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Llywodraeth Cynulliad Cymru
Welsh Assembly Government

Eich cyf/Your ref
Ein cyf/Our ref

Alun Ffred Jones AM
Chair, Environmental Protection and Waste Management
LCO Committee
Welsh Assembly Government
Cardiff Bay
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1st October 2007

Annwyl Alun,

REQUEST FOR INFORMATION BY ENVIRONMENTAL PROTECTION AND WASTE MANAGEMENT LCO COMMITTEE

Thank you for the opportunity to present evidence at the Environmental Protection and Waste Management LCO Committee on September 25. The Committee requested further information on four areas and my response to each is set out below. It is crucial to emphasise that examples of possible topics are used only to illustrate the extent of the legislative competence that the draft LCO would confer, and do not necessarily reflect or limit the types of Measures that the LCO will be used to introduce once legislative competence is conferred.

1. Legal advice on the definition of "environmental protection" and on the term "including" in Matter 6.2.

Matter 6.2 - Environmental Protection, including pollution, nuisances and hazardous substances

Legal advice is that the word "including" in Matter 6.2 engages the *expressio unius est exclusio alterius* rule of statutory construction, which limits the definition of "environmental protection" only to the words which follow, in this case "pollution, nuisances and hazardous substances". The effect of the rule is that where the legislation mentions a broad area "including" specific topics, it is assumed that there was no intention to include other topics. Matter 6.2 therefore covers environmental protection in relation to pollution, nuisances and hazardous substances and does not include, for example, nature conservation or biodiversity which both fall outside of the scope of this LCO.

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2. Further information and legal advice on the relationship of the proposed LCO and its impact on carbon emissions and proposals on climate change.

Legal advice indicates that emissions of greenhouse gases are considered to be a form of pollution and the LCO could therefore potentially allow the Assembly to pass Measures which cover such emissions. The draft LCO therefore has the potential to confer legislative powers that could be used to assist in reducing greenhouse gas emissions. For example, it could allow the Assembly to pass Measures that aim to reduce waste and improve resource efficiency, which will contribute to emission reduction by cutting the amount of energy required to make and then dispose of products, and by reducing the amount of waste going to landfill and thereby cutting methane emissions.

The draft LCO would enable the introduction of Measures aimed at reducing emissions of pollutants, which includes greenhouse gases. However, the main legislative mechanisms for achieving this are emission trading schemes and the draft Climate Change Bill, which is likely to lead to broad executive functions for Ministers in this area.

3. An analysis of the powers that would come forward under the LCO in terms of proposed Measures relating to carbon emissions and those contained in the Climate Change Bill for the Committee to see side by side.

The UK Climate Change Bill has not yet been formally introduced into Parliament and therefore it is not yet possible to provide a detailed comparative analysis of the powers in the final draft and those conferred in the draft LCO.

However, based on the draft Bill, the main areas aimed at emission reduction relate to emission trading schemes (Part 3 of the draft Bill). In broad terms these cover schemes which:

- Aim to limit activities that lead to the emission of greenhouse gases; and,
- Encourage activities that contribute to the reduction of greenhouse gas emissions or their removal from the atmosphere

As stated above, the draft LCO would confer legislative powers which would then allow the Assembly to pass Measures that seek to reduce emissions of greenhouse gases for instance by improving resource efficiency and by reducing waste. The draft LCO also has the potential to enable the introduction of Measures that will assist in meeting the One Wales carbon emission target of a 3% per year reduction by 2011 in areas of devolved competence. The achievement of the 3% target will also require powers and levers that go much wider than the scope of the legislative powers covered by the LCO, including the Assembly Government's existing executive powers. However, the increased legislative competence that the draft LCO would confer could be used to pass Measures that assist in reaching this target as well as any statutory targets that arise from the Climate Change Bill. Legislative powers could also be used to help meet the UK's contribution, via the EU burden-sharing agreement, to the requirements of the Kyoto Protocol (for the UK, a 12.5% reduction

in greenhouse gas emissions over the period 2008 – 2012 compared to the base year).

4. Advice on whether, as a result of the LCO, a Measure could be passed imposing a general levy rather than just a levy on plastic bags.

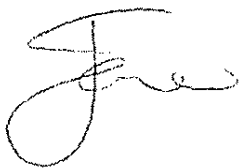
Legal advice suggests that the draft LCO could, for example, allow the Assembly to pass a Measure which introduced a levy or charge on plastic carrier bags at the point of sale. This has been introduced in the Republic of Ireland, where each plastic bag is subject to a 22 cent levy or charge at the point of sale. Revenue from the Irish 'PlasTax' can only be used to fund environmental improvements including litter, waste management and other environmental initiatives.

Legal advice also 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. A levy or charge could for instance be considered to encourage behaviour that addresses environmental protection within the terms of Matter 6.2 insofar as it relates to "pollution, nuisances and hazardous substances". However, there are various legalities which could serve to restrict such a power in practice, for example:

1. The Government of Wales Act 2006 contains 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. There are various 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.

I trust that this letter clarifies the questions brought up by the Committee.

Yours,



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