



**Response by Keep Wales Tidy to the
National Assembly for Wales Consultation
on the proposed Environmental Protection
and Waste Management Legislative
Competence Order**

September 2007

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Keep Wales Tidy is an independent National Voluntary Organisation with Charitable Status working towards a Clean, Safe and Tidy Wales. Keep Wales Tidy co-ordinates a number of programmes and projects such as Eco-Schools, Clean Rivers, Clean Coasts, Coastal Awards such as Blue Flag, Seaside Award and the Green Coast Award, the flytipping project Pride in our Communities, and the Tidy Wales Awards. We are a partner in Waste Awareness Wales and Environment Wales and provide an information service to various agencies and the public on litter and other related issues.

Introduction

Keep Wales Tidy welcomes the proposed National Assembly for Wales (Legislative Competence) (No.2) Order 2007 relating to Environmental Protection and Waste Management. We consider that this Order would enable the Welsh Assembly Government to develop and implement policies that tackle the local environmental quality and waste problems of Wales and make a contribution towards achieving a clean, safe and tidy Wales. Since the powers relating to waste and local environmental quality are already devolved to the National Assembly of Wales it appears appropriate for the Assembly to have the necessary powers to legislate on these matters.

In response to the specific questions requested by the Committee:

1. Would the terms of the proposed Order allow for the implementation of the policy agenda on waste management and environmental protection by means of Measures? If not, how would the proposed Order need to be re-drafted and why?

Issues impacting on the quality of the local environment such as litter, flytipping, dog fouling, graffiti, flyposting, abandoned cars and vandalism have an impact on the quality of life and are of key importance to the people of Wales. The Environment Strategy for Wales, 2005 recognises that there is a clear social justice driver for activity in this area and that “ensuring that all communities enjoy higher levels of environmental quality is crucial” (p.41) Tackling these problems requires a variety of options such as good public education, effective operations by statutory authorities to maintain cleanliness, the empowerment of communities to look after and take pride in their communities and local area and wide ranging enforcement powers to tackle the minority who engage in anti-social behaviour that has a negative impact on the local environment.

While the Assembly currently has the necessary powers to encourage action in areas such as education, effective operations and empowering communities, in some cases there is a need for additional powers that can only be provided through legislation. In this case the

powers of the Assembly in relation to enforcement are restricted to those relating to specific legislation relating to local environmental quality such as the Environmental Protection Act 1990, the Clean Neighbourhood Act 2005 and other acts that may confer some powers relating to the issue such as the Anti Social Behaviour Act 2003. The Assembly currently does not have the ability to bring in enforcement powers to tackle any specific nuisance issue that is deemed a priority in Wales and the passing of the LCO would provide the Assembly Government with the necessary powers to develop policy to tackle the specific problems and priority areas in Wales.

The current powers that the Assembly possesses also prevents it from introducing additional statutory duties aimed at reducing nuisance such as the provision of bins or the sale of solvents. This LCO would provide the Assembly with a full range of powers to tackle problems that are specific to the needs of Wales.

Since the LCO relates to both local environmental quality and waste, it will be possible to develop a strategic approach towards tackling waste issues. The powers conferred through this LCO will enable the Assembly Government to development policies to encourage waste reduction and recycling. However, one unfortunate consequence of this can be an increase in flytipping, as a small minority of people use irresponsible and illegal means to dispose of their waste. The passing of this LCO can provide the Assembly with the necessary powers to ensure that appropriate measures aimed at reducing flytipping are developed hand in hand with policies to reduce waste and encourage recycling.

2. The proposed Order includes a Table setting out certain exceptions from the scope of Matters 6.1 and 6.2 - see the entries at numbers 1, 2, 12, 13, 14, 15, 16 and 18. Are these exceptions appropriate? If not, how should they be re-drafted and why?

The exceptions outlined in the table appear appropriate with the exception to numbers 12 and 15. According to the Annual Beachwatch Survey undertaken by the Marine Conservation Society almost 15% of litter on Welsh beaches comes from waste thrown from shipping and fishing. While some of this would come from activity that is outside the jurisdiction of the Welsh Assembly Government, the current scope of the LCO would prevent the Welsh Assembly Government from developing measures to seek to tackle the problem amongst any shipping or fishing that is within its jurisdiction.

The same issue would apply should the Assembly wish to develop policies where harbours, docks, piers and boatslips are required to provide the necessary facilities to ensure the responsible disposal of waste by boat owners.

3. Are the terms of the proposed Order drafted appropriately, too narrowly

or too broadly. If necessary how should the proposed Order be re-drafted and why?

Matter 6.1 should be amended to include powers relating to the reduction of waste. While this may already be included in the definition of 'management' it is important to ensure that the necessary powers to promote waste reduction are not excluded from the LCO. If it is not included it would prevent that Assembly Government from developing holistic policies to tackle the problem of waste and may necessitate another LCO in the future.

Keep Wales Tidy supports the use of the term Environmental Protection as part of Matter 6.2 instead of a more specific list of what is covered by the LCO. While in some cases it may be useful to include a list of issues covered, such a list could be very long and the Assembly would be restricted from dealing with any issues that are not included on the list. It is more effective to have a broad definition for the LCO to ensure that it encompasses all items and types of behaviour that can have a negative impact on the quality of the local environment.

While no specific definition of the term Environmental Protection is available Keep Wales Tidy interprets this as inclusive of matters included in the list of legislation included in the Ministers Statement accompanying the LCO and incorporating issues currently devolved to the Assembly. We consider that it is necessary for this LCO to have this broad definition. If we have misinterpreted the LCO we suggest that Assembly officials revise the LCO to ensure it provides them with a broad range of powers relating to Environmental Protection.

Our interpretation of the LCO is based on the view that if it is passed the Assembly would have the necessary powers to pass legislation on Environmental Protection relating to any area or issue, with the exception of items specifically excluded in the Table of Exemptions.

While Keep Wales Tidy has not been able to access an specific legal advice on this issue during discussions with other organisations we were made aware of another more restrictive interpretation of the LCO. This suggests that the LCO would not enable Environmental Protection legislation to be passed relating to devolved issues, as listed in Schedule 7 of the Government of Wales Act 2006, unless they are specifically included in the LCO. If such an interpretation is correct then this would prevent any subsequent legislation from impacting on countryside and open spaces, sites of special scientific interest, the coast and marine environment, town and village greens common land. Keep Wales Tidy does not consider that this interpretation is correct or that this was intended by the Assembly while framing the LCO. However, if Assembly officers consider that the LCO may be interpreted in this way, we suggest that they clarify the legal position and take the necessary steps to ensure that the LCO enables the development of "a package of measures to improve the environment of Wales" as outlined

in the Ministers supporting statement.

Conclusion

Keep Wales Tidy welcomes the proposed LCO on Environmental Protection and Waste Management. We look forward to supporting the Committee in the process of scrutinising the LCO and in the future to supporting the developing of effective Assembly Measures that can contribute towards creating and maintaining a clean, safe and tidy Wales.