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## Y Pwyllgor ar y Gorchymyn Arfaethig ynghylych Diogleu'r Amgylchedd a Rheoli Gwastraff

### Aelodau'r Pwyllgor

Alun Ffred Jones (Cadeirydd)	Plaid Cymru	Arfon
Lorraine Barrett	Llafur	De Caerdydd a Phenarth
Mick Bates	Democratiaid Rhyddfydol Cymru	Sir Drefaldwyn
Sandy Mewies	Llafur	Delyn
Darren Millar	Plaid Geidwadol Cymru	Gorllewin Clwyd

## Crynodeb

Mae casgliadau ac argymhellion y Pwyllgor ar y Gorchymyn ynghylch Diogelu'r Amgylchedd a Rheoli Gwastraff fel a ganlyn:

- Rydym yn cytuno mewn egwyddor y dylai cymhwysedd deddfwriaethol yn y meysydd a nodir yn y Gorchymyn arfaethedig gael ei roi i'r Cynulliad Cenedlaethol.
- Rydym yn argymhell bod Llywodraeth Cynulliad Cymru yn diwygio Mater 6.1 i'w gwneud yn glir ei fod yn cwmpasu lleihau neu ostwng lefel gwastraff.
- Rydym yn argymhell nad yw Llywodraeth Cynulliad Cymru yn diwygio Mater 6.1 er mwyn peidio â chynnwys gwastraff ymbelydrol o fewn ei derfynau.
- Rydym yn argymhell bod Llywodraeth Cynulliad Cymru yn diwygio Mater 6.2 i'w gwneud yn glir pa feysydd diogelu'r amgylchedd y mae yn eu cwmpasu.
- Rydym yn argymhell bod Llywodraeth Cynulliad Cymru yn diwygio Mater 6.2 i'w gwneud yn glir ei fod yn cwmpasu gwella neu hybu'r amgylchedd, ac y bydd modd dod â Mesurau gerbron i wella'r amgylchedd (o fewn cwmpas y Mater), yn ogystal ag i'w ddiogelu.
- Rydym yn argymhell yn gryf bod Llywodraeth Cynulliad Cymru yn dod â Gorchymyn Cymhwysedd Deddfwriaethol gerbron sy'n cwmpasu bioamrywiaeth a materion cysylltiol, a hynny ar y cyfle cyntaf.
- Rydym yn fodlon ar y materion eithriedig a ddarparwyd mewn perthynas â Materion 6.1 a 6.2.

- Rydym yn fodlon ar y newid cyflwyniadol a gynigiwyd mewn perthynas ag Atodlen 5 i *Ddeddf Llywodraeth Cymru 2006*, fel y bydd pob mater eithriedig sy'n gysylltiedig â Mater penodol yn cael ei gynnwys yn y dyfodol mewn tabl ar ddiwedd Maes 20.
- Byddem yn annog Llywodraeth Cynulliad Cymru i sicrhau bod Memoranda Esboniadol i gyd-fynd â Gorchmynion arfaethedig (a drafft) yn esbonio'r rhesymau am gynnwys unrhyw faterion eithriedig, a phwrpas y materion eithriedig hynny, yn glir.

## 1. Cyflwyniad

### *Y cefndir*

1. Ar 19 Mehefin 2007, gosododd y Gweinidog dros yr Amgylchedd, Cynaliadwyedd a Thai<sup>1</sup>, Jane Davidson AC ('y Gweinidog'), *Orchymyn arfaethedig Cynulliad Cenedlaethol Cymru (Cymhwysedd Deddfwriaethol) (Rhif 2) 2007* ('y Gorchymyn arfaethedig') a'r Memorandwm Esboniadol, yn unol â Rheolau Sefydlog 22.13 a 22.14. Mae copïau o'r dogfennau hyn ynghlwm yn Atodiad 1. Gwnaeth y Gweinidog ddatganiad am y Gorchymyn arfaethedig yn y cyfarfod llawn ar 19 Mehefin.<sup>2</sup>

2. Ar 3 Gorffennaf, cytunodd y Pwyllgor Busnes i gyfeirio'r Gorchymyn arfaethedig at bwyllgor i gael ei ystyried yn fanwl. Cytunodd fod rhaid i'r pwyllgor orffen ystyried y Gorchymyn arfaethedig ac adrodd arno erbyn 23 Tachwedd 2007 fan hwyraf (cafodd y dyddiad hwn ei ymestyn wedi hynny i 30 Tachwedd gan y Pwyllgor Busnes).<sup>3</sup>

3. Yn dilyn penderfyniad yn y cyfarfod llawn ar 4 Gorffennaf, sefydlwyd y Pwyllgor ar y Gorchymyn Arfaethedig ynghylch Diogelu'r Amgylchedd a Rheoli Gwastraff (yn unol â Rheol Sefydlog 21) i ystyried y Gorchymyn arfaethedig.<sup>4</sup>

4. Rôl y pwyllgor, fel y'i nodwyd yn Rheol Sefydlog 22.19, oedd ystyried y Gorchymyn arfaethedig a rhoi adroddiad arno h.y. craffu arno cyn y broses ddeddfu.

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<sup>1</sup>Teitl y Gweinidog pan osodwyd y Gorchymyn arfaethedig oedd y Gweinidog dros Gynaliadwyedd a Datblygu Gwledig

<sup>2</sup> Cofnod y Trafodion, 739-67, 19 Mehefin 2007, Gweler hefyd Llywodraeth Cynulliad Cymru, y Gweinidog dros Gynaliadwyedd a Datblygu gwledig, *Diogelu'r Amgylchedd a Rheoli Gwastraff - Gorchymyn Cymhwysedd Deddfwriaethol*, Datganiad Ysgrifenedig y Cabinet, 18 Mehefin 2007

<sup>3</sup> Cytunwyd gan y Pwyllgor Busnes ar 6 Tachwedd 2007

<sup>4</sup> Cofnod y Trafodion, t22-24, 4 Gorffennaf 2007

### *Cwmpas gwaith craffu'r Pwyllgor*

5. Cytunasom ar gwmpas ein gwaith craffu ar 11 Gorffennaf<sup>5</sup> fel y nodir isod:
- (i) penderfynu a yw egwyddorion cyffredinol y Gorchymyn arfaethedig, h.y. y cymhwysedd deddfwriaethol hwnnw a bennir ym Materion 6.1 a 6.2, i gael eu rhoi i'r Cynulliad a bod y diwygiadau a awgrymir i gael eu gwneud i Fater 5.10 ac ar ôl Maes 20;
  - (ii) penderfynu a yw'r Gorchymyn arfaethedig yn darparu fframwaith priodol er mwyn gwireddu'r agenda bolisi o ran diogelu'r amgylchedd a rheoli gwastraff ac, yn arbennig, a yw telerau'r Gorchymyn arfaethedig wedi cael eu diffinio'n rhy eang neu'n rhy gul.

### *Tystiolaeth*

6. Cyhoeddasom alwad gyffredinol am dystiolaeth a gwahoddwyd cyrff sy'n ymwneud â'r amgylchedd i gyflwyno tystiolaeth i'n helpu gyda'n gwaith. Mae copi o'r llythyr ymgynghori ynghlwm yn Atodiad 2. Cymerasom dystiolaeth lafar hefyd. Mae rhestr o'r ymatebion i'r ymgynghoriad, ynghyd â manylion y sesiynau tystiolaeth lafar, ynghlwm yn Atodiad 3.
7. Hefyd, cyfnewidiasom ohebiaeth â'r Gweinidog ac mae copïau o'r llythyrau perthnasol i gyd ynghlwm yn Atodiad 4.
8. Dan Reol Sefydlog 22.21, wrth baratoi ein hadroddiad, rhaid inni, cyn belled ag sy'n ymarferol o fewn rheswm, ystyried unrhyw argymhellion a wneir ar y Gorchymyn arfaethedig gan:
- (i) unrhyw bwyllgor arall o Gynulliad Cenedlaethol Cymru; a

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<sup>5</sup> Cafodd y cwmpas ei drafod mewn cyfarfodydd ffurfiol ac anffurfiol ar 11 Gorffennaf 2007.

- (ii) unrhyw bwyllgor Tŷ'r Cyffredin, Tŷ'r Arglwyddi neu unrhyw Gydbwyllgor o ddau Dŷ'r Senedd.

Nid oes argymhellion o'r fath wedi cael eu gwneud mewn perthynas â'r Gorchymyn hwn.

- 9. Mae'r adroddiad a'r argymhellion sy'n dilyn yn cynrychioli'r casgliadau y daethom iddynt ar sail y dystiolaeth a ddaeth i law yn ystod ein gwaith.

## 2. Egwyddor y Gorchymyn arfaethedig

### *Y cefndir*

10. Pwrpas y Gorchymyn arfaethedig yw rhoi cymhwysedd deddfwriaethol i Gynulliad Cenedlaethol Cymru ('Cynulliad Cenedlaethol') ym Maes yr Amgylchedd (Maes 6, Atodlen 5 o *Ddeddf Llywodraeth Cymru 2006 - 'Deddf 2006'*) drwy gynnwys dau fater newydd ym meysydd diogelu'r amgylchedd a rheoli gwastraff:

Mater 6.1 Casglu, rheoli, trin a gwaredu gwastraff

Mater 6.2 Diogelu'r amgylchedd, yn cynnwys llygredd, niwsansau a sylweddau peryglus

11. Mae'r cymhwysedd sydd i gael ei roi gan Faterion 6.1 a 6.2 yn ddarostyngedig i nifer o faterion eithriedig, sydd wedi'u cynnwys mewn tabl o faterion eithriedig.

12. Mae'r tabl hwn o faterion eithriedig yn cynrychioli newid cyflwyniadol i Atodlen 5 o Ddeddf 2006, a fydd yn dod i rym drwy gyfrwng y Gorchymyn arfaethedig hwn. Yn y dyfodol, nid yw materion eithriedig o fewn cwmpas Mater i gael eu rhestru dan bob Mater ond maent i gael eu cynnwys mewn tabl dan y pennawd '*Materion eithriedig mewn meysydd Rhan 1*'. Mae'r tabl i gael ei fewnosod ar ôl Maes 20. Mae'n cynnwys rhestr o faterion eithriedig yn y golofn gyntaf, ac mae'r ail golofn yn nodi'r Materion y mae'r mater eithriedig yn berthnasol iddynt. O ganlyniad i'r newid hwn yn y ffordd o weithredu, mae'r materion eithriedig presennol sydd wedi'u cynnwys eisoes yn Rhan 1 o Atodlen 5 - mewn perthynas â Mater 5.10 - hefyd yn ymddangos yn y tabl, er nad oes a wnelont â'r cymhwysedd sy'n cael ei roi dan Faterion 6.1 a 6.2.

13. Byddai rhoi cymhwysedd deddfwriaethol i'r Cynulliad Cenedlaethol drwy'r Gorchymyn arfaethedig hwn yn caniatáu i Lywodraeth Cynulliad Cymru ('Llywodraeth y Cynulliad'), Aelodau Cynulliad a Phwyllgorau



Cynulliad ddod â chynigion am ddeddfwriaeth gerbron, ar ffurf Mesurau Cynulliad, o fewn cwmpas Materion 6.1 a 6.2.

