Constitutional and Legislative Affairs Committee

Meeting Venue:
Committee Room 4 - Ty Hywel

Meeting date:
7 July 2011

Meeting time:
09:00

Cynulliad Cenedlaethol Cymru
National Assembly for Wales

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Agenda

1. Introduction, apologies, substitutions and declarations of interest

2. Instruments that raise no reporting issues under Standing Order 21.2 or 21.3

Negative Resolution Instruments

CLA11 - The Disabled Persons (Badges for Motor Vehicles) (Wales) (Amendment) Regulations 2011
Negative Procedure. Date made 22 June 2011. Date laid 29 June 2011. Coming into force date 1 August 2011

CLA12 - The Plastic Kitchenware (Conditions on Imports from China) (Wales) Regulations 2011 (Pages 1 - 43)
Negative Procedure. Date made 28 June 2011. Date laid 30 June 2011. Coming into force date 1 July 2011. These Regulations breach the 21 day rule.

Affirmative Resolution Instruments

None

3. Instruments that raise issues to be reported to the Assembly under Standing Order 21.2 or 21.3

Negative Resolution Instruments

None

Affirmative Resolution Instruments

CLA10 - The Environmental Permitting (England and Wales) (Amendment) Regulations 2011 (Pages 44 - 157)
Affirmative procedure. Date made not stated. Date laid not stated. Coming into force date in accordance with regulation 1(b).

4. Supplementary Legislative Consent Motion: Localism Bill (Pages 158 - 180)

5. Date of the next meeting

Papers to note
CLA(4)-02-11- Report of the meeting 29 June 2011

Transcript
View the meeting transcript.

Explanatory Memorandum to the Plastic Kitchenware (Conditions on Imports from China) (Wales) Regulations 2011

This Explanatory Memorandum has been prepared by the Food Standards Agency and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Member's Declaration

In my view the Explanatory Memorandum gives a fair and reasonable view of the expected impact of **The Plastic Kitchenware (Conditions on Imports from China) (Wales) Regulations 2011**. I am satisfied that the benefits outweigh any costs.

Lesley Griffiths AM

Minister for Health and Social Services

28 June 2011

Explanatory Memorandum for the Plastic Kitchenware (Conditions on Imports from China) (Wales) Regulations 2011

1. Description

This Statutory Instrument will provide for the provide for the implementation and enforcement of European Commission Regulation (EU) No. 284/2011 which lays down additional controls for the import of certain plastic kitchenware from China and Hong Kong (hereafter referred to as the Kitchenware Regulation)

2. Matters of Special Interest to the Constitutional and Legislative Affairs Committee

The Instrument breaches the 21 day rule. Member States are required under European law to transpose and implement the provisions of the Commission Decision into domestic Legislation by 1 July 2011. Parallel legislation in England, Scotland and Northern Ireland will also come into force no later than 1 July 2011. The breach of the 21-day rule is required to protect public health by ensuring that enforcement authorities have the necessary powers to carry out the additional controls required by Commission Directive 284/2011.

3. Legislative Background

Welsh Ministers have the powers to make these Regulations under sections 16(2), 17(2), 26(1)(a) and (3) and 48(1) of the Food Safety Act 1990.

This instrument is subject to the negative procedure.

4. Purpose and Intended Effect of the Legislation

This instrument designates Local Authorities and Port Health Authorities as having responsibility for the enforcement of the Kitchenware Regulation in Wales. It provides offences for contravening certain provisions of the EU Regulation and for defences against prosecution for committing an offence in particular circumstances, and specifies the penalties that the Courts may impose upon conviction for an offence.

This instrument also enables enforcement Authorities to recover the actual costs incurred in undertaking the additional enforcement activity arising from the EU Kitchenware Regulation in accordance with certain provisions of Regulation (EU) No. 882/2004 on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules.

5. Consultation

The FSA conducted a formal public consultation from 28 April to 27 May 2011, seeking comments on a draft of this instrument and an earlier draft of the

Impact Assessment. The EU Kitchenware Regulation was also included in the consultation package. Once more, Enforcement Authorities and their representative bodies, trade associations, individual companies (both large and SMEs), the UK Boarder Agency, HM Revenue and Customs and the UK's Official Control Laboratories were consulted.

The FSA received 10 responses to the consultation in England from local enforcement Authorities, industry and trade associations representing the interests of small food businesses and large retailers. There were no responses from stakeholders in Wales. Comments focused mainly on the estimated costs associated with the new legislation as reflected in the draft Impact Assessment.

There were several comments on the draft Regulations from Port Health Authorities (PHAs) on drafting detail and these have been acted upon where necessary.

Enforcement authorities were generally in support of the proposed control measures and the Regulations enforcing them for the increased protection they provided UK citizens from exposure to harmful chemicals. They indicated that costs for familiarising themselves ("familiarisation costs") with the requirements of new legislation were underestimated. The PHAs asked for further guidance on consistent execution of the Regulations.

There was a general consensus amongst industry that familiarisation costs had been underestimated. Industry suggested that it would be unable to pass the additional costs associated with these controls on to Chinese exporters. Industry also highlighted the costs of storing consignments subjected to random 10% checks and held pending analytical results and the costs associated with sourcing relevant products from countries other than China, should they opt to do so. Industry also raised the possibility that the charity/third sector could potentially be affected, although no comments were received from this sector.

Stakeholders were asked to provide evidence to support their views in relation to additional costs over and above their commercial activities of the proposed Regulations; however, none were able to quantify the additional costs in their comments or provide evidence to support their views.

A full summary of comments received in response to the consultation will be published on the FSA's website.

6. Regulatory Impact Assessment

Options Considered

Policy Option 1: Do Nothing. Do not provide for the execution and enforcement of the EU Kitchenware Regulation in Wales

This option would not prevent the EU Kitchenware Regulation from applying in Wales; it would already be legally binding and applicable throughout the European Union (EU). However, enforcement authorities in the UK would not

have the necessary powers to enable them to enforce it. Therefore, the UK's obligation (under the Treaty on the Functioning of the European Union) to put in place provisions for its enforcement would not be fulfilled which would be likely to lead to the UK being subject to infraction proceedings.

This option would also mean allowing China to continue to export polyamide and melamine plastic kitchenware into Wales without additional targeted controls, thus exposing consumers to the risk of ingesting primary aromatic amines and formaldehyde with potential adverse health effects.

Policy Option 2: National Regulations to provide for the execution and enforcement of the EU Kitchenware Regulation in Wales

This option provides a significant measure of control that would minimise the potential health risks. The control would, however, place some financial cost on businesses that use, sell and import such products into Wales. We understand, however, that in some instances (i.e. where importers products are not compliant with the law) UK importers and or their representatives will seek to recover these costs from the Chinese exporters. It is our view that large businesses are more likely to be able to achieve cost recovery from the Chinese businesses due to their extensive buying power. However, for SMEs this is less likely to be the case, potentially resulting in them having to bear the costs of the import controls.

This also ensures that enforcement authorities and port health authorities can fulfil the requirements placed upon them and the Courts can impose penalties that are consistent with those that apply elsewhere in Welsh food law. It also provides for defences to alleged offences in certain specified circumstances.

Policy Option 3 – Non-regulatory option - European Commission visits to China to encourage the Chinese control authorities to improve the safety standards of kitchenware manufactured there.

This option has been tried by the European Commission in the shape of two Food and Veterinary Office (FVO) missions with the Chinese control authorities in 2009; however, the initiatives identified serious weaknesses in the Chinese control systems. Thus, this option would fail to deliver the level of protection for consumers agreed as necessary by the EU, as large quantities of polyamide and melamine plastic kitchenware continued to fail to meet the requirements of Directive 2002/72/EC. This option would not fulfil the requirements of the EU Kitchenware Regulation and would therefore not be fit for purpose.

Thus, option 2 is the preferred option that will achieve the requirements of the EU Kitchenware Regulation.

Sectors Affected

Industry

This proposal will affect UK retailers, wholesalers and importers of plastic products from China. Businesses potentially affected by this measure are not identified by a specific standard industrial classification code (SIC), and as such it is difficult to provide accurate estimates of the precise number of businesses that will face an impact. Where appropriate, an attempt has been made to estimate the number of retailers and wholesalers *potentially* affected using the Interdepartmental Business Register (IDBR[1]) and the number of importers through the consulation process.

Retailers

For retailers, because it is not possible to isolate the precise subsectors affected by this Regulation we have made assumptions about the *types* of businesses that may face an impact using SICs that are broader than the limited remit of this policy[2]. As such, the sectors identified below will encompass, but be greater than, all affected businesses. This will inevitably lead to an overestimate of the costs involved but in the absence of any better data, will serve as useful upper bound.

Wholesalers

The number or wholesalers affected is derived from the IDBR[3] category labelled 'wholesale of other household goods'. Again, because of the wide coverage of this category and the fact that we are dealing with a specific industry in plastics, it is likely that we are overestimating the number of wholesalers affected. Some responses from consultation indicate that this is the case and the number of wholesalers is likely to be much lower than that which is reported here.[4] Estimated ranges start at only 100 first tier wholesalers but we believe this is likely to be an underestimate. Thus, to be conservative and ensure we have captured the full extent of wholesalers that may be affected by this legislation, we have used the figures provided by IDBR.

