiny and approval by the Assembly.

7. Environmental Protection has been a devolved subject area for many years and the Welsh Assembly Government already has significant executive and secondary legislative competence in this area as Environmental protection is a devolved subject. Most of the Welsh Assembly Government's existing powers (now exercisable by the Welsh Ministers) in the field of environmental protection and waste are to be found in the Environmental Protection Act 1990, the Environment Act 1995, the Local Government Acts of 1988 and 1999 and through European law. The Welsh Ministers also have functions under the Control of Pollution Acts, the Anti-social Behaviour Act 2003 and the Clean Neighbourhoods and Environment Act 2005.

8. In May 2006, the Welsh Assembly Government published its long-term strategy for the environment of Wales. The strategy sets the strategic direction for the next 20 years to provide the framework within which to achieve an environment which is clean, bio-diverse healthy, and valued by the people of Wales. It is supported by a series of regularly updated action plans and a policy map setting out the key actions that will be taken to deliver the outcomes in the Strategy.

9. This request for legislative competence derives from a need to address the considerable and long-standing public concern in Wales about litter and other local environment issues, linked to which are concerns about sustainable waste management. These concerns were highlighted during the consultation process for the Environment Strategy.

10. In particular, local environment quality issues are seen as being central to quality of life and important to improve as a means of engaging people on other environmental issues. Delivering high quality living environments for everyone in Wales where the quality of life is not negatively affected by environmental nuisances is a priority for the Welsh Assembly Government

11. New powers in this Field will enable the Welsh Assembly Government to bring forward coherent proposals for Measures, based on Welsh priorities and timescales that will move us closer to the aim of sustainable communities.

12. The proposal for these powers is also made in the context of the limitations to the current settlement, which in some respects restricts the Assembly Government from tackling Welsh priorities and issues. In a number of areas the Welsh Assembly Government's existing powers are constrained. For example, a range of existing legislation deals with the problems relating to litter, but aspects of litter policy have been identified which cannot be implemented effectively by using existing powers; a good example being smoking litter accumulating in specific areas as an unintended consequence of the smoking ban. This Order will give us scope to come up with new solutions to some of these local challenges.

Annex 1

Scope

13. There are three specific areas in which these powers will be used to provide the scope to tackle environmental protection and waste management issues. These areas are improving local environmental quality, where issues like litter and flytipping are everyday concerns, increasing recycling and improving waste management; and strengthening pollution controls

14. It is proposed that the two Matters are inserted under Field 6: Environment, in Schedule 5 to the Government of Wales Act 2006 to enable the Assembly to legislate on these issues by way of Assembly Measure. Matter 6.1 will enable the Assembly to bring forward Measures to increase recycling and improve sustainable waste management in Wales. Matter 6.2 will enable the Assembly to bring forward Measures to improve local environmental quality and strengthen pollution controls.

15. The principal purpose of this LCO is therefore to empower the Assembly to pass Assembly Measures under part 3 of the Government of Wales Act 2006 that will enable implementation of a package of measures to improve the environment of Wales.

Geographical limits of any Assembly Measure

16. Section 94 of the 2006 Act imposes a prohibition upon Assembly Measures having effect other than in relation to Wales. It provides that a provision of an Assembly Measure is not law in so far as it is outside the Assembly's legislative competence. A provision is outside competence if it applies otherwise than in relation to Wales or confers, imposes, modifies or removes functions exercisable otherwise than in relation to Wales (or gives power to do so). There are limited exceptions for certain kinds of ancillary provision, for example provision appropriate to make the provisions of the Measure effective, provision enabling the provisions of the Measure to be enforced and to make consequential amendments to other legislation.

17. The limitation relating to functions other than in relation to Wales prevents the Assembly from passing any Measure conferring on the Welsh Ministers, Welsh local authorities or any other public authority, functions which did not relate to Wales.

Minister of the Crown functions

18. This proposed Order in itself does not seek to modify or remove any functions of a Minister of the Crown. By virtue of Part 2 of Schedule 5 of the Act, the Assembly may not by measure alter the functions of the Minister of the Crown without the consent of the Secretary of State for Wales. In relation to any future proposals that may impact on Minister of the Crown functions the appropriate UK Government Departments will be consulted and agreement sought to any future proposals to change or modify those functions.

Annex 1

Conclusion

18. For the reasons outlined above, the Welsh Assembly Government proposes that the legislative competence of the National Assembly for Wales should be extended in accordance with the government proposed LCO to which this Explanatory Memorandum relates.

Jane Davidson
Minister for Sustainability and Rural Development

June 2007



Annex 2

Pwyllgor ar y Gorchymyn ynghylch
Diogelu'r Amgylchedd a Rheoli Gwastraff

The Proposed Environmental Protection
and Waste Management LCO Committee

Bae Caerdydd / Cardiff Bay
Caerdydd / Cardiff CF99 1NA

July 2007

Dear Colleague

Consultation - The Proposed Environmental Protection and Waste Management LCO Committee

The Proposed Environmental Protection and Waste Management LCO Committee was established on 4 July 2007 to consider and report on the proposed National Assembly for Wales (Legislative Competence) (No.2) Order 2007.

