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

DRAFT STATUTORY INSTRUMENTS

2010 No.

CONSTITUTIONAL LAW
DEVOLUTION, WALES

The National Assembly for Wales (Legislative Competence) (Environment) Order 2010

Made - - - - 2010

Coming into force in accordance with article 1(2)

At the Court at Buckingham Palace, the day of 2010

Present,

The Queen's Most Excellent Majesty in Council

In accordance with section 95(5) of the Government of Wales Act 2006(**1**) 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, commencement and interpretation

1.—(1) This Order may be cited as the National Assembly for Wales (Legislative Competence) (Environment) Order 2010.

(2) This Order shall come into force on the day after the day on which it is made.

(3) In this Order "the 2006 Act" means the Government of Wales Act 2006.

Amendments relating to the field of environment

2. In field 6 (environment) of Part 1 of Schedule 5 to the 2006 Act insert—

"Matter 6.1

(**1**) 2006 c.32.

Preventing, reducing, collecting, managing, treating or disposing of waste.

This matter does not include—

(a) regulation of any activity in the sea;

(b) regulation of the provision of postal services by a person who holds, or is required to hold, a licence from the Postal Services Commission authorising the person to convey letters from one place to another (whether or not the licence relates to the services).

See below for further provision about what this matter does not include.

Matter 6.2

Disposal of waste in the sea where the waste has been collected, managed or treated on land.

This matter does not include regulation of the following activities—

(a) depositing any substance or object in the sea or on or under the seabed from any vehicle, vessel, aircraft, marine structure or floating container;

(b) depositing any explosive substance or article in the sea or on or under the seabed;

(c) incinerating any substance or object on any vehicle, vessel, marine structure or floating container.

See below for further provision about what this matter does not include.

Matter 6.3

Protecting or improving the environment in relation to pollution.

This matter does not include—

(a) regulating the composition and content of fuel used in—

(i) a means of transport,

(ii) non-road mobile machinery, or

(iii) an agricultural or forestry tractor;

(b) obligations upon persons who supply transport fuel at or for delivery to places in the United Kingdom to produce evidence showing the supply of renewable transport fuel;

(c) making provision regarding the proportion of renewable energy consumed in transport, including the imposition of requirements relating to sustainability that determine whether any particular renewable energy is to be counted towards any renewable energy obligation or target;

(d) provision of financial support in connection with—

(i) the production of renewable energy for consumption in transport, or

(ii) the use of that energy in transport,

including the imposition of requirements relating to sustainability that determine whether any particular renewable energy qualifies for financial support.

(e) regulation of oil and gas exploration and exploitation in those parts of the territorial sea that are not relevant territorial waters.

See below for further provision about what this matter does not include.

Matter 6.4

Protecting or improving the environment in relation to nuisances.

This matter does not include—

(a) imposition of criminal or civil liability in respect of energy nuisances that consist of acts, omissions and states of affairs for which there is statutory authority, except criminal or civil liability which the Welsh Ministers have power to impose;

(b) removal of relevant defences to, or relevant exclusions from, rules of law which impose civil or criminal liability in respect of energy nuisances, except those defences and exceptions which the Welsh Ministers have power to remove;

(c) regulation of the emission of smoke, artificial light or noise from military premises;

(d) regulation of gas activities, oil activities, and infrastructure that is necessary for carrying out any such activities;

(e) regulation of oil and gas exploration and exploitation in the sea;

(f) regulation of electronic communications and electronic communications networks.

See below for further provision about what this matter does not include.

Not included in matters 6.1, 6.2, 6.3 and 6.4

Matters 6.1, 6.2, 6.3 and 6.4 do not include any of the following—

(a) regulation concerning the control of major accident hazards involving dangerous substances (this exception is to be interpreted in accordance with Council Directive 96/82/EC(**2**) and it relates only to activity within the scope of that Directive);

(b) regulation of the decommissioning of offshore energy installations and related infrastructure.

Not included in matters 6.1 and 6.2

Matters 6.1 and 6.2 do not include any of the following—

(a) regulation of decommissioned explosives that are outside the scope of the Waste Directive by virtue of Article 2(1)(b)(v) of the Waste Directive and are or have been—

(i) held on behalf of the Crown for naval, military or air force purposes or for the purposes of the department of the Secretary of State having responsibility for defence, or

(ii) held by or for the purposes of visiting forces;

(b) regulation of radioactive material that is at military premises;

(c) regulation of the capture, conveyance or disposal of carbon dioxide as part of relevant carbon capture and storage.