Importers

The IDBR does not identify importers as a distinct category and as such we have no robust data regarding the total number of importers that may be affected. However as an approximation, industry body membership data (obtained from consultation) indicates that the total number of nylon kitchenware importers in the UK is approximately 150. Some large retailers will also import directly but this is covered by the retail section above.

[1] http://statistics.gov.uk/idbr/idbr.asp

[2] Categories for retailers includes: 47.11 Retail sale in non-specialised stores with food, beverages or tobacco predominating; 47.19 Other retail sale in non-specialised stores and 47.52 Retail sale of hardware, paints and glass in specialised stores

[3] Categories for wholesalers; 46.49 Wholesalers of other household goods.

[4] Estimate ranges begin from only 100 first tier wholesalers.

Table 1 displays the estimated number of businesses affected by the proposal by country. Note that we currently have no information regarding the country level disaggregation of importers. The split has been estimated using the proportion of businesses in each of the countries in the other sectors using IDBR data. This is not therefore an accurate representation but may be used as an indicative estimate in the absence of robust data.

Table 1: Sectors Affected

	England	Wales	Scotland	NI	UK
Retailers	34,020	2,175	3,835	1,460	41,490
Wholesalers	4,860	140	220	120	5,340
Importers	125	7	13	5	150
Total	**39,005**	**2,322**	**4,068**	**1,585**	**46,980**

Source: IDBR and consultation process

Note: Totals may not sum due to rounding

HM Revenue and Customs (HMRC) and Local Authorities will also be affected by these proposals. For these bodies there will be a one-off cost for reading and familiarising themselves with the new Regulations. HMRC may also incur costs for delaying consignments awaiting release into free circulation, pending receipt of documents from Enforcement Authorities confirming their compliance with the EU Kitchenware Regulation and subsequent release. These costs will ultimately be recovered from the Food Standards Agency (the FSA) and so although HMRC will initially incur these costs the FSA will bear the final burden.

Option 1 – Do Nothing

Costs to the Consumer

This is the baseline with which other options are compared. The costs associated with this option are predominantly public health related. Excessive levels of primary aromatic amines (PAAs) are known to be carcinogenic and excessive levels of formaldehyde can have potential adverse health effects. If nothing is done to prevent China from exporting polyamide and melamine plastic kitchenware into Wales without additional targeted controls, consumers will be exposed to the risk of ingesting primary aromatic amines and formaldehyde with potentially serious health consequences.

Option 2 - Fully implements the necessary requirements and makes appropriate domestic Regulations for the execution and enforcement of the EU Kitchenware Regulation

This option would provide enforcement authorities with the necessary domestic legislation for the enforcment and execution of the EU Kitchenware Regulation in Wales, which is binding in its entirety and directly applicable in all EU Member States.

Costs to Enforcement Authorities

One-off Costs

There will be a one-off cost to enforcement authorities for reading and familiarisation with the new Regulations. Each Local Authority (LA) in its area and each Port Health Authority (PHA) in its district are responsible for enforcing the legislation with respect to food safety and/or food hygiene, and thus will have the responsibility for enforcing the food contact materials legislation. At this stage it is unclear if a Trading Standards Officer (TSO) or an Environmental Health Officer (EHO) would be responsible for enforcing and thus familiarising themselves with these Regulations. To account for the uncertainty, we have presented a range for the hourly wage rate using an EHO hourly salary of £20.45[5] as the lower bound, and a TSO hourly salary of £22.09[6] as the upper bound; the midpoint is £21.27[7].

We have estimated that one enforcement officer per LA will typically invest one hour to read and familiarise themselves with the new Regulations and that PHAs will require a further one hour to assimilate this information. In addition, we have estimated that each enforcement officer (in each PHA or LA) will spend a further hour disseminating key information to staff within the organisation; this results in a total of two hours for familiarisation in each LA and three hours per officer in each PHA.

Familiarisation costs are quantified by multiplying the hourly rate of a TSO/EHO by both the time required to read, assimilate and disseminate the new Regulations and the total number of enforcement authorities.

For LAs, using the range of enforcement officers wage rates: £20.45 - £22.09 and a time investment of two hours, results in a familiarisation cost per Local authority of between £40.90 and £44.17[8], with a best estimate of £42.54. For PHAs, using the same range of salaries and a time investment of three hours, results in a familiarisation cost for each PHA of between £61.35 and £66.26 with a best estimate of £63.80. This gives a best estimate of £1,000 total familiarisation cost in Wales**.** Table 2 displays the familiarisation cost by location using the best estimate.

[5] Wage rate obtained from the Annual Survey of Household Earnings, 2010.
(See:http://www.statistics.gov.uk/StatBase/Product.asp?vlnk=15313). Median hourly wage of 'Environmental health officers') £15.73 + 30% to cover overheads = £20.45).

[6] Wage rate obtained from the Annual Survey of Household Earnings, 2010.
(See:http://www.statistics.gov.uk/StatBase/Product.asp?vlnk=15313). Median hourly wage of 'Inspectors of factories, utilities and trading standards' (£16.99 + 30% to cover overheads = £22.09).

[7](£20.45 + £22.09)/2

[8] Note that wage rates have been estimated by taking the median rate and uplifting by 30% to account for overheads. This means that figures reported are to two decimal places and when multiplied the numbers may not accurately sum due to rounding.

Responses from the consultation process have indicated on the whole that time spent initially familiarising with the Regulations is reflected by this estimate. However, the responses also indicated that PHAs may require further familiarisation/training. One PHA suggested that 12 members of its enforcement team would be sent on a training course to ensure they could adequately enforce the legislation at a cost of £75 per officer. This additional requirement was not reflected by other PHAs however, in order to attempt to provide an estimate of the potential costs involved, we have assumed that on average each PHA will require additional training for six[9] members of staff at a cost of £75 per person.

Table 2 - 'One-Off' costs to Local Authorities and Port Health Authorities in the UK (Best Estimate)

Country	England	Wales	Scotland	NI	UK
Number of LAs	**354**	**22**	**32**	**26**	**434**
Familiarisation cost (LA)	£15,058	£936	£1,361	£1,106	£18,461
Number of PHAs	**39**	**1**	**N/A**	**N/A**	**£40**
Familiarisation cost (PHA)	£2,488	£64	N/A	N/A	£2,552
Training cost (PHA)	£17,550	£450	N/A	N/A	£18,000
Total Familiarisation cost (LA+PHA)	**£17,546**	**£1,000**			**£21,013**
Total One-off Cost (All familiarisation + Training)	**£35,096**	**£1,450**	**£1,361**	**£1,106**	**£39,013**

Note: Totals may not sum due to rounding

Wage rates are reported in the text to 2 decimal places and when grossed may result in a rounding error

Equivalent Annual Net Costs (EANC)

In order for 'one-off' transition costs to be compared on an equivalent basis across policies spanning different time periods, it is necessary to 'equivalently annualise' costs using a standard formula[10]. Under Standard HMT Green book guidance a discount rate of 3.5% is used.

A total one-off cost to enforcement authorities in Wales affected by this proposal is an estimated £35,096. This yields an EANC of approximately £4,077 in Wales over 10 years. Table 3 displays the breakdown of the EANC per country.

[9] Taking 6 as the midpoint of 0 and 12 to obtain an average estimate.

[10] EANCB = PVNCB/a_{tr}, Where a_{tr} is the annuity rate given by:

$$a_{t,r} = \sum_{j=0}^{t-1} \prod_{i=0}^{j} \left(\frac{1}{1+r_i} \right)$$

PVNCB is the present value of costs, r is the social discount rate and t is the time period over which the policy is being appraised.

Table 3: Equivalent Annual Costs to Enforcement Authorities (by location)

Country	EAC
England *	**£4,077**
Wales **	£168
Scotland	£158
NI	£128
UK	£4,532

Ongoing Costs[11]

In addition to reading and familiarisation costs, it is expected that the procedure for recording information arising from the controls will be established and reports will need to be forwarded to the Commission on a quarterly basis. This will require additional work for PHAs. The cost of this administrative work is not recoverable.

In a recent (2010) trial conducted by Suffolk Coastal Port Health Authority in Felixstowe, 1,657 consignments of plastic items were identified on manifests over a 10 week period, most of which will be captured by the EU Kitchenware Regulation.

Estimates of costs for a typical Port Health enforcement as exemplified by Felixstowe are shown in table 4 below. Note that each port will charge varying fees to business and thus evidence from Felixtowe is used indicatively and does not necessarily provide an accurate representation of costs to PHAs across the whole UK.

[11] Note that all costs in the ongoing costs section are attributable to the UK as a whole. In order to estimate the proportion of costs that may reasonably be attributed to England only we have assumed a proportionate split based on the IDBR country based distribution of businesses. This does not necessarily provide an accurate representation but is useful for indicative purposes and will serve as the best estimate in the absence of robust data.

