



Wales Office | Swyddfa Cymru

Office of the Secretary of State for Wales
Gwydyr House
Whitehall
London SW1A 2NP

Ysgrifennydd Gwladol Cymru
Secretary of State for Wales

Swyddfa Ysgrifennydd Gwladol Cymru
Tŷ Gwydir
Whitehall
Llundain SW1A 2NP

Rt Hon Peter Hain MP

Tel: 020 7270 0549
Ffon: 020 7270 0549

Fax: 020 7270 0568
Ffacs: 020 7270 0568

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I am writing to respond to the Constitution Committee's report on the proposed National Assembly for Wales (Legislative Competence) (Environment) Order 2009 - the "Environment LCO", which you published in October. The draft LCO was laid before Parliament on 2 December, and I apologise for not writing to you then. This was due to an administrative oversight.

I would like to thank the Committee for its thoughtful scrutiny of the proposed Order and for its well-considered report, which focused on the way in which exceptions had been used in the proposed LCO. The UK Government and the Welsh Assembly Government worked together closely to consider the report, and the findings of the Welsh Affairs Committee's and National Assembly's scrutiny. I will respond to each of the points you raise in your letter in turn.

First, on fixed or matter-specific exceptions, I was pleased that your Committee concluded their use in the proposed LCO was readily understandable, in that they follow the current boundaries of the Welsh devolution settlement. The Environment LCO is broad, in that it touches on many areas of policy including transport, defence and energy as well as of course environmental policy itself. The many exceptions in the proposed LCO reflected the complexity of this area of legislation, a fact that, as you note, the Welsh Affairs Committee acknowledged in its report.

In light of the comments a number of changes have been made in the attached draft LCO to rationalise the fixed exceptions, and make the LCO more succinct and easier to understand. I have explained these changes in detail in my letter to Dr Francis, which I have copied to you. More generally, I fully agree that exceptions - fixed or floating - should not be used unnecessarily and that we need to be vigilant to the risk that too many exceptions could make Schedule 5 to the Government of Wales Act 2006 unwieldy and unintelligible to the lay reader. However, there is a need to define accurately the boundaries to the legislative competence the National Assembly has, and that boundary is inevitably more complex in some areas (such as the environment) than others.



I do not believe that Schedule 5 is currently overly complex, nor is likely to become so as a result of the LCOs currently in the pipeline. But I can assure your Committee that I am prepared to agree only those exceptions that are absolutely necessary to describe the National Assembly's competence clearly and unambiguously.

Secondly, I was also pleased that your Committee recognised the need for floating (or general) exceptions to be applied in this LCO given that environmental concerns are relevant to policy and legislation in many areas. Indeed, the non-devolved policy areas included in the floating exceptions being inserted or amended by the Environment LCO relate directly to the environment, covering areas such as electricity generation and supply, nuclear energy and aviation. As you say, the exceptions are listed otherwise than under the Environment Field (Field 6) because they relate more closely to their "home" Field, but that should not imply they have no relationship with environmental matters.

I fully agree with your Committee's conclusion that LCOs should avoid rolling up specific provision on a subject and exceptions on a completely unrelated subject. Any exceptions - fixed or floating - inserted into Schedule 5 by an LCO should relate directly to the subject matter of that LCO. I am grateful to your Committee for re-emphasising this point.

Your Committee also endorsed the view of the Welsh Affairs Committee that "carve-outs" of legislative competence from exceptions should be kept to an absolute minimum given that they add to the complexity of the legislation. Again, I agree fully. Some carve-outs are inevitable, especially in areas such as transport where most of the subject area is non-devolved but the Welsh Ministers have some limited functions. But clearly extensive use of carve-outs would render Schedule 5 unintelligible and would be of benefit to no-one.

I can assure your Committee that carve-outs are included in LCOs only when absolutely necessary, and only after a great deal of thought as to whether there are other, better ways to present the boundaries of the competence. I do not expect carve-outs to be a commonplace feature of Schedule 5.

Finally, your Committee rightly agreed with the Welsh Affairs Committee that LCOs should be drafted with the aims of clarity and simplicity in mind, and recommended that the Wales Office should explore ways to simplify the Environment LCO. I believe the draft LCO is simpler than its predecessor in terms of both content and presentation, but is inevitably one of the more complex LCOs given the nature of the subject and the breadth of the competence it confers.



I am particularly grateful to the Constitution Committee for highlighting the importance of ensuring the Assembly's evolving legislative competence can be easily explained and readily understood. This should be the case for individual LCOs, and the enclosed Memorandum has been substantially revised to explain better the changes the Environment LCO makes. But, just as importantly, it should also be the case for Schedule 5 as a whole. The Welsh Affairs Committee commented in similar terms, and the Welsh Assembly Government is currently exploring how this would best be done.

I enclose a copy of the draft Order and the Explanatory Memorandum. I hope that both Houses will be able to debate the draft early in the New Year.

I am copying this letter to Dr Hywel Francis, Chairman of the Welsh Affairs Select Committee.

Lord Goodlad
Chairman
Select Committee on the Constitution
House of Lords
London
SW1A 0PW