### *Memorandwm Esboniadol*<sup>6</sup>

14. Yn ei Memorandwm Esboniadol, esboniodd Llywodraeth y Cynulliad fod ganddi eisoes gymhwysedd gweithredol a chymhwysedd is-ddeddfwriaethol sylweddol ym meysydd diogelu'r amgylchedd a rheoli gwastraff<sup>7</sup>. Fodd bynnag, mae Llywodraeth y Cynulliad o'r farn fod ei phwerau'n gyfyngedig mewn nifer o feysyddl.<sup>8</sup>

15. Byddai'r pwerau newydd a roddir gan y Gorchymyn arfaethedig yn caniatáu i Lywodraeth y Cynulliad ddod â chynigion am Fesurau gerbron, a'r rheini wedi'u seilio ar flaenoriaethau ac amserlenni Cymru.<sup>9</sup> Yn arbennig, nododd Llywodraeth y Cynulliad dri maes penodol y mae'n bwriadu defnyddio'r pwerau ynddynt:

- gwella ansawdd yr amgylchedd yn lleol;
- cynyddu ailgylchu a gwella'r rheolaeth dros wastraff;
- cryfhau'r rheolaeth dros lygredd.<sup>10</sup>

16. Tynnwyd sylw at y materion hyn fel rhai y mae gofyn gweithredu ynglŷn â nhw yn ystod ymgynghoriad Llywodraeth y Cynulliad am ei strategaeth tymor hir ar gyfer amgylchedd Cymru,<sup>11</sup> a gyhoeddwyd wedi hynny ym mis Mai 2006.<sup>12</sup>

### *Tystiolaeth*

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<sup>6</sup> Llywodraeth Cynulliad Cymru, *Memorandwm gan y Gweinidog dros Gynaliadwyedd a Datblygu Gwledig, Gorchymyn Cynulliad Cenedlaethol Cymru (Cymhwysedd Deddfwriaethol) (Rhif 2) 2007, Cynnig ar gyfer Gorchymyn Cymhwysedd Deddfwriaethol gan y Llywodraeth ynghylch Diogelu'r Amgylchedd a Rheoli Gwastraff*, Mehefin 2007

<sup>7</sup> Ibid paragraff 7

<sup>8</sup> Ibid paragraff 12

<sup>9</sup> Ibid paragraff 11

<sup>10</sup> Ibid paragraff 13

<sup>11</sup> Ibid paragraff 9

<sup>12</sup> Llywodraeth Cynulliad Cymru. *Strategaeth Amgylcheddol ar gyfer Cymru*, Mai 2006

17. Roedd y rhai a ymatebodd i'r ymarferiad ymgynghori'n cefnogi'r Gorchymyn arfaethedig yn gyffredinol, ac roedd llawer o'r rhai a ymatebodd yn ei groesawu'n benodol. Cyflwynwyd safbwyntiau amrywiol o blaid cefnogi'r Gorchymyn arfaethedig. Dywedodd Cyswllt Amgylchedd Cymru:

“...it will aid the Welsh Assembly Government in achieving the Environment Strategy’s vision of an environment which is clean, healthy, biologically diverse and valued by the people of Wales.”<sup>13</sup>

18. Dywedodd Asiantaeth yr Amgylchedd Cymru y bydd y Gorchymyn arfaethedig:

“...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.”<sup>14</sup>

19. Yn fwy penodol, nododd Cadwch Gymru'n Daclus fod pwerau cyfredol y Cynulliad Cenedlaethol yn ei atal rhag cyflwyno dyletswyddau statudol ychwanegol gyda'r nod o leihau niwsans a dywedodd y byddai'r Gorchymyn arfaethedig yn rhoi i'r Cynulliad ystod lawn o bwerau i fynd i'r afael â phroblemau sy'n benodol i anghenion Cymru.<sup>15</sup>

20. Mynegodd nifer fach o gyrff amheuan am fod y pwerau sy'n cael eu rhoi gan y Gorchymyn arfaethedig mor eang. Er ei fod yn dweud y bydd y Gorchymyn arfaethedig yn dod â manteision ar lefel leol yng Nghymru o ran rhai materion fel tipio anghyfreithlon, taflu sbwriel a rheoli gwastraff, mynegodd Cydffederasiwn Diwydiant Prydain yng Nghymru rywfaint o bryder y gallai'r Gorchymyn arfaethedig:

“...may give powers to the Assembly to address matters that we think would be best dealt with at a UK or even an international level...”<sup>16</sup>

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<sup>13</sup> Cyswllt Amgylchedd Cymru, Tystiolaeth Ysgrifenedig, Diogelu'r Amgylchedd a Rheoli Gwastraff, EPWM3

<sup>14</sup> Asiantaeth yr Amgylchedd Cymru, Tystiolaeth Ysgrifenedig, Diogelu'r Amgylchedd a Rheoli Gwastraff, EPWM8

<sup>15</sup> Cadwch Gymru'n Daclus, Tystiolaeth Ysgrifenedig, EPWM5

<sup>16</sup> Cofnod y Trafodion, paragraff [151], 2 Hydref 2007, y Pwyllgor ar y Gorchymyn ynghylch Diogelu'r Amgylchedd a Rheoli Gwastraff

21. Ar nodyn ychydig yn wahanol, er ei bod o blaid egwyddor y Gorchymyn arfaethedig mewn egwyddor<sup>17</sup>, mynegodd Cymdeithas Llywodraeth Leol Cymru y farn:

“In terms of environmental protection, we are not clear what Measures would be introduced because recent research by the Assembly Government clearly shows that, at the moment, there is not a deficit in legislative provision on environmental protection. The real issue that we face in Wales is one of changing behaviours and fully utilising the powers that we have at present, which is a resource issue. Therefore, I am not clear about the gaps that the LCO, as currently drafted, would cover.

Having said that, in our evidence we did say that we would like the LCO introduced to be clear about its coverage of enhancement of the environment.”<sup>18</sup>

22. Darparodd y Gweinidog restr enghreifftiol o’r testunau y mae Llywodraeth y Cynulliad o’r farn eu bod wedi’u cynnwys gan gwmpas y Gorchymyn arfaethedig.<sup>19</sup> Ailadroddodd pam yr oedd y cais am gymhwysedd deddfwriaethol yn cael ei wneud, gan nodi bod yna o fewn pob un o’r testunau a restrwyd feysydd lle nad yw ein pwerau’n mynd yn ddigon pell.<sup>20</sup> Cydnabu hefyd y gallai’r Gorchymyn arfaethedig ganiatáu i’r Cynulliad basio Mesurau sy’n cwmpasu gollyngiadau nwyon tŷ gwydr (er enghraifft drwy leihau gwastraff a gwella effeithlonrwydd o ran adnoddau).<sup>21</sup> Esboniodd y Gweinidog hefyd y byddai’r pwerau’n fodd i roi sylw i bryderon y cyhoedd

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<sup>17</sup> Cofnod y Trafodion, paragraff [226], 25 Medi 2007, y Pwyllgor ar y Gorchymyn Arfaethedig ynghylch Diogelu'r Amgylchedd a Rheoli Gwastraff

<sup>18</sup> Cofnod y Trafodion, paragraffau[170-1], 25 Medi 2007, y Pwyllgor ar y Gorchymyn Arfaethedig ynghylch Diogelu'r Amgylchedd a Rheoli Gwastraff

<sup>19</sup> Llythyr gan Jane Davidson AC, y Gweinidog dros yr Amgylchedd, Cynaliadwyedd a Thai, *Proposed Environmental Protection and Waste Management LCO*, 25 Hydref 2007

<sup>20</sup> Cofnod y Trafodion, paragraff [8], 6 Tachwedd 2007, y Pwyllgor ar y Gorchymyn Arfaethedig ynghylch Diogelu'r Amgylchedd a Rheoli Gwastraff

<sup>21</sup> Llythyr gan Jane Davidson AC, y Gweinidog dros yr Amgylchedd, Cynaliadwyedd a Thai, *Request for information by Environmental Protection and Waste Management LCO committee*, 1 Hydref 2007

am wastraff a materion amgylcheddol lleol, pryderon y tynnwyd sylw atynt yn y Strategaeth Amgylcheddol ar gyfer Cymru.<sup>22</sup>

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<sup>22</sup> Cofnod y Trafodion, paragraff [10], 6 Tachwedd 2007, y Pwyllgor ar y Gorchymyn Arfaethedig ynghylch Diogelu'r Amgylchedd a Rheoli Gwastraff

*Ein barn ni*

23. Rydym wedi nodi'r gefnogaeth gyffredinol i'r Gorchymyn arfaethedig ac yn arbennig nad oes yr un corff wedi gwrthwynebu, mewn egwyddor, rhoi cymhwysedd deddfwriaethol yn y meysydd a nodwyd o fewn y Gorchymyn arfaethedig. Rydym hefyd wedi nodi ac rydym yn cydnabod y rhesymau a roddwyd gan y Gweinidog dros geisio cymhwysedd deddfwriaethol o'r fath. Rydym yn cytuno mewn egwyddor y dylai cymhwysedd deddfwriaethol yn y meysydd a nodir yn y Gorchymyn arfaethedig gael ei roi i'r Cynulliad Cenedlaethol.

24. Er ein bod yn cytuno mewn egwyddor y dylid rhoi cymhwysedd, wrth ystyried a yw'r Gorchymyn arfaethedig wedi'i lunio'n rhy eang neu'n rhy gul ac ar ôl ystyried y dystiolaeth, rydym yn credu bod angen ailystyried y ffordd y cafodd Materion 6.1 a 6.2 eu drafftio'n benodol. Mae Paragraffau 25 i 55 o'r adroddiad hwn yn trafod y materion hyn.

### 3. Mater 6.1

#### *Lleihau gwastraff - tystiolaeth*

25. Awgrymodd llawer o'r rhai a ymatebodd i'r ymgynghoriad a thystion a oedd yn cynnig sylwadau am Fater 6.1 y dylai gael ei ailddrafftio i gynnwys y geiriau 'lleihau' ('minimisation') neu 'ostwng lefel' ('reduction').

26. Dywedodd Cylch, rhwydwaith ailgylchu cymunedol Cymru:

“We believe that without the inclusion of the term ‘reduction’ the LCO will not allow for the implementation of an effective policy agenda on waste management, i.e. one that has the principle of sustainability at its heart.”<sup>23</sup>

27. Atgoffodd Asiantaeth yr Amgylchedd Cymru y Pwyllgor:

“...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 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.”<sup>24</sup>

28. Aeth Asiantaeth yr Amgylchedd Cymru ymlaen i awgrymu y dylai Mater 6.1 gael ei ailddrafftio i gynnwys y gair 'lleihau'<sup>25</sup>. Wedi hynny, awgrymodd Asiantaeth yr amgylchedd Cymru fod 'cynhyrchu' yn well gair oherwydd dylai fod pwyslais cryf ar beidio â chynhyrchu gwastraff yn y lle cyntaf.<sup>26</sup>

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<sup>23</sup> Cylch, Tystiolaeth Ysgrifenedig, EPWM1

<sup>24</sup> Asiantaeth yr Amgylchedd Cymru, Cyflwyniad Ysgrifenedig, EPWM8

<sup>25</sup> Ibid

<sup>26</sup> Cofnod y Trafodion, paragraffau [17] a [21], 2 Hydref 2007, y Pwyllgor ar y Gorchymyn Arfaethedig ynghylch Diogelu'r Amgylchedd a Rheoli Gwastraff

29. Nododd Cymdeithas Llywodraeth Leol Cymru fod absenoldeb y cyfeiriad at 'lleihau' neu 'ostwng lefel' ym Mater 6.1 yn gwneud iddi ymddangos y byddai ffocws unrhyw Fesurau dilynol ar fynd i'r afael â'r symptomau yn hytrach nag atal y broblem.<sup>27</sup>
30. Awgrymodd Cadwch Gymru'n Daclus y gallai gadael y cyfeiriad at leihau gwastraff o Fater 6.1 atal Llywodraeth Cynulliad Cymru rhag datblygu polisiâu cyfannol i fynd i'r afael â phroblem gwastraff ac y gallai olygu y byddai rhaid cael Gorchymyn arall yn y dyfodol.<sup>28</sup>
31. Esboniodd y Gweinidog fod y geiriad wedi cael ei ddewis yn ofalus wrth ddrafftio'r Gorchymyn arfaethedig i ddilyn y geiriad a ddefnyddiwyd yn Atodlen 7 i Ddeddf 2006<sup>29 30</sup>, er ei bod yn cydnabod, mewn perthynas â Mater 6.1, bod y gair 'trin' wedi cael ei ychwanegu i'w gwneud yn bosibl i Lywodraeth Cynulliad Cymru ddeddfu, er enghraifft, ar ailgylchu, compostio a thrin gwastraff bwyd.<sup>31</sup>
32. Dywedodd y Gweinidog y bydd lleihau Gwastraff yn bendant yn rhan o gwmpas y Gorchymyn arfaethedig fel y'i drafftiwyd.<sup>32</sup> Esboniodd y byddai'n hapus mewn egwyddor i ychwanegu 'gostwng lefel' at Fater 6.1 pe bai hynny'n cadarnhau y tu hwnt i amheuaeth fwriad Llywodraeth Cynulliad Cymru i gael cymhwysedd deddfwriaethol mewn perthynas â swmp y gwastraff sy'n cael ei gynhyrchu, er y byddai angen iddi fod yn siŵr na fyddai cynnwys y geiriau hynny'n cyfaddawdu cwmpas y Gorchymyn arfaethedig.<sup>33</sup> Dywedodd hefyd nad yw Llywodraeth Cynulliad Cymru yn:

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<sup>27</sup> Cymdeithas Llywodraeth Leol Cymru, Tystiolaeth Ysgrifenedig, EPWM2

<sup>28</sup> Cadwch Gymru'n Daclus, Cyflwyniad Ysgrifenedig, EPWM5

<sup>29</sup> Cofnod y Trafodion, paragraff [17], 25 Medi 2007, y Pwyllgor ar y Gorchymyn ynghylch Diogelu'r Amgylchedd a Rheoli Gwastraff

<sup>30</sup> Yn dilyn refferendwm llwyddiannus, mae Adran 108 ac Atodlen 7 i Ddeddf 2006 yn nodi cwmpas cymhwysedd deddfwriaethol y Cynulliad Cenedlaethol i basio Deddfau.