Table 4 – Cost of activities at Felixstowe Port

	Activity – Document receipt & check	Time Involved	Officer (£50 inc on costs)	Admin (£22 inc on costs)
1	Check ship's manifest and detain consignments	10 mins		£3.67
2	Record receipt of Annex, commercial docs and analytical certificates, Invoice fees.	15 mins		£5.50
3	Conduct documentary check inc analytical cert check, stamp / sign / copy documents & notify HMRC (inc allowance for notifying customs of those consignments captured but not subject to checks)	30 mins	£25.00	
4	Record and submit data for quarterly return	12 mins		£4.40
		Sub total		**£38.57**
	Activity – Examination sampling & analysis			
1	Determination of correct sampling protocol – exam request information communicated to examination facility	15 mins	£12.50	
2	Examination of consignment including identity check	15 mins	£12.50	
3	Sampling of consignment according to legislation/ guidance	30 mins	£25.00	
	Sampling time (assuming simple sampling protocol)			
4	Prepare sample paperwork and issue detention notice	15 mins	£12.50	
5	Dispatch of samples to laboratory & consumables	Fixed Cost		
6	Analyst fee	Variable: Note Storage costs have been discussed separately in the cost section below	£400.00	
		Sub total		**£462.50**
	Activity – Charge for Onward transportation arrangements			
1	Arrangement for sampled consignments to move forward to ERTS for detention pending results – dealing with request, completion of additional paperwork.	30 mins	£25.00	
		Sub total		**£25.00**
		Total: excluding cost of tests and recording and submitting data		**£59.17**
		Total		**£526.07**

Source: Port of Felixtowe Suffolk

ERTS (Enhanced Remote Transit Shed)

Unrecoverable administrative costs

The evidence from Felixstowe suggests that recording and submitting data to the Commission will take an administrative member of staff 12 minutes to complete per consignment. The cost of reporting each consignment is quantified by multiplying the hourly wage rate of a member of staff carrying out the reporting (£22, as shown in table 4) by the length of time take per consignment (12 minutes) resulting in a cost of reporting each consignment of £4.40. The total cost is quantified by multiplying the cost of reporting each consignment (£4.40) by the total number of consignments entering the UK

(approximately 34,000), resulting in an annual reporting cost to enforcement authorities of £149,600. This cost is not recoverable.

Recoverable compliance costs

Table 4 also details other costs associated with complying with this regulation. Enforcement authorities will **initially** incur costs associated with administrative checks, sampling and analysis, and onward transportation. The costs highlighted here would be recovered from businesses. As table 4 indicates, the total cost of these actions (excluding analysis fees for tests and recording and submitting data) will cost approximately £59.17 per sampled consignment. In addition, all consignments entering the UK will be charged for the activities associated with document receipt and check. Table 5 details total activity costs incurred by Local Authorities (excluding sampling tests fees) that will be recovered from business.

Table 5: Summary of additional costs

Activity Type	Cost	Consignments affected	Total cost
Activity Doument reciept and check	£34.17	34,000	£1,161,667
Activity Examination sampling and anlaysis	£62.50	3,400	£212,500
Activity Charge for onward transportation	£25.00	3,400	£85,000
Total	£0.00	-	**£1,459,167**

Source: Data from Port of Felixtowe

Recoverable sampling and analysis costs

Enforcement authorities will also incur sampling and analysis costs as each sampled consignment will need to be tested. Initially these costs will be incurred by the enforcement authorities who send the consignments to public analysts; however, enforcement authorities will seek to recover the costs from food importers/or importers of those goods. Evidence from consultation suggests that for the most part importers **will not** be able to recover these costs from Chinese exporters particularly if the goods are sampled and found to be compliant with the legal requirements. If the products are found to be non-compliant then large businesses are more likely to be able to recover costs from Chinese exporters due to their strong buying power. SMEs however are unlikely to be able to claim back costs in the same way. Evidence from consultation has suggested that SMEs will not be able to recover costs from exporters under any circumstances.

The sampling and analysis cost per consignment comprises a test for formaldehyde and a test for PAAs. Each product will only be tested for **either** PAAs or Formaldehyde; nylon kitchenware will be tested for formaldehyde and melamine kitchenware for PAAs. Costs of these tests vary greatly between laboratories and prices have been quoted ranging from between £395 and £617 for formaldehyde and between £395 and £917 for PAAs. Using the upper and lower bounds yields a best estimate of £506 for formaldehyde and £656 for PAA. In the absence of robust evidence, we have assumed there will be an equal split of each type of test. Multiplying the average sampling cost by the

estimated number of consignments being sent for analysis each year (3,400), results in a total annual cost of £1,975,400, which will be charged back to industry (see industry cost section).

Total Ongoing Costs to Enforcement Authorities

Accounting for the fact that most of the costs discussed above will be recovered, ongoing costs to enforcement authorities is as detailed below:

Table 6: Ongoing Costs to Enforcement Authorities

On-going Enforcement Costs	Year 0 (m)	Year 1 (m)	Year 2 (m)	Year 3 (m)	Year 4 (m)	Year 5 (m)	Year 6 (m)	Year 7 (m)	Year 8 (m)	Year 9 (m)	Total Cost (m)	Present Value (m)
Reporting costs	£0.15	£0.15	£0.15	£0.15	£0.15	£0.15	£0.15	£0.15	£0.15	£0.15	£1.50	£1.29

Note: These costs are for the UK as a whole; for England only see summary table

The present value presents a discounted total cost. Discounting is a technique used to compare future costs (and benefits) that occur in different periods and is based on the principle that, generally, people place a higher value on money today than in the future, which is why future costs are discounted.

Costs to HM Revenue and Customs (HMRC)

There will be a one-off cost to HMRC for reading and familiarising with the new Regulations. We estimate that one member of HMRC staff per Port Health Authority (PHA) will typically invest one hour to read and familiarise themselves with the new Regulations, plus a further hour to disseminate key information to staff within the organisation;

The familiarisation cost to HMRC is quantified by multiplying the cost per organisation by the time required to read and disseminate the new Regulations. The familiarisation cost per organisation equates to £47.74[12] (the hourly wage rate of a public sector worker £23.87[13] multiplied by the time taken to become familiar with the regulation (2 hours). For the 39 PHOs in Wales, this generates a one off familiarisation cost to HMRC of approximately £47.74.

Equivalent Annual Costs (EAC)

It is necessary to equivalently annualise the one off cost to HMRC. The one cost component to HMRC in Wales totals £47.74, which equates to an equivalent annual cost to HMRC of approximately £216 over 10 years. Table 7 displays the familiarisation cost and EAC[14] by location.

[12] Note that wage rates have been estimated by taking the median rate and uplifting by 30% to account for overheads. This means that figures reported are to two decimal places and when multiplied the numbers may not accurately sum due to rounding.

[13] Wage rate obtained from The Annual Survey of Household Earnings, 2010 (See http://www.statistics.gov.uk/StatBase/Product.asp?vlnk=15313). Median hourly wage of 'Business and public service associate professionals (£18.36 + 30% to cover overheads = £23.87).

[14] EANCB = PVNCB/a_{tr}, Where a_{tr} is the annuity rate given by:

Table 7: Equivalent Annual Costs to HMRC (by location)

Country	Number of PHO's	Total	EAC
England	**39**	**£0**	**£216**
Wales	1	£0	£6
Total	40	£0	£222

Ongoing Costs to HMRC

The additional controls imposed by the new Regulations are likely to place a significant demand on the enforcement authority's resources. It is estimated from HMRC information that approximately 34,000 (per annum) consignments of plastic kitchenware are imported; it is envisaged that most of these consignment(s) will fall under the scope of the EU Kitchenware Regulation. The Regulation does not allow for the release into free circulation of any consignment(s) until satisfactory completion of checks has been confirmed by HMRC.

In accordance with Cabinet Office directives, HMRC could recover some costs from the FSA as the lead Agency in the UK. At present we have no detailed information about how this will be done (See FSA costs section for further details).

Costs to Industry

One-off Costs

Any likely costs to businesses associated with the proposed Regulations relate only to those businesses that import polyamide and melamine plastic kitchenware, this may include wholesalers, supermarkets and other retailers placing such products on the market. For these sectors, there will be a one-off cost for reading and familiarising with the Regulations. We have estimated that a business importing polyamide and melamine plastic kitchenware will spend one hour reading and familiarising themselves with the new Regulations. In addition, we have estimated that each person uses a further hour disseminating key information within the organisation, which is a total of two hours.

7. It will cost each business £31.15[15] to become familiar with the new Regulations (based on an hourly wage rate of £15.57[16] for a manager multiplied by the time

$$a_{t,r} = \sum_{j=0}^{t-1} \prod_{i=0}^{j} \left(\frac{1}{1+r_i} \right)$$

PVNCB is the present value of costs, r is the social discount rate and t is the time period over which the policy is being appraised.