The Committee has agreed the scope of its scrutiny as follows:

- the general principles of the proposed Order, i.e. that legislative competence, as specified in 'Matters 6.1 and 6.2', be conferred on the Assembly and that suggested modifications are made to Matter 5.10 and after Field 20; and
- whether the proposed Order provides an appropriate framework for the delivery of the policy agenda on Environmental Protection and Waste Management, in particular whether the terms of the proposed Order are too broadly or too narrowly defined.

The purpose of the committee's work is to scrutinise the drafting of the proposed Order and, as such, the committee will avoid engaging in detailed discussions on proposed Measures which could be brought forward as a result of the conferral of legislative competence, reviewing existing policies in this area or replicating work already undertaken by former subject committees.

Further information on the proposed Order and its Explanatory Memorandum, together with a Guide to the legislative process can be found at <http://www.assemblywales.org/bus-home/buslegislation.htm>

The transcript of the Committee's first meeting is available at http://www.assemblywales.org/bus-home/bus-committees/bus-committees-third-assem/bus-committees-third-epwm-home/bus-committees-third-epwm-agendas/epwm_transcript.pdf?langoption=3&ttl=EPWM%283%29%20%3A%20Transcript%20%28PDF%2079-2%20kb%29

I am writing to invite you to submit evidence to the Committee.

Ffon / Tel: 029 2089 8008
Ffacs / Fax: 029 2089 8021
Minicom: 029 2082 3280

E-bost / E-mail: legislationoffice@wales.gsi.gov.uk

In particular the Committee would like to receive evidence on the following questions:

1. Would the terms of the proposed Order allow for the implementation of the policy agenda on waste management and environmental protection by means of Measures? If not, how would the proposed Order need to be re-drafted and why?
2. The proposed Order includes a Table setting out certain exceptions from the scope of Matters 6.1 and 6.2 - see the entries at numbers 1, 2, 12 13, 14 15, 16 and 18. Are these exceptions appropriate? If not, how should they be re-drafted and why?
3. Are the terms of the proposed Order drafted appropriately, too narrowly or too broadly. If necessary how should the proposed Order be re-drafted and why?

If you wish to contribute to the committee's work, submissions should be sent, preferably by email or on disc, or otherwise in hard copy to:

Sarah Beasley, Deputy Committee Clerk, Legislation Office, National Assembly for Wales, Cardiff Bay, CF99 1NA.

Email: legislationoffice@wales.gsi.gov.uk. (Please title the email '*Consultation EPWM Committee*').

Submissions should arrive in the Assembly by Friday 21 September 2007. It may not be possible to take into account responses received after this date.

When putting together your submission, please keep the following in mind:

- Your response should be as succinct as possible. Please reference your response using the title applied above;
- The National Assembly normally makes responses to public consultation available for public scrutiny and they may also be seen and discussed at Committee meetings. If you do not want your response or name published, it is important that you clearly specify this in your submission;
- Please indicate whether you are responding on behalf of an organisation, or as an individual;
- Please indicate whether or not you would be prepared to give oral evidence to the Committee.

The Committee welcomes contributions in English and Welsh and will consider responses to the written consultation during the autumn term.

If you have any queries, please contact the Clerk, Gareth Williams (tel: 029 2089 8008) or Sarah Beasley, the Deputy Clerk (tel: 029 2089 8032).



Alun Ffred Jones AM
Chair

Ffon / Tel: 029 2089 8008
Ffacs / Fax: 029 2089 8021
Minicom: 029 2082 3280

E-bost / E-mail: legislationoffice@wales.gsi.gov.uk

Annex 3

Consultation responses

Reference	Organisation
EPWM1	Cylch (Wales Community Recycling Network)
EPWM2	Welsh Local Government Association
EPWM3	Wales Environment Link Wales Environment Link (supplementary submission)
EPWM4	Tobacco Manufacturers' Association, Annex
EPWM5	Keep Wales Tidy
EPWM6	Royal Society for the Protection of Birds
EPWM7	Welsh Association of Chief Police Officers Welsh Association of Chief Police Officers (supplementary submission)
EPWM8	Environment Agency Wales
EPWM9	Countryside Council for Wales
EPWM10	CBI Wales

Responses to the consultation can be found at:

www.assemblywales.org/bus-home/buslegislation/bus-legislation-lco/bus-legislation-lco-in-prog/bus-legislation-lco-2007-2/bus-legislation-lco-2007-2-writevid.htm



Annex 3

Schedule of Oral Evidence

Date	Witnesses
25 September 2007	Minister for Environment, Sustainability and Housing Welsh Local Government Association Wales Environment Link
2 October 2007	Environment Agency Wales Countryside Council for Wales Confederation of British Industry (CBI) Wales
9 October 2007	Welsh Association of Chief Police Officers
6 November 2007	Minister for Environment, Sustainability and Housing

Transcripts of oral evidence sessions can be found at:

www.assemblywales.org/bus-home/bus-committees/bus-committees-third-assem/bus-committees-third-epwm-home.htm