<sup>31</sup> Cofnod y Trafodion, paragraff [62], 25 Medi 2007, y Pwyllgor ar y Gorchymyn ynghylch Diogelu'r Amgylchedd a Rheoli Gwastraff

<sup>32</sup> Cofnod y Trafodion, paragraff [30], 25 Medi 2007, y Pwyllgor ar y Gorchymyn ynghylch Diogelu'r Amgylchedd a Rheoli Gwastraff

<sup>33</sup> ibid

"...resistant in any way to adding words to help Members and the public to understand the full panoply of powers that will be available. However, you always want to ensure that you have legal advice on whether any perverse outcome results from adding particular phraseologies".<sup>34</sup>

33. Wedi hynny, esboniodd y Gweinidog:

"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."<sup>35</sup>

*Lleihau gwastraff - ein barn ni*

34. Rydym wedi nodi'r galwadau cryf gan dystion a ymatebodd i'r ymgynghoriad am gynnwys cyfeiriad penodol at leihau neu ostwng lefel gwastraff ym Mater 6.1. Rydym o'r farn y byddai cynnwys cyfeiriad o'r fath yn ychwanegu eglurder ac rydym yn cytuno â Chymdeithas Llywodraeth Leol Cymru y byddai diwygio Mater 6.1 yn y ffordd hon yn hoelio sylw ar atal gwastraff, yn hytrach nag ar fynd i'r afael â gwastraff ar ôl iddo gael ei gynhyrchu. Rydym wedi nodi barn Asiantaeth yr Amgylchedd Cymru y dylid cyfeirio at 'gynhyrchu'. Fodd bynnag, mae cyngor cyfreithwyr y Cynulliad Cenedlaethol yn awgrymu bod modd dehongli term o'r fath yn gulach nag un ai 'lleihau' neu 'ostwng lefel'. Rydym wedi nodi bod y Gweinidog yn ystyried newid i Fater 6.1 ar y pwynt hwn ac rydym yn cydnabod, wrth wneud hynny, bod rhaid sicrhau nad yw effaith unrhyw newidiadau'n arwain at ganlyniadau nad ydym yn eu dymuno. I osgoi unrhyw amheuaeth, rydym yn argymhell bod

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<sup>34</sup> Cofnod y Trafodion, paragraff [62], 25 Medi 2007, y Pwyllgor ar y Gorchymyn Arfaethedig ynghylch Diogelu'r Amgylchedd a Rheoli Gwastraff

<sup>35</sup> Llythyr gan Jane Davidson AC, y Gweinidog dros yr Amgylchedd, Cynaliadwyedd a Thai, *Proposed Environmental Protection and Waste Management LCO*, 25 Hydref 2007



Llywodraeth Cynulliad Cymru yn diwygio Mater 6.1 i'w gwneud yn glir ei fod yn cynnwys lleihau neu ostwng lefel gwastraff.

*Gwastraff ymbelydrol - tystiolaeth*

35. Ceisiasom eglurhad gan y Gweinidog am ba ffrydiau gwastraff nad yw'r Gorchymyn arfaethedig yn eu cwmpasu.<sup>36</sup>

36. Atebodd y Gweinidog:

“The intended scope of the LCO is to cover all waste streams...with the exception of radioactive waste. We are not currently seeking to deepen the scope of our powers in 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.”<sup>37</sup>

37. Pan holwyd hi'n ddiweddarach am y pwynt hwn, rhoddodd y Gweinidog eglurhad pellach:

“Under the current drafting of matter 6.1, radioactive waste would appear to be included. However, it is not our intention that it would be within the scope of the LCO, so further consideration needs to be given in relation to the inclusion of a specific exception.”<sup>38</sup>

38. Mewn llythyr dilynol i'r pwyllgor, esboniodd y Gweinidog hefyd fod mater eithriedig rhif 16 yn y tabl o faterion eithriedig h.y. 'cludo nwyddau peryglus (yn cynnwys deunydd ymbelydrol)', “is not really relevant to the

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<sup>36</sup> Llythyr gan Alun Ffred Jones AC, Cadeirydd y Pwyllgor ar y Gorchymyn Arfaethedig ynghylch Diogelu'r Amgylchedd a Rheoli Gwastraff, *Proposed Environmental Protection and Waste Management LCO*, 23 Hydref 2007

<sup>37</sup> Llythyr gan Jane Davidson AC, y Gweinidog dros yr Amgylchedd, Cynaliadwyedd a Thai, *Proposed Environmental Protection and Waste Management LCO*, 25 Hydref 2007

<sup>38</sup> Cofnod y Trafodion, paragraff [14], 6 Tachwedd 2007, y Pwyllgor ar y Gorchymyn Arfaethedig ynghylch Diogelu'r Amgylchedd a Rheoli Gwastraff

issue of whether radioactive waste is included within the scope of this LCO or not”.<sup>39</sup> Y rheswm dros hyn yw bod gwastraff ymbelydrol wedi’i eithrio’n benodol o’r diffiniad o ddeunydd ymbelydrol<sup>40</sup>, er bod y ddau’n cael eu osbarthu fel sylweddau ymbelydrol.

39. Ymhelaethodd y Gweinidog hefyd ar y rhesymau dros beidio â cheisio cymhwysedd mewn perthynas â sylweddau ymbelydrol:

“Management and regulation of radioactive substances is carried out to ensure the highest degree of safety for human health and the environment and there is no evidence that additional powers for Wales would increase the degree of safety. Welsh interests in this area are covered by consultative arrangements between the UK Government and the devolved administrations and the regulators. Separate Welsh legislation would cut across these longstanding arrangements.”<sup>41</sup>

#### *Gwastraff ymbelydrol - ein barn ni*

40. Fel y mae’r Gweinidog wedi nodi, daw gwastraff ymbelydrol o fewn cwmpas Mater 6.1 ar hyn o bryd, a nodwn mai ei bwriad yw diwygio Mater 6.1 i’w eithrio. Rydym wedi nodi bod gan Weinidogion Cymru eisoes swyddogaethau helaeth, datganoledig yn ymwneud â gwastraff ymbelydrol. Er ein bod wedi nodi rhesymau’r Gweinidog dros geisio eithrio gwastraff ymbelydrol o gwmpas y Gorchymyn arfaethedig hwn, gan fod y newid hwn wedi dod yn amlwg tua diwedd ein cyfnod craffu, nid ydym wedi cael y cyfle i glywed barn tystion ar y mater hwn. Serch hynny, rydym wedi ystyried darpariaethau paragraff 6 o Ran 1 o Atodlen 7 i Ddeddf 2006 ac wedi nodi, yn sgil refferendwm llwyddiannus ac o dan y darpariaethau hyn, byddai gan y Cynulliad gymhwysedd deddfwriaethol mewn perthynas â gwastraff ymbelydrol. Ar y sail hon, rydym yn argymhell na ddylai Llywodraeth

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<sup>39</sup> Llythyr gan Jane Davidson AC, y Gweinidog dros yr Amgylchedd, Cynaliadwyedd a Thai, *Proposed Environmental Protection and Waste Management LCO*, 14 Tachwedd 2007

<sup>40</sup> Ibid. Gweler *Deddf Sylweddau Ymbelydrol 1993*, adran 1 a 2

<sup>41</sup> Llythyr gan Jane Davidson AC, y Gweinidog dros yr Amgylchedd, Cynaliadwyedd a Thai, *Proposed Environmental Protection and Waste Management LCO*, 14 Tachwedd 2007

Cynulliad Cymru ddiwygio Mater 6.1 i eithrio gwastraff ymbelydrol o'i gwmpas.

#### 4. Mater 6.2

##### *Diogelu'r amgylchedd - tystiolaeth*

41. Roedd cwmpas Mater 6.2 a'r dehongliad ohono yn fater allweddol i'r rhan fwyaf o'r rhai a ymatebodd i'r ymgynghoriad. Yn arbennig, dehonglai llawer o'r rhai a ymatebodd fod y geiriau "yn cynnwys" yn golygu bod cwmpas Mater 6.2 o ran diogelu'r amgylchedd yn ehangach na dim ond "llygredd, niwsansau a sylweddau peryglus". Yn wir, cynigiodd llawer o gyrff sylwadau tebyg, er eu bod yn amrywio i ryw raddau, am gwmpas Mater 6.2.

42. Roedd y Gymdeithas Frenhinol er Gwarchod Adar ('RSPB') o'r farn fod cwmpas y term 'diogelu'r amgylchedd' yn aneglur iawn.<sup>42</sup> Nodwyd hefyd bod y defnydd o'r term 'diogelu'r amgylchedd' o ddydd i ddydd a'r defnydd ohono mewn deddfwriaeth flaenorol yn awgrymu bod ei gwmpas gryn lawer yn ehangach na'r enghreifftiau a roddir ym Memorandwm Esboniadol Llywodraeth y Cynulliad ym mharagraffau 12 a 13.<sup>43</sup> Fel nifer o gyrff eraill, dadleuai y gallai diogelu'r amgylchedd gynnwys llawer o'r pynciau a restrir ym mharagraff 6 o Ran 1 o Atodlen 7 i Ddeddf 2006.<sup>44</sup>

43. Wrth wneud sylwadau am y Memorandwm Esboniadol, awgrymai'r RSPB ei fod yn cynnwys negeseuon a oedd yn groes i'w gilydd:

"...as to whether the interpretation of 'environmental protection' is wide or restricted to a narrow agenda of 'environmental nuisances' (e.g. waste, pollution, cigarette butts and fly tipping)".<sup>45</sup>

a gwnaed y pwynt:

"No attempt is made to define 'local environmental quality', but clearly all

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<sup>42</sup> Y Gymdeithas Frenhinol er Gwarchod Adar, Tystiolaeth Ysgrifenedig, EPWM6

<sup>43</sup> *ibid*

<sup>44</sup> *Ibid*

<sup>45</sup> *ibid*

environments are local to someone and, therefore, this could cover any aspect of environmental management, and indeed all the matters specified in Section 6, Schedule 7 of [the Government of Wales Act] 2006.”<sup>46</sup>

44. Dywedodd Cyngor Cefn Gwlad Cymru mai ei brif pryder ynghylch y gorchymyn arfaethedig yw nad yw’n diffinio’r term ‘diogelu’r amgylchedd’.<sup>47</sup> Dywedodd:

“...we would like to see the definition of environmental protection covering what I think is classically accepted as the definition, which includes restoration, maintenance and enhancement of the environment so that it covers environment in the round”.<sup>48</sup>

a:

“The purpose for including not just protection, but restoration and enhancement as well, is because, over a long timescale, that has been the meaning of environmental protection, which has never been restricted purely to just protection—it has always been about putting right the damage caused, and about taking the opportunity to make things even better.”<sup>49</sup>

45. Ym marn Cyngor Cefn Gwlad Cymru, mae diogelu’r amgylchedd yn cwmpasu “nature conservation, including biodiversity, because other, Westminster legislation assumes that, and we operate under that legislation”.<sup>50</sup>

46. Dywedodd Cyngor Cefn Gwlad Cymru hefyd, os nad yw diogelu yn cynnwys gwella, y dylai gael ei ychwanegu oherwydd na fyddai diogelu o bosibl ond yn cynnal y sefyllfa fel y mae hi ac na fyddai’n ceisio gwella

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<sup>46</sup> Y Gymdeithas Frenhinol er Gwarchod Adar, Tystiolaeth Ysgrifenedig, EPWM6

<sup>47</sup> Cofnod y Trafodion, paragraff [90], 2 Hydref 2007, y Pwyllgor ar y Gorchymyn Arfaethedig ynghylch Diogelu’r Amgylchedd a Rheoli Gwastraff

<sup>48</sup> Cofnod y Trafodion, paragraff [91], 2 Hydref 2007, y Pwyllgor ar y Gorchymyn Arfaethedig ynghylch Diogelu’r Amgylchedd a Rheoli Gwastraff

<sup>49</sup> Cofnod y Trafodion, paragraff [108], 2 Hydref 2007, y Pwyllgor ar y Gorchymyn Arfaethedig ynghylch Diogelu’r Amgylchedd a Rheoli Gwastraff

<sup>50</sup> Ibid

ansawdd yr amgylchedd lleol, a dyna yn ôl dealltwriaeth y Cyngor Cefn Gwlad oedd sylfaen y Gorchymyn Cymhwysedd Deddfwriaethol.<sup>51</sup>

47. Dywedodd Asiantaeth yr Amgylchedd Cymru y byddai'n ystyried diogelu'r amgylchedd fel lleihau'r perygl llygru i'r eithaf<sup>52</sup> ond roedd hefyd yn gallu gweld pam yr oedd rhai dadleuon yn cael eu cyflwyno o blaid cynnwys gwella hefyd.<sup>53</sup>

48. Yng nghyd-destun y Gorchymyn arfaethedig, esboniodd y Gweinidog fod y diffiniad o ddiogelu'r amgylchedd yn cael ei gyfyngu i bob diben gan y geiriau sy'n ei ddilyn.<sup>54</sup> Eglurodd y pwynt hwn mewn llythyr at y pwyllgor, yn datgan:

“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.”<sup>55</sup>

49. Cytunai cyfreithwyr y Cynulliad Cenedlaethol â'r cyngor cyfreithiol hwn. Serch hynny, mewn llythyr dilynol cydnabu'r Gweinidog fod y ffordd y drafftwyd Mater 6.2 wedi arwain at ddehongliadau gwahanol a dywedodd fod y geiriad yn cael ei ailystyried gyda golwg ar egluro mai dim ond y

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<sup>51</sup> Cofnod y Trafodion, paragraff [111], 2 Hydref 2007, y Pwyllgor ar y Gorchymyn Arfaethedig ynghylch Diogelu'r Amgylchedd a Rheoli Gwastraff

<sup>52</sup> Cofnod y Trafodion, paragraff [37], 2 Hydref 2007, y Pwyllgor ar y Gorchymyn Arfaethedig ynghylch Diogelu'r Amgylchedd a Rheoli Gwastraff

<sup>53</sup> Cofnod y Trafodion, paragraff [45], 2 Hydref 2007, y Pwyllgor ar y Gorchymyn Arfaethedig ynghylch Diogelu'r Amgylchedd a Rheoli Gwastraff

<sup>54</sup> Cofnod y Trafodion, paragraff [38], 25 Medi 2007, y Pwyllgor ar y Gorchymyn Arfaethedig ynghylch Diogelu'r Amgylchedd a Rheoli Gwastraff

<sup>55</sup> Llythyr gan Jane Davidson AC, y Gweinidog dros yr Amgylchedd, Cynliadwyedd a Thai, *Request for information by Environmental Protection and Waste Management LCO committee*, 1 Hydref 2007

swyddogaethau hynny o ran diogelu'r amgylchedd sy'n ymwneud â llygredd, niwsansau a sylweddau peryglus y mae'n eu cwmpasu.<sup>56</sup>

### *Gwella - tystiolaeth*

50. Fel mae'r dystiolaeth sydd eisoes wedi cael ei chyflwyno uchod yn dangos<sup>57</sup>, roedd cefnogaeth ymhlith y rhai a ymatebodd i'r ymgynghoriad a thystion i gynnwys cyfeiriad at wella'r amgylchedd ym Mater 6.2. Fodd bynnag, teimlai sefydliadau fod yr hyn sy'n dod o fewn terfynau'n term 'gwella' yn dibynnu ar y cyd-destun a ddefnyddir ac yn agored i gael ei ddehongli. Er enghraifft, awgrymai Asiantaeth yr Amgylchedd Cymru y gallai 'gwella' gael ei gynnwys ym Mater 6.2 neu fel Mater ar wahân.<sup>58</sup>

51. Megis gyda'i sylwadau am Fater 6.1, awgrymodd Cymdeithas Llywodraeth Leol Cymru eto nad yw Mater 6.2 ond yn delio â phroblem ar ôl iddi ddiwydd. I ddarlunio'r pwynt, awgrymodd y dylai arian awdurdodau lleol gael ei wario ar wella'r amgylchedd lleol a buddsoddi mewn gwasanaethau yn hytrach nag ar glirio ar ôl pobl.<sup>59</sup>

52. Er iddi gyfeirio at y cysylltiad ag Atodlen 7 o Ddeddf 2006, awgrymodd y Gweinidog nad oedd ganddi wrthwynebiad i'r gair 'gwella' gael ei ddefnyddio, eto ar yr amod na fyddai ei gynnwys yn arwain at ganlyniadau na fyddid yn eu dymuno.<sup>60</sup> Fodd bynnag, mynegodd y farn hefyd fod y term diogelu'r amgylchedd yn ddigon eang i gynnwys y syniad o wella a hybu'r amgylchedd.<sup>61</sup>

### *Eglurder bwriad - tystiolaeth*

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<sup>56</sup> Llythyr gan Jane Davidson AC, y Gweinidog dros yr Amgylchedd, Cynliadwyedd a Thai, *Proposed Environmental Protection and Waste Management LCO*, 25 Hydref 2007

<sup>57</sup> Er enghraifft, gweler paragraffau 21 a 46 uchod.

<sup>58</sup> Cofnod y Trafodion, paragraff [68], 2 Hydref 2007, y Pwyllgor ar y Gorchymyn Arfaethedig ynghylch Diogelu'r Amgylchedd a Rheoli Gwastraff

<sup>59</sup> Cymdeithas Llywodraeth Leol Cymru, Tystiolaeth Ysgrifenedig, EPWM2

<sup>60</sup> Cofnod y Trafodion, paragraff [62] a [66], 25 Medi 2007, y Pwyllgor ar y Gorchymyn Arfaethedig ynghylch Diogelu'r Amgylchedd a Rheoli Gwastraff

<sup>61</sup> Cofnod y Trafodion, paragraff [39], 6 Tachwedd 2007, y Pwyllgor ar y Gorchymyn Arfaethedig ynghylch Diogelu'r Amgylchedd a Rheoli Gwastraff

53. Fel sy'n amlwg o'r paragraffau uchod, un thema allweddol a ddaeth i'r wyneb wrth inni graffu ar Fater 6.2 oedd yr angen am eglurder bwriad. Credai Cyswllt Amgylchedd Cymru fod eglurder cyfreithiol yn hanfodol er mwyn i'r sector gwirfoddol a'r cyhoedd ddeall y setliad datganoli ac i warchod rhag difreinio.<sup>62</sup> Mynegwyd teimladau tebyg gan Gymdeithas Prif Swyddogion Heddlu Cymru a ddywedodd ei bod am gael eglurder llwyr ac am gael gwared ag amwysedd.<sup>63</sup>

#### *Ein barn ni*

54. Rydym yn cytuno â'r ymatebwyr a awgrymodd nad yw Mater 6.2 yn glir ynglŷn â'i fwriad penodol. Yn ein barn ni mae'r diffyg eglurder hwn wedi codi oherwydd nad esboniwyd y ffaith bod y gair 'including' yn cael ei ddefnyddio mewn ystyr statudol yn hytrach nag yn ei ystyr arferol. Mae hefyd, o bosibl, yn deillio o'r derminoleg a ddefnyddiwyd i ddisgrifio pwrpas y Gorchymyn arfaethedig, sef i wella'r amgylchedd lleol, a gallai hynny gael ei ystyried yn rhywbeth gwahanol i'w ddiogelu. Felly, rydym yn croesawu bwriad y Gweinidog i ailystyried geiriad Mater 6.2. I osgoi unrhyw amheuaeth, rydym yn argymhell bod Llywodraeth Cynulliad Cymru yn diwygio Mater 6.2 i'w gwneud yn glir pa feysydd diogelu'r amgylchedd y mae yn eu cwmpasu.

55. Er ein bod yn nodi barn y Gweinidog fod diogelu'r amgylchedd yn cwmpasu gwella neu hybu, credwn y dylai Mater 6.2 gael ei ddrafftio mewn ffordd a fydd yn gwneud y pwynt hwn yn glir. Rydym yn argymhell bod Llywodraeth Cynulliad Cymru yn diwygio Mater 6.2 i'w gwneud yn glir ei fod yn cwmpasu gwella neu hybu'r amgylchedd, ac y bydd modd dod â Mesurau gerbron i wella'r amgylchedd (o fewn cwmpas y Mater), yn ogystal ag i'w ddiogelu.

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<sup>62</sup> Cofnod y Trafodion, paragraff [241], 25 Medi 2007, y Pwyllgor ar y Gorchymyn ynghylch Diogelu'r Amgylchedd a Rheoli Gwastraff

<sup>63</sup> Cofnod y Trafodion, paragraff [31], 9 Hydref 2007, y Pwyllgor ar y Gorchymyn ynghylch Diogelu'r Amgylchedd a Rheoli Gwastraff



## 5. Bioamrywiaeth

### *Tystiolaeth*

56. Wrth geisio barn am ba un a oedd cwmpas y Gorchymyn arfaethedig yn rhy eang neu'n rhy gul, cawsom gyflwyniadau gan nifer o ymatebwyr i'r ymgynghoriad a oedd yn awgrymu y dylai bioamrywiaeth gael ei gynnwys o fewn terfynau'r Gorchymyn arfaethedig.