[15] Note that wage rates have been estimated by taking the median rate and uplifting by 30% to account for overheads. This means that figures reported are to two decimal places and when multiplied the numbers may not accurately sum due to rounding.

taken to read and disseminate the information (2 hours)). The total cost is quantified by multiplying the cost per business (£31.15) by the number of retail, wholesale and importing businesses affected in Wales (39,005 as shown in table 1) which totals approximately £72,339 in Wales. The breakdown of costs is displayed in the table below:

Table 8: Familiarisation Costs to Industry

	All Retailers and Wholesalers					
Country	**Micro**	**Small**	**Medium**	**Large**	**Importers**	**Total**
England	**£1,098,135**	**£97,822**	**£11,559**	**£3,518**	**£3,879**	**£1,214,913**
Wales	£65,890	£5,438	£580	£200	£231	£72,339
Scotland	£115,500	£9,459	£997	£349	£405	£126,710
NI	£44,888	£3,774	£413	£138	£158	£49,371
UK	£1,324,413	£116,494	£13,549	£4,205	£4,672	£1,463,333

Source: IDBR and consultation process

Note: Totals may not sum due to rounding

As the number of importers of kitchenware products was not available from IDBR it has not been possible to disaggregate the figures in the same way as has been done for the retailers and wholesalers above. We have therefore made an assumption about the proportion of businesses in each of the countries based on the proportions presented by the IDBR data. This is not an accurate measure, but is indicative of the likely distribution.

Equivalent Annual Net Costs (EAC)

As with enforcement authorities above, the one-off cost to industry must also be expressed as equivalent annual costs (EAC[17]). Total one-off costs to industry in Wales have been estimated at £72,339. This yields an EAC for industry in Wales of approximately £8,404 over 10 years. Table 9 displays the breakdown of the EAC per country.

[16] Wage rate obtained from The Annual Survey of Household Earnings, 2010 (See http://www.statistics.gov.uk/StatBase/Product.asp?vlnk=15313). Median hourly wage of 'Managers in Distribution, Storage And Retailing' (£11.98 + 30% to cover overheads = £15.57).

[17] EANCB = PVNCB/a_{tr}, Where a_{tr} is the annuity rate given by:

$$a_{t,r} = \sum_{j=0}^{t-1} \prod_{i=0}^{j} \left(\frac{1}{1+r_i} \right)$$

PVNCB is the present value of costs, r is the social discount rate and t is the time period over which the policy is being appraised.

Table 9: Equivalent Annual Costs to Industry

Country	EAC
England	**£141,143**
Wales	£8,404
Scotland	£14,721
NI	£5,737
UK	£170,003

Ongoing Costs[18]

Sampling Costs

Importers will be charged by Port Health Authorities for their products being sent to public analysts for sampling. As discussed under costs to enforcement authorities there are considerable uncertainties regarding the likely costs of sampling due to difficulties in estimating the number of samples likely to be taken and subsequently sent for analysis. We have estimated that approximately 34,000 consignments containing plastic kitchenware articles are imported by the UK annually each containing numerous containers. Sampling will be carried out at a rate of approximately 10% of all consignments which annually results in 3,400 tests being carried out. As detailed in paragraph 47 our best estimate for the sampling and analysis cost is £1,975,400. Responses from consultation have indicated that large businesses may be able to recover some of these costs from Chinese exporters if samples taken are found to be non-compliant but that SMEs will be unable to recover any of these costs. However even for large businesses for any compliant samples, costs will not be recovered. Without further evidence regarding the likelihood of finding non-compliant samples and the volume of trade accounted for by large businesses in this sector it is not possible to estimate the proportion of costs that may be passed back to China. For the purpose of this analysis we have therefore conservatively assumed that **all costs** will be borne by UK Industry.

Storage Costs

Importers or their representatives may also incur additional costs if their consignments have been stored pending the release of analytical results. For example the Port of Felixstowe charges rent for each day a container remains on the port after a specified timescale. Each port charges different fees and so we've used the example of the Port of Felixstowe to illustrate the likely costs involved. See table 10 below:

[18] Note that all costs in the ongoing costs section are attributable to the UK as a whole. In order to estimate the proportion of costs that may reasonably be attributed to England only we have assumed a proportionate split based on the IDBR country based distribution of businesses. This does not necessarily provide an accurate representation but is useful for indicative purposes and will serve as the best estimate in the absence of robust data.

Table 10: Storage charges

Size of Container	Detainment charge from day 6 to day 12	Total Cost day 6 to 12*	Detainment charge from day 13 onwards	Total cost day 13 onwards**	Cost per container for 20 days	Cost per container 2 weeks (best estimate)
Up to 20 foot	£13.60	£95.20	£36.70	£293.60	£388.80	£168.60
Over 20 foot	£27.20	£190.40	£73.40	£587.20	£777.60	£337.20
Total All Consignments (up to 20 foot)						**£573,240**
Total All Consignments (over 20 foot)						**£1,146,480**

Source: Port of Felixtowe
**daily fee multiplied by 7 days*
***daily fee multiplied by 8 days*

Consultation with PHAs indicates that each consignment that is sampled will require storing until the analysis results are available. As approximately 10% of all consignments containing melamine plastic kitchenware products will be sampled, this means that all 3400 sampled consignments will require storing at the port for a period of time. Guidance for the EU Commission suggests that consignments could be held for up to 3 weeks but that the intention would be to have the tests carried out in two weeks or less. Therefore as a best estimate we have assumed that consignments may require storing for on average 2 weeks. The Port applies a daily storage fee (see table 10) for each container, based on the length of the detention and the size of the container. As we cannot be sure of the size of the containers being stored we have used a range based on the cost of storing each size. Using costs provided by the Port of Felixstowe (see table 9 above), cumulative daily storage fees for a total of 14 days range from £168.60 to £337.20 per container. This yields a total cost to industry of between £573,240 and £1,146,480.

Demurrage costs

Responses from consultation have highlighted that in addition to charges made for storage, containers held at port will also incur demurrage fees (charged by the shipping line) at approximately £60-£120 per day for each additional day that the container is held in port. We are advised that each shipping company will make charges after differing periods of time but beginning at around 14 days is average. As we've assumed in the storage costs section above that on average containers will be held for two weeks, it seems reasonable to assume here that a maximum of 50% of containers will be held for up to 20 days. Using the sample rate of 10% and assuming 50% of these will be held for 20 days results in 1700 affected consignments and a cost ranging between £102[19]k and £204k[20] annually, with a best estimate of £153k.

[19] £60*1700 consignments

[20] £120*1700 consignments

Other Recovered PHA Costs

As detailed in the 'costs to enforcement authorities' section above, PHAs will seek to recover additional administrative costs associated with document checking, onward transportation and sampling. Table 5 provides detail on the breakdown of this; the total cost amounts to approximately £1,459,167 annually.

Total Ongoing costs to Industry

Note that the annual costs presented below are quoted in constant prices. This means that the costs have been adjusted for any impact that inflation may have on rising prices over the period.

Table 11: Ongoing Costs to Industry

On-going costs to Industry	Year 0 (m)	Year 1 (m)	Year 2 (m)	Year 3 (m)	Year 4 (m)	Year 5 (m)	Year 6 (m)	Year 7 (m)	Year 8 (m)	Year 9 (m)	Total Cost (m)	Present Value (m)
costs	£1.98	£1.98	£1.98	£1.98	£1.98	£1.98	£1.98	£1.98	£1.98	£1.98	£19.75	£17.00
Detainment fee	£0.99	£0.99	£0.99	£0.99	£0.99	£0.99	£0.99	£0.99	£0.99	£0.99	£9.91	£8.53
Demurrage Fees	£0.15	£0.15	£0.15	£0.15	£0.15	£0.15	£0.15	£0.15	£0.15	£0.15	£1.53	£1.32
PHA costs	£1.46	£1.46	£1.46	£1.46	£1.46	£1.46	£1.46	£1.46	£1.46	£1.46	£14.59	£12.56
Total Costs	**£4.58**	**£4.58**	**£4.58**	**£4.58**	**£4.58**	**£4.58**	**£4.58**	**£4.58**	**£4.58**	**£4.58**	**£45.79**	**£39.41**

Note: These costs are for the UK as a whole; for England only see summary table

The present value presents a discounted total cost. Discounting is a technique used to compare future costs (and benefits) that occur in different periods and is based on the principle that, generally, people place a higher value on money today than in the future, which is why future costs are discounted.

Foregone Earnings

Industry may face further costs as a result of consignment detainment associated with loss of earnings for foregone sales. If businesses do not have enough products in stock to compensate for product detainment this could potentially be a costly issue. Some consultation responses have highlighted potential problems in this area particularly around season/festival specific produce e.g. Halloween. Storage of up to 20 days at specific times of year could mean that the goods cannot be sold in the limited sales period available. Consulted parties were not able to provide estimates of the likely scale/magnitude of such sales losses due to uncertainties around the underlying data i.e. how often one of their containers will be sampled and how long it will be held at port, and as such it has not been possible to provide a quantification of these costs; any estimates would also be dependent on the time of year.

