



National Assembly for Wales
Cynulliad Cenedlaethol Cymru

Environmental Protection and Waste Management Legislative Competence Order

Abstract

This research paper provides some background information about the Environmental Protection and Waste Management Legislative Competence Order.

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Environmental Protection and Waste Management Legislative Competence Order

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Executive Summary

This research paper provides some background information about the Environmental Protection and Waste Management Legislative Competence Order. Current legislation, policy, and important stakeholders are detailed for each of the three specific areas in which the proposed powers will be used:

- Improving local environmental quality
- Increasing recycling and improving waste management
- Strengthening pollution control

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Environmental Protection and Waste Management Legislative Competence Order

1 Background

On 19 June 2007, the Minister for Sustainability laid a Legislative Competence Order¹ – known at that time as 'Green Switch' – and gave a statement about the intentions of the government in plenary². The Order seeks to allow the Assembly to pass Measures in the area of environmental protection and waste management, "based on Welsh priorities, to our Welsh timescales, and in our Welsh context". Although the Welsh Assembly Government already had significant executive and secondary legislative competence in these areas, it felt that the powers did not go far enough in enabling problems to be effectively tackled. The Minister highlighted the problems that visibility of environmental problems contributes to the fear of crime, while areas that are not well-presented are less likely to attract investment and tourism. The Minister also noted that extra powers are needed in order to increase recycling rates beyond the 40 per cent target for 2010.

In particular the Minister highlighted the following issues as being of relevance to the Legislative Competence Order:

- Smoking litter
- Plastic bag issues
- Changing the public culture towards recycling and composting
- Prescribing recycling targets for local authorities
- Leaving excess packaging at shop checkouts
- Hazardous waste
- Energy recovery

The National Assembly for Wales (Legislative Competence) (No. 2) Order 2007³ seeks to amend the *Government of Wales Act 2006*⁴ by inserting two new matters under field 6 (environment) of Schedule 5 of the Act. The two matters are:

- Matter 6.1: Collection, management, treatment and disposal of waste
- Matter 6.2: Environmental protection, including pollution, nuisances and hazardous substances

The explanatory memorandum⁵ to the Order provides the following information about the scope of the proposed Order:

¹ National Assembly for Wales, [National Assembly for Wales \(Legislative Competence\) \(No. 2\) Order 2007](#).

² RoP, pp.39-42, 19 June 2007,

[http://www.assemblywales.org/rop070619qv.pdf?langoption=3&ttl=The%20Record%20\(430%2C%20kb\)](http://www.assemblywales.org/rop070619qv.pdf?langoption=3&ttl=The%20Record%20(430%2C%20kb))

³ National Assembly for Wales, [National Assembly for Wales \(Legislative Competence\) \(No. 2\) Order 2007](#).

⁴ OPSI, *Government of Wales Act 2006*,

<http://www.opsi.gov.uk/ACTS/acts2006/20060032.htm>

⁵ National Assembly for Wales, [Memorandum from the Minister for Sustainability and Rural Development: Proposal for a Government Legislative Competence Order relating to environmental protection and waste management](#).



13. There are three specific areas in which these powers will be used to provide the scope to tackle environmental protection and waste management issues. These areas are improving local environmental quality, where issues like litter and flytipping are everyday concerns, increasing recycling and improving waste management; and strengthening pollution controls

14. It is proposed that the two Matters are inserted under Field 6: Environment, in Schedule 5 to the Government of Wales Act 2006 to enable the Assembly to legislate on these issues by way of Assembly Measure. Matter 6.1 will enable the Assembly to bring forward Measures to increase recycling and improve sustainable waste management in Wales. Matter 6.2 will enable the Assembly to bring forward Measures to improve local environmental quality and strengthen pollution controls.

15. The principal purpose of this LCO is therefore to empower the Assembly to pass Assembly Measures under part 3 of the Government of Wales Act 2006 that will enable implementation of a package of measures to improve the environment of Wales.