57. Dywedodd yr RSPB y byddai ychwanegu Mater newydd ar gyfer bioamrywiaeth yn help i ymdrin â'r dirywiad sy'n parhau ymysg bywyd gwyllt yng Nghymru.<sup>64</sup> Roedd Cyswllt Amgylchedd Cymru yn argyhoeddedig fod angen gweithredu ar fyrder mewn perthynas â bioamrywiaeth a gwelai'r Gorchymyn arfaethedig fel cyfle i Gymru sicrhau'r pwerau sy'n ofynnol i wneud yn siŵr y gweithredir o blaid bioamrywiaeth yn y ffordd integredig a nodwyd yn y Strategaeth Amgylcheddol.<sup>65</sup>

58. Cyfiawnhaodd Cyswllt Amgylchedd Cymru ei galwad am gynnwys bioamrywiaeth drwy ddatgan:

"If the measure deals with local environmental quality, in its broadest sense, then biodiversity should definitely be included in that definition."<sup>66</sup>

a thrwy gytuno ag awgrym fod a wnelo materion bioamrywiaeth â diogelu'r amgylchedd.<sup>67</sup>

59. Cafwyd cefnogaeth hefyd i gynnwys Mater newydd ar fioamrywiaeth yn y Gorchymyn arfaethedig gan Gyngor Cefn Gwlad Cymru<sup>68</sup> ac Asiantaeth

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<sup>64</sup> Y Gymdeithas Frenhinol er Gwarchod Adar, Tystiolaeth Ysgrifenedig, EPWM6

<sup>65</sup> Cyswllt Amgylchedd Cymru, Tystiolaeth Ysgrifenedig, EPWM3

<sup>66</sup> Cofnod y Trafodion, paragraff [255], 25 Medi 2007, y Pwyllgor ar y Gorchymyn Arfaethedig ynghylch Diogelu'r Amgylchedd a Rheoli Gwastraff [255]

<sup>67</sup> Cofnod y Trafodion, paragraffau [256-7], 25 Medi 2007, y Pwyllgor ar y Gorchymyn Arfaethedig ynghylch Diogelu'r Amgylchedd a Rheoli Gwastraff

<sup>68</sup> Cofnod y Trafodion, paragraffau [124] a [144-5], 2 Hydref 2007, y Pwyllgor ar y Gorchymyn Arfaethedig ynghylch Diogelu'r Amgylchedd a Rheoli Gwastraff

yr Amgylchedd Cymru<sup>69</sup>. Cynigiodd Cymdeithas Prif Swyddogion Heddlu Cymru hefyd ei chefnogaeth, gan wneud y pwynt fod llawer o'r ddeddfwriaeth bresennol sy'n berthnasol i fioamrywiaeth o leiaf 25 oed a bod angen ei diweddarau.<sup>70</sup> I gefnogi ei barn, cyflwynodd dystiolaeth ysgrifenedig bellach yn amlinellu 33 o awgrymiadau ynglŷn â sut y gellid gwella'r ddeddfwriaeth sy'n ymdrin â bioamrywiaeth. O'r rheini, byddai angen cymhwysedd deddfwriaethol ar gyfer 22 ohonynt.<sup>71</sup>

60. Nododd y Gweinidog nad oedd yn bwriadu ehangu cwrpas y Gorchymyn arfaethedig i gynnwys bioamrywiaeth y byddai hynny'n mynd â'r Gorchymyn y tu hwnt i'w fwriad gwreiddiol.<sup>72</sup> Yn ychwanegol at hynny, dywedodd y Gweinidog y byddai'n eithriadol o anodd dadlau y dylid cynnwys bioamrywiaeth heb hefyd gynnwys cadwraeth natur a safleoedd o ddiddordeb gwyddonol arbennig.<sup>73</sup> Fodd bynnag, cydnabu'r Gweinidog fod bioamrywiaeth yn gyfrifoldeb ac yn flaenoriaeth o bwys i Lywodraeth y Cynulliad.<sup>74</sup>

#### *Ein barn ni*

61. Rydym wedi ystyried y galwadau am i fioamrywiaeth gael ei gynnwys o fewn terfynau'r Gorchymyn arfaethedig yn ofalus. Pa bai bioamrywiaeth i gael ei gynnwys, rydym yn derbyn barn y Gweinidog y byddai'n gwneud synnwyr i gynnwys materion cysylltiol hefyd ond rydym yn cydnabod nad ydym wedi profi dull gweithredu o'r fath yn llawn yn ein gwaith craffu. Serch hynny, rydym o'r farn ein bod wedi cael tystiolaeth gref y byddai o fudd i'r amgylchedd yng Nghymru pe bai'r Cynulliad Cenedlaethol yn cael cymhwysedd deddfwriaethol mewn perthynas â bioamrywiaeth. Felly, rydym yn argymhell yn gryf bod Llywodraeth Cynulliad Cymru yn dod â

<sup>69</sup> Cofnod y Trafodion, paragraff [71], 2 Hydref 2007, Pwyllgor ar y Gorchymyn Arfaethedig ynghylch Diogelu'r Amgylchedd a Rheoli Gwastraff

<sup>70</sup> Cofnod y Trafodion, paragraff [33-4], 9 Hydref 2007, y Pwyllgor ar y Gorchymyn Arfaethedig ynghylch Diogelu'r Amgylchedd a Rheoli Gwastraff

<sup>71</sup> Cymdeithas Prif Swyddogion Heddlu Cymru, Tystiolaeth Ysgrifenedig Atodol, EPWM7

<sup>72</sup> Llythyr gan Jane Davidson AC, y Gweinidog dros yr Amgylchedd, Cynaliadwyedd a Thai, *Proposed Environmental Protection and Waste Management LCO*, 25 Hydref 2007

<sup>73</sup> Cofnod y Trafodion, paragraff [53], 6 Tachwedd 2007, y Pwyllgor ar y Gorchymyn Arfaethedig ynghylch Diogelu'r Amgylchedd a Rheoli Gwastraff

<sup>74</sup> Cofnod y Trafodion, paragraff [76], 6 Tachwedd 2007, y Pwyllgor ar y Gorchymyn Arfaethedig ynghylch Diogelu'r Amgylchedd a Rheoli Gwastraff

Gorchymyn Cymhwysedd Deddfwriaethol gerbron sy'n cwmpasu bioamrywiaeth a materion cysylltiol, a hynny ar y cyfle cyntaf.

## 6. Materion Eithriedig

### *Tystiolaeth*

62. Ceisiodd llawer o'r rhai a ymatebodd i'r ymgynghoriad a thystion eglurhad am y rhestr o faterion eithriedig, yn arbennig mewn perthynas â rhifau 1 (gwasanaeth cludo nwyddau ar y ffyrdd), 2 (defnyddio cerbydau modur), 12 (morgludiant), 15 (porthladdoedd, dociau, pierau a llithrfeydd cychod), 16 (cludo nwyddau peryglus) a 18 (cadwraeth ynni). Ymysg y materion arbennig a godwyd roedd: a fyddai materion eithriedig 1 a 2 yn cyfyngu ar allu'r Cynulliad cenedlaethol i ddeddfu i fynd i'r afael â llygredd oherwydd traffig ar y ffyrdd<sup>75</sup>; a fyddai materion eithriedig 12 a 15 yn cyfyngu ar allu'r Cynulliad Cenedlaethol i fynd i'r afael â gwastraff yn deillio o forgludiant a gweithgareddau pysgota<sup>76</sup> ac eglurhad am y bwriad y tu cefn i fater eithriedig 18.<sup>77</sup> Awgrymodd rhai ymatebwyr i'r ymgynghoriad fod cynnwys Mater 5.10 yn y tabl materion eithriedig yn peri dryswch.<sup>78</sup>

63. Cyngorodd cyfreithwyr y Cynulliad Cenedlaethol ni fod geiriad y materion eithriedig wedi cael ei gymryd o Ran 1 o Atodlen 7 i Ddeddf 2006.

64. Esboniodd y Gweinidog y sail resymegol ar gyfer pob un o'r materion eithriedig, y maent yn gyd yn ymwneud â materion nad ydynt wedi cael eu datganoli<sup>79</sup> a dywedodd ei bod yn fodlon na fyddai'r materion eithriedig yn tanseilio effeithiolrwydd unrhyw Fesurau arfaethedig a gyflwynir dan Faterion 6.1 a 6.2.<sup>80</sup>

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<sup>75</sup> Cyswllt Amgylchedd Cymru, Tystiolaeth Ysgrifenedig, EPWM3

<sup>76</sup> Ibid

<sup>77</sup> Asiantaeth yr Amgylchedd Cymru, Tystiolaeth Ysgrifenedig, EPWM8; Cofnod y Trafodion, paragraff [79], 25 Medi 2007, y Pwyllgor ar y Gorchymyn Arfaethedig ynghylch Diogelu'r Amgylchedd a Rheoli Gwastraff

<sup>78</sup> Er enghraifft, Cyswllt Amgylchedd Cymru, Tystiolaeth Ysgrifenedig, EPWM3

<sup>79</sup> Cofnod y Trafodion, paragraffau [110-137], 25 Medi 2007, y Pwyllgor ar y Gorchymyn Arfaethedig ynghylch Diogelu'r Amgylchedd a Rheoli Gwastraff; Llythyr gan Jane Davidson AC, y Gweinidog dros yr Amgylchedd, Cynaliadwyedd a Thai, *Proposed Environmental Protection and Waste Management LCO*, 25 Hydref 2007; Cofnod y Trafodion, paragraffau [23-29] ac [89-117], 6 Tachwedd 2007, y Pwyllgor ar y Gorchymyn Arfaethedig ynghylch Diogelu'r Amgylchedd a Rheoli Gwastraff; Llythyr gan Jane Davidson AC, y Gweinidog dros yr Amgylchedd, Cynaliadwyedd a Thai, *Proposed Environmental Protection and Waste Management LCO*, 14 Tachwedd 2007

<sup>80</sup> Cofnod y Trafodion, paragraffau [88-9], 25 Medi 2007, Y Pwyllgor ar y Gorchymyn ynghylch Diogelu'r Amgylchedd a Rheoli Gwastraff

65. Wrth egluro'r rhesymau am y newidiadau cyflwyniadol i Atodlen 5 i Ddeddf 2006, dywedodd y Gweinidog:

“The table format was therefore created as an efficient drafting device that enables exceptions to be applied to multiple matters and fields in Schedule 5, without repeating the exceptions each time.”<sup>81</sup>

*Ein barn ni*

66. Rydym wedi nodi ac wedi derbyn y rhesymau a roddwyd gan y Gweinidog dros gynnwys y materion eithriedig mewn perthynas â Materion 6.1 a 6.2. Felly, rydym yn fodlon ar y materion eithriedig a ddarparwyd mewn perthynas â Materion 6.1 a 6.2.

67. Rydym yn fodlon hefyd ar y newid cyflwyniadol a gynigiwyd mewn perthynas ag Atodlen 5 i *Ddeddf Llywodraeth Cymru 2006*, fel y bydd pob mater eithriedig sy'n gysylltiedig â Mater penodol yn cael ei gynnwys yn y dyfodol mewn tabl ar ddiwedd Maes 20.

68. Fodd bynnag, rydym wedi nodi bod rhai ymatebwyr i'r ymgynghoriad yn aneglur am y materion eithriedig sy'n gysylltiedig â'r Gorchymyn arfaethedig. Nodwn hefyd na roddodd y Memorandwm Esboniadol mewn perthynas â'r Gorchymyn arfaethedig unrhyw wybodaeth am y newid cyflwyniadol i Atodlen 5 i Ddeddf 2006 nac am y materion unigol a eithriwyd mewn perthynas â Materion 6.1 a 6.2. Mae'r materion eithriedig yn ymdrin â materion cymhleth ac mae angen eu hegluro'n llawn i sicrhau bod dealltwriaeth lawn o gwmpas y cymhwysedd deddfwriaethol sy'n cael ei roi i'r Cynulliad Cenedlaethol drwy Orchymyn arfaethedig (neu ddrafft) neilltuol. Felly, byddem yn annog Llywodraeth Cynulliad Cymru i sicrhau bod Memoranda Esboniadol i gyd-fynd â Gorchymynion arfaethedig (a drafft) yn esbonio'r rhesymau am gynnwys unrhyw faterion eithriedig, a phwrpas y materion eithriedig hynny, yn glir.

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<sup>81</sup> Cofnod y Trafodion, paragraff [110], 25 Medi 2007, y Pwyllgor ar y Gorchymyn Arfaethedig ynghylch Diogelu'r Amgylchedd a Rheoli Gwastraff





Atodiad 1

# Atodiad 1 - Nid yw hwn ar gael yn y Gymraeg

*Draft Order laid before the National Assembly for Wales and Parliament under section 95(5) of the Government of Wales Act 2006, for approval by resolution of the Assembly and of each House of Parliament.*

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## DRAFT STATUTORY INSTRUMENTS

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**2007 No.**

### **CONSTITUTIONAL LAW**

#### **DEVOLUTION, WALES**

### **National Assembly for Wales (Legislative Competence) (No.2) Order 2007**

*Made* - - - - - \*\*\*

*Coming into force in accordance with Article 1*

At the Court at Buckingham Palace, the \*\*\* day \*\*\* of \*\*\* 2007

Present

The Queen's Most Excellent Majesty in Council

In accordance with section 95(5) of the Government of Wales Act 2006(a), a draft of this Order has been laid before, and approved by resolution of, the National Assembly for Wales and each House of Parliament.