Costs of product destruction

EU guidance does not automatically necessitate destruction of products if they do not comply with the EU regulation.[21] In the possible scenario that the plastic

[21] The competent authority should place under official detention a consignment that does not comply with the applicable food contact materials legislation and, having heard the business operators responsible for the consignment; it could take the following measures:

kitchenware is destroyed as a result of containing excessive levels of PAA and formaldehyde, the importer would initially bear the costs. However we anticipate that some of the costs incurred could be recovered from the Chinese exporter. Again, it is more likely that large businesses will be able to the recover full costs whereas this may be more difficult for SMEs. We have been unable to quantify the costs associated with destruction due to underlying uncertainties which has meant importers were unable to provide evidence, but we anticipate that where costs are incurred they will diminish over time for two reasons 1) that if kitchenware suppliers (Chinese exporters) have to bear the costs of destroyed products they will be less likely to infract the EU Kitchenware Regulation in future and 2) that if importers have to bear the costs they will switch to suppliers with a reputation for adhering to the standards set. In addition as there is scope under EU guideline for not requiring destruction of produce we anticipate that this would be used only as a last resort.

Food Standards Agency (FSA)

The FSA will incur charges from HMRC for compliance checks for release for free circulation of plastic products from China on the FSA's behalf. HMRC will charge the FSA a one-off fee of £161.50 to set up new proposed measures. HMRC will also charge the FSA an Annual fee of £64.60 for review of the measure. HMRC will then charge a fee of £8.84 to check each import declaration which is sent before the arrival of a consignment. To quantify the cost to the FSA of HMRC checking all import declarations we multiply the charge per check (£8.84) by the number of declarations that will accompany a consignment of plastics from China (approximately 34,000) resulting in an annual cost of checking each declaration of £300,560. This results in total annual cost of £300,625[22] for each consignment being checked and the annual review. There will also be a one-off cost of £162 for HMRC set up fee.

Equivalent Annual Net Costs (EANC)

It is necessary to equivalently annualise the one off cost to the FSA. The one cost component to the FSA totals £162.50, which equates to an equivalent annual cost to the FSA of approximately £19.72 over 10 years.

(a) order that such plastic kitchenware be destroyed, in particular in cases where the consignment is injurious to human health or is unsafe;

(b) order that such plastic kitchenware be re-dispatched outside the Union; (c) order that such plastic kitchenware be used for purposes other than those for which it was originally intended; (d) if the plastic kitchenware has already been placed on the market, monitor it or, if

necessary, order its recall or withdrawal before taking one of the measures referred to above.

[22] £300,560+ annual fee of £64.60

8. Ongoing Costs[23]

Table 12: Ongoing Costs to the FSA

On-going Agency Costs	Year 0 (m)	Year 1 (m)	Year 2 (m)	Year 3 (m)	Year 4 (m)	Year 5 (m)	Year 6 (m)	Year 7 (m)	Year 8 (m)	Year 9 (m)	Total Cost (m)	Present Value (m)
HMRC Charge and annual review cost (UK)	£0.30	£0.30	£0.30	£0.30	£0.30	£0.30	£0.30	£0.30	£0.30	£0.30	£3.01	£2.59

Note: These costs are for the UK as a whole; for England only see summary table

The present value presents a discounted total cost. Discounting is a technique used to compare future costs (and benefits) that occur in different periods and is based on the principle that, generally, people place a higher value on money today than in the future, which is why future costs are discounted.

Total Costs Summary

A table summarising all one-off and ongoing annual costs to affected parties has been provided below for reference. Please note that all costs reported so far in the ongoing costs sections and one-off costs to the FSA section are attributable to the UK as a whole. In order to estimate the proportion of costs that may reasonably be attributed to Wales only we have assumed a proportionate split based on the IDBR country based distribution of businesses. This does not necessarily provide an accurate representation but is useful for indicative purposes and will serve as the best estimate in the absence of robust data.

Table 13: Costs Summary Table

	Year 0 (m)	Year 1 (m)	Year 2 (m)	Year 3 (m)	Year 4 (m)	Year 5 (m)	Year 6 (m)	Year 7 (m)	Year 8 (m)	Year 9 (m)	Total Cost (m)	Present Value (m)
One off costs												
Enforcement Authorities	£0.004	£0.004	£0.004	£0.004	£0.004	£0.004	£0.004	£0.004	£0.004	£0.004	£0.041	£0.035
Industry	£0.141	£0.141	£0.141	£0.141	£0.141	£0.141	£0.141	£0.141	£0.141	£0.141	£1.411	£1.215
HMRC	£0.000	£0.000	£0.000	£0.000	£0.000	£0.000	£0.000	£0.000	£0.000	£0.000	£0.002	£0.002
FSA	£0.000	£0.000	£0.000	£0.000	£0.000	£0.000	£0.000	£0.000	£0.000	£0.000	£0.000	£0.000
Total	**£0.145**	**£0.145**	**£0.145**	**£0.145**	**£0.145**	**£0.145**	**£0.145**	**£0.145**	**£0.145**	**£0.145**	**£1.455**	**£1.252**
Ongoing costs	£0.00	£0.00	£0.00	£0.00	£0.00	£0.00	£0.00	£0.00	£0.00	£0.00	£0.00	£0.00
Enforcement Authorities	£0.12	£0.12	£0.12	£0.12	£0.12	£0.12	£0.12	£0.12	£0.12	£0.12	£1.24	£1.07
Industry	£3.80	£3.80	£3.80	£3.80	£3.80	£3.80	£3.80	£3.80	£3.80	£3.80	£38.02	£32.72
HMRC	£0.00	£0.00	£0.00	£0.00	£0.00	£0.00	£0.00	£0.00	£0.00	£0.00	£0.00	£0.00
FSA	£0.30	£0.30	£0.30	£0.30	£0.30	£0.30	£0.30	£0.30	£0.30	£0.30	£3.01	£2.59
Total	**£4.23**	**£4.23**	**£4.23**	**£4.23**	**£4.23**	**£4.23**	**£4.23**	**£4.23**	**£4.23**	**£4.23**	**£42.26**	**£36.38**
Grand Total	**£4.37**	**£4.37**	**£4.37**	**£4.37**	**£4.37**	**£4.37**	**£4.37**	**£4.37**	**£4.37**	**£4.37**	**£43.72**	**£37.63**

Note: All costs have been presented on an annual basis. For one off costs the equivalent annual cost value is used.

[23] Note that all costs in the ongoing costs section are attributable to the UK as a whole. In order to estimate the proportion of costs that may reasonably be attributed to England only we have assumed a proportionate split based on the IDBR country based distribution of businesses. This does not necessarily provide an accurate representation but is useful for indicative purposes and will serve as the best estimate in the absence of robust data.

Benefits

Option 1 – Do nothing

There are no identifiable incremental benefits for this option.

Option 2 - Fully implements the necessary requirements and make appropriate domestic Regulations for the execution and enforcement that will support the EU Kitchenware Regulation

This option would ensure that enforcement authorities within Wales, including port health authorities, have adequate statutory powers to prevent the placing on the market of those materials and articles that fail to meet the requirements of the EU Kitchenware Regulation. This option would also harmonise standards across Member States and prevent any distortion of trade occurring as a result of there being different regulations in different individual Member States. It also meets the Government's commitment to fulfil its EU obligations and contributes significantly to providing the means of protecting consumers from ingesting harmful levels of chemicals that could have adventitiously migrated from the materials or articles that were intended to be brought into contact with food.

Consumers

This option minimises the potential for consumers to be exposed to harmful levels of substances migrating from food contact materials and articles to the food itself.

However, the benefit to consumer health is unquantifiable as it is impossible to isolate the benefits of this Regulation to a reduction in ill health from chemical contamination. Excessive levels of PAAs are known to be carcinogenic; it's not possible to provide more information, as no one type of cancer can be isolated because PAAs are genotoxic. In such instances it is not possible to quantify the benefits to consumer health. Excessive levels of formaldehyde can have potential adverse health effects. For further detail on this please see Annex 4.

Consultation

In Spring/Summer 2010, during the course of European negotiations, the FSA conducted an informal consultation on the Commission's draft proposal for specific control measures on polyamide and melamine plastic kitchenware originating in or consigned from China. Enforcement authorities and their representative bodies, trade associations, individual companies (both large businesses and SMEs), the UK Border Agency and HM Revenue and Customs and the UK's Official Control Laboratories were targeted. Responses to the consultation played a key role in shaping the EU Kitchenware Regulation. The FSA has continued to liaise with many of these stakeholders and has kept them abreast with developments.

The informal consultation carried out in 2010 raised a number of pertinent issues about cost implications in relation to the EU Kitchenware Regulation from enforcement authorities and industry. These comments informed the UK's approach to discussions in EU Working Group meetings, which led to a substantial reduction in the percentage of consignments to be subjected to random physical checks from the 50% initially proposed by the Commission down to 10%, as reflected in the published EU Regulation.

Formal Public Consultation

The FSA conducted a formal public consultation from 28 April to 27 May 2011, seeking comments on a draft of this instrument and an earlier draft of the Impact Assessment. The EU Kitchenware Regulation was also included in the consultation package. Once more, Enforcement Authorities and their representative bodies, trade associations, individual companies (both large and SMEs), the UKBA, HMRC and the UK's Official Control Laboratories were consulted.