The remainder of this paper will deal with the three issues relating to which the proposed Order will improve performance in Wales:

- Improving local environmental quality
- Increasing recycling and improving waste management
- Strengthening pollution controls

Several of these issues have been examined in a Research Paper published by Members' Research Service entitled *Waste Management in Wales*⁶.

⁶ National Assembly for Wales, *Waste Management in Wales*, March 2007,
<http://www.cynulliadcymru.org/07-052.pdf>

2 Improving Local Environmental Quality

2.1 Legislation

The two most important pieces of legislation for dealing with local environmental quality problems are the *Environmental Protection Act 1990*⁷ (EPA) and the *Clean Neighbourhoods and Environment Act 2005*⁸ (CNEA). The *Dogs (Fouling of Land) Act 1996*⁹ is also of note.

The EPA introduced the following:

- A prohibition on the unauthorised or harmful deposit, treatment or disposal of waste (s. 33), and requiring a waste management licence for any site accepting the deposition, treatment or disposal of waste. The punishment for offences committed under section 33 includes imprisonment of up to two years (five years for hazardous waste), and fines of up to £20,000.
- A requirement for householders to present household waste for collection 'in receptacles of a kind and number specified' (s. 46).
- Powers for local authorities to require the removal of waste unlawfully deposited, or to recover the cost of removing the waste from the person who deposited it (s.59).
- An offence of leaving litter (s. 87), and the power for authorised officers of local authorities to issue fixed penalty notices for the offence (s. 88).
- A requirement for litter authorities and statutory undertakers (principally, in Wales, local authorities) to keep land clear of litter and refuse (s. 89). Such bodies that fail to keep land sufficiently clean¹⁰ can be required by a magistrate to do so, under the terms of a Litter Abatement Order (s. 91).
- The power for local authorities to require certain premises that tend to generate litter to keep land near those premises clear of litter and refuse, under 'street litter control notices' (s. 93).
- The power for local authorities to seize and store abandoned shopping trolleys, then sell or dispose of the trolleys, and to recover costs for the storage and disposal from the owner (Schedule 4, under s. 99).

The CNEA introduced the following:

- Fixed penalty notices for the offence of abandoning a vehicle (s. 10).
- An extension of the offence of littering to include waterbodies (s. 18).
- The transfer of monies received from fixed penalty notices for littering directly to the authority that issued the notices, rather than to HM Treasury (as was previously the case) (s. 19).
- 'Litter clearing notices', which a local authority can impose on any occupier of land, where that land 'is defaced by litter or refuse so as to be detrimental to the amenity of the locality'

⁷ OPSI, *Environmental Protection Act 1990*,
http://www.opsi.gov.uk/acts/acts1990/Ukpga_19900043_en_1.htm

⁸ OPSI, *Clean Neighbourhoods and Environment Act 2005*,
<http://www.opsi.gov.uk/ACTS/acts2005/20050016.htm>

⁹ OPSI, *Dogs (Fouling of Land) Act 1996*,
<http://www.opsi.gov.uk/acts/acts1996/1996020.htm>

¹⁰ Cleanliness standards are set out in the Code of Practice on Litter and Refuse 1999. The Welsh Assembly Government's consultation on a successor Code ended in March 2007. The consultation document is available at
<http://new.wales.gov.uk/docrepos/40382/4038231121/403828/1026101/COPLARConsultation27-11-06.pdf?lang=en>

(s. 20). Where the occupier refuses to clear the litter, the local authority may clear it and then recover its costs from the occupier.

- An extension of street litter control notices to mobile operations (s. 21).
- The power for a local authority to prohibit the free distribution of printed matter (excluding matter for political, charity, or religious purposes) in designated parts of its land (s. 23).
- A further, definitive, encompassing of cigarette-related products, and discarded chewing gum, as litter (s. 27).
- An increase in the maximum punishment for fly-tipping, to a fine of up to £50,000 (s. 41).

The *Dogs (Fouling of Land) Act 1996* makes it an offence for any person to allow a dog under that person's control to defecate on designated land¹¹, and not to remove the faeces forthwith.

