

Jane Davidson AC/AM

Y Gweinidog dros yr Amgylchedd, Cynaliadwyedd a Thai
Minister for Environment, Sustainability and Housing



Llywodraeth Cynulliad Cymru
Welsh Assembly Government

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Alun Ffred Jones AM
Chair, Environmental Protection and
Waste Management LCO Committee
Welsh Assembly Government
Cardiff Bay
Cardiff
CF99 1NA

25 October 2007

Amyni Alun Ffred,

PROPOSED ENVIRONMENTAL PROTECTION AND WASTE MANAGEMENT LCO

Thank you for your letter of 23 October and for the invitation to provide further evidence at the next Committee session on 6 November.

I am grateful for the opportunity to provide clarity on the issues you have raised and will address them in the same order as your letter.

Matter 6.1

Point 1: Have you had an opportunity to undertake any such consideration (*of whether Matter 6.1 is more explicit in referring to waste minimisation*) and if so, what was the outcome?

I have had the opportunity to consider a more explicit reference to waste prevention in Matter 6.1 and initial legal advice is that "waste reduction" is more established as a legal concept than "waste minimisation" and would encapsulate waste minimisation. However, further consideration of changes to the drafting of Matter 6.1, along with discussion with Whitehall, is needed to ensure that inclusion of this term does not compromise the scope of the LCO.

Point 2: Members would also like clarification on which waste streams are not covered by this proposed LCO.

The intended scope of the LCO is to cover all waste streams, eg, municipal waste, commercial and industrial waste and hazardous waste with the exception of radioactive waste. We are not currently seeking to deepen the scope of our powers in

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1NA

English Enquiry Line 0845 010 3300
Llinell Ymholiadau Cymraeg 0845 010 4400
Ffacs * Fax 029 2089 8129
PC minister for Environment and Housing

respect of radioactive waste given that Welsh Ministers already have extensive powers regarding radioactive waste which allow us to fulfil our policy aims. This includes nuclear waste, radioactive discharges and other radioactive substances including e.g. sealed sources for industrial or educational purposes

Matter 6.2

Point 3: Members would be grateful for an explanation as to why the proposed Order has been confined to the first two sentences of paragraph 6, Schedule 7 to the 2006 Act (albeit subject to the addition of the word "treatment" in Matter 6.1).

The intention is that the scope of the LCO is confined to waste management, local environment quality and pollution control, although I am aware that the current drafting of Matter 6.2 has led to some different interpretations. Accordingly, I have asked the Welsh Assembly Government's Legislative Counsel to reconsider the wording of Matter 6.2 with a view to clarifying that it covers only those environmental protection functions which relate to pollution, nuisances and hazardous substances, and does not cover functions which might be construed as falling under the wider 'Environment' field.

Point 4: Members would be interested to know what thought you have given to broadening the scope of the proposed Order, for example to cover biodiversity and other matters in paragraph 6, Schedule 7 to the 2006 Act.

This proposed LCO arises out of the manifesto commitment "to seek new powers to tackle all forms of environmental pollution, improve waste management and promote behaviour which protects our shared environment" and that commitment derives from the need to tackle the 'doorstep' issues that we all face in our constituencies relating to local environmental quality such as litter, graffiti, abandoned cars, fly-tipping, noise and dog fouling. It is not my intention to broaden the scope of this LCO to cover biodiversity or other matters within the 'Environment' field that would take the scope of the order beyond its original intention. However, this is the first request for legislative competence under that field. I envisage many more will follow and I am happy to consider future recommendations from the Committee

Point 5: Members would welcome clarification on the extent to which these powers could be used. For example, could they, in principle, be used to introduce charges / levies in relation to pollutants and noise pollution?

As I stated in my earlier letter, legal advice suggests that the draft LCO could allow a levy or charge to be introduced by a Measure in a number of areas which fall within the scope of the LCO. That would, in principle, include a levy or charge in relation to pollutants and noise pollution. However, as I stated previously, there are various legalities which could serve to restrict such a power in practice, which include for example:

1. A general restriction on any proposed Assembly Measure which prohibits it from removing or modifying any function of a Minister of the Crown, without the consent of the relevant Secretary of State. If the introduction of a levy or charge was deemed to interfere with a Minister of the Crown function, then it

would not be permitted under the Minister of the Crown restriction, unless the UK Government consented;

2. Any Measure that sought to introduce a levy or charge would require a Regulatory Impact Assessment which would need to identify the impact on businesses, charities and voluntary bodies to ensure, amongst other things, that the levy or charge was proportionate with its purpose;
3. Provisions in the EU Treaty which protect the free movement of goods by ensuring that competition between goods is not affected by duties, quotas or other restrictions on the movement of goods. These prohibit measures which restrict import and measures which have equivalent effect, including, measures which are applicable both to imports and domestic products.