The FSA received 10 responses to the consultation in England from Enforcement Authorities, industry and trade associations representing the interests of small food businesses and large retailers. Comments focused mainly on the estimated costs associated with the new legislation as reflected in the draft Impact Assessment.

There were several comments on the draft Regulations from Port Health Authorities (PHAs) on drafting detail and these have been acted upon where necessary.

Enforcement authorities were generally in support of the proposed control measures and the Regulations enforcing them for the increased protection they provided UK citizens, from exposure to harmful chemicals. They indicated that costs for familiarising themselves ("familiarisation costs") with the requirements of new legislation were underestimated. The PHAs asked for further guidance on consistent execution of the Regulations.

There was a general consensus amongst industry that familiarisation costs had been underestimated. Industry suggested that it would be unable to pass the additional costs associated with these controls on to Chinese exporters. Industry also highlighted the costs of storing consignments subjected to random 10% checks and held pending analytical results and the costs associated with sourcing relevant products from countries other than China, should they opt to do so. Industry also raised the possibility that the charity/voluntary sector could potentially be affected, although no comments were received from this sector.

Stakeholders were asked to provide evidence to support their views in relation to additional costs over and above their commercial activities of the proposed Regulations; however, none were able to quantify the additional costs in their comments or provide evidence to support their views.

A full summary of comments received in response to the consultation will be published on the FSA's website.

Enforcement

The purpose of The Plastic Kitchenware (Conditions on Imports from China) (Wales) Regulations 2011 is to provide enforcement authorities, e.g. Environmental Health Officers, Trading Standards Officers and Port Health Officers with the necessary powers to prevent non-compliant polyamide and melamine plastic kitchenware originating in or consigned from China from entering the market in Wales.

Statutory Review

The Minister for Health and Social Services has agreed to the Food Standards carrying out a review of these regulations within five years. The review period begins when the proposed Regulations that are the subject of this impact assessment come info force. In carrying out the review, the FSA is required to produce a report that will assess whether the Regulations achieved their intended objectives. The report will also assess if these objectives could be achieved by means that impose less regulation.

EU Guidance

The Commission has produced draft EU guidelines to provide guidance on the application of the EU Kitchenware Regulation to assist businesses and enforcement bodies. The Commission's Joint Research Centre (JRC) has also produced draft technical Guidelines[24] for laboratories on testing the migration of PAAs from polyamide kitchenware and for formaldehyde from melamine plastic kitchenware. The draft guidelines are currently under discussion with Member States, once agreed; they will be adopted and published. The guidelines, when published, will be available on the Commissions website at:

http://ec.europa.eu/food/food/chemicalsafety/foodcontact/index_en.htm

Risks

For option 1 'Do nothing' - the risk of not having the Regulations in place would mean that enforcement authorities would not have the necessary powers to enable them to enforce the EU Kitchenware Regulation. Therefore, the obligations to put in place the provisions for its enforcement, for offences to be prosecuted and for penalties for those found to be in breach of the EU Kitchenware Regulation will not be fulfilled. This would lead the UK Government being cited in infraction proceedings by the Commission and this in turn could

[24] The technical Guidelines produced by the JRC have been produced in collaboration with its EU official network of National Reference Laboratories and endorsed by the Commission's competent service DG Health and Consumers (DG SANCO) and its network of Member State Competent Authorities.

result in financial penalties being incurred. It would also leave the regulation of food contact materials in the UK deficient in comparison with the rest of the EU.

Consumer safety may also be compromised and the potential for consumers to be exposed to harmful levels of substances migrating from food contact materials to the food itself.

9. Due to the specific nature of this Regulation and the fact that the plastics sector is not a specified category in the Standard Industry Codes (SIC), we are likely to be overestimating the number of affected businesses. Because we are likely to be overestimating the number of businesses affected it will lead to an overestimation of the familiarisation costs to industry as the number of businesses affected drives the familiarisation cost.

   The assumptions used to derive the annual costs assume that the number of imports of plastics from China will remain constant throughout the duration of this policy. It is likely that the number of imports of plastics from China will decline after the application of this regulation as a result of costs being imposed on industry, which may lead to plastic imports being sourced from other areas. However, we lack sufficient data to make the assumptions about future imports of plastics from China so are likely to be over estimating the ongoing costs of this policy.

   We have had to make assumptions regarding the number of consignments that will be tested and therefore detained.

Specific Impact Tests

Competition Assessment

We have fully considered the questions posed in the Office of Fair Trading (OFT) competition assessment test[25] and conclude that the preferred policy option on the proposed Regulations that enforce the EU Kitchenware Regulation are unlikely to hinder the number or range of businesses or the ability for operators to compete. The proposals are unlikely to significantly affect competition and will apply equally to all importers and retailers of polyamide and melamine plastic kitchenware. The EU legislation is directly binding on all Member States and the businesses that trade within them. Charities and voluntary organisations are also unlikely to be affected by these proposals.

Small Firms Impact Test

Stakeholders, including the Department for Business Innovation and Skills (BIS), and the Federation of Small Businesses have been consulted throughout the negotiations on the EU Kitchenware Regulation, in an earlier informal consultation and throughout the formal consultation process. From responses to the consultation we understand that large business importers may be able

[25] http://www.oft.gov.uk/shared/_oft/reports/comp_policy/oft876.pdf

recover some of the costs of testing and sampling from the Chinese exporters if products are found to be non-compliant but it will not be possible to recover costs if products are compliant with the regulation. Consultation responses further indicated that from SMEs cost recovery will not be possible at all even if products are found to be non-compliant due to their limited market power. In addition, the incremental costs resulting from this policy will account for a larger percentage of revenue for a smaller firm and it may lack the resources and scale to cope with the additional regulations compared to larger companies.

Sustainability

Impacts under the three pillars of sustainable development (environment, economic and social) have been and continue to be considered in the preparation of this Impact Assessment. Option 2 is the preferred option as it provides enforcement authorities the necessary powers to enforce the EU Kitchenware Regulation to ensure that polyamide and melamine plastic kitchenware entering the retail market in Wales are compliant with the that Regulation. This option will also provide a significant measure of control that would minimise the potential health risks to consumers.

Race/Gender/Disability equality issues

The FSA believes that the proposal will have no impact on race, gender or disability equality issues.

WELSH STATUTORY INSTRUMENTS

2011 No. 1605 (W.186)

FOOD, WALES

The Plastic Kitchenware (Conditions on Imports from China) (Wales) Regulations 2011

EXPLANATORY NOTE

(This note is not part of the Regulations)

1. These Regulations provide for the execution and enforcement in relation to Wales of Commission Regulation (EU) No. 284/2011 laying down specific conditions and detailed procedures for the import of polyamide and melamine plastic kitchenware originating in or consigned from the People's Republic of China and Hong Kong Special Administrative Region, China (OJ No. L77, 23.3.2011, p.25) ("the Commission Regulation").

2. These Regulations —

(a) prohibit the placing on the market of polyamide and melamine plastic kitchenware from China and Hong Kong that does not comply with the conditions or has not undergone the import checks and certification specified in the Commission Regulation (*regulation 3*);

(b) make it an offence to breach any prohibition set out in regulation 3 (*regulation 4*);

(c) designate the competent authorities for the purposes of certain provisions of the Commission Regulation (*regulation 5*);

(d) provide that it is the duty of local food authorities to execute and enforce the Commission Regulation and to inform the Food Standards Agency where laboratory analysis of imports of plastic kitchenware indicates non-compliance with that Regulation (*regulation 6*);

(e) provide for the expenses incurred by food authorities in carrying out the official controls

required by the Commission Regulation to be recovered from importers (*regulation 7*);

(f) specify the measures to be taken by a food authority where a consignment is not accompanied by the required documentation or is otherwise found to be non-compliant (*regulation 8*);

(g) provide for a right of appeal by an importer against the decision of an authorised officer of a food authority to take measures under regulation 8 (*regulation 9*);

(h) provide for the suspension of designated first points of introduction (*regulation 10*); and

(i) apply with modifications specified provisions of the Food Safety Act 1990 for the purposes of these Regulations and the Commission Regulation (*regulation 11*).

3. These Regulations require the Food Standards Agency to review their operation and effect and publish a report within 5 years of their coming into force and within every 5 years after that. Following a review it will fall to the Welsh Ministers, having taken advice from the Food Standards Agency, to consider whether the Regulations should remain as they are or be amended or revoked (*regulation 12*). A further instrument would be needed to revoke or amend the Regulations.

4. A regulatory impact assessment has been prepared as to the likely costs and benefits of complying with these Regulations and is available from the Food Standards Agency, 11th Floor, Southgate House, Cardiff, CF10 1EW.

WELSH STATUTORY INSTRUMENTS

2011 No. 1605 (W. 186)

FOOD, WALES

The Plastic Kitchenware (Conditions on Imports from China) (Wales) Regulations 2011

Made *28 June 2011*

Laid before the National Assembly for Wales *30 June 2011*

Coming into force *1 July 2011*

The Welsh Ministers make the following Regulations in exercise of the powers conferred by sections 16(2), 17(2), 26(1)(a) and (3) and 48(1) of the Food Safety Act 1990(**1**), and now vested in them(**2**).