2.2 Important stakeholders

Keep Wales Tidy is an independent environmental charity that works to create a 'clean, safe and tidy Wales', principally through working to tackle litter, flytipping, and dog fouling. Keep Wales Tidy has produced several policy papers that consider local environmental quality issues, three of which are currently available on their website (can and bottle litter, chewing gum, and plastic bags)¹². The Marine Conservation Society has also maintained a campaigning role against litter that ends up on beaches and the coast.

Local authorities in Wales have a substantial interest in local environmental quality. This stems partly from their role as principal litter authorities, but also because poor local environmental quality both reduces the quality of life of the authority inhabitants, and impacts on the investment climate for that authority. No local authority in Wales has yet been subject to a Litter Abatement Order (requiring the body to keep its land clear of litter and refuse). Picking up litter is one of the most expensive means of waste management, and reducing littering and flytipping can mean significant savings for local authorities.

Other than local authorities, the bodies that have a statutory duty as litter authorities are: Crown authorities, for Crown land; statutory undertakers, for their relevant land; and the governing bodies of educational institutions, for land under their stewardship.

Environment Agency Wales is responsible for clearing up large and toxic flytipping.

2.3 Policy in Wales and elsewhere

¹¹ Land that is *not* designated includes: highways where the speed limit is more than 40mph, agricultural land, woodland, marshland, moorland, heath, and common land (s. 1).

¹² Keep Wales Tidy, *Policies*, <http://www.keepwalestidy.org/english/images/cansandbottles.pdf>
<http://www.keepwalestidy.org/english/images/chewinggum.pdf>
<http://www.keepwalestidy.org/english/images/plasticbags.pdf>



Welsh policy on local environmental quality is summarised by the Environment Strategy for Wales¹³ outcome "environmental nuisances, such as litter, flytipping, graffiti, dog fouling, fly-posting, noise pollution and light pollution are minimised". Policy on most of these topics, and many that are not included in the Strategy outcome, is detailed on the waste and recycling page of the Welsh Assembly Government¹⁴.

Both Scotland and England have updated their Codes of Practice on Litter and Refuse^{15,16}.

¹³ Welsh Assembly Government, *Environment strategy for Wales*, May 2006,
http://new.wales.gov.uk/topics/environmentcountryside/epg/Envstratforwales/About_the_strategy/?lang=en

¹⁴ Welsh Assembly Government, *Waste and recycling*,
http://new.wales.gov.uk/topics/environmentcountryside/epg/waste_recycling/?lang=en

¹⁵ Natural Scotland, *Code of practice on litter and refuse*, October 2006,
<http://www.littercode.org/docs/0043662.pdf>

¹⁶ DEFRA, *Code of practice on litter and refuse*, April 2006,
<http://www.defra.gov.uk/environment/localenv/litter/code/pdf/cop-litter.pdf>

3 Increasing Recycling and Improving Waste Management

3.1 Legislation

The *Environmental Protection Act 1990*¹⁷ is also important for waste management. In addition to the points raised in section 2.1 (some of which are relevant to increasing recycling and waste management), the EPA introduced the following:

- A legal 'duty of care' for waste, such that any person who imports, produces, carries, keeps, treats or disposes of controlled waste must ensure that it does not escape into the environment (s. 34).
- A licensing scheme to ensure that persons involved in the treatment, transport or storage of waste are subject to controls (s. 35).
- A requirement for waste management authorities to collect household waste in their areas (s. 45).
- The possibility for local authorities to require those storing commercial or industrial waste to store such waste in specified types of containers, if such waste is likely to cause a nuisance or be detrimental to the amenities of the locality (s. 47).
- Powers for local authorities to recycle waste (s. 55).

The *Household Waste Recycling Act 2003*¹⁸ introduced the following:

- A requirement for at least two types of recyclable (or compostable) waste to be collected from all households served by normal household waste collection (s. 2 and 1).