Jane Davidson AC/AM

Y Gweinidog dros yr Amgylchedd, Cynaliadwyedd a Thai
Minister for Environment, Sustainability and Housing



Llywodraeth Cynulliad Cymru
Welsh Assembly Government

Annex 4

Eich cyf/Your ref
Ein cyf/Our ref

Alun Ffred Jones AM
Chair, Environmental Protection and Waste Management
LCO Committee
Welsh Assembly Government
Cardiff Bay
Cardiff
CF99 1NA

1st October 2007

Annwyl Alun,

REQUEST FOR INFORMATION BY ENVIRONMENTAL PROTECTION AND WASTE MANAGEMENT LCO COMMITTEE

Thank you for the opportunity to present evidence at the Environmental Protection and Waste Management LCO Committee on September 25. The Committee requested further information on four areas and my response to each is set out below. It is crucial to emphasise that examples of possible topics are used only to illustrate the extent of the legislative competence that the draft LCO would confer, and do not necessarily reflect or limit the types of Measures that the LCO will be used to introduce once legislative competence is conferred.

1. Legal advice on the definition of "environmental protection" and on the term "including" in Matter 6.2.

Matter 6.2 - Environmental Protection, including pollution, nuisances and hazardous substances

Legal advice is that the word "including" in Matter 6.2 engages the *expressio unius est exclusio alterius* rule of statutory construction, which limits the definition of "environmental protection" only to the words which follow, in this case "pollution, nuisances and hazardous substances". The effect of the rule is that where the legislation mentions a broad area "including" specific topics, it is assumed that there was no intention to include other topics. Matter 6.2 therefore covers environmental protection in relation to pollution, nuisances and hazardous substances and does not include, for example, nature conservation or biodiversity which both fall outside of the scope of this LCO.

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1NA

English Enquiry Line 0845 010 3300
Llinell Ymholiadau Cymraeg 0845 010 4400
Ffacs * Fax 029 2089 8129
PS.minister.for.ESH@wales.gsi.gov.uk

2. Further information and legal advice on the relationship of the proposed LCO and its impact on carbon emissions and proposals on climate change.

Legal advice indicates that emissions of greenhouse gases are considered to be a form of pollution and the LCO could therefore potentially allow the Assembly to pass Measures which cover such emissions. The draft LCO therefore has the potential to confer legislative powers that could be used to assist in reducing greenhouse gas emissions. For example, it could allow the Assembly to pass Measures that aim to reduce waste and improve resource efficiency, which will contribute to emission reduction by cutting the amount of energy required to make and then dispose of products, and by reducing the amount of waste going to landfill and thereby cutting methane emissions.

The draft LCO would enable the introduction of Measures aimed at reducing emissions of pollutants, which includes greenhouse gases. However, the main legislative mechanisms for achieving this are emission trading schemes and the draft Climate Change Bill, which is likely to lead to broad executive functions for Ministers in this area.

3. An analysis of the powers that would come forward under the LCO in terms of proposed Measures relating to carbon emissions and those contained in the Climate Change Bill for the Committee to see side by side.

The UK Climate Change Bill has not yet been formally introduced into Parliament and therefore it is not yet possible to provide a detailed comparative analysis of the powers in the final draft and those conferred in the draft LCO.

However, based on the draft Bill, the main areas aimed at emission reduction relate to emission trading schemes (Part 3 of the draft Bill). In broad terms these cover schemes which:

- Aim to limit activities that lead to the emission of greenhouse gases; and,
- Encourage activities that contribute to the reduction of greenhouse gas emissions or their removal from the atmosphere

As stated above, the draft LCO would confer legislative powers which would then allow the Assembly to pass Measures that seek to reduce emissions of greenhouse gases for instance by improving resource efficiency and by reducing waste. The draft LCO also has the potential to enable the introduction of Measures that will assist in meeting the One Wales carbon emission target of a 3% per year reduction by 2011 in areas of devolved competence. The achievement of the 3% target will also require powers and levers that go much wider than the scope of the legislative powers covered by the LCO, including the Assembly Government's existing executive powers. However, the increased legislative competence that the draft LCO would confer could be used to pass Measures that assist in reaching this target as well as any statutory targets that arise from the Climate Change Bill. Legislative powers could also be used to help meet the UK's contribution, via the EU burden-sharing agreement, to the requirements of the Kyoto Protocol (for the UK, a 12.5% reduction

in greenhouse gas emissions over the period 2008 – 2012 compared to the base year).

4. Advice on whether, as a result of the LCO, a Measure could be passed imposing a general levy rather than just a levy on plastic bags.

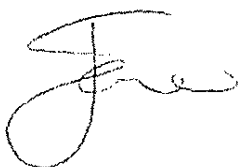
Legal advice suggests that the draft LCO could, for example, allow the Assembly to pass a Measure which introduced a levy or charge on plastic carrier bags at the point of sale. This has been introduced in the Republic of Ireland, where each plastic bag is subject to a 22 cent levy or charge at the point of sale. Revenue from the Irish 'PlasTax' can only be used to fund environmental improvements including litter, waste management and other environmental initiatives.

