



**THE PROPOSED ENVIRONMENTAL PROTECTION AND WASTE MANAGEMENT  
LEGISLATIVE COMPETENCE ORDER COMMITTEE:  
SUBMISSION BY ENVIRONMENT AGENCY WALES**

**SUMMARY**

We are pleased to be given the opportunity to present our views to the consultation on the proposed Environmental Protection and Waste Management Legislative Competence Order (the "Order").

- Environment Agency Wales welcomes measures designed to encourage sustainable waste management and deliver improved environmental protection.
- We are mindful to ensure that any proposals reflect cross-border regulatory responsibilities.
- It is important that our customers have certainty, many of which operate cross border, both in terms of what the legislation says and in terms of the policy objectives.
- Whilst we have a specific regulatory role in relation to the proposed Matters, we have also taken the opportunity to highlight areas outside of our direct area of responsibility where we believe there is the opportunity to achieve an improved environmental outcome.
- We believe that the proposed Order, as drafted, can deliver implementation of the policy agenda in most areas. However, we are concerned that in some areas, such as waste minimisation, the emission of greenhouse gases and sustainable development, the Order may not offer the future opportunity for the National Assembly for Wales to implement appropriate legislation.

**1.0 INTRODUCTION**

Environment Agency Wales' job is to look after the environment and make Wales a better place.

We have a clear and definite role within waste regulation and environment protection in providing support to meeting the objectives in the Welsh Assembly Government's Environment Strategy and Waste Strategy. A variety of other bodies also influence these sectors and we need to work with them to ensure we achieve the desired environmental outcomes. For example, the safe and sustainable management of waste is reliant on the interactions of many players including the waste producer, waste management industry, Local Authorities, Government and ourselves.

Our role in waste management and environment protection includes being:

***A Modern Regulator*** - Delivering effective risk-based regulation to control the production of waste and pollution from major industry, waste management activities, tackling environmental crime, managing waste and pollution incidents and emergencies in order to protect our environment and public health.

***A Supporter and promoter*** – Informing and supporting Local Authorities to deliver the Wales Waste Strategy and Local Air Quality Management plans by being a definitive source of new technology information and a provider of guidance and data to partners industry, public and Government. A key role is to ensure that those making the decisions to determine location and scale of waste facilities, or those that have the responsibility for procurement, provision or operation of such facilities have the best data, modelling and interpretation available

***An Influential Advisor*** - Advising Government, the European Commission, business, industry and the public. We engage early, openly and in partnership with industry to promote

more sustainable use of resources, maximise the resource potential of wastes and act to reduce emissions and exposure.

We will achieve these objectives by:

- ensuring waste producers take responsibility for their wastes by regulating waste streams, not just the waste handling sites
- ensuring the waste industry takes responsibility for their own performance
- using intelligence to target those wastes posing the greatest risk and focusing our effort to achieve the greatest environmental benefit
- tackling illegal waste activity, making waste crime unacceptable
- ensuring that activities we regulate do not lead to breaches of EU limit values or UK air quality objectives
- minimising the impact of poor air quality from all sources on people's health
- ensuring the provision of high quality and timely data and information
- supporting other organisations to achieve environmental outcomes that are not directly in our remit

## **2.0 GENERAL COMMENTS ON THE PROPOSED ORDER**

This 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. We recognise that this could give Wales the ability to become a world leader in tackling waste and environmental protection issues. We also believe that the proposed Matters support our Pride in Our Communities initiative by allowing Measures to be developed that tackle local environment quality issues; for example, taking steps to assist in restricting access to fly-tipping hot spots. The proposed Matters would also enable the Assembly to introduce statutory and material specific recycling targets.

Wales has a very good record of 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.

The majority of existing legislation/powers relating to the environment now comes from Europe. Where current legislation does not deliver the outcomes we seek to achieve, then the Welsh Assembly Government and Environment Agency Wales must use all available opportunities to work with others in the UK Government and the European Commission to influence:

- the aims of new legislation,
- the review of existing legislation,
- how new legislation is transposed.

For example, we are working with the Welsh Assembly Government on the current waste exemption review. At a European Commission level, we have been working on the revision of the waste framework directive and the review of the Integrated Pollution Prevention and Control regime.

