

# **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

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.

## **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.

## **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**

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