Legal advice also suggests that the draft LCO could allow a levy or charge to be introduced by a Measure in a number of areas which fall within the scope of the LCO. A levy or charge could for instance be considered to encourage behaviour that addresses environmental protection within the terms of Matter 6.2 insofar as it relates to "pollution, nuisances and hazardous substances". However, there are various legalities which could serve to restrict such a power in practice, for example:

1. The Government of Wales Act 2006 contains a general restriction on any proposed Assembly Measure which prohibits it from removing or modifying any function of a Minister of the Crown, without the consent of the relevant Secretary of State. If the introduction of a levy or charge was deemed to interfere with a Minister of the Crown function, then it would not be permitted under the Minister of the Crown restriction, unless the UK Government consented;
2. Any Measure that sought to introduce a levy or charge would require a Regulatory Impact Assessment which would need to identify the impact on businesses, charities and voluntary bodies to ensure, amongst other things, that the levy or charge was proportionate with its purpose;
3. There are various provisions in the EU Treaty which protect the free movement of goods by ensuring that competition between goods is not affected by duties, quotas or other restrictions on the movement of goods. These prohibit measures which restrict import and measures which have equivalent effect, including, measures which are applicable both to imports and domestic products.

I trust that this letter clarifies the questions brought up by the Committee.

Yours,



Jane Davidson AM
Minister for Environment, Sustainability and Housing

Y Pwyllgor ar y Gorchymyn ynghylch Diogelu'r
Amgylchedd a Rheoli Gwastraff

Proposed Environmental Protection and Waste
Management Legislative Competence Order
Committee

Bae Caerdydd / Cardiff Bay
Caerdydd / Cardiff CF99 1NA

Jane Davidson AM
Minister for Environment, Sustainability and
Housing
Welsh Assembly Government
Cardiff Bay
Cardiff CF99 1NA

23 October 2007

Dear Jane

PROPOSED ENVIRONMENTAL PROTECTION AND WASTE MANAGEMENT LCO

1. You may be aware that the Proposed Environmental Protection and Waste Management LCO Committee met in private on 16 October to discuss key issues emerging from the Committee's pre-legislative scrutiny of the proposed Order.
2. Members asked that I write to you to seek clarification on certain issues and consequently thought it would be more sensible for you to appear before the Committee on 6 November, rather than 23 October. The committee is grateful that you have re-arranged your diary commitments to accommodate the change of date.

Matter 6.1

3. The committee is keen that Matter 6.1 is more explicit in conferring competence on the prevention of waste, perhaps by referring to the minimisation or reduction of waste. In committee on 25 September you said that you would be happy in principle to include an additional word but further consideration would be necessary to ensure that its inclusion does not compromise the scope of the LCO.
Point 1: Have you had an opportunity to undertake any such consideration and if so, what was the outcome?
4. **Point 2: Members would also like clarification on which waste streams are not covered by this proposed LCO. For example, are radioactive wastes excluded? If not, and the Assembly is responsible for radioactive waste and its**

collection, management, treatment and disposal, how is this affected by exception 16, which prohibits the Assembly from legislating in relation to the carriage of radioactive material?

Matter 6.2

5. The committee has considered your letter of 1 October in relation to the definition of environmental protection and also the relationship between the terms of the proposed Order and paragraph 6, Schedule 7 to the Government of Wales Act 2006. It has also discussed the need for clarity in the drafting of Matter 6.2 and also whether it needs to be, or should be, more explicit in referring, in some way, to the enhancement of the environment (given that the explanatory memorandum makes reference to bringing forward Measures to improve local environmental quality). Following on from this, Members have also considered whether the scope of the proposed Order should be broadened given the weight of evidence it has received supporting such an approach and in particular, in relation to the addition of a new matter on biodiversity.

Point 3: Members would be grateful for an explanation as to why the proposed Order has been confined to the first two sentences of paragraph 6, Schedule 7 to the 2006 Act (albeit subject to the addition of the word "treatment" in Matter 6.1).

Point 4: Members would be interested to know what thought you have given to broadening the scope of the proposed Order, for example to cover biodiversity and other matters in paragraph 6, Schedule 7 to the 2006 Act.

6. Paragraph 4 of your letter of 1 October says that the proposed Order could allow for a levy or charge to be introduced by Measure to encourage behaviour that addresses environmental protection within the terms of Matter 6.2, insofar as it relates to "pollution, nuisances and hazardous substances", subject to certain potential legal restrictions.

Point 5: Members would welcome clarification on the extent to which these powers could be used. For example, could they, in principle, be used to introduce charges / levies in relation to pollutants and noise pollution?

Exceptions

7. **Point 6:** Members would be grateful if you could set out clearly, and in detail, the rationale for all the relevant excepted matters in so far as they relate to this proposed Order, including whether they relate to non-devolved matters. As part of this information, it would be helpful if you could cover the following points:

- (i) Exceptions 1 and 2: clarification on whether these exceptions would restrict the Assembly's ability to legislate to tackle road traffic pollution. On exception 2, what would be the impact of removing the phrase "and conditions under which they may be so used"?