Accordingly, Her Majesty, in pursuance of section 95(1) of the Government of Wales Act 2006, is pleased, by and with the advice of Her Privy Council, to order as follows:—

#### **Citation and commencement**

1. This Order may be cited as the National Assembly for Wales (Legislative Competence) (No.2) Order 2007 and it comes into force on the day after the day on which it is made.

#### **Amendments to the Government of Wales Act 2006**

2.—(1) Part 1 of Schedule 5 to the Government of Wales Act 2006 is amended in accordance with this article.

(2) In matter 5.10 of field 5 (education), omit the second paragraph including sub-paragraphs (a) to (o).

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(a) 2006 (c.32).



## Atotiad 1 - Nid yw hwn ar gael yn y Gymraeg

(3) In field 6 (environment), insert –

*“Matter 6.1*

Collection, management, treatment and disposal of waste.

*Matter 6.2*

Environmental protection, including pollution, nuisances and hazardous substances.”

(4) After field 20, insert –

*“Excepted matters in Part 1 fields*

The matters specified in the first column of the table below (excepted matters) are not included within the matters in the fields of this Part specified in the corresponding entry in the second column.

**TABLE**

<b>1.</b> Road freight transport services, including goods vehicles operating licensing.	Matters 6.1, 6.2
<b>2.</b> The regulation of the use of motor vehicles on roads, their construction and equipment and conditions under which they may be so used.	Matters 5.10, 6.1, 6.2
<b>3.</b> Road traffic offences.	Matter 5.10
<b>4.</b> Driver licensing.	Matter 5.10
<b>5.</b> Driving instruction.	Matter 5.10
<b>6.</b> Insurance of motor vehicles.	Matter 5.10
<b>7.</b> Drivers’ hours.	Matter 5.10
<b>8.</b> Traffic regulation on special roads, pedestrian crossings, traffic signs and speed limits;	Matter 5.10
<b>9.</b> Public service vehicle operator licensing.	Matter 5.10

## Atotiad 1 - Nid yw hwn ar gael yn y Gymraeg

<p><b>10.</b> The provision and regulation of railway services, apart from financial assistance which—</p> <ul style="list-style-type: none"> <li>(a) does not relate to the carriage of goods,</li> <li>(b) is not made in connection with a railway administration order, and</li> <li>(c) is not made in connection with Council Regulation (EEC) 1191/69 as amended by Council Regulation (EEC) No. 1893/91 on public service obligations in transport.</li> </ul>	Matter 5.10
<p><b>11.</b> Transport security.</p>	Matter 5.10
<p><b>12.</b> Shipping, apart from financial assistance for shipping services to, from or within Wales.</p>	Matters 5.10, 6.1, 6.2
<p><b>13.</b> Navigational rights and freedoms, apart from regulation of works which may obstruct or endanger navigation.</p>	Matters 6.1, 6.2
<p><b>14.</b> Technical and safety standards of vessels.</p>	Matters 5.10, 6.1, 6.2
<p><b>15.</b> Harbours, docks, piers and boatslips apart from—</p> <ul style="list-style-type: none"> <li>(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</li> <li>(b) regulation for the purposes of protecting the environment.</li> </ul>	Matters 5.10, 6.1, 6.2
<p><b>16.</b> Carriage of dangerous goods (including transport of radioactive material).</p>	Matters 6.1, 6.2
<p><b>17.</b> Registration of local bus services, and the application and enforcement of traffic regulation conditions in relation to</p>	Matter 5.10

## Atodiad 1 - Nid yw hwn ar gael yn y Gymraeg

those services.	
<b>18.</b> Energy conservation, apart from the encouragement of energy efficiency otherwise than by prohibition or regulation.	Matters 6.1, 6.2

”

Clerk to the Privy Council

### **EXPLANATORY NOTE**

*(This note is not part of the Order)*

This Order amends Schedule 5 to the Government of Wales Act 2006 (“the 2006 Act”). The effect of the Order is to extend the legislative competence of the National Assembly of Wales to make new laws for Wales by Measure under section 93 of the 2006 Act.

Article 2 inserts new matters 6.1 and 6.2 and a table of excepted matters into Part 1 of Schedule 5 to the 2006 Act. The new matters are inserted by article 2(3). Matter 6.1 is about the collection, management and treatment and disposal of waste. Matter 6.2 is about environmental protection, including pollution, nuisances and hazardous substances. Any provision of an Assembly Measure relating to the new matters 6.1 and 6.2 will be within the legislative competence of the Assembly by virtue of the terms of those matters and section 94(4) of the 2006 Act.

The table inserted by article 2(4) sets out excepted matters and connects them to specified matters under the fields in Part 1 of Schedule 5 to the 2006 Act. The table has effect so that the matters specified in the first column (“excepted matters”) are not included in the matters in the fields identified in the second column. The Assembly will not be able make provision in an Assembly Measure under section 94(4) of the 2006 Act about anything in the first column, even if it would otherwise relate to the matters in the fields specified in the second column. The excepted matters in the first column will be outside the scope of the matters specified in the corresponding entry in the second column.

Article 2(2) makes an amendment to matter 5.10 which is consequential on the insertion of the table of excepted matters.

## Atodiad 1

### MEMORANDWM GAN Y GWEINIDOG DROS GYNALIADWYEDD A DATBLYGU GWLEDIG

#### GORCHYMYN CYNULLIAD CENEDLAETHOL CYMRU (CYMHWYSEDD DEDDFWRIAETHOL) (Rhif 2) 2007

#### Cynnig ar gyfer Gorchymyn Cymhwysedd Deddfwriaethol gan y Llywodraeth ynghylch Diogelu'r Amgylchedd a Rheoli Gwastraff

#### Cyflwyniad

1. Cafodd y Memorandwm hwn ei baratoi a'i osod gerbron yn unol â Rheol Sefydlog (RhS) 22.14. Mae'n gosod y cefndir i'r darpariaethau yn y cynnig amgaeedig gan y llywodraeth am Orchymyn Cymhwysedd Deddfwriaethol (GCD) a fyddai'n rhoi cymhwysedd deddfwriaethol ychwanegol i Gynulliad Cenedlaethol Cymru ("y Cynulliad") gerbron yn unol â RhS 22.13 ac mae'r Memorandwm hwn yn esbonio cwmpas y pwerau a geisir drwy'r GCD.
2. Ceir cyd-destun cyfansoddiadol y cais hwn yn Neddf Llywodraeth Cymru 2006 (Deddf 2006) a pholisi Llywodraeth y DU. Dangosodd Papur Gwyn Llywodraeth y DU "Trefn Lywodraethu Well i Gymru" a gyhoeddwyd ym mis Mehefin 2005 ymrwymiad Llywodraeth y DU i wella pwerau deddfwriaethol Cynulliad Cenedlaethol Cymru, fel sefydliad a etholwyd yn ddemocrataidd gyda'i weithdrefnau craffu manwl ei hunan.
3. Mae adran 95 o Ddeddf 2006 yn rhoi'r pŵer i'w Mawrhydi, drwy Orchymyn yn y Cyfrin Gyngor, i roi'r cymhwysedd i Gynulliad Cenedlaethol Cymru ddeddfu drwy Fesur Cynulliad ar faterion penodedig. Caniateir ychwanegu'r materion hyn at Feysydd o fewn Atodlen 5 i Ddeddf 2006. Caiff Mesurau Cynulliad wneud unrhyw ddarpariaeth y gallai Deddf Seneddol ei gwneud (ac o'r herwydd gall addasu deddfwriaeth bresennol a gwneud darpariaeth newydd), o ran materion, yn ddarostyngedig i'r terfynau y darperir ar eu cyfer yn Rhan 3 o Ddeddf 2006. Cyfeirir at Orchymyn yn y Cyfrin Gyngor o dan Adran 95 o Ddeddf 2006 fel Gorchymyn Cymhwysedd Deddfwriaethol (GCD) yn y Memorandwm hwn.
4. Caniateir mewnosod materion i Feysydd a gynhwysir yn Atodlen 5 i Ddeddf 2006, naill ai drwy Ddeddf Seneddol neu drwy Orchymyn Cymhwysedd Deddfwriaethol, pan fo'r olaf wedi ei gymeradwyo gan y Cynulliad a chan ddau Dŷ'r Senedd. Mae'r ail lwybr yn galluogi'r Cynulliad i gychwyn y broses ar gyfer trosglwyddo cymhwysedd o'r fath, drwy Orchymyn Cymhwysedd Deddfwriaethol.
5. Byddai'r Gorchymyn Cymhwysedd Deddfwriaethol a gynigir yn rhoi cymhwysedd deddfwriaethol ychwanegol i Gynulliad Cenedlaethol Cymru, ym maes Diogelu'r Amgylchedd (Maes 6 o fewn Atodlen 5 i Ddeddf 2006).

## Atodiad 1

### Y cefndir

6. Bydd pwerau deddfwriaethol newydd o ran y “materion” penodedig yn galluogi Llywodraeth y Cynulliad, Aelodau'r Cynulliad a Phwyllgorau'r Cynulliad i ddwyn cynigion gerbron ar gyfer deddfwriaeth, ar ffurf Mesurau, a seilir ar flaenoriaethau ac ar amserlen ar gyfer Cymru. Bydd y Mesurau yn destun craffu trylwyr a chymeradwyaeth gan y Cynulliad.
7. Bu Diogelu'r Amgylchedd yn faes pwnc wedi ei ddatganoli ers blynyddoedd ac mae gan Lywodraeth y Cynulliad eisoes bwerau gweithredol sylweddol a chymhwysedd is-ddeddfwriaethol yn y maes hwn gan fod diogelu'r Amgylchedd yn faes wedi ei ddatganoli. Mae'r rhan fwyaf o bwerau presennol Llywodraeth Cynulliad Cymru (sydd bellach yn arferadwy gan Weinidogion Cymru) ym maes diogelu'r amgylchedd a gwastraff i'w canfod yn Neddf Diogelu'r Amgylchedd 1990, Deddf yr Amgylchedd 1995, Deddfau Llywodraeth Leol 1988 a 1999, a thrwy gyfraith Ewrop. Mae gan Weinidogion Cymru hefyd swyddogaethau o dan y Deddfau Rheoli Llygredd, Deddf Ymddygiad Gwrthgymdeithasol 2003 a Deddf Cymunedau Glân a'r Amgylchedd 2005.
8. Ym Mai 2006, cyhoeddodd Llywodraeth Cynulliad Cymru ei strategaeth tymor hir ar gyfer amgylchedd Cymru. Mae'r strategaeth yn gosod y cyfeiriad strategol am yr ugain mlynedd nesaf er mwyn darparu'r fframwaith drwy'r hon y gellir cyrraedd at amgylchedd sy'n lân, yn fioamrywiol, yn iach ac y rhoddir gwerth arno gan bobl Cymru. Caiff y strategaeth ei chynnal gan gyfres o gynlluniau gweithredu sy'n cael eu diweddarau'n rheolaidd a chan fap polisi sy'n gosod y gweithrediadau allweddol a gaiff eu gwneud er mwyn cyflawni'r canlyniadau a geir yn y Strategaeth.
9. Mae'r cais hwn am gymhwysedd deddfwriaethol yn tarddu o'r angen i weithredu ar y pryder cyhoeddus sylweddol a hirymarhous yng Nghymru ynghylch sbwriel a phynciau amgylcheddol lleol eraill, a phryderon cysylltiedig ynghylch rheoli gwastraff cynaliadwy. Cafodd y pryderon hyn eu hamlygu yn ystod y broses ymgynghori ar gyfer Strategaeth yr Amgylchedd.
10. Yn benodol, mae pynciau ansawdd amgylcheddol lleol yn cael eu gweld â rhan ganolog mewn ansawdd bywyd ac mae'n bwysig i'w gwella fel moddion i sicrhau ymwneud pobl â materion amgylcheddol eraill. Mae cyflenwi amgylcheddau byw o ansawdd uchel i bawb yng Nghymru lle nad yw niwsansys amgylcheddol yn cael effaith negyddol ar ansawdd bywyd yn flaenoriaeth i Lywodraeth Cynulliad Cymru.
11. Bydd pwerau newydd yn y Maes hwn yn Galluogi Llywodraeth Cynulliad Cymru i ddwyn ymlaen gynigion cydlynol ar gyfer Mesurau, yn seiliedig ar flaenoriaethau Cymru ac ar amserlen fydd yn dod ac ar amserlen fydd yn dod â ni'n nes at yr amcan o gymunedau cynaliadwy.
12. Mae'r cynnig i gael y pwerau hyn hefyd yn cael ei wneud yng nghydestun terfynau'r setliad presennol sydd i ryw raddau yn cyfyngu llywodraeth y

## Atotiad 1

Cynulliad rhag mynd i'r afael â blaenoriaethau a phynciau Cymru. Mewn nifer o feysydd mae pwerau presennol Llywodraeth Cynulliad Cymru wedi'u caethiwo. Y mae, er enghraifft, ystod o ddeddfwriaeth bresennol sy'n ymwneud â phroblemau ynghylch sbwriel, ond cafodd agweddau ar bolisi sbwriel eu dynodi nad oes modd gweithredu arnynt yn effeithiol drwy ddefnyddio pwerau presennol; enghraifft dda yw sbwriel ysmegu yn casglu mewn mannau penodol fel canlyniad anfwriadol i'r gwaharddiad ar ysmegu. Bydd o fewn cwmpas y Gorchymyn hwn i ni ganfod atebion newydd i rai o'r anawsterau lleol hyn.