In so far as these Regulations cannot be made under the powers in the Food Safety Act 1990 specified above, the Welsh Ministers make these Regulations in exercise of the powers conferred on them by section 2(2) of the European Communities Act 1972(**3**).

(**1**) 1990 c.16, section 1(1) and (2) (definition of "food") was substituted by S.I. 2004/2990. Sections 17 and 48 were amended by paragraphs 12 and 21 respectively of Schedule 5 to the Food Standards Act 1999 (1999 c.28), "the 1999 Act". Section 48 was also amended by S.I. 2004/2990. Section 53(2) was amended by paragraph 19 of Schedule 16 to the Deregulation and Contracting Out Act 1994 (1994 c.40), Schedule 6 to the 1999 Act, S.I. 2004/2990 and S.I. 2004/3279.

(**2**) Functions formerly exercisable by "the Ministers" (being, in relation to England and Wales and acting jointly, the Minister of Agriculture, Fisheries and Food and the Secretaries of State respectively concerned with health in England and food and health in Wales) so far as exercisable in relation to Wales were transferred to the National Assembly for Wales by the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672) as read with section 40(3) of the 1999 Act, and subsequently transferred to the Welsh Ministers by paragraph 30 of Schedule 11 to the Government of Wales Act 2006 (2006 c.32).

(**3**) 1972 c.68.

The Welsh Ministers have been designated for the purposes of section 2(2) of the European Communities Act 1972 in relation to measures relating to food safety (including drink)(**1**).

In accordance with section 48(4A) of the Food Safety Act 1990 they have had regard to relevant advice given by the Food Standards Agency.

As required by Article 9 of Regulation (EC) No. 178/2002 of the European Parliament and of the Council laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety(**2**), there has been open and transparent public consultation during the preparation and evaluation of these Regulations.

Title, application and commencement

1.—(1) The title of these Regulations is the Plastic Kitchenware (Conditions on Imports from China) (Wales) Regulations 2011.

(2) These Regulations apply in relation to Wales and come into force on 1 July 2011.

Interpretation

2.—(1) In these Regulations —

"the Act" ("*y Ddeddf*") means the Food Safety Act 1990;

"the Agency" (*"yr Asiantaeth"*) means the Food Standards Agency;

"the Commission Regulation" *("Rheoliad y Comisiwn"*) means Commission Regulation (EU) No. 284/2011 laying down specific conditions and detailed procedures for the import of polyamide and melamine plastic kitchenware originating in or consigned from the People's Republic of China and Hong Kong Special Administrative Region, China(**3**);

(**1**) S.I. 2005/1971.

(**2**) OJ No. L31, 1.2.2002, p.1. That Regulation was last amended by Regulation (EC) No. 596/2009 of the European Parliament and of the Council adapting a number of instruments subject to the procedure referred to in Article 251 of the Treaty to Council Decision 1999/468/EC with regard to the regulatory procedure with scrutiny: Adaptation to the regulatory procedure with scrutiny – Part Four (OJ No. L188, 18.7.2009, p.14).

(**3**) OJ No. L77, 23.3.2011, p.25.

"food authority" ("*awdurdod bwyd"*) has the meaning that it bears by virtue of section 5(1A) of the Act; and

"relevant product" (*"cynnyrch perthnasol"*) means plastic kitchenware originating in or consigned from the People's Republic of China and Hong Kong Special Administrative Region, China.

(2) Any expression used in these Regulations and the Commission Regulation has the same meaning in these Regulations as it bears in the Commission Regulation and any reference to a numbered Article is a reference to the Article so numbered in the Commission Regulation.

(3) Where any functions under the Act are assigned —

(a) by an order under section 2 of the Public Health (Control of Disease) Act 1984(**1**), to a port health authority; or

(b) by an order under section 6 of the Public Health Act 1936(**2**), to a joint board for a united district;

any reference in these Regulations to a food authority must be construed, so far as relating to those functions, as a reference to the authority to whom they are so assigned.

Breach of conditions on import of plastic kitchenware from China

3.—(1) No person may place on the market in Wales any relevant product that has been imported into the European Union other than in compliance with the requirements of Article 3(1), (2) and (3) (import conditions).

(2) No person may place on the market in Wales any relevant product until —

(a) the checks specified in paragraph 1(a) and, as the case may be, paragraph 1(b) of Article 6 (controls at the first point of introduction) have been completed; and

(b) the food authority has issued a declaration in accordance with Article 3(4) indicating that the relevant product conforms and is thus acceptable for release into free circulation.

(**1**) 1984 c.22; section 7(3)(d) was substituted by paragraph 27 of Schedule 3 to the Food Safety Act 1990.

(**2**) 1936 c.49; section 6 is to be read with paragraph 1 of Schedule 3 to the Food Safety Act 1990.

Offences and penalties

4. Any person who fails to comply with paragraph (1) or (2) of regulation 3 is guilty of an offence and liable —

(a) on summary conviction, to a fine not exceeding the statutory maximum; or

(b) on conviction on indictment, to a fine.

Competent authorities

5.—(1) The competent authority for the purposes of Articles 3(1) and (4), 4, 6(1), 7 and 9 is each food authority in its area or united district.

(2) The competent authority for the purpose of Article 6(2) is the Agency.

Execution and enforcement

6.—(1) It is the duty of each food authority in its area or united district to execute and enforce the Commission Regulation and these Regulations.

(2) Each food authority must—

(a) immediately inform the Agency of the results of any laboratory analysis which it has caused to be carried out under Article 6(1) if the results of that analysis indicate non-compliance; and

(b) give the Agency such information and assistance as it may reasonably request in connection with the execution and enforcement of these Regulations.

(3) The Commission for Her Majesty's Revenue and Customs must carry out the functions given to customs authorities under Article 8.

Expenses arising from official controls

7.—(1) Expenses charged pursuant to Article 27(1) of Regulation 882/2004 by a food authority to an importer in connection with the checks mentioned in Article 6(1) are payable by the importer on the written demand of the food authority.

(2) Where a food authority identifies non-compliance—

(a) with the requirements of Article 3(1), (2) or (3) or Article 4; or

(b) following the checks mentioned in Article 6(1)(b),

expenses charged pursuant to Article 54(5) of Regulation 882/2004 by a food authority to an importer are payable by the importer on the written demand of the food authority.

(3) In paragraph (1) and (2) and in regulation 8(3), "Regulation 882/2004" (*"Rheoliad 882/2004"*) means Regulation (EC) No. 882/2004 of the European Parliament and of the Council on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules(**1**).

Notices and actions in the case of non-compliance

8.—(1) If an importer presents a consignment of relevant product for import into Wales without submitting a declaration and accompanying laboratory report in accordance with the requirements of Article 3(1),(2) and (3), the food authority may by written notice require the importer to submit such a declaration within 14 days of the date of service of the notice.

(2) If the checks provided for in Article 6(1) indicate that —

(a) where notice has been served under paragraph (1), the declaration specified in Article 3(1) together with the laboratory report specified in Article 3(3) has not been submitted by the date specified in the notice; or

(b) where notice has not been served under paragraph (1), the declaration specified in Article 3(1) together with the laboratory report specified in Article 3(3) has not been submitted; or

(c) a declaration or a laboratory report has been submitted that does not comply with the requirements of Article 3(1),(2) and (3); or

(d) the relevant product that is the subject of the checks —

(i) fails an identity check, or

(ii) does not meet the requirements of Commission Regulation (EU) No. 10/2011 on plastic materials and articles intended to come into contact with food(**2**),

the food authority must take the steps set out in paragraph (3).

(3) The food authority must, by written notice —

(**1**) OJ No. L165, 30.4.2004, p. 1. The revised text is set out in a corrigendum (OJ No. L191, 28.5.2004, p.1). This Regulation was last amended by Commission Regulation (EU) No. 208/2011 amending Annex VII to Regulation (EC) 882/2004 of the European Parliament and of the Council and Commission Regulations (EC) No. 180/2008 and (EC) No. 737/2008 as regards lists and names of EU reference laboratories (OJ No.L58, 3.3.2011, p.29).

(**2**) OJ No. L12, 15.1.2011, p.1.

(a) require the importer within 60 days of the date of service of the notice —

(i) to re-dispatch the consignment outside the European Union,

(ii) in the case of polyamide kitchenware, to carry out shredding and melting and form the resulting product into articles for purposes other than food contact, or

(iii) at the importer's expense to destroy the consignment under official control; and

(b) inform the importer that if the requirements of sub-paragraph (a) are not complied with the authority may in accordance with Article 54(2) and (5) of Regulation 882/2004 arrange for the destruction of the consignment and recover the costs of storage and destruction from the importer.

(4) Any notice under paragraph (1) or (3) may be served on the importer or the importer's representative.

Rights of appeal

9.—(1) Any person who is aggrieved by a decision of an authorised officer to serve a notice under regulation 8(3) may appeal to a magistrates' court.

(2) The procedure on an appeal to a magistrates' court under paragraph (1) shall be by way of complaint for an order, and the Magistrates' Courts Act 1980 (**1**) applies to the proceedings.