It is therefore difficult to offer any more degree of clarity given that any proposal for a potential measure would need to be considered on a case by case basis, taking all of the above into account.

Point 6: Members would be grateful if you could set out clearly, and in detail, the rationale for all the relevant excepted matters in so far as they relate to this proposed Order, including whether they relate to non-devolved matters.

The intended basis for adding exceptions to Matters 6.1 and 6.2 is that they could otherwise reasonably be construed as being included in the matter and that the "protection" offered by Part 2 of Schedule 5 of the Government of Wales Act 2006 that the Assembly may not by measure alter the functions of the Minister of the Crown without the consent of the Secretary of State is sufficient. The specific exceptions, all of which relate to non-devolved matters, have been included as follows:

Exception 1 – Road freight transport services, including goods vehicles operator licensing.

This exception has been included because road freight transport services are generally a reserved matter and waste could count as freight. This exception makes it clear that any Assembly Measure could not, for example, limit distances over which waste is transported.

Exception 2 – The regulation of the use of motor vehicles on roads, their construction and equipment and conditions under which they may be so used.

This exception has been included because the regulation of motor vehicles remains the responsibility of the Department for Transport. This would prevent the National Assembly for Wales from, for example, legislating on road traffic pollution through MOT conditions. The "conditions under which they may be so used" wording relates to the detailed conditions set out in Part IV of the Road Vehicles (Construction and Use) Regulations 1986, which include conditions relating to the maximum laden weight of vehicles, the use of gas propulsion systems in vehicles, the control of noise from vehicles and the avoidance of danger when using vehicles.

Exception 12 - Shipping, apart from financial assistance for shipping services to, from or within Wales.

Exception 13 - Navigational rights and freedoms, apart from regulation of works which may obstruct or endanger navigation

Exception 14 - Technical and safety standards of vessels.

Exception 15 - Harbours, docks, piers and boatslips apart from—

(a) those used or required wholly or mainly for the fishing industry, for recreation or for communication between places in Wales (or for two or more of those purposes), and

(b) regulation for the purposes of protecting the environment.

These exceptions have been included to ensure any provision in a Measure relating to pollution could not interfere with laws on shipping, navigational rights, technical and safety standards of vessels or the operation of major ports as these are all reserved responsibilities of the Department for Transport.

Exception 16 - Carriage of dangerous goods (including transport of radioactive material).

This exception has been included because the carriage of dangerous goods is a non-devolved area.

Exception 18 - Energy conservation, apart from the encouragement of energy efficiency otherwise than by prohibition or regulation.

This exception has been included because Energy conservation is largely a non-devolved matter and the only scope of the Assembly is in relation to energy efficiency, for example, through the provision of grants. The word 'prohibition' included in exception 18, is intended to have its literal meaning, i.e. a ban or embargo. This exception would prevent, for example, a Measure prohibiting new homes in Wales being connected to the national grid.

In addition to the above points, at Annex A I enclose an illustrative list of the topics that we believe are covered by the scope of the draft Environmental Protection and Waste Management LCO. I must emphasise that these are examples, intended to illustrate the extent of the legislative competence that the draft LCO would confer. The list is not an indication of the specific provisions in any Measures that will be proposed once the legislative competence is conferred. It is intended to help clarify the scope of the LCO and the policy areas for potential future Measures that we believe are covered by the draft (all of which relate to the current executive competence of the Welsh Assembly Government).

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Jane Davidson AM
Minister for Environment, Sustainability and Housing

PROPOSED LEGISLATIVE COMPETENCE ORDER FOR WASTE MANAGEMENT AND ENVIRONMENTAL PROTECTION

ILLUSTRATIVE EXAMPLES OF TOPICS WITHIN SCOPE OF DRAFT LCO

NB - All options will be subject to rigorous impact assessment and will be constrained by the requirements of the Government of Wales Act 2006, for example in relation to compliance with international obligations, taking account of the interests of business and further regulatory impact assessment of any subordinate legislation made under a Measure. In addition, 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.

WASTE MANAGEMENT

Statutory recycling/composting targets

Requirements on local authorities to collect and recycle/compost specified amounts of recoverable municipal waste by specified dates (these would of course have to be compatible with international obligations)

Current statutory functions under section 55 of the EPA 1990

Types of waste for recycling/composting

Specification of the type of recyclable material (food waste, plastics, cardboard, paper, etc.) that local authorities would be required to collect as part of their duty to collect recyclable material. Extension of any such duty, to include recyclable commercial and industrial waste.

Direct or variable household waste charging/incentives

The ability for local authorities to introduce direct or variable charges/incentives in relation to household waste, allow for an excess waste charge to be levied or recycling rebate to be offered. There is a proposal to scope this in the Environment Strategy announced in July 2006 which will be taken forward as part of the review of the Waste Strategy.

