



EPWM9

Cyngor Cefn Gwlad Cymru Countryside Council for Wales

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Committee on the Environmental Protection & Waste Management LCO
Legislation Office
National Assembly for Wales
Cardiff Bay
CARDIFF
CF99 INA

21 September 2007

Dear Sir/Madam

CONSULTATION: THE PROPOSED ENVIRONMENTAL PROTECTION AND WASTE MANAGEMENT LEGISLATIVE COMPETENCE ORDER

On behalf of the Countryside Council for Wales (CCW), I am grateful for the opportunity to participate in the consultation process on the above draft LCO. CCW believes that our natural environment is fundamental to our learning, culture, employment and recreation, that it is central to our quality of life and that it is essential to our very existence.

We therefore particularly welcome this draft LCO, given that it seeks to extend our Assembly's powers within the field of environmental protection and, through being the second LCO under the Government of Wales Act 2006 (the Act), thereby implicitly confirms the importance to Wales of our natural environment.

Our response addresses the aspects of the draft LCO that are directly relevant to our remit, focusing therefore on Matter 6.2 *Environmental protection, including pollution, nuisances and hazardous substances*. Although we are not commenting in detail on Matter 6.1, we nevertheless endorse the Assembly's drive to achieve additional legislative competence in recycling and sustainable waste management. We have limited our comments to the scope of the draft LCO and look forward to working with the Assembly in the development of detailed Measures during the subsequent process of taking policy through to delivery.

We hope these comments are helpful and would be pleased to contribute further, if requested.

Yours faithfully

Roger Thomas
Chief Executive

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**CYNGOR CEFN GWLAD CYMRU
COUNTRYSIDE COUNCIL FOR WALES**

**COMMENTS ON THE CONSULTATION: THE PROPOSED ENVIRONMENTAL
PROTECTION AND WASTE MANAGEMENT LEGISLATIVE COMPETENCE
ORDER**

Consultation 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?**

The Scope of the Order (Questions 1 and 3)

Neither the draft Order itself nor the Explanatory Memorandum include a definition of 'environmental protection'. The Explanatory Memorandum refers to several Acts of parliament of relevance, including the Environmental Protection Act 1990, which, in addition to issues such as pollution, waste management and litter, covers Nature Conservation and Countryside Matters (Part 7), indicating a wide interpretation of the scope of 'environmental protection'.

The matters outlined in the exceptions table within the draft Order provide further indication of the scope of Matter 6.2 with regard to 'environmental protection'. In addition, the use of the word 'including' in Matter 6.2 signifies that 'pollution, nuisances and hazardous substances' are included only as examples of issues that could be covered within the wider concept of 'environmental protection'. In legal terms therefore, 'environmental protection', as referred to within the draft Order, could be interpreted as referring to a wider range of policy areas than those referred to in the Explanatory Memorandum (paragraphs 13, 14 and 15)

There are certain other provisions outlined in Schedule 5, Field 6 of the GoWA 2006 (Environment) (Annex 2) that would appear to be covered under 'environmental protection', such as 'Protection of natural habitats'. While biodiversity, nature conservation and sites of special scientific interest and other issues are referred to separately in Schedule 5, Field 6 (Environment), and are not specified in the draft Order, our interpretation indicates that this does not preclude them from being considered within the scope of 'environmental protection'

In interpreting the draft Order therefore, it is our understanding that 'environmental protection' (as referred to in Matter 6.2) is wide in its scope. Based on this premise, the draft Order would allow the Assembly to develop Measures on policy areas wider than those specified in the Explanatory Memorandum (paragraphs 13, 14 and 15).

Summary of Conclusions on Questions 1 and 3

- Consideration is required of the interpretation (scope of) of 'environmental protection' within the draft Order, with particular reference to the issues set out in Schedule 5, Field 6 of the GoWA 2006. Our analysis suggests that it could be interpreted as referring to a wider range of policy areas than those referred to in the Explanatory Memorandum (Paragraphs 13, 14 and 15: Scope). The CCW would support a broad and unambiguous definition of 'environmental protection', that embraces all of the issues in Field 6 (Environment), covering from CCW's interests, our natural heritage (wildlife and landscape). In this context, we assume that 'environmental protection' means 'restoration, maintenance and enhancement of the environment'. Devolved competence on these policy areas would facilitate successful implementation of the wider policy agenda as reflected in the Wales Environment Strategy. It would also enable the Assembly to strengthen legislation relating to Nature Conservation, Wildlife and Biodiversity, comparable to the Scottish approach (Nature Conservation (Scotland) Act 2004).
- If the proposal is to develop Measures to improve local environmental quality, consideration should be given to amending Matter 6.2 to make provision for the 'improvement' or 'enhancement' of the environment rather than simply its 'protection'. In considering this proposed amendment it should be noted that proposals for amendments to GoWA 2006, Schedule 5 in the form of Matters are not restricted to the issues identified in Field 6: Environment.
- Consideration is required of the interpretation (scope of) of 'environmental protection' within the draft Order and the identification of the 'policy agenda' as appropriate.
- The text in Matter 6.2 of the draft Order does not currently reflect the breadth of the policy areas specified in the Wales Environment Strategy in relation to local environment quality. If the LCO is to enable the Assembly to develop Measures relating more narrowly to the policy agenda on local environment quality as set out within the WES, consideration should be given to amending Matter 6.2 of the Order or add an additional Matter to include appropriate wording i.e. 'green space and landscape'. However, consideration of proposals for amendments to the draft Order is largely dependent on the interpretation of the scope of 'environmental protection'.
- It is unclear whether suitable Measures could be developed in relation to green space and landscape issues within the scope of the draft Order, without making appropriate amendments to Schedule 5, Field 8 of the Government of Wales Act 2006: Town and Country Planning.
- In terms of strengthening pollution controls, Matter 6.2 is considered adequate

The Excepted matters (Question 2 of the consultation)

- The exceptions indicate that the draft Order has the potential to enable the Assembly to develop Measures under Matter 6.2 (and others) on policy areas wider than those identified in the Explanatory Memorandum (Paragraphs 13, 14 and 15: Scope). For example, it is indicated that Measures could be developed under Matter 6.2 (Environmental protection, including pollution, nuisances and hazardous substances) in relation to the regulation of harbours, docks, piers and boatslips (Matter 15 in the table), and the use of motorised vehicles off-road (Matter 2 in the table). Clarification is required as to the scope of the order in relation to

protecting the marine environment, with particular regard to EU Maritime policy and the anticipated Marine Bill.

- Further consideration is therefore required of the scope of the draft Order (Refer to Questions 1 and 3) before an assessment can be made as to whether the excepted matters are appropriate. Any amendments to the draft Order (and specifically Matter 6.2) would necessitate further consideration of the appropriateness of the excepted matters.

Cyngor Cefn Gwlad Cymru
Countryside Council for Wales
September 2007