There is no legislation at present to allow local authorities to apply financial incentive schemes in order to encourage recycling (by, for example, charging heavy users of waste management services more, and light users less). The UK Government is currently consulting on these financial incentives¹⁹, although the proposed regulations would not apply to Wales.

3.2 Important stakeholders

Cylch is the Welsh community recycling network, and is a registered charity. Its mission is to promote sustainable resource management through education and practical action. Cylch has produced one policy document²⁰ that examines 'Cleanstream' – an approach that treats waste as a resource.

¹⁷ OPSI, *Environmental Protection Act 1990*,
http://www.opsi.gov.uk/acts/acts1990/Ukpga_19900043_en_1.htm

¹⁸ OPSI, *Household Waste Recycling Act 2003*,
<http://www.opsi.gov.uk/ACTS/acts2003/20030029.htm>

¹⁹ DEFRA, *Consultation on the incentives for recycling by households*, May 2007 (consultation closes on 16 August 2007),
<http://www.defra.gov.uk/corporate/consult/waste-incentives/waste-incentives.pdf>

²⁰ Cylch, *Cleanstream 2006*,
http://www.cylch.org/content/files/Cleanstream_2006.pdf

Local authorities in Wales have a massive interest in recycling and waste management. According to projections by Members' Research Service²¹, local authorities could face fines of as much as £10 million if they miss Landfill Directive targets in 2009/10, and nearly £32 million if they miss the targets in 2012/13. These fines do not include any share of possible EU infringement penalties. Other projections indicate that as many as 11 of the 22 authorities might fail to reach the 40 per cent recycling target by 2010.

Waste management businesses are involved in the collection and disposal of waste in Wales. These vary in scale from community enterprises (covered by the umbrella group Cylch, above), to large multinationals such as Biffa and Veolia.

3.3 Policy in Wales and elsewhere

Welsh policy on recycling and waste management is detailed in the National Waste Strategy for Wales²². Although the Strategy was designed to operate from 2002 to 2012, there have been substantial changes in the field of waste management during recent years, and the Welsh Assembly Government has started a review of the Waste Strategy.

Scotland's National Waste Plan²³ established the direction of waste management in Scotland until 2020, and is also due to be updated in the coming years.

The Waste Strategy for England 2007²⁴ outlines the UK Government's objectives for waste management in England. One of the most noteworthy differences from policy in Wales is a consultation on removing the ban on local authorities introducing household financial incentives for waste reduction and recycling in England. The document also commits to consult on restricting or banning the landfill of certain biodegradable waste and recyclable materials, and it also mentions considering initiating a system whereby people would 'opt-in' to receive direct marketing.

A levy on plastic carrier bags has been operational in the Republic of Ireland since March 2002; the number of plastic bags distributed has reduced by 94 per cent²⁵.

Several countries in Europe, including all the Nordic countries, operate a mandatory deposit system for drinks containers. In the USA, the system has led to big improvements in recycling such vessels; states with deposit laws recycle 72 per cent of drinks containers, while states without have a recycling rate for drinks containers of 28 per cent²⁶.

²¹ National Assembly for Wales, *Waste Management in Wales*, March 2007, <http://www.cynulliadcymru.org/07-052.pdf>

²² Welsh Assembly Government, *Wise about waste: The national waste strategy for Wales, Part one*, June 2002, http://new.wales.gov.uk/topics/environmentcountryside/epq/waste_recycling/wise_about_waste_strategy?lang=en

²³ Scottish Executive, *The national waste plan 2003*, http://www.sepa.org.uk/pdf/nws/guidance/national_plan_2003.pdf

²⁴ DEFRA, *The waste strategy for England 2007*, May 2007, <http://www.defra.gov.uk/environment/waste/strategy/strategy07/pdf/waste07-strategy.pdf>

²⁵ McDonnell S, 2005, *Environmental Levy on Plastic Bags (Scotland) Bill: Stage 1*, Written evidence submitted to Environment and Rural Development Committee. Simon McDonnell, Department of Planning and Environmental Policy, University College Dublin, Dublin.