(ii) Exception 16: clarification on whether the term dangerous goods covers hazardous wastes and radioactive wastes.

(iii) Exception 18: clarification on what prohibition means in the context of this excepted matter.

8. I would be grateful if you could reply by noon on Wednesday 31 October. Your response will form the basis for our meeting on 6 November, though I should stress that this would not prevent Members from raising other issues as well.

Yours sincerely



Alun Ffred Jones AM
Chair

Jane Davidson AC/AM

Y Gweinidog dros yr Amgylchedd, Cynaliadwyedd a Thai
Minister for Environment, Sustainability and Housing



Llywodraeth Cynulliad Cymru
Welsh Assembly Government

Ein cyf/Our ref:LF/JD/0024/07

Alun Ffred Jones AM
Chair, Environmental Protection and
Waste Management LCO Committee
Welsh Assembly Government
Cardiff Bay
Cardiff
CF99 1NA

25 October 2007

Amyni Alun Ffred,

PROPOSED ENVIRONMENTAL PROTECTION AND WASTE MANAGEMENT LCO

Thank you for your letter of 23 October and for the invitation to provide further evidence at the next Committee session on 6 November.

I am grateful for the opportunity to provide clarity on the issues you have raised and will address them in the same order as your letter.

Matter 6.1

Point 1: Have you had an opportunity to undertake any such consideration (*of whether Matter 6.1 is more explicit in referring to waste minimisation*) and if so, what was the outcome?

I have had the opportunity to consider a more explicit reference to waste prevention in Matter 6.1 and initial legal advice is that "waste reduction" is more established as a legal concept than "waste minimisation" and would encapsulate waste minimisation. However, further consideration of changes to the drafting of Matter 6.1, along with discussion with Whitehall, is needed to ensure that inclusion of this term does not compromise the scope of the LCO.

Point 2: Members would also like clarification on which waste streams are not covered by this proposed LCO.

The intended scope of the LCO is to cover all waste streams, eg, municipal waste, commercial and industrial waste and hazardous waste with the exception of radioactive waste. We are not currently seeking to deepen the scope of our powers in

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1NA

English Enquiry Line 0845 010 3300
Llinell Ymholiadau Cymraeg 0845 010 4400
Ffacs * Fax 029 2089 8129
PC minister for Environment and Housing

respect of radioactive waste given that Welsh Ministers already have extensive powers regarding radioactive waste which allow us to fulfil our policy aims. This includes nuclear waste, radioactive discharges and other radioactive substances including e.g. sealed sources for industrial or educational purposes

Matter 6.2

Point 3: Members would be grateful for an explanation as to why the proposed Order has been confined to the first two sentences of paragraph 6, Schedule 7 to the 2006 Act (albeit subject to the addition of the word “treatment” in Matter 6.1).

The intention is that the scope of the LCO is confined to waste management, local environment quality and pollution control, although I am aware that the current drafting of Matter 6.2 has led to some different interpretations. Accordingly, I have asked the Welsh Assembly Government’s Legislative Counsel to reconsider the wording of Matter 6.2 with a view to clarifying that it covers only those environmental protection functions which relate to pollution, nuisances and hazardous substances, and does not cover functions which might be construed as falling under the wider ‘Environment’ field.

Point 4: Members would be interested to know what thought you have given to broadening the scope of the proposed Order, for example to cover biodiversity and other matters in paragraph 6, Schedule 7 to the 2006 Act.

This proposed LCO arises out of the manifesto commitment “to seek new powers to tackle all forms of environmental pollution, improve waste management and promote behaviour which protects our shared environment” and that commitment derives from the need to tackle the ‘doorstep’ issues that we all face in our constituencies relating to local environmental quality such as litter, graffiti, abandoned cars, fly-tipping, noise and dog fouling. It is not my intention to broaden the scope of this LCO to cover biodiversity or other matters within the ‘Environment’ field that would take the scope of the order beyond its original intention. However, this is the first request for legislative competence under that field. I envisage many more will follow and I am happy to consider future recommendations from the Committee

Point 5: Members would welcome clarification on the extent to which these powers could be used. For example, could they, in principle, be used to introduce charges / levies in relation to pollutants and noise pollution?

As I stated in my earlier letter, legal advice suggests that the draft LCO could allow a levy or charge to be introduced by a Measure in a number of areas which fall within the scope of the LCO. That would, in principle, include a levy or charge in relation to pollutants and noise pollution. However, as I stated previously, there are various legalities which could serve to restrict such a power in practice, which include for example:

1. A general restriction on any proposed Assembly Measure which prohibits it from removing or modifying any function of a Minister of the Crown, without the consent of the relevant Secretary of State. If the introduction of a levy or charge was deemed to interfere with a Minister of the Crown function, then it

would not be permitted under the Minister of the Crown restriction, unless the UK Government consented;

2. Any Measure that sought to introduce a levy or charge would require a Regulatory Impact Assessment which would need to identify the impact on businesses, charities and voluntary bodies to ensure, amongst other things, that the levy or charge was proportionate with its purpose;
3. Provisions in the EU Treaty which protect the free movement of goods by ensuring that competition between goods is not affected by duties, quotas or other restrictions on the movement of goods. These prohibit measures which restrict import and measures which have equivalent effect, including, measures which are applicable both to imports and domestic products.

