

## **CBI WALES EVIDENCE TO THE ENVIRONMENTAL PROTECTION AND WASTE MANAGEMENT LEGISLATIVE COMPETENCY ORDER COMMITTEE**

### **CONSULTATION QUESTIONS**

- 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?
- The proposed Order includes a Table setting out criteria 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 no, how should they be re-drafted and why?
- 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?

### **INTRODUCTION**

1. This is a response of the membership of CBI Wales to the Welsh Assembly consultation on the Environmental Protection and Waste Management Legislative Competency Order (the 'Order').
2. The CBI is the UK's foremost business representative body dealing principally with cross-sector issues which affect the business environment in which all companies operate. The CBI's strength lies in its breadth of membership, which includes companies of every size, including over 200 trade associations and academic institutions, and from all sectors of the economy – manufacturing, construction, retailing, financial services, e-commerce, leisure, transport and so on. The CBI represents companies employing about 50% of the private sector workforce in Wales.

### **GENERAL COMMENTS**

3. The CBI welcomes the opportunity to contribute to the consultation on the proposed Environmental Protection and Waste Management Legislative Competency Order. Business wants to continue to play a constructive part in encouraging waste management and combating climate change.
4. We recognise the intentions behind the Order are an attempt to deliver a joined-up approach to the management of waste and the protection of the environment.
5. We believe the proposed Order, as drafted will enable sufficient delivery within the policy agenda described within the explanatory memorandum and the Welsh Assembly Government's current waste strategy, 'Wise about waste.' We would therefore advise against further expansion of the scope of the Order.
6. The CBI fully endorses and concurs with the statements made by the Environment Agency in their submission to this consultation that *'Wales has a very good record in attracting successful investments by some of the world's largest and most prestigious companies. It will be important to ensure that any legislation that is introduced does not create a disincentive for businesses to locate and operate in Wales. In particular, waste and pollution does not respect national boundaries, and unless Wales can achieve self-sufficiency across all waste streams, some wastes will continue to move round the UK for treatment and/or disposal.'*



7. It is vitally important that Wales and England maintain the same overarching waste and environmental protection regimes. Two separate reporting regimes on issues as fundamental as waste and climate change would impose significant burdens on many companies. Working on two different sets of requirements clearly imposes obvious and significant management issues to companies that are designed to report at company - not the geographic- level. A new set of Wales-only hazardous waste procedures for example would increase uncertainty, add additional regulatory burdens, reducing the attractiveness of Wales as a business location. These ramifications (intended or otherwise) need to be heeded when considering widening any aspect of this Order.
8. The CBI strongly believes that joint public and private effort on many of the issues covered in the Order best achieve environmental results when they take place within a market of sufficient critical mass and are accompanied by action under an established and unified cross-border regulatory regime over a medium to long term which best reflects business investment cycles.
9. Finally, the CBI also regrets that there is no apparent regulatory impact assessment to be conducted on Legislative Competency Orders. The CBI recommends all LCOs are subject to a regulatory impact assessment, believing it will provide a useful evidence base by which to judge and monitor the often complicated and initially unclear implications of LCOs, going forward.

## CLIMATE CHANGE

10. With regard to matter 6.2 (*Environmental protection, including pollution, nuisances and hazardous substances*) the CBI would not support any amendment that would bring carbon dioxide (or any other greenhouse gases) within its remit.
11. Furthermore, with regard to air pollution targets. We are unclear to what extent the definition of 'pollution' would devolve to the Welsh Assembly Government the power to alter air pollution targets to that currently in place in England and Wales. The CBI would not want to see differing air pollution targets imposed on industry in Wales. We believe this to be better planned at a UK/EU level.
12. UK CO<sub>2</sub> emissions amount to 2% of annual global emissions and Wales accounts for 15% of that 2% or 0.4% of total annual CO<sub>2</sub> emissions from the US and China. The devolution of powers to introduce additional Wales-only pressures to reduce emissions would seriously harm industry while at the same time not make any meaningful reduction to global CO<sub>2</sub> emissions. It is essential that business in Wales is not adversely affected or placed at a competitive disadvantage either within a UK market or more specifically global supply-driven market due to unique measures imposed locally or elsewhere within the Welsh Assembly Government.
13. Renewable energy and emissions are well handled within UK and EU proposals (i.e. reform of Renewable Obligation, Energy White Paper, Climate Change Levy and the European Union Emissions Trading Scheme) and as such additional and Wales-specific measures which incur a greater cost burden for Welsh business would be a major concern.
14. For the reasons outlined above, we do not believe the definition of 'pollution' within matter 6.2 should be interpreted or reworded to include carbon dioxide or greenhouse gases. If the matter was reworded we do not believe it would produce the desired results, increasing inconsistency and uncertainty without enabling a significant contribution to be made to reducing CO<sub>2</sub> emissions.
15. Furthermore, we understand the Welsh Assembly Government is pursuing measures in this area via other legislative routes- namely the Climate Change Bill and another Legislative Competency Order on Building Regulations. This suggests that amending this LCO to encompass emissions is not the preferred route of the Welsh Assembly Government.

## ENERGY CONSERVATION

16. While business has a key role and companies are committed to doing more on energy efficiency, much has already been done and it is vital that national and regional governments' leadership on energy efficiency embraces action by individuals at home and by major economies overseas.

17. According to research conducted by the Department for the Environment Food and Rural Affairs, changes in Wales' CO<sub>2</sub> emissions between 1990-2004 clearly show the commercial sector has made by far the biggest reduction of any sector (some 17.3% reduction in CO<sub>2</sub>) followed by the manufacturing Industry & construction sector with a reduction of 11% compared to an increase of 16.1% of CO<sub>2</sub> emissions in the residential sector. These reductions are the result of purposeful action by industry in Wales to reduce their emissions and represent very significant private sector capital investments.
18. To this end, we seek clarification on section (4), excepted matter 18 (*'Energy conservation, apart from the encouragement of energy efficiency otherwise than by prohibition or regulation'*). Business has made great strides to improve energy efficiency in recent decades and this exception should not prevent the Assembly Government taking action to *promote or encourage* greater energy conservation.
19. If exception 18 is intended to empower the Welsh Assembly Government to provide a greater suite of incentives to industry and the consumer to improve energy efficiency it is to be welcomed. Far greater use of incentives, as a way of implement technologies for sustainable solutions, is needed. This approach, if adopted, should be of sufficient value to make the business decision viable in terms of investment return.
20. However, we do not support a definition of excepted matter 18 or an amendment to the current Order that would empower the Assembly Government to introduce Wales-only regulation or Wales-only prohibitions relating to energy efficiency believing this currently is best regulated for at a UK or EU level.

## PLASTIC BAGS AND WASTE

21. The CBI supports steps to improve waste minimisation. Indeed statistics point towards the continued reduction of industrial and commercial waste.
22. Resource efficiency, by its very nature, decreases waste which has positive environmental and economic consequences. However, we believe such steps are far more effectively driven by consumer demand and achieved by way of voluntary sectoral agreements.
23. An example of this progress is the Courtauld Commitment. In 2005 following a Ministerial Summit in London retailers that represent 92% of the UK grocery market signed up to several commitments including: *'to design out packaging waste growth by 2008, to deliver absolute reductions in packaging by March 2010 and to identify ways to tackle the problem of food waste.'*
24. The situation on the use of plastic bags has significantly changed since the introduction of the plastic bag tax in Ireland half a decade ago (2002). This is evidenced by a similar proposal introduced by the Scottish Government which was later withdrawn after similar consideration and extensive studies in October 2006 found that it was not the best way forward.
25. Due to the reasons highlighted above, we do not believe a levy on plastic bags in Wales is required. Much of what could realistically be achieved by such a levy is already underway, achieved via voluntary demand-led agreements. We believe the Welsh Assembly Government could play a valuable role in incentivising other such sectoral agreements.
26. The Courtauld Commitment is still running its course. Action within Wales in addition to the Commitment would be premature, undermine the significant steps being taken voluntarily by the vast majority of the retail sector, adversely impact smaller retailers within Wales and likely increase the take-up of alternative containers such as paper bags (recycled or not) which are much more energy intensive to make and transport compared to current re-usable plastic bags.
27. In addition, several major retailers have introduced or are planning to shortly introduce partly or completely degradable plastic bags. One retailer is voluntarily introducing fully degradable plastic bags that break down in as little as 60 days with no harmful residue. The pilot of this scheme has already saved over 6,035 tonnes of non-degradable plastic.
28. A more effective solution would be for the Welsh Assembly Government and local authorities to stipulate the use of 'recycled materials' in their public procurement contracts. Such a move would stimulate demand and help

create/sustain a recycled materials market in Wales. The effect would be the pump-priming of associated recycling businesses with direct environmental benefits.