(3) The period within which an appeal under paragraph (1) may be brought is one month from the date on which the notice was served on the person desiring to appeal and the making of a complaint for an order will be deemed for the purposes of this paragraph to be the bringing of the appeal.

(4) Where on an appeal under paragraph (1) a magistrates' court determines that the decision of the authorised officer is incorrect, the authority must give effect to the determination of the court.

(5) A person who is aggrieved by the dismissal by a magistrates' court of an appeal to it under paragraph (1) may appeal to the Crown Court.

(6) Where an appeal has been brought under paragraph (1) within the period specified in paragraph (3), the effect of a notice served under regulation 8(3) is suspended pending the final determination of the appeal.

(**1**) 1980 c.43.

Suspension of designation of first point of introduction

10.—(1) Where the Agency is satisfied that the continued operation of a first point of introduction designated under Article 5 presents a serious risk to public health, it may suspend the designation of the first point of introduction either in full or in part by the service on the operator of the point of introduction of a written notice to that effect.

(2) Upon service of a notice under paragraph (1), the point of introduction will cease to be a designated first point of introduction under Article 5 to the extent so specified in that notice until it is again so designated under Article 5.

Application of various sections of the Act

11.—(1) The following provisions of the Act apply for the purposes of these Regulations with the modification that any reference in those provisions to the Act or Part of it is to be construed as a reference to these Regulations —

(a) section 20 (offences due to fault of another person);

(b) section 21 (defence of due diligence)(**1**) with the modification that —

(i) subsections (2) to (4) apply in relation to an offence of contravening regulation 3 as they apply in relation to an offence under section 14 or 15, and

(ii) in subsection (4) the references to "sale" are deemed to include references to "placing on the market";

(c) section 30(8) (which relates to documentary evidence);

(d) section 35(1) (punishment of offences)(**2**), in so far as it relates to offences under section 33(1) as applied by paragraph (3)(a) above;

(e) section 35(2) and (3)(**3**), in so far as it relates to offences under section 33(2) as applied by paragraph (3)(b) above;

(f) section 36 (offences by bodies corporate); and

(g) section 36A (offences by Scottish partnerships)(**4**).

(**1**) Section 21 was amended by S.I. 2004/3279.
(**2**) Section 35(1) is amended by the Criminal Justice Act 2003 (2003 c.44), Schedule 26, paragraph 42, from a date to be appointed.
(**3**) Section 35(3) was amended by S.I. 2004/3279.
(**4**) Section 36A was inserted by the Food Standards Act 1999 (1999 c.28), Schedule 5, paragraph 16.

(2) In the application of section 32 of the Act (powers of entry) for the purposes of these Regulations, the references in subsection (1) to the Act are to be construed as including references to the Commission Regulation.

(3) The following provisions of the Act apply for the purposes of these Regulations with the modification that any reference in those provisions to the Act is to be construed as including a reference to the Commission Regulation and these Regulations —

(a) section 33(1) (obstruction etc. of officers);

(b) section 33(2), with the modification that the reference to "any such requirement as is mentioned in subsection (1)(b) above" is deemed to be a reference to any such requirement as is mentioned in that subsection as applied by sub-paragraph (a) above; and

(c) section 44 (protection of officers acting in good faith).

(4) Section 34 of the Act (time limit for prosecutions) applies to offences under regulation 4 as it applies to offences punishable under section 35(2) of the Act.

Statutory review

12.—(1) Before the end of each review period the Agency must —

(a) carry out a review of regulations 3 to 11;

(b) set out the conclusions of the review in a report; and

(c) publish the report.

(2) In carrying out the review the Agency must, so far as is reasonable, have regard to how the Commission Regulation is executed and enforced in other Member States.

(3) The report must in particular —

(a) set out the objectives intended to be achieved by the regulatory system established by these Regulations;

(b) assess the extent to which those objectives are achieved; and

(c) assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved with a system that imposes less regulation.

(4) "Review period" (*"cyfnod adolygu"*) means —

(a) the period of 5 years beginning with the day on which these Regulations come into force; and

(b) subject to paragraph (5), each successive period of 5 years.

(5) If the report under this regulation is published before the last day of the review period to which it relates, the following review period is to begin with the day on which that report is published.

Lesley Griffiths

Minister for Health and Social Services, one of the Welsh Ministers

28 June 2011

Jane Hutt AC / AM
Y Gweinidog Cyllid ac Arweinydd y Tŷ
Minister for Finance and Leader of the House

Llywodraeth Cymru
Welsh Government

Eich cyf/Your ref
Ein cyf/Our ref: SF/LG/0047/11

Rosemary Butler AM
Presiding Officer
Welsh Government
Cardiff Bay
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29 June 2011

Dear / Annwyl Rosemary.

The Plastic Kitchenware (Conditions on Imports from China) (Wales) Regulations 2011

I am writing to inform you that in order to bring the Plastic Kitchenware (Conditions on Imports from China) (Wales) Regulations 2011 into force in Wales it has become necessary to breach the 21-day rule. This order will be made on 29 June and will come into force on 1 July 2011.

These Regulations will provide for the execution and enforcement, in Wales, of the provisions of Commission Regulation (EU) No. 284/2011 which was published in the Official Journal on 23 March 2011. These Regulations lay down specific conditions and detailed procedures for the import of polyamide and melamine plastic kitchenware originating in or consigned from the People's Republic of China and Hong Kong administrative region, China.

Scientific analysis has shown such products to have been releasing primary aromatic amines (PAAs) or formaldehyde into food or food simulant[1] at levels exceeding the limits set down in EU legislation on food contact materials.

The European Commission has taken several initiatives with the Chinese control authorities and industry to increase their knowledge of EU legislation on food contact materials. Despite these initiatives, two audits by the Commission's Food and Veterinary Office (FVO) to China in 2009 identified serious weaknesses in the official control systems for plastic food contact materials imported into the EU.

Significant numbers of notifications and alerts have been received via the EU Rapid Alert System for Food and Feed (RASFF) following the FVO visits to China resulted in the Commission proposing additional control measures for the import of polyamide and

[1] Food simulants are materials intended to mimic the migration behavioural properties of foods. They are used in the laboratory to provide a conservative estimate of the amount of individual substances that may migrate from the packaging into food.

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melamine plastic kitchenware originating in or consigned from China. These were adopted in the form of the directly applicable EU Kitchenware Regulation which lays down import conditions and detailed procedures, and come into effect on 1 July 2011.

The breach of the 21 day rule is required to protect public health by ensuring that enforcement authorities have the necessary powers to carry out the additional controls required by Commission Regulation 284/2011.

Furthermore, Commission Regulation 284/2011 was not published formally in the Official Journal of the EU until 23 March 2011. The need for a reasonable period of formal public consultation on national Regulations and Impact Assessment and consideration of the responses greatly restricted the time available to bring the instrument into force. There were no responses to the public consultation in Wales.

Parallel Regulations are expected to come into force in England, Scotland and Northern Ireland no later than 1 July 2011.

It is for this reason the Minister for Health and Social Services has deemed that the Regulations should come into force in Wales on 1 July 2011, in line with the rest of the UK.

An Explanatory Memorandum has been prepared, and laid, together with these Regulations, in the Table Office.

A copy of this letter has been sent to David Melding, Chair of the Constitutional and Legislative Affairs Committee and to Stephen George, Clerk to the Constitutional and Legislative Affairs Committee.

Jane Hutt AC / AM

Y Gweinidog Cyllid ac Arweinydd y Tŷ
Minister for Finance and Leader of the House

Jane Hutt AC / AM
Y Gweinidog Cyllid ac Arweinydd y Tŷ
Minister for Finance and Leader of the House

Llywodraeth Cymru
Welsh Government

Eich cyf/Your ref
Ein cyf/Our ref: SF/LG/0047/11

Rosemary Butler AC
Y Llywydd
Llywodraeth Cymru
Bae Caerdydd
Caerdydd
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29 Mehefin 2011

Dear Rosemary / Annwyl

Rheoliadau Llestri Cegin Plastig (Amodau ar Fewnforion o Tsieina) (Cymru) 2011

Rwy'n ysgrifennu atoch i'ch hysbysu bod yn rhaid torri'r rheol 21 diwrnod er mwyn dod â Rheoliadau Llestri Cegin Plastig (Amodau ar Fewnforion o Tsieina) (Cymru) 2011 i rym. Bydd y gorchymyn hwn yn cael ei wneud ar 29 Mehefin ac yn dod i rym ar 1 Gorffennaf 2011.

O dan y Rheoliadau hyn, bydd modd gweithredu a gorfodi yng Nghymru ddarpariaethau Rheoliad y Comisiwn (UE) Rhif 284/2011 a gyhoeddwyd yn y Cyfnodolyn Swyddogol ar 23 Mawrth 2011. Mae'r Rheoliadau'n cynnwys amodau penodol a gweithdrefnau manwl ar gyfer mewnforio llestri cegin plastig polyamid a melamin sy'n tarddu o Weriniaeth Pobl Tