

**2010 No. 248**

**CONSTITUTIONAL LAW**

**DEVOLUTION, WALES**

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

*Made* - - - - - *10th February 2010*

*Coming into force in accordance with article 1(2)*

At the Court at Buckingham Palace, the 10th day of February 2010

Present,

The Queen's Most Excellent Majesty in Council

In accordance with section 95(5) of the Government of Wales Act 2006<sup>(a)</sup> 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*

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

This matter does not include—

(a) regulation of any activity in the sea;

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(a) 2006 c.32.

- (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<sup>(a)</sup> 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;

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(a) 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.

- (ii) scuttling any vessel or floating container;
  - (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(a).

*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

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(a) 2009 c.23.

(ii) the authority of an order granting development consent under the Planning Act 2008<sup>(a)</sup>;

(b) transmitting, distributing or supplying electricity;

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—

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(a) 2008 c. 29. See Part 4 for the requirement for development consent.

- (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;

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

“relevant carbon capture and storage” means the capture and underground disposal of carbon dioxide by a method in which the carbon dioxide is captured at the place of its production and conveyed for disposal by pipeline directly from the place of production to a place of underground disposal;

“relevant territorial waters” means the waters which extend seaward for three miles from the baselines from which the breadth of the territorial sea adjacent to Wales is measured; but any order made under section 104(4)(a) of the Water Resources Act 1991(a) for the purposes of Part 3 of that Act in relation to an area of the territorial sea adjacent to Wales also applies for the purposes of determining what are relevant territorial waters for the purposes of this field;

“sea” means (except where the context otherwise requires) the sea adjacent to Wales out as far as the seaward boundary of the territorial sea;

“statutory” means arising by virtue of an Act;

“visiting force” means any such body, contingent or detachment of the forces of any country as is a visiting force for the purposes of any of the provisions of the Visiting Forces Act 1952;

“Waste Directive” means Directive 2006/12/EC(b) of the European Parliament and of the Council of 5 April 2006 on waste, as it was originally adopted.

An order or an Order in Council made under or by virtue of section 158(3) or (4) for the purposes of that section also applies for the purpose of determining any boundary between the parts of the sea which are to be treated as adjacent to Wales for the purposes of this field and those which are not.”.

### **Amendments to Part 2 of Schedule 5 to the 2006 Act**

3.—(1) Paragraph A1(c) of Part 2 of Schedule 5 to the 2006 Act is amended in accordance with this article.

(2) Before the heading “*Highways and transport (field 10 of Part 1)*” insert—

“*Economic development (field 4 of Part 1)*”

(1) Generation of electricity at generating stations whose construction, extension or operation requires—

- (a) the consent of the Secretary of State, or
- (b) the authority of an order granting development consent under the Planning Act 2008,

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.

(2) Transmitting, distributing or supplying electricity.

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(a) 1991 c. 57.

(b) O.J. No. L 114, 27.4.2006, pp. 9-21.

(c) This paragraph was inserted by article 2(9) of the National Assembly for Wales (Legislative Competence) (Exceptions to Matters) Order 2009 (S.I. 2009/3006).

(3) Energy conservation, apart from the encouragement of energy efficiency otherwise than by prohibition or regulation.

(4) Nuclear energy and nuclear installations, including—

- (a) nuclear safety, and
- (b) liability for nuclear occurrences,

but this paragraph does not include disposal of very low level radioactive waste moved from a site whose use requires a nuclear site licence under the Nuclear Installations Act 1965(a)”.

(3) Under the heading “*Highways and transport (field 10 of Part 1)*”—

(a) after paragraph (1) insert—

“(1A) Road freight transport services, including goods vehicles operating licensing.”;

(b) for paragraph (2) substitute—

“(2) Regulation of the use of relevant vehicles on roads, the construction and use of relevant vehicles, and conditions under which relevant vehicles may be so used, apart from—

- (a) regulation of use of relevant vehicles carrying animals for the purposes of protecting human, animal, fish or plant health or the environment, and
- (b) regulation relating to matter 10.1.

