

Introduction

WEL welcomes the proposed Environmental Protection and Waste Management Legislative Competence Order, and believes 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.

Question 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?

WEL believes that Matter 6.1 should be re-drafted to read:

'Reduction, collection, management, treatment and disposal of waste'

One of WEL's main policy priorities is for a significant reduction in the amount of waste produced in Wales – from domestic, business and industrial sources.

Our understanding of the LCO as it is currently phrased, is that it would not allow the Assembly to introduce legislation that would require production of waste at source to be reduced, i.e. eliminating waste before it is created. This approach omits the first of the three Rs: Reduce, Reuse, Recycle; together with the peak of the waste pyramid, which ranks waste management options in order of sustainability. 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 which has the principle of sustainability at its heart.

With regard Matter 6.2, WEL is not content with the drafting and seeks clarification as to the legal definition of 'environmental protection' in this context. We have received conflicting legal information regarding what issues could be included within this term.

In common parlance (and in previous legislation such as the Environmental Protection Act 1990) the term 'environmental protection' is very broad, indeed it can mean any of the subjects that are identified in Section 6, Schedule 7 of the Government of Wales Act 2006. We believe this confusion stems from the drafting of Section 6, which provides a list of subjects separated by full stops, and have received conflicting legal advice as to whether other matters identified in Section 6 could be included or excluded from the LCO.

As drafted in the LCO "Environmental protection, ***including*** pollution, nuisances and hazardous substances" (WEL's emphasis) only serves to illustrate that this is not a limiting

definition – but it is unclear what else is included. Point 15 of the Explanatory Memorandum suggests that the scope is intended to be wide – “a package of measures to improve the environment of Wales.”

WEL believes that clarity over the devolution of new powers is essential and therefore requests that:

- a) further information is sought from the Welsh Assembly Government on the extent of measures currently envisaged
- b) that the National Assembly secure further advice over the legal interpretation of ‘environmental protection’ and therefore what other Measures could be legal under this LCO in the future.

Question 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?

WEL questions the inclusion of the following exceptions, and requests further clarification in relation to these:

Exceptions 1 and 2

- WEL advocates improved access to good quality, integrated transport infrastructure that is affordable and accessible to all. Indeed, included within WEL’s policy priorities for the National Assembly for Wales 2007 are the following ‘asks’:
 - Commitment of more financial resources to improve walking, cycling and public transport infrastructure with focus on services at a local and regional level
 - Set targets for road traffic reduction as a main objective of the Wales Transport Strategy
 - Support for the pilot ‘road user charging scheme’, with money made to be reinvested in more sustainable modes of travel
- One of the reasons behind these ‘asks’ is the benefit to the environment and to human health that would be gained from a reduction in air and noise pollution.
- We are therefore concerned that exceptions 1 and 2 would restrict the Assembly’s ability to introduce legislation to tackle road traffic pollution.

Exceptions 12 and 15

- WEL advocates a significant reduction in the amount of waste produced in Wales, from all sources. One of the reasons for this is the benefit to the environment, society and the

economy as a result of a cleaner, litter-free environment.

- According to the Annual Beachwatch Survey undertaken by the Marine Conservation Society, almost 15% of sourced litter on Welsh beaches is marine borne and comes from waste from fishing and shipping.
- We are concerned that exceptions 12 and 15 would restrict the Assembly's ability to introduce legislation to tackle waste from shipping and fishing activities within its jurisdiction.

Exception 16

- WEL questions the inclusion of exception 16 in the table, and would be interested to know why the Welsh Assembly Government does not wish to seek powers over the transport of radioactive waste within Welsh territory.

Exception 18

WEL queries the wording of exception 18 – which is difficult to follow. We understand that the exception refers specifically to the prohibition and regulation of energy conservation rather than energy conservation measures. We suggest that the Welsh Assembly Government could also consider seeking powers over these exclusions as this would further progress under its Sustainable Development Scheme.

Other

- WEL would also like to note the confusion that was caused by the inclusion of exceptions to Matter 5.10 in this Table. We suggest for clarity and greater public understanding of the already complex devolution legislation, that these exceptions are dealt with separately.

Question 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?

WEL would suggest that the Order be re-drafted only in relation to our above responses to Questions 1 and 2.

Additionally, we ask the Committee to consider inserting a specific reference to Biodiversity in the LCO, by adding a new Matter 6.3 'Biodiversity'. This would be inserted at Clause 2 (3) of the Order. Devolution of primary powers over Biodiversity would allow the Assembly to bring forward Measures, such as a duty on public bodies to further biodiversity in Wales¹ (as is

¹ Wales Environment Link Policy Priorities for the National Assembly for Wales 2007, WEL

currently the case in Scotland²), which would facilitate greater proactive engagement in tackling biodiversity declines,.

We believe that these additional powers are necessary because:

- a) The Assembly has a duty to promote sustainable development, and the health of our biodiversity is a key test of whether we are developing sustainably.
- b) Biodiversity in Wales is under considerable pressure with continued deterioration of habitats and declines in many species continuing unabated despite previous high level governmental commitments.
- c) The Wales Environment Strategy states that the loss of biodiversity puts many key ecosystem services at risk, and specifically stresses the need for clarity on roles: “Outcome 4: The roles and responsibilities of organisations are understood leading to better integration for the delivery of environmental protection **and enhancement**” (WEL’s emphasis).
- d) The current duty to further the conservation of priority species and habitats in the Natural Environment & Rural Communities Act 2006 applies only to the Welsh Assembly Government – all other public bodies (Local Authorities, ASPBs, water companies etc) are required to only to “have regard to biodiversity,” which does not have the same focus **on action** for delivery .
- e) This duty should not mean additional burdens and expensive new programmes but rather a clear signal that biodiversity needs to be integrated into all areas of policy and practice and will ensure that existing responsibilities are carried out in ways that further biodiversity e.g. sensitive management of the land holdings of public bodies. Local Planning Authorities can encourage positive planning for biodiversity – e.g. the inclusion of planning conditions (s106) to ensure that biodiversity is properly taken into account in development proposals: the ‘win-win-win’ that is often quoted with regard to sustainable development.

WEL is convinced of the need for urgent action if the Assembly Government is to meet its Environment Strategy biodiversity targets and wider international commitments, and believes that this LCO is 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.

Depending on the legal interpretation of 6.2 “environmental protection,” it may be that this biodiversity focused measure could be considered under the scope of the existing LCO. However, WEL would suggest that it would add clarity for the public in understanding the process of devolving further powers if the subject Biodiversity were explicitly added to the LCO scope.

² Nature Conservation (Scotland) Act 2004

Wales Environment Link values the opportunity to take part in this important consultation process and trusts the above response will be taken into consideration by the Scrutiny Committee.

The member organisations of Wales Environment Link that sign up to this consultation response are:

Bat Conservation Trust
British Trust for Conservation Volunteers Cymru
Butterfly Conservation Wales
Campaign for the Protection of Rural Wales
Cylch
Groundwork Wales
Keep Wales Tidy
National Trust Wales
Plantlife Wales
RSPB Cymru
Wildlife Trusts Wales

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