### Cwmpas

13. Mae yna dri maes penodol lle bydd y pwerau hyn yn cael eu defnyddio i ddarparu'r cwmpas i fynd i'r afael â phynciau diogelu'r amgylchedd a rheoli gwastraff. Y meysydd hynny yw gwella ansawdd yr amgylchedd yn lleol, lle mae pynciau megis sbwriel a thipio anghyfreithlon yn bryderon beunyddiol, cynyddu ailgylchu a gwella rheoli gwastraff; a chryfhau rheolaeth dros lygredd.

14. Y cynnig yw bod y ddau Fater yn cael eu mewnosod o dan Faes 6: Yr Amgylchedd yn Atodlen 5 i Ddeddf Llywodraeth Cymru 2006 i alluogi'r Cynulliad i ddeddfu ar y pynciau hyn drwy Fesur Cynulliad. Bydd Mater 6.1 yn galluogi'r Cynulliad i ddwyn Mesurau gerbron i gynyddu ailgylchu a gwella rheoli gwastraff cynaliadwy yng Nghymru. Bydd Mater 6.2 yn galluogi'r Cynulliad i ddwyn Mesurau gerbron i wella ansawdd yr amgylchedd yn lleol ac i gryfhau rheolaeth dros lygredd.

15. Gan hynny, prif fwriad y GCD hwn yw rhoi'r pŵer i'r Cynulliad wneud Mesurau o dan Ran 3 o Ddeddf Llywodraeth Cymru 2006 a fydd yn galluogi i becyn o fesurau gael eu gweithredu i wella amgylchedd Cymru.

### Terfynau daearyddol unrhyw Fesur Cynulliad

16. Mae Adran 94 o Ddeddf 2006 yn gwahardd unrhyw Fesur Cynulliad rhag cael effaith ac eithrio o ran Cymru. Mae'n darparu na fydd darpariaeth mewn Mesur Cynulliad yn gyfraith i'r graddau y mae y tu allan i gymhwysedd deddfwriaethol y Cynulliad. Mae darpariaeth y tu allan i gymhwysedd os bydd yn gymwys ac eithrio o ran Cymru, neu os bydd yn gosod, addasu neu dynnu swyddogaethau y gellir eu harfer ac eithrio o ran Cymru (neu'n rhoi'r pŵer i wneud hynny). Mae eithriadau cyfyngedig ar gyfer mathau penodol o ddarpariaethau atodol, er enghraifft, darpariaeth sy'n addas i wneud darpariaethau'r Mesur yn effeithiol, darpariaeth sy'n galluogi darpariaethau'r Mesur i gael eu gorfodi a darpariaeth sy'n gwneud diwygiadau canlyniadol i ddeddfwriaeth arall.

17. Mae'r cyfyngiad ynghylch swyddogaethau ac eithrio o ran Cymru yn rhwystro'r Cynulliad rhag pasio unrhyw Fesur sy'n rhoi i Weinidogion Cymru, awdurdodau lleol Cymru neu unrhyw awdurdod cyhoeddus arall swyddogaethau nad ydynt yn ymwneud â Chymru.

## Atodiad 1

### **Swyddogaethau Gweinidog y Goron**

18. Nid yw'r Gorchymyn hwn a gynigir ynddo'i hun yn gwneud cais i addasu neu dynnu unrhyw swyddogaeth gan Weinidog y Goron. Yn rhinwedd Rhan 2 o Atodlen 5 o'r Ddeddf, ni chaiff y Cynulliad drwy Fesur newid swyddogaethau Gweinidog y Goron heb gydsyniad Ysgrifennydd Gwladol Cymru. O ran unrhyw gynigion yn y dyfodol a all effeithio ar swyddogaethau Gweinidog y Goron, ymgynghorir ag Adrannau priodol Llywodraeth y DU a cheisir dod i gytundeb am unrhyw gynigion yn y dyfodol i newid neu addasu'r swyddogaethau hynny.

### **Y Casgliad**

19. Oherwydd y rhesymau a amlinellir uchod, mae Llywodraeth Cynulliad Cymru yn cynnig bod cymhwysedd deddfwriaethol Cynulliad Cenedlaethol Cymru yn cael ei ymestyn yn unol â darpariaethau cynnig GCD y llywodraeth y mae'r Memorandwm Esboniadol hwn yn ymwneud ag ef.

Jane Davidson  
Y Gweinidog dros Gynaliadwyedd a Datblygu Gwledig

Mehefin 2007







Atodiad 2

## Atodiad 2

Pwyllgor ar y Gorchymyn ynghylch  
Diogelu'r Amgylchedd a Rheoli Gwastraff

The Proposed Environmental Protection  
and Waste Management LCO Committee

Bae Caerdydd / Cardiff Bay  
Caerdydd / Cardiff CF99 1NA

July 2007

Annwyl Gydweithiwr

Ymgynghoriad - Pwyllgor ar y Gorchymyn ynghylch Diogelu'r Amgylchedd a Rheoli  
Gwastraff

Sefydlwyd y Pwyllgor ar y Gorchymyn ynghylch Diogelu'r Amgylchedd a Rheoli Gwastraff ar 4 Gorffennaf 2007 i drafod Gorchymyn arfaethedig Cynulliad Cenedlaethol Cymru (Cymhwysedd Deddfwriaethol)(Rhif 2)2007 ac i adrodd amdano.

Mae'r Pwyllgor wedi cytuno mai'r canlynol fydd maes ei graffu:

- egwyddorion cyffredinol y Gorchymyn arfaethedig, h.y. bod cymhwysedd deddfwriaethol, fel y'i dynodir yn 'Materion 6.1 a 6.2', yn cael ei roi i'r Cynulliad a bod Mater 5.10 ac ar ôl Maes 20 yn cael eu diwygio yn unol â'r hyn a awgrymir; ac
- a yw'r Gorchymyn arfaethedig yn darparu fframwaith priodol ar gyfer cyflwyno agenda'r polisi ar Ddiogelu'r Amgylchedd a Rheoli Gwastraff, ac yn arbennig felly, a ddiffiniwyd amodau'r Gorchymyn arfaethedig yn rhy eang neu'n rhy gyfyng?

Diben gwaith y pwyllgor yw craffu ar y modd y bydd y Gorchymyn arfaethedig yn cael ei ddrafftio ac oherwydd hynny ni fydd y pwyllgor yn cynnal trafodaethau manwl ynghylch y Mesurau arfaethedig y gellid eu cyflwyno yn sgil derbyn y cymhwysedd deddfwriaethol, nac yn adolygu'r polisiau sydd yn bodoli eisoes yn y maes, nac yn ail-wneud gwaith a wnaed yn barod gan bwyllgorau pwnc y gorffennol.

Gellir cael mwy o wybodaeth am y Gorchymyn arfaethedig a'i Femorandwm Esboniadol, ynghyd â Chanllaw i'r broses ddeddfu yn <http://www.assemblywales.org/bus-home/buslegislation.htm>

Gwelir trawsgrifiad cyfarfod cyntaf y Pwyllgor yma: [http://www.assemblywales.org/bus-home/bus-committees/bus-committees-third-assem/bus-committees-third-epwm-home/bus-committees-third-epwm-agendas/epwm\\_transcript.pdf?langoption=3&ttl=EPWM%283%29%20%3A%20Transcript%20%28PDF%2079-2%20kb%29](http://www.assemblywales.org/bus-home/bus-committees/bus-committees-third-assem/bus-committees-third-epwm-home/bus-committees-third-epwm-agendas/epwm_transcript.pdf?langoption=3&ttl=EPWM%283%29%20%3A%20Transcript%20%28PDF%2079-2%20kb%29)

'R wy'n ysgrifennu atoch i'ch gwahodd i gyflwyno tystiolaeth i'r Pwyllgor.

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Minicom: 029 2082 3280

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Byddai'r Pwyllgor yn hoffi derbyn tystiolaeth yn enwedig mewn perthynas â'r cwestiynau a ganlyn:

1. A fyddai amodau'r Gorchymyn arfaethedig yn caniatáu gweithredu agenda'r polisi ar reoli gwastraff a diogelu'r amgylchedd drwy Fesurau? Os na fyddai, ym mha fodd y byddai gofyn ail-ddrafftio'r Gorchymyn arfaethedig a pham?
2. Mae'r Gorchymyn arfaethedig yn cynnwys Tabl sydd yn nodi rhai eithriadau nad yw Materion 6.1 a 6.2 yn eu cwmpasu- gweler y rhai rhif 1, 2, 12 13, 14 15, 16 a 18. A yw'r eithriadau hyn yn briodol? Os nad ydynt, sut y dylid eu hail-ddrafftio a pham?
3. A yw amodau'r Gorchymyn arfaethedig wedi'u drafftio'n briodol, neu'n rhy eang neu'n rhy gyfyng? Os oes angen sut y dylid ail-ddrafftio'r Gorchymyn arfaethedig a pham?

Os ydych yn dymuno cyfrannu at waith y pwyllgor dylid anfon cyflwyniadau drwy'r e-bost neu ar ddisg, lle mae hynny'n bosibl, neu fel arall ar ffurf copi caled at:

Sarah Beasley, Dirprwy Clerc y Pwyllgor, Y Swyddfa Ddeddfwriaeth, Cynulliad Cenedlaethol Cymru, Bae Caerdydd, CF99 1NA.

E-bost: [legislationoffice@wales.gsi.gov.uk](mailto:legislationoffice@wales.gsi.gov.uk). (Rhowch y teitl 'Ymgynghoriad y Pwyllgor DARhG ar yr e-bost.)

Dylai'r cyflwyniadau gyrraedd y Cynulliad erbyn dydd Gwener 21 Medi 2007. Efallai na fydd hi'n bosibl rhoi ystyriaeth i gyflwyniadau a dderbynnir ar ôl y dyddiad hwn.

Wrth lunio'ch cyflwyniad, cofiwch y pwyntiau canlynol:

- Dylai'ch ymateb fod mor gryno â phosibl. Rhowch y teitl a roddwyd uchod fel cyfeirnod ar eich ymateb;
- Bydd Cynulliad Cenedlaethol Cymru fel arfer yn peri bod y cyhoedd yn cael gweld yr ymatebion a geir wrth ymgynghori'n gyhoeddus ac efallai y byddant hefyd yn cael eu gweld a'u trafod mewn cyfarfodydd Pwyllgor. Os nad ydych yn dymuno bod eich enw na'ch cyflwyniad yn cael eu cyhoeddi mae hi'n bwysig eich bod yn datgan hynny'n glir yn eich cyflwyniad;
- Dangoswch ai fel unigolyn neu o ran sefydliad yr ydych yn ymateb;
- Dangoswch a fydddech yn fodlon rhoi tystiolaeth lafar i'r Pwyllgor neu beidio.

