



Pre-legislative Scrutiny of the
Proposed Legislative Competence
Order - Environment

28th May 2009



WLGA • CLILC

INTRODUCTION

1. The Welsh Local Government Association (WLGA) represents the 22 local authorities in Wales, and the three national park authorities, the three fire and rescue authorities, and four police authorities are associate members. It seeks to provide representation to local authorities within an emerging policy framework that satisfies the key priorities of our members and delivers a broad range of services that add value to Welsh Local Government and the communities they serve.
2. The WLGA welcomes the opportunity to provide a written submission to the Welsh Affairs Select Committee on this proposed Legislative Competence Order (LCO) relating to environmental protection and waste management. The LCO laid on 27th April 2009 seeks to allow the National Assembly to pass Measures in the area of environmental protection, specifically pollution and nuisance, and waste management.
3. All three matters impact on the actions and services provided by local authorities in Wales. Therefore the powers of the National Assembly in relation to these areas is of critical importance to the WLGA and its members. Local authorities in Wales are collection and disposal authorities for the management of municipal waste and WAG has indicated strongly that it intends to make measures to implement its forward thinking and challenging waste strategy – Towards Zero Waste. Local authorities are responsible for monitoring certain aspects of pollution control to protect human health and the environment and are also responsible for a range of powers to prevent nuisances impacting on communities and people's quality of life in general e.g. litter.
4. The WLGA recognises therefore that pollution, nuisance and waste management impact directly on people's quality of life. Pollution and nuisance can spoil an area and be key contributors to the feeling of poverty fear of crime. Waste management is a service which impacts on every citizen whether they are at home or at work and for Welsh local government the issues and risks facing municipal waste management has made waste our number one priority for support and action.

Summary of Response

5. In principle the WLGA is supportive of the National Assembly for Wales having competence over the matters in question – waste management, pollution and

nuisance. We recognise however that in the development of measures under these matters, close liaison and policy synchronisation with the UK government and wider stakeholders will need to occur.

6. However a very narrow definition is being given to pollution thereby we understand, ruling out actions relating to WAG's ability to tackle climate change. The WLGA fully recognises that tackling climate change is a global to local issue and that different tiers of governance have a different role to play in tackling this agenda. We query however whether complete exclusion of any form of action on climate change is appropriate.
7. We understand that the Welsh Assembly Government intends to publish its climate change strategy at the end of June. We therefore feel that this strategy should be examined before making a final judgement on whether this LCO should address measures relating to CO2 emissions and climate change.
8. We also recognise that many of the issues that need addressing under waste, pollution and nuisance are also placed within a European and UK context and policy and legal consistency will be needed however local implementation may differ which this LCO would allow.

Matter 6.1 Waste

9. The WLGA is pleased that this draft of the LCO addresses the main concerns we had with the 2007 draft in that it covers the "preventing and reducing" of waste. The main criticism with the first draft was that it allowed the National Assembly to act once a problem i.e. waste had been created rather than tackling the problem at source i.e. stop it being created.
10. The WLGA would still appreciate clarification whether this wording will allow the National Assembly to introduce measures to introduce producer responsibility in Wales as happens in parts of Europe. Welsh LAs have been given by WAG extremely challenging targets to be met and it has been recognised (indeed the technical report accompanying the target the "Eunomia Report" categorically states) that to achieve such high performance a form of producer responsibility will be needed.
11. The WLGA does appreciate that retailers and producers do not want to work within different systems in the UK and indeed that this isn't possible. However the LCO does

provide the opportunity for Wales to become a test bed for future UK policy development and look at innovative ways of tackling the waste problem.

Matter 6.2 Pollution

12. The WLGA notes that the LCO now covers pollution and nuisance separately and both have been defined which is welcomed.
13. As commented above it is still not clear, because of the narrowness of the definition of pollution “pollution of the air, water or land which may give rise to any environmental harm, including (but not limited to) pollution caused by light, noise, heat or vibrations or any other kind of release of energy,” whether actions in climate change and CO2 will be possible.
14. We do query the exclusion Matter 6.2 (d(i)) of providing financial support for the production of renewable energy for consumption in transport. Innovative solutions are being examined in Wales which relate production of gases etc. to alternative vehicles for local authority transport fleets. For example the use of anaerobic digestion for the treatment of food waste can result in a biogas being produced which can be used as an alternative fuel in the vehicles which are used to collect the food waste. The Welsh Assembly Government has committed to substantial financial aid to support the development of such facilities and it would be a shame if such support could not be utilised to close this environmental loop.

Matter 6.3 Nuisance

15. As stated above the WLGA appreciates the clarification provided with the definition of nuisance “an act or omission affecting any place, or a state of affairs in any place, which may impair, or interfere with, the amenity of the environment, or any legitimate use of the environment...”
16. We believe that competence in this area will allow the National Assembly to introduce measures which allows a ‘made in Wales’ approach to issues affecting the local environment – from fly-tipping to graffiti. A lot of local, grass roots work has been undertaken such as Pride in Our Communities to clean up areas and significant progress has been made. However for Wales to achieve its clean and green aspirations suitable measures will be able to be made under this competence.

Specific Questions

Is the LCO request in the spirit and scope of the devolution settlement?

17. The WLGA believes that it is.

Is the use of the LCO mechanism in accordance with the Government of Wales Act 2006?

18. The WLGA believes that it is.

Is the use of an LCO more appropriate, than for example the use of framework powers in a Westminster Bill?

19. The WLGA believes that the LCO is an appropriate route for securing additional powers to the National Assembly. We understand no bill is currently proposed by UK Government which would allow framework powers in these areas to be vested therefore timescales are critical.

The extent to which there is a demand for legislation on the matter(s) in question?

20. We understand that the Welsh Assembly Government has already identified a powers deficit to act in this area and is unable to fulfil some of its aspirations because measures cannot be made. The WLGA for example has identified a hiatus on producer responsibility which this LCO may address. We know the National Assembly wants to make the targets proposed in Towards Zero Waste a mandatory requirement – the LCO would allow this. We also understand that there will be synergies between the nuisance element of this LCO and powers already provided via the Climate Change Act to act on single use carrier bags.

To what extent might the transfer of functions proposed have wider implications for the UK budget?

21. The WLGA does not believe that, or can think of examples where the transfer of functions will have wider implications for the UK budget. Indeed it maybe possible if the LCO allowed Wales to trial innovation that it could assist the UK budget position.

To what extent might the transfer of functions impact on reserved functions?

22. The WLGA does not believe there to be any impact on reserved functions.

Are there any cross-border issues relating to the LCO?

23. Potentially yes but these can be overcome through dialogue and negotiation and are not a major issue which would put a stop to this LCO. Waste management practices cross borders. For example recycling collected in Wales can be reprocessed in England and vice versa (e.g. Wales is a centre for electronic recycling). Use of this competence and any subsequent measures would need to take account of such factors. We are also aware that any measures introduced in Wales must not have a negative effect on England – for example increase in fly-tipping over the border because of stronger action arising from Welsh actions. Again dialogue and partnership working can overcome this.

Would the proposed LCO necessitate the formation or abolition of Welsh institutions and structures? If so, where does the legislative competence to exercise such functions lie?

24. The WLGA does not believe that the LCO forces any change to existing institutions.

Conclusions-Recommendations

25. The WLGA believes that the draft Order will allow Wales to help deliver its commitment to sustainable development and ensure a made in Wales approach is developed which is fit for policy and Welsh purposes but within a UK and European framework.

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