It is therefore difficult to offer any more degree of clarity given that any proposal for a potential measure would need to be considered on a case by case basis, taking all of the above into account.

Point 6: Members would be grateful if you could set out clearly, and in detail, the rationale for all the relevant excepted matters in so far as they relate to this proposed Order, including whether they relate to non-devolved matters.

The intended basis for adding exceptions to Matters 6.1 and 6.2 is that they could otherwise reasonably be construed as being included in the matter and that the "protection" offered by Part 2 of Schedule 5 of the Government of Wales Act 2006 that the Assembly may not by measure alter the functions of the Minister of the Crown without the consent of the Secretary of State is sufficient. The specific exceptions, all of which relate to non-devolved matters, have been included as follows:

Exception 1 – Road freight transport services, including goods vehicles operator licensing.

This exception has been included because road freight transport services are generally a reserved matter and waste could count as freight. This exception makes it clear that any Assembly Measure could not, for example, limit distances over which waste is transported.

Exception 2 – The regulation of the use of motor vehicles on roads, their construction and equipment and conditions under which they may be so used.

This exception has been included because the regulation of motor vehicles remains the responsibility of the Department for Transport. This would prevent the National Assembly for Wales from, for example, legislating on road traffic pollution through MOT conditions. The "conditions under which they may be so used" wording relates to the detailed conditions set out in Part IV of the Road Vehicles (Construction and Use) Regulations 1986, which include conditions relating to the maximum laden weight of vehicles, the use of gas propulsion systems in vehicles, the control of noise from vehicles and the avoidance of danger when using vehicles.

Exception 12 - Shipping, apart from financial assistance for shipping services to, from or within Wales.

Exception 13 - Navigational rights and freedoms, apart from regulation of works which may obstruct or endanger navigation

Exception 14 - Technical and safety standards of vessels.

Exception 15 - Harbours, docks, piers and boatslips apart from—

(a) those used or required wholly or mainly for the fishing industry, for recreation or for communication between places in Wales (or for two or more of those purposes), and

(b) regulation for the purposes of protecting the environment.

These exceptions have been included to ensure any provision in a Measure relating to pollution could not interfere with laws on shipping, navigational rights, technical and safety standards of vessels or the operation of major ports as these are all reserved responsibilities of the Department for Transport.

Exception 16 – Carriage of dangerous goods (including transport of radioactive material).

This exception has been included because the carriage of dangerous goods is a non-devolved area.

Exception 18 - Energy conservation, apart from the encouragement of energy efficiency otherwise than by prohibition or regulation.

This exception has been included because Energy conservation is largely a non-devolved matter and the only scope of the Assembly is in relation to energy efficiency, for example, through the provision of grants. The word 'prohibition' included in exception 18, is intended to have its literal meaning, i.e. a ban or embargo. This exception would prevent, for example, a Measure prohibiting new homes in Wales being connected to the national grid.

In addition to the above points, at Annex A I enclose an illustrative list of the topics that we believe are covered by the scope of the draft Environmental Protection and Waste Management LCO. I must emphasise that these are examples, intended to illustrate the extent of the legislative competence that the draft LCO would confer. The list is not an indication of the specific provisions in any Measures that will be proposed once the legislative competence is conferred. It is intended to help clarify the scope of the LCO and the policy areas for potential future Measures that we believe are covered by the draft (all of which relate to the current executive competence of the Welsh Assembly Government).

low,



Jane Davidson AM
Minister for Environment, Sustainability and Housing

PROPOSED LEGISLATIVE COMPETENCE ORDER FOR WASTE MANAGEMENT AND ENVIRONMENTAL PROTECTION

ILLUSTRATIVE EXAMPLES OF TOPICS WITHIN SCOPE OF DRAFT LCO

NB - All options will be subject to rigorous impact assessment and will be constrained by the requirements of the Government of Wales Act 2006, for example in relation to compliance with international obligations, taking account of the interests of business and further regulatory impact assessment of any subordinate legislation made under a Measure. In addition, by virtue of Part 2 of Schedule 5 of the Act, the Assembly may not by measure alter the functions of the Minister of the Crown without the consent of the Secretary of State.

WASTE MANAGEMENT

Statutory recycling/composting targets

Requirements on local authorities to collect and recycle/compost specified amounts of recoverable municipal waste by specified dates (these would of course have to be compatible with international obligations)

Current statutory functions under section 55 of the EPA 1990

Types of waste for recycling/composting

Specification of the type of recyclable material (food waste, plastics, cardboard, paper, etc.) that local authorities would be required to collect as part of their duty to collect recyclable material. Extension of any such duty, to include recyclable commercial and industrial waste.