## RECYCLING TARGETS

29. We do not support imposing recycling targets at a significantly higher level than England. Increasing the requirements to recycle in Wales without heavy and early investment in the required waste facilities and infrastructure will achieve very little. For example, CBI member companies have been concerned for a number of years about the absence of hazardous waste facilities in Wales, the provision of which is within the current powers of the Welsh Assembly Government. This failure has led to significant cost implications to companies operating in Wales and addressing it remains an urgent priority.
30. Imposing additional recycling targets when current infrastructure requirements, (long within the gift of the Assembly) have not been delivered is unlikely to produce the government's desired effect while at the same time creating damaging uncertainty for businesses.
31. Responsible businesses already factor in the costs of the landfill tax escalator and waste pre-treatment requirements (from October 2007) will still further reduce waste going to landfill.
32. The CBI concurs with the WLGA in its evidence to this consultation when it states '*we are not convinced that statutory targets and penalties is the best use of limited legislative time.*'

## ILLEGAL WASTE ACTIVITY

33. The CBI condemns illegal waste activity and supports action to tackle fly-tipping. The problem of flytipping on private land is often overlooked. The CBI calculates flytipping is significantly more of a problem on private land than publicly owned land. Large land owning companies report fly-tipping remains a significant problem and action to clampdown on fly tipping is to be welcomed within the Order.

## REGULATORY REGIME

34. The CBI wholeheartedly supports the philosophy of a risk-based approach to regulation and regulatory compliance and enforcement. A risk-based and light touch approach as recommended by the Hampton Review coupled with a culture change resulting in regulators capable of delivering a common England and Wales business friendly culture is required. This Order must not interfere or disturb this ongoing process of reform, currently underway at a UK level.

## SUSTAINABLE DEVELOPMENT

35. With regard to the proposed Environment Agency amendment of Matter 6.2 ('*Environment protection, including pollution, nuisances and hazardous substances.*') to add 'sustainable development' after 'environmental protection.' We recognise that under the Government of Wales Act 1998 the Assembly Government has a legal duty to promote sustainable development in the exercise of its functions. A duty it rightly takes seriously and which includes social, economic and environmental sustainable development. To this end, the CBI believes the proposed amendment is unnecessary.
36. Furthermore, we are unclear about the exact ramifications of adding a requirement that all proposed 'new developments' are 'sustainable.' Current UK and Welsh Assembly Government policy on new developments already prescribes robust Environmental Impact Assessments (EIA) requiring detailed Environmental Statements that describe the likely significant effects of a development on the environment and the proposed mitigation measures. Such statements then must be circulated to statutory consultation bodies and made available for robust public comment. Such comment then must be taken into account by the local planning authority prior to consent being granted. We believe this existing obligation is well established, understood and effective.

**37.** In addition, the business community is already deeply concerned around the implications of the One Wales document to delivery 'carbon neutral' developments from 2011 and an another proposed Legislative Competency Order to impose fire sprinklers in all newly built homes in Wales. A third Wales-only obligation on developers in a regional property market such as Wales will hinder, still further, Wales as a location for development and investment. In such scenarios it is often a country's most deprived areas that suffer most by such regulatory restrictions.

## **CONCLUSION**

**38.** The CBI is pro-environment and is serious about playing its part in combating climate change and reducing waste going to landfill.

**39.** We believe the Welsh Assembly Government can ensure government resources are deployed in areas where Wales can best deliver additional value by seeking to collaborate with other parts of the UK where possible. A coordinated 'UK PLC' approach has the best chance of delivering the returns we all wish to see.

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