

# Sustainability Committee

SC(3)-08-08 (p1) Annex C: 24 April 2008

## Letter from Proposed Environmental Protection and Waste Management Legislative Competence Order Committee to the Petitions Committee, 16 November 2007

Y Pwyllgor ar y Gorchymyn ynghylch Diogelu'r Amgylchedd a Rheoli Gwastraff

### Proposed Environmental Protection and Waste Management Legislative Competence Order Committee

Val Lloyd AM  
Chair, Petitions Committee,  
National Assembly for Wales  
Cardiff Bay  
Cardiff CF99 1NA

16 November 2007

Dear Val

#### Petition - Banning Plastic Bags

1. Thank you for your letter of 8 October.
2. The Committee discussed the petition at its meeting of 6 November 2007.
3. The Committee has been set up specifically to consider and report on the National Assembly for Wales (Legislative Competence) (No. 2) Order 2007, which seeks to confer legislative competence on the Assembly in relation to specified aspects of environmental protection and waste management.
4. The Committee has agreed that the scope of its work is broadly to consider whether:  
  
the general principles of the legislative competence as specified in the proposed Order should be conferred on the Assembly;  
  
the proposed Order provides an appropriate framework for the delivery of the policy agenda on environmental protection and waste management, and in particular whether the terms of the proposed Order are too broadly or too narrowly defined.
5. The Committee cannot provide definitive legal advice on whether the proposed Order would lead to the Assembly having the legislative competence to ban plastic bags.
6. If at a later date a proposed Measure is brought forward by the Assembly Government, a committee or a backbench Member to ban plastic bags, and a doubt remains as to whether it comes within the legislative competence of the Assembly, the definitive legal view would ultimately come from the Supreme Court on a reference by the Counsel General (or the Attorney General) under section 99 of the Government of Wales Act 2006.
7. Nonetheless, on 25 September during a meeting of the committee to scrutinise the proposed Order, the Minister for Environment, Sustainability and Housing provided the following response to a question on this point:

Mick Bates

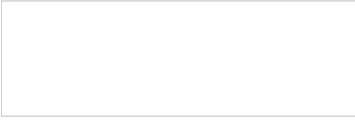
: Would the proposed LCO be of sufficient scope for legislation banning plastic bags?

Jane Davidson

: It would be of sufficient scope in terms of legislation to ban plastic bags, or it would enable a Measure to be passed to impose a levy on plastic bags by way of a charge made to consumers at the till point. There are a number of ways that you could take this forward. We would have to be mindful of European law in this context. Legal advice currently suggests that an outright ban on plastic bags may be contrary to EU law, because it is likely to be disproportionate to the aim pursued insofar as other steps, such as a levy, could be taken to address the problem. All of these matters would have to be considered by the Assembly of the future. So, in a sense, the broad answer to the question is 'yes', but you would have to take account of any other laws that are relevant in this context.

8. The full transcript of the committee's meeting is available on the Committee's webpage.
9. The Minister has also touched on the issue of plastic bags in her letters to the Committee on 1 and 25 October respectively, and copies of both letters are attached.
10. I hope this information is helpful,

Yours sincerely



Alun Ffred Jones AM  
Chair

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