For the purpose of this paragraph, “relevant vehicles” means motor vehicles, mobile machinery and agricultural and forestry tractors.”;

(c) after paragraph (14) insert—

“(14A) Aviation, air transport, airports and aerodromes, apart from—

- (a) financial assistance to providers or proposed providers of air transport services or airport facilities or services,
- (b) strategies by the Welsh Ministers or local or other public authorities about provision of air services, and
- (c) regulation of the use of aircraft carrying animals for the purpose of protecting—
  - (i) human health, apart from the health of persons in aircraft,
  - (ii) animal, fish or plant health, or
  - (iii) the environment.”;

(d) for paragraph (15) substitute—

“(15) Shipping, apart from—

- (a) financial assistance for shipping services to, from or within Wales, and
- (b) regulation of the use of vessels carrying animals for the purposes of protecting—
  - (i) human health, apart from the health of persons on vessels,
  - (ii) animal, fish or plant health, or
  - (iii) the environment.”;

(e) for paragraph (18) substitute—

“(18) Harbours, docks, piers and boatslips, apart from—

- (a) those used or required wholly or mainly for the fishing industry, for recreation, or for communications between places in Wales (or for two or more of those purposes), and

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(a) 1965 c.57. There have been amendments to section 1 of this Act, which restricts certain nuclear installations to licensed sites.

(b) regulation for the purposes of protecting human, animal, fish or plant health or the environment.

(19) Carriage of dangerous goods, including transport of radioactive material.”.

(4) After the exceptions listed under the heading “*Social Welfare (field 15 of Part 1)*” insert

“*Water and flood defence (field 19 of Part 1)*

(1) Appointment and regulation of any water undertaker whose area is not wholly or mainly in Wales.

(2) Licensing and regulation of any licensed water supplier within the meaning of the Water Industry Act 1991<sup>(a)</sup>, apart from regulation in relation to licensed activities using the supply system of a water undertaker whose area is wholly or mainly in Wales.”.

*Judith Simpson*  
Clerk of the Privy Council

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(a) 1991 c.56. Amendments to provide for the licensing of water suppliers other than water undertakers were made by the Water Act 2003 (c. 37), section 56 and Schedule 4, paragraphs 1-3.



## EXPLANATORY NOTE

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

This Order amends the Government of Wales Act 2006 (“the 2006 Act”). The Order extends the legislative competence of the National Assembly for Wales to make laws known as Measures of the National Assembly for Wales (referred to in the 2006 Act as “Assembly Measures”). The legislative competence conferred by this Order is subject to general limitations on the exercise of that legislative competence, which apply by virtue of section 94 of, and Schedule 5 to, the 2006 Act.

Article 2 inserts matters 6.1, 6.2, 6.3 and 6.4 into field 6 (environment) of Part 1 of Schedule 5 to the 2006 Act. It also inserts interpretation provisions into that field.

Matter 6.1 is about preventing, reducing, collecting, managing, treating or disposing of waste.

This matter does not include regulation of—

- (a) activity in the sea, or
- (b) the provision of postal services.

Matter 6.2 is about disposal of waste in the sea where the waste has been collected, managed or treated on land.

This matter does not include regulation of specified marine activities.

Regulation of the following is excepted from both matters 6.1 and 6.2—

- (a) decommissioned explosives held for military purposes,
- (b) radioactive material at military premises, and
- (c) large-scale carbon capture and storage.

Matter 6.3 is about protecting or improving the environment in relation to pollution.

This matter does not include—

- (a) regulating the composition and content of transport fuel;
- (b) specified obligations on persons who supply transport fuel;
- (c) specified matters relating to renewable energy and transport;
- (d) regulation of oil and gas exploration in certain parts of the sea.

Matter 6.4 is about protecting or improving the environment in relation to nuisances.

This matter does not include—

- (a) specified matters relating to criminal and civil liability for energy nuisances (apart from specified matters within the powers of the Welsh Ministers);
- (b) regulation of smoke, artificial light or noise from military premises;
- (c) regulation of oil and gas activities and oil and gas exploration and exploitation in the sea;
- (d) regulation of electronic communications and their networks;

Regulation of the following is excepted from both matters 6.3 and 6.4—

- (a) contained use of genetically modified organisms;
- (b) specified activities in the sea, and
- (c) marine licensing under Part 4 of the Marine and Coastal Access Act 2009.

The following are excepted from matters 6.1, 6.2, 6.3 and 6.4—

- (a) regulation concerning the control of major accident hazards;
- (b) regulation of the decommissioning of offshore energy installations and related infrastructure.

Article 3 amends Part 2 of Schedule 5 to the 2006 Act to make provision for exceptions that apply to all matters in Part 1 of Schedule 5. This article substitutes a number of existing exceptions in Part 2 (inserted by the National Assembly for Wales (Legislative Competence) (Exceptions to Matters) Order 2009 (SI 2009/3006) that are grouped in the field of highways and transport. It also inserts new exceptions into that group and creates new groups of exceptions in the fields of economic development and water and flood defence. The substituted exceptions and the new exceptions touch upon matters inserted by this Order.

A full regulatory impact assessment has not been prepared for this Order since the effect of this Order is only to confer competence on the National Assembly for Wales to legislate.

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STATUTORY INSTRUMENTS

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£5.50