²⁶ BEAR, *Understanding beverage container recycling: A value-chain assessment prepared for the multi-stakeholder recovery project*, January 2002, Santa Monica, California: Businesses and Environmentalists Allied for Recycling, <http://www.globalgreen.org/bear/Projects/FinalReport.pdf>

4 Strengthening Pollution Controls

4.1 Legislation

There is voluminous legislation dealing with pollution (for example, *The Pollution Prevention and Control (England and Wales) Regulations 2000*²⁷ have been modified by 17 subsequent Regulations (see <http://www.defra.gov.uk/environment/ppc/regs/pdf/ppcregs-consolidated.pdf> for the full list)). This paper will only attempt to summarise a small section of the more significant legislation.

In addition to the points raised in sections 2.1 and 3.1 (some of which are relevant to pollution control), the *Environmental Protection Act 1990*²⁸ introduced the following:

- A requirement that authorisation be obtained in order to carry out certain processes (s. 2)
- Environmental standards with which certain processes must comply (s. 3)
- The power for the enforcement agency (Environment Agency Wales) to revoke authorisations (s. 12), or serve enforcement notices (s. 13), or prohibition notices (s. 14)
- Offences under various sections of the Act, punishment for which includes imprisonment of up to two years, and fines of up to £20,000 (s. 23).

The *Environment Act 1995*²⁹ established the Environment Agency as the enforcement body for polluting activities in Wales and England.

Potentially polluting activities undertaken by the following sectors are controlled under *The Pollution Prevention and Control (England and Wales) Regulations 2000*:

- Energy industries
- Production and processing of metals
- Mineral industries
- The chemical industry
- Waste management
- Other activities

4.2 Important stakeholders

Environment Agency Wales is the statutory body with responsibility for pollution control in Wales.

Local authorities have responsibility for air pollution and contaminated land within their boundaries.

²⁷ OPSI, *The Pollution Prevention and Control (England and Wales) Regulations 2000*, <http://www.opsi.gov.uk/si/si2000/20001973.htm>

²⁸ OPSI, *Environmental Protection Act 1990*, http://www.opsi.gov.uk/acts/acts1990/Ukpga_19900043_en_1.htm

²⁹ OPSI, *Environment Act 1995*, http://www.opsi.gov.uk/acts/acts1995/Ukpga_19950025_en_1.htm

Several NGOs have an interest in pollution, including Friends of the Earth Cymru and WWF Cymru.

4.3 Policy in Wales and elsewhere

Welsh policy on environmental hazards and pollution is described in the Environment Strategy for Wales³⁰. There are four outcomes for the Strategy:

- A reduction in air pollution leads to increased life expectancy and ecological protection
- The extent of contaminated land is better understood and actions are being taken to remediate contaminated land for beneficial use where appropriate
- The quality of our groundwater, rivers, lakes and coastal waters is enhanced
- Diffuse pollution is better understood and action is being taken to reduce and manage diffuse pollution

In addition, three outcomes are related to exposure to chemicals and radioactivity.

European activities have an impact, through UK or Wales and England legislation, on Welsh affairs. Recent examples include the Registration, Evaluation and Authorisation of Chemicals (REACH) Regulation³¹ and the VOC Paints Directive³².

³⁰ Welsh Assembly Government, *Environment strategy for Wales*, May 2006,

http://new.wales.gov.uk/topics/environmentcountryside/epg/Envstratforwales/About_the_strategy/?lang=en

³¹ European Parliament and European Council, *Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC,*

http://eur-lex.europa.eu/LexUriServ/site/en/oj/2006/l_396/l_39620061230en00010849.pdf

³² European Parliament and European Council, *Directive 2004/42/CE of the European Parliament and of the Council of 21 April 2004 on the limitation of emissions of volatile organic compounds due to the use of organic solvents in certain paints and varnishes and vehicle refinishing products and amending Directive 1999/13/EC,*

http://eur-lex.europa.eu/LexUriServ/site/en/oj/2004/l_143/l_14320040430en00870096.pdf