Prohibition of the disposal of hazardous waste in household waste

Controls on the disposal of hazardous household wastes, covering:

- inclusion of hazardous household waste which is in the possession of an householder in the definition of "hazardous waste"
- requirements for safe treatment or disposal of such waste
- restrictions on mixing of hazardous and non-hazardous waste by householders
- introduction of penalties for non-compliance
- local authority arrangements for collection of hazardous household waste.
- facilities at civic amenity sites to receive a specified range of hazardous household wastes (e.g. asbestos, paints, batteries, WEEE etc.)
- requirements for household hazardous wastes to be re-used and recycled as far as possible

Restrict landfill of wastes

Restrictions on the disposal of certain wastes in landfill (e.g. bio-degradable waste, untreated waste or recyclable waste) as is done in other EU countries. Source separation of waste.

Joint municipal waste authorities

The establishment of Joint Municipal Waste Authorities to manage the collection and/or disposal of municipal waste in their areas and the establishment of a new entity or entities to manage municipal waste in Wales if necessary.

Requirements on public bodies

Requirements on public sector bodies regarding use of Environmental Management Systems (EMS) and reporting of environmental impacts (including the amount of waste generated, water used, energy used etc.); setting of statutory targets for environmental improvements, e.g. waste reduction, recycling, minimum recycled content in purchased goods

Waste facility capacity

Reporting of annual tonnage and maximum operational capacity by facilities handling waste.

Current statutory functions under section 35(6) of the EPA 1990.

Reporting of waste production

Reporting of information about the type and quantity of waste produced and how it is managed.

Welsh Assembly Government grants

Requirements on "environmental" grant conditions in all successful applications for Welsh Assembly Government grants.

LOCAL ENVIRONMENT QUALITY

Litter/recycling at events

Provision enabling local authorities to require large-scale events (e.g. Royal Welsh Show, Eisteddfod, Millennium Stadium) to have adequate facilities for recycling and adequate provision of bins for different types of waste material.

Litter from smoking

Extension of the scope of the Street Litter Control Notice ("SLCN") provisions in sections 93 and 94 of the Environmental Protection Act 1990 ("the EPA") to give local authorities the power to (a) place a greater proactive responsibility on the occupiers of premises to clean-up cigarette-related material dropped by smokers in the vicinity of their premises; and (b) require occupiers of such premises to install appropriate disposal facilities.

Current statutory functions under sections 93 and 94 of the EPA 1990

Litter from cars

Provision concerning default responsibility for any litter thrown from a vehicle.

Graffiti

Age limits below which it is an offence to sell aerosol spray paints and associated penalties.

Current statutory functions under sections 43 to 52, 54 and 54A of the Anti-social Behaviour Act 2003

Fast food litter

Prevention and management of waste/litter caused by food 'on the go'.

Current statutory functions under sections 93 and 94 of the EPA 1990

Abandoned shopping trolleys

Measures to prevent the abandonment of trolleys.

Current Statutory provisions in section 99 of, and Schedule 4 to, the EPA 1990

Plastic bags and other packaging

Provision to minimise waste and reduce litter from plastic bags and other packaging. This could include a ban on plastic bags if this were considered necessary and feasible.

Alternatives to fixed penalty notices

Provision to allow local authorities to offer a lower rate of fixed penalty to different people, e.g. persons under the age of 16 or an alternative to a fixed penalty, perhaps through a community service activity such as a local litter pick or an environmental awareness session on the problems caused by litter, graffiti, etc.

Producer responsibility for direct mail

Producer responsibility requirements on companies who advertise/print/distribute direct mail sent out in Wales.

Excess packaging

Further reduction of excess packaging and development of associated recycling protocols, building on Directive 94/62/EC – implemented by the Packaging (Essential Requirements) Regulations 2003 (SI 2003/1941) and the Producer Responsibility Obligations (Packaging Waste) Regulations 2007(S.I. 2007/871).

Returnable packaging

Further provision to promote the re-use of certain packaging, e.g. returnable bottles with deposit return systems.

Invasive plants

Provision concerning control or removal of invasive plants by local authorities as part of environmental rehabilitation projects under LEQ.

Current statutory functions include those under the Wildlife and Countryside Act 1981 and the Weeds Act 1959.

Quiet areas

Measures as on the Continent to promote 'quiet' areas as in the UK we have for example, pedestrianised or alcohol free areas.

Current statutory functions under the Environmental Noise (Wales) Regulations 2006 (S.I. 2006/2629), which implemented Directive 2002/49/EC under powers designated to the National Assembly for Wales by S.I. 2004/706

Noise pollution

Additional measures to tighten up or control noise nuisance and pollution, eg from properties.

Current statutory functions under Part III of the EPA 1990, the Noise Act 1996 and Part 7 of the Clean Neighbourhoods and Environment Act 2005

Light pollution

Additional measures to reduce light nuisance or intrusion and pollution. This could also have energy and climate change benefits in reducing energy wastage.

Current statutory functions under Part III of the EPA 1990