Direct or variable household waste charging/incentives

The ability for local authorities to introduce direct or variable charges/incentives in relation to household waste, allow for an excess waste charge to be levied or recycling rebate to be offered. There is a proposal to scope this in the Environment Strategy announced in July 2006 which will be taken forward as part of the review of the Waste Strategy.

Prohibition of the disposal of hazardous waste in household waste

Controls on the disposal of hazardous household wastes, covering:

- inclusion of hazardous household waste which is in the possession of an householder in the definition of "hazardous waste"
- requirements for safe treatment or disposal of such waste
- restrictions on mixing of hazardous and non-hazardous waste by householders
- introduction of penalties for non-compliance
- local authority arrangements for collection of hazardous household waste.
- facilities at civic amenity sites to receive a specified range of hazardous household wastes (e.g. asbestos, paints, batteries, WEEE etc.)
- requirements for household hazardous wastes to be re-used and recycled as far as possible

Restrict landfill of wastes

Restrictions on the disposal of certain wastes in landfill (e.g. bio-degradable waste, untreated waste or recyclable waste) as is done in other EU countries. Source separation of waste.

Joint municipal waste authorities

The establishment of Joint Municipal Waste Authorities to manage the collection and/or disposal of municipal waste in their areas and the establishment of a new entity or entities to manage municipal waste in Wales if necessary.

Requirements on public bodies

Requirements on public sector bodies regarding use of Environmental Management Systems (EMS) and reporting of environmental impacts (including the amount of waste generated, water used, energy used etc.); setting of statutory targets for environmental improvements, e.g. waste reduction, recycling, minimum recycled content in purchased goods

Waste facility capacity

Reporting of annual tonnage and maximum operational capacity by facilities handling waste.

Current statutory functions under section 35(6) of the EPA 1990.

Reporting of waste production

Reporting of information about the type and quantity of waste produced and how it is managed.

Welsh Assembly Government grants

Requirements on “environmental” grant conditions in all successful applications for Welsh Assembly Government grants.

LOCAL ENVIRONMENT QUALITY

Litter/recycling at events

Provision enabling local authorities to require large-scale events (e.g. Royal Welsh Show, Eisteddfod, Millennium Stadium) to have adequate facilities for recycling and adequate provision of bins for different types of waste material.

Litter from smoking

Extension of the scope of the Street Litter Control Notice ("SLCN") provisions in sections 93 and 94 of the Environmental Protection Act 1990 ("the EPA") to give local authorities the power to (a) place a greater proactive responsibility on the occupiers of premises to clean-up cigarette-related material dropped by smokers in the vicinity of their premises; and (b) require occupiers of such premises to install appropriate disposal facilities.

Current statutory functions under sections 93 and 94 of the EPA 1990

Litter from cars

Provision concerning default responsibility for any litter thrown from a vehicle.

Graffiti

Age limits below which it is an offence to sell aerosol spray paints and associated penalties.

Current statutory functions under sections 43 to 52, 54 and 54A of the Anti-social Behaviour Act 2003

Fast food litter

Prevention and management of waste/litter caused by food 'on the go'.

Current statutory functions under sections 93 and 94 of the EPA 1990

Abandoned shopping trolleys

Measures to prevent the abandonment of trolleys.

Current Statutory provisions in section 99 of, and Schedule 4 to, the EPA 1990

Plastic bags and other packaging

Provision to minimise waste and reduce litter from plastic bags and other packaging. This could include a ban on plastic bags if this were considered necessary and feasible.

Alternatives to fixed penalty notices

Provision to allow local authorities to offer a lower rate of fixed penalty to different people, e.g. persons under the age of 16 or an alternative to a fixed penalty, perhaps through a community service activity such as a local litter pick or an environmental awareness session on the problems caused by litter, graffiti, etc.

Producer responsibility for direct mail

Producer responsibility requirements on companies who advertise/print/distribute direct mail sent out in Wales.

Excess packaging

Further reduction of excess packaging and development of associated recycling protocols, building on Directive 94/62/EC – implemented by the Packaging (Essential Requirements) Regulations 2003 (SI 2003/1941) and the Producer Responsibility Obligations (Packaging Waste) Regulations 2007(S.I. 2007/871).

Returnable packaging

Further provision to promote the re-use of certain packaging, e.g. returnable bottles with deposit return systems.

Invasive plants

Provision concerning control or removal of invasive plants by local authorities as part of environmental rehabilitation projects under LEQ.

Current statutory functions include those under the Wildlife and Countryside Act 1981 and the Weeds Act 1959.

Quiet areas

Measures as on the Continent to promote 'quiet' areas as in the UK we have for example, pedestrianised or alcohol free areas.

Current statutory functions under the Environmental Noise (Wales) Regulations 2006 (S.I. 2006/2629), which implemented Directive 2002/49/EC under powers designated to the National Assembly for Wales by S.I. 2004/706

Noise pollution

Additional measures to tighten up or control noise nuisance and pollution, eg from properties.