Not included in matters 6.3 and 6.4

Matters 6.3 and 6.4 do not include any of the following—

(a) regulation of the contained use of genetically modified organisms;

(b) regulation of the following activities in the sea—

(i) depositing any substance or object in the sea or on or under the seabed from any vehicle, vessel, aircraft, marine structure or floating container, or any structure on land constructed or adapted wholly or mainly for the purpose of depositing solids in the sea;

(ii) scuttling any vessel or floating container;

(**2**) O.J. No. L10, 14.1.1997, pp. 13-33. The scope of the Directive was extended by Directive 2003/105/EC of the European Parliament and of the Council (O.J. No. L345, 31.12.2003, pp 97-105). There have been other amendments which are not relevant to this Order.

(iii) constructing, altering or improving works in or over the sea or on or under the seabed;

(iv) using any vehicle, vessel, aircraft, marine structure or floating container to remove any substance or object from the seabed;

(v) dredging;

(vi) depositing or using any explosive substance or article in the sea or on or under the seabed;

(vii) incinerating any substance or object on any vehicle, vessel, marine structure or floating container;

(c) marine licensing under Part 4 of the Marine and Coastal Access Act 2009(**3**).

Meaning of "pollution"

In this field "pollution" means pollution of the air, water or land which may give rise to any environmental harm, including (but not limited to) pollution caused by light, noise, heat or vibrations or any other kind of release of energy.

For the purposes of this definition "air" includes (but is not limited to) air within buildings and air within other natural or man-made structures above or below ground.

Meaning of "nuisance"

In this field "nuisance" means an act or omission affecting any place, or a state of affairs in any place, which may impair, or interfere with, the amenity of the environment or any legitimate use of the environment, apart from an act, omission or state of affairs that constitutes pollution.

Meaning of "relevant defence" and "relevant exclusion"

In matter 6.4, in relation to a rule of law which imposes civil or criminal liability in respect of an energy nuisance ("the unlawful nuisance")—

"relevant defence" means statutory removal (however expressed, and whether conditional or not) of the civil or criminal liability in respect of an act, omission or state of affairs that is within the scope of the unlawful nuisance;

"relevant exclusion" means statutory exclusion (however expressed, and whether conditional or not) of an act, omission or state of affairs from the scope of the unlawful nuisance.

In those definitions, a reference to the scope of the unlawful nuisance is a reference to the class of acts, omissions and states of affairs that constitutes the unlawful nuisance.

Other interpretation of this field

In this field—

"electricity activity" means any of the following—

(a) generating electricity at a generating station whose construction, extension or operation requires—

(i) the consent of the Secretary of State, or

(ii) the authority of an order granting development consent under the Planning Act 2008(**4**);

(b) transmitting, distributing or supplying electricity;

(**3**) 2009 c.23.
(**4**) 2008 c. 29. See Part 4 for the requirement for development consent.

and for this purpose, the reference to consent of the Secretary of State is a reference to consent under powers to regulate generation of electricity;

"electronic communication" means a communication transmitted—

(a) by means of an electronic communications network, or

(b) by other means but while in an electronic form;

"electronic communications network" means—

(a) a transmission system for the conveyance, by the use of electrical, magnetic or electro-magnetic energy, of signals of any description, and

(b) such of the following as are used, by the person providing the system and in association with it, for the conveyance of the signals—

(i) apparatus comprised in the system,

(ii) apparatus used for the switching or routing of the signals, and

(iii) software and stored data;

"energy nuisance" means a nuisance that relates to electricity activities, gas activities, oil activities, or infrastructure that is necessary for carrying out any such activities;

"environmental harm" means any of the following—

(a) harm to the health of humans and other living organisms;

(b) harm to the quality of the environment, including—

(i) harm to the quality of the environment taken as a whole,

(ii) harm to the quality of the air, water or land, and

(iii) other impairment of, or interference with, the ecological systems of which any living organisms form part;

(c) offence to the senses of human beings;

(d) damage to property;

(e) impairment of, or interference with, the amenity of the environment or any legitimate use of the environment;

"gas activity" means storing, conveying or supplying gas, except any such activity that is carried out by an individual for the domestic purposes of the individual;

"marine structure" means a platform or other artificial structure at sea, other than a pipeline;

"military premises" means premises which are—

(a) occupied on behalf of the Crown for naval, military or air force purposes or for the purposes of the department of the Secretary of State having responsibility for defence, or

(b) occupied by or for the purposes of visiting forces;

"offshore energy installation" means any of the following installations that are maintained in the sea or on the foreshore or other land intermittently covered with water, and that are not connected with dry land by a permanent structure providing access at all times and for all purposes—

(a) installations used for oil activities, gas activities or for the exploration or exploitation of gas or oil;

(b) carbon dioxide storage installations;

(c) renewable energy installations;