Mae'r Pwyllgor yn croesawu cyfraniadau Cymraeg neu Saesneg a bydd yn ystyried ymatebion i'r ymgynghoriad ysgrifenedig yn ystod tymor yr hydref.

Os oes gennych unrhyw gwestiynau, cysylltwch â'r Clerc, Gareth Williams (Ffôn 029 2089 8032) neu Sarah Beasley, y Dirprwy Clerc (Ffôn: 029 2089 8032).



Alun Ffred Jones AC  
Cadeirydd

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Atodiad 3

## Atodiad 3

### Ymatebion i'r Ymgynghoriad

Cyfeirnod	Sefydliad
EPWM1	Cylch (Rhwydwaith Ailgylchu Cymunedol Cymru) (Saesneg yn Unig)
EPWM2	Cymdeithas Llywodraeth Leol Cymru (Saesneg yn Unig)
EPWM3	Cyswllt Amgylchedd Cymru (Saesneg yn Unig) Cyswllt Amgylchedd Cymru (papur atodol) (Saesneg yn Unig)
EPWM4	Cymdeithas Gwneuthurwyr Tybaco, Annex (Saesneg yn Unig)
EPWM5	Cadwch Gymru'n Daclus (Saesneg yn Unig)
EPWM6	Y Gymdeithas Frenhinol er Gwarchod Adar (Saesneg yn Unig)
EPWM7	Cymdeithas Prif Swyddogion Heddlu Cymru (Saesneg yn Unig) Cymdeithas Prif Swyddogion Heddlu Cymru (papur atodol) (Saesneg yn Unig)
EPWM8	Asiantaeth yr Amgylchedd Cymru (Saesneg yn Unig)
EPWM9	Cyngor Cefn Gwlad Cymru (Saesneg yn Unig)
EPWM10	CBI Cymru

Gellir dod o hyd i ymatebion i'r ymgynghoriad yn:

[www.cynulliadcymru.org/bus-home/buslegislation/bus-legislation-lco/bus-legislation-lco-in-prog/bus-legislation-lco-2007-2/bus-legislation-lco-2007-2-writevid.htm](http://www.cynulliadcymru.org/bus-home/buslegislation/bus-legislation-lco/bus-legislation-lco-in-prog/bus-legislation-lco-2007-2/bus-legislation-lco-2007-2-writevid.htm)

## Atodiad 3

### Rhestr o dystiolaeth lafar

Dyddiad	Tystion
25 Medi 2007	Y Gweinidog dros yr Amgylchedd, Cynaliadwyedd a Thai Cymdeithias Llywodraeth Leol Cymru Cyswllt Amgylechedd Cymru
2 Hydref 2007	Asiantaeth yr Amgylchedd Cymru Cyngor Cefn Gwald Cymru CDP Cymru
9 Hydref 2007	Cymdeithas Prif Swyddogion Heddlu Cymru
6 Tachwedd 2007	Y Gweinidog dros yr Amgylchedd, Cynaliadwyedd a Thai

Mae trawsgrifiadau'r sesiynau tystiolaeth lafar i'w gweld yn:

[www.assemblywales.org/bus-home/bus-committees/bus-committees-third-  
assem/bus-committees-third-epwm-home/bus-committees-third-epwm-  
agendas.htm](http://www.assemblywales.org/bus-home/bus-committees/bus-committees-third-<br/>assem/bus-committees-third-epwm-home/bus-committees-third-epwm-<br/>agendas.htm)



Atodiad 4

Jane Davidson AC/AM

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



Llywodraeth Cynulliad Cymru  
Welsh Assembly Government

## Atodiad 4 - Nid yw hwn ar gael yn y Gymraeg

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  
Cardiff  
CF99 1NA

1<sup>st</sup> 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.**

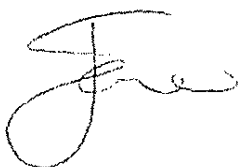
Legal advice suggests that the draft LCO could, for example, allow the Assembly to pass a Measure which introduced a levy or charge on plastic carrier bags at the point of sale. This has been introduced in the Republic of Ireland, where each plastic bag is subject to a 22 cent levy or charge at the point 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,



**Jane Davidson AM**  
**Minister for Environment, Sustainability and Housing**

Y Pwyllgor ar y Gorchymyn ynghylch Diogelu'r  
Amgylchedd a Rheoli Gwastraff

Proposed Environmental Protection and Waste  
Management Legislative Competence Order  
Committee

Bae Caerdydd / Cardiff Bay  
Caerdydd / Cardiff CF99 1NA

Jane Davidson AM  
Minister for Environment, Sustainability and  
Housing  
Welsh Assembly Government  
Cardiff Bay  
Cardiff CF99 1NA

23 October 2007

Dear Jane

## PROPOSED ENVIRONMENTAL PROTECTION AND WASTE MANAGEMENT LCO

1. You may be aware that the Proposed Environmental Protection and Waste Management LCO Committee met in private on 16 October to discuss key issues emerging from the Committee's pre-legislative scrutiny of the proposed Order.
2. Members asked that I write to you to seek clarification on certain issues and consequently thought it would be more sensible for you to appear before the Committee on 6 November, rather than 23 October. The committee is grateful that you have re-arranged your diary commitments to accommodate the change of date.

### Matter 6.1

3. The committee is keen that Matter 6.1 is more explicit in conferring competence on the prevention of waste, perhaps by referring to the minimisation or reduction of waste. In committee on 25 September you said that you would be happy in principle to include an additional word but further consideration would be necessary to ensure that its inclusion does not compromise the scope of the LCO.  
**Point 1: Have you had an opportunity to undertake any such consideration and if so, what was the outcome?**

4. **Point 2: Members would also like clarification on which waste streams are not covered by this proposed LCO. For example, are radioactive wastes excluded? If not, and the Assembly is responsible for radioactive waste and its**

collection, management, treatment and disposal, how is this affected by exception 16, which prohibits the Assembly from legislating in relation to the carriage of radioactive material?

## Matter 6.2

5. The committee has considered your letter of 1 October in relation to the definition of environmental protection and also the relationship between the terms of the proposed Order and paragraph 6, Schedule 7 to the Government of Wales Act 2006. It has also discussed the need for clarity in the drafting of Matter 6.2 and also whether it needs to be, or should be, more explicit in referring, in some way, to the enhancement of the environment (given that the explanatory memorandum makes reference to bringing forward Measures to improve local environmental quality). Following on from this, Members have also considered whether the scope of the proposed Order should be broadened given the weight of evidence it has received supporting such an approach and in particular, in relation to the addition of a new matter on biodiversity.

**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).

**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.

6. Paragraph 4 of your letter of 1 October says that the proposed Order could allow for a levy or charge to be introduced by Measure to encourage behaviour that addresses environmental protection within the terms of Matter 6.2, insofar as it relates to "pollution, nuisances and hazardous substances", subject to certain potential legal restrictions.

**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?

## Exceptions

7. **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. As part of this information, it would be helpful if you could cover the following points:

- (i) Exceptions 1 and 2: clarification on whether these exceptions would restrict the Assembly's ability to legislate to tackle road traffic pollution. On exception 2, what would be the impact of removing the phrase "and conditions under which they may be so used"?

(ii) Exception 16: clarification on whether the term dangerous goods covers hazardous wastes and radioactive wastes.

(iii) Exception 18: clarification on what prohibition means in the context of this excepted matter.

8. I would be grateful if you could reply by noon on Wednesday 31 October. Your response will form the basis for our meeting on 6 November, though I should stress that this would not prevent Members from raising other issues as well.

Yours sincerely



**Alun Ffred Jones AM**  
Chair

Jane Davidson AC/AM

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



Llywodraeth Cynulliad Cymru  
Welsh Assembly Government

Ein cyf/Our ref:LF/JD/0024/07

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

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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).

*low,*



**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

Jane Davidson AC/AM

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



Llywodraeth Cynulliad Cymru  
Welsh Assembly Government

Ein cyf/Our ref:

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14 November 2007

*Annwyl Alun Ffred,*

#### REQUEST FOR INFORMATION BY ENVIRONMENTAL PROTECTION AND WASTE MANAGEMENT LCO COMMITTEE

Following the meeting of the proposed Environmental Protection and Waste Management LCO Committee on the 6<sup>th</sup> November, I would like to provide clarification to the Committee regarding their questions on radioactive waste and radioactive material.

With a few exceptions, all the functions of the Secretary of State under the Radioactive Substances Act 1993 are currently devolved to the Welsh Ministers. The Act deals with radioactive waste including nuclear waste, radioactive discharges and other radioactive substances including, for example, sealed sources for industrial or educational purposes. The Act is concerned with ensuring that accumulation and disposal of radioactive waste occurs with minimum impact on the general public and the environment. Keeping or using radioactive substances without registration is prohibited under the Act. Applications for registration are made to the Environment Agency. The Welsh Ministers' functions under the Act include the power to direct the Agency as to such applications (including to direct it to refuse registrations), the power to call in applications for decision by the Welsh Ministers instead of by the Agency, and the power to decide appeals against refusals etc. of registrations. The Act is also devolved in the sense that the regulatory functions that it confers on the Environment Agency are exercised, in Wales, by the Environment Agency Wales, an arm of the Agency which reports to the Welsh Ministers and in relation to which the Welsh Ministers have powers of direction, both under the Act itself (as referred to above) and under the Environment Act 1995. The Act is devolved in the sense of the functions carried out under the Act being devolved, but it is not devolved in the sense of legislative competence, which would give the power to amend it.

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Functions under the Nuclear Installations Act 1965 are not devolved to the Welsh Ministers. This Act concerns specific regulatory controls which apply to nuclear power plants. Under this Act, apart from certain exceptions, no site may be used for the purpose of installing or operating any nuclear installation unless the Health and Safety Executive (HSE) have granted a licence.

The draft LCO is not intended to seek legislative competence in either of these areas. In Wales, the areas covered by the Radioactive Substances Act 1993 are regulated by the Environment Agency Wales, which, as set out above, reports to the Welsh Ministers. The management and regulation of radioactive substances is subject to both UK and international requirements, the latter emanating from Euratom and the International Atomic Energy Authority. Management and regulation of radioactive substances is carried out to ensure the highest degree of safety for human health and the environment and there is no evidence that additional powers for Wales would increase the degree of safety. Welsh interests in this area are covered by consultative arrangements between the UK Government and the devolved administrations and the regulators. Separate Welsh legislation would cut across these longstanding arrangements.

I know that, in considering the current drafting of Matter 6.1, radioactive waste would appear to be included. However, as I indicated to Committee, it is not my intention that this subject should be within the scope of this LCO and this is why I said that further consideration is being given to the inclusion of a specific exception to clarify this point. This will be additional to Exception 16 of the draft LCO which relates to the 'Carriage of dangerous goods (including transport of radioactive material)'. This exception has been included to ensure that we do not interfere with Department for Transport functions in relation to the carriage of dangerous goods. The reference to radioactive material in this exception should not be assimilated to a reference to radioactive waste; indeed, the two terms can be mutually exclusive, as in the Radioactive Substances Act 1993 itself, where "radioactive material" is defined (in section 1) in terms as, "anything which, not being waste, is either a [radioactive] substance or an article made wholly or partly from, or incorporating, a [radioactive] substance". I think I may have said, in addressing the Committee on 6<sup>th</sup> November, that this definition appeared in the Pollution Prevention and Control Act 1993. May I take this opportunity to correct the reference since I should have referred to the Radioactive Substances Act 1993.

Therefore Exception 16 is not really relevant to the issue of whether radioactive waste is included within the scope of this LCO or not. As I have said above, my intention is that it is not within the scope, and this may need to be clarified by a further specific exception.

I trust that this letter clarifies the questions brought up by the Committee regarding why the Welsh Assembly Government is not currently seeking legislative competence regarding radioactive waste.

Yn gyf,  


**Jane Davidson AM**  
**Minister for Environment, Sustainability and Housing**