Current statutory functions under Part III of the EPA 1990, the Noise Act 1996 and Part 7 of the Clean Neighbourhoods and Environment Act 2005

Light pollution

Additional measures to reduce light nuisance or intrusion and pollution. This could also have energy and climate change benefits in reducing energy wastage.

Current statutory functions under Part III of the EPA 1990

Jane Davidson AC/AM

Y Gweinidog dros yr Amgylchedd, Cynaliadwyedd a Thai
Minister for Environment, Sustainability and Housing



Llywodraeth Cynulliad Cymru
Welsh Assembly Government

Ein cyf/Our ref:

Alun Ffred Jones AM
Chair, Environmental Protection and
Waste Management LCO Committee
Welsh Assembly Government
Cardiff Bay
Cardiff
CF99 1NA

14 November 2007

Annwyl Alun Ffred,

REQUEST FOR INFORMATION BY ENVIRONMENTAL PROTECTION AND WASTE MANAGEMENT LCO COMMITTEE

Following the meeting of the proposed Environmental Protection and Waste Management LCO Committee on the 6th November, I would like to provide clarification to the Committee regarding their questions on radioactive waste and radioactive material.

With a few exceptions, all the functions of the Secretary of State under the Radioactive Substances Act 1993 are currently devolved to the Welsh Ministers. The Act deals with radioactive waste including nuclear waste, radioactive discharges and other radioactive substances including, for example, sealed sources for industrial or educational purposes. The Act is concerned with ensuring that accumulation and disposal of radioactive waste occurs with minimum impact on the general public and the environment. Keeping or using radioactive substances without registration is prohibited under the Act. Applications for registration are made to the Environment Agency. The Welsh Ministers' functions under the Act include the power to direct the Agency as to such applications (including to direct it to refuse registrations), the power to call in applications for decision by the Welsh Ministers instead of by the Agency, and the power to decide appeals against refusals etc. of registrations. The Act is also devolved in the sense that the regulatory functions that it confers on the Environment Agency are exercised, in Wales, by the Environment Agency Wales, an arm of the Agency which reports to the Welsh Ministers and in relation to which the Welsh Ministers have powers of direction, both under the Act itself (as referred to above) and under the Environment Act 1995. The Act is devolved in the sense of the functions carried out under the Act being devolved, but it is not devolved in the sense of legislative competence, which would give the power to amend it.

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1NA

English Enquiry Line 0845 010 3300
Llinell Ymholiadau Cymraeg 0845 010 4400
Ffacs * Fax 029 2089 8129
PS.minister.for.ESH@wales.gsi.gov.uk

*Wedi'i argraffu ar bapur wedi'i ailgylchu (100%)
paper*

Printed on 100% recycled

Functions under the Nuclear Installations Act 1965 are not devolved to the Welsh Ministers. This Act concerns specific regulatory controls which apply to nuclear power plants. Under this Act, apart from certain exceptions, no site may be used for the purpose of installing or operating any nuclear installation unless the Health and Safety Executive (HSE) have granted a licence.

The draft LCO is not intended to seek legislative competence in either of these areas. In Wales, the areas covered by the Radioactive Substances Act 1993 are regulated by the Environment Agency Wales, which, as set out above, reports to the Welsh Ministers. The management and regulation of radioactive substances is subject to both UK and international requirements, the latter emanating from Euratom and the International Atomic Energy Authority. Management and regulation of radioactive substances is carried out to ensure the highest degree of safety for human health and the environment and there is no evidence that additional powers for Wales would increase the degree of safety. Welsh interests in this area are covered by consultative arrangements between the UK Government and the devolved administrations and the regulators. Separate Welsh legislation would cut across these longstanding arrangements.

I know that, in considering the current drafting of Matter 6.1, radioactive waste would appear to be included. However, as I indicated to Committee, it is not my intention that this subject should be within the scope of this LCO and this is why I said that further consideration is being given to the inclusion of a specific exception to clarify this point. This will be additional to Exception 16 of the draft LCO which relates to the 'Carriage of dangerous goods (including transport of radioactive material)'. This exception has been included to ensure that we do not interfere with Department for Transport functions in relation to the carriage of dangerous goods. The reference to radioactive material in this exception should not be assimilated to a reference to radioactive waste; indeed, the two terms can be mutually exclusive, as in the Radioactive Substances Act 1993 itself, where "radioactive material" is defined (in section 1) in terms as, "anything which, not being waste, is either a [radioactive] substance or an article made wholly or partly from, or incorporating, a [radioactive] substance". I think I may have said, in addressing the Committee on 6th November, that this definition appeared in the Pollution Prevention and Control Act 1993. May I take this opportunity to correct the reference since I should have referred to the Radioactive Substances Act 1993.

Therefore Exception 16 is not really relevant to the issue of whether radioactive waste is included within the scope of this LCO or not. As I have said above, my intention is that it is not within the scope, and this may need to be clarified by a further specific exception.

I trust that this letter clarifies the questions brought up by the Committee regarding why the Welsh Assembly Government is not currently seeking legislative competence regarding radioactive waste.

Yn gyf,



Jane Davidson AM
Minister for Environment, Sustainability and Housing