Environment Agency Wales, as part of the Environment Agency covering England and Wales, has operational staff working cross boundary. Regulations need to be as simple and clear as possible for our customers and our staff. We think it is important to retain the same overarching waste and environmental protection principles as England, e.g. the hazardous waste consignment procedures and best available techniques under Integrated Pollution Prevention and Control. The Environmental Permitting Program, where we are working with the Welsh Assembly Government and Defra to develop a standardised permitting regime, will do some of this. We hope this will be the platform for any future permitting requirements, which will enable a consistent approach, efficiency savings and the regulatory certainty that industry needs.

### **3.0 ANSWERS TO SPECIFIC QUESTIONS**

- Q1) **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?**

#### **'Matter 6.1 Collection, management, treatment and disposal of waste'**

We believe that this matter will enable delivery of the majority of the waste policy agenda. In particular those that relate to local environment quality issues, and the delivery of a co-ordinated approach to the management and disposal of waste.

However, 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 will also encourage the efficient use of raw materials, energy and water. 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.

The current Wales Waste Strategy states that the top priority is not only to curb future growth in waste but also to reduce the amount of waste produced particularly hazardous waste. A lot has been achieved in Wales to date, with the main trends showing that industrial, commercial and municipal waste production has stabilised and is continuing to reduce. However, the Welsh Assembly Government's strategy for a vibrant economy is likely to mean an increase in growth in the Small and Medium Enterprise sector. This will probably occur in the service industries and local businesses, with the potential of an associated increase in waste production in these sectors. We also anticipate that the revised waste strategy will have an even greater focus on waste minimisation; and for these reasons we suggest that the current Order should expressly allow for the implementation of specific legislation in this area. If it is the Assembly's intention to implement such legislation then we suggest that this Matter is re-drafted as follows; "Minimisation, collection, management, treatment and disposal of waste".

#### **'Matter 6.2 Environmental protection, including pollution, nuisances and hazardous substances'**

It is clear from the transcript of *National Assembly for Wales Record of Proceedings Tuesday 19<sup>th</sup> June* that this Matter is not intended to allow for the consideration of carbon dioxide (or other greenhouse gases) reduction under the heading of 'pollution'. We are aware that Climate Change will be considered through the implementation of the Climate Change Bill, but are concerned that if the proposed Order is not expected to include carbon dioxide, we will miss an opportunity to for these issues to be considered in a wider context. We believe that the use of 'pollution' in this Matter once defined should allow the inclusion of carbon dioxide and greenhouse gases.

There is also the potential for the Assembly to use this Matter in relation to the development of sustainable communities. We are aware that the Assembly has an obligation to issue a sustainable development scheme under s.79 Government of Wales Act 2006. There is potential that this matter could assist in delivering sustainable development in Wales. We wish to ensure that adequate provision is made to mitigate any adverse environmental impact due to increased pressure on the infrastructure arising from new development. We consider that in some cases the development of new infrastructure such as drainage systems could actually benefit the environment. For example, with proper planning, wastewater can be considered a beneficial resource, and schemes such as Sustainable Drainage Schemes (SUDS) can improve bio-diversity and recreation opportunities. We suggest that the proposed Matter might be re-drafted as follows; Environmental Protection, including sustainable development, pollution, nuisances and hazardous substances.

Q2) **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?**

The Order lists the following exception:

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

However, it is slightly ambiguous in the drafting of the Order as to how this exception might operate we would welcome clarity to prevent any future misunderstanding.

Four Local Authorities in Wales have declared a total of Ten Air Quality Management Areas for the pollutant nitrogen dioxide. The major source of this pollutant is road traffic emissions. Whilst this is not directly within our role, we do have a responsibility to work with and support Local Authorities to achieve better air quality. As such, we believe that there needs to be an opportunity in Wales via this Order to consider alternative approaches, such as spatial and transport planning to deliver better air quality at 'hotspots' and improve background levels.

Another exception stated is:

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

Again, we would welcome more clarity on the extent and nature of this exception. For example, does this apply to the older housing stock in Wales, which is less efficient than modern build to the current BREEAM standards? This leads to higher than necessary releases of greenhouse gas from increased heating and energy use. Climate change is one of the leading priorities for Wales; we support the need to regulate energy efficiency and feel this is an opportunity to address a potential source of emissions. It may be necessary for further clarification as to what is believed to be outside the scope of the Order.

Q3) **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 terms of the proposed Order could be seen to be drafted too narrowly. We have suggested potential amendments above, which include:

- Waste minimisation
- Carbon dioxide and greenhouse gases
- Sustainable development
- Air quality
- Energy efficiency

#### **FURTHER INFORMATION**

Further information or background to this response can be obtained from: Ceri Davies  
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**Environment Agency Wales**  
12<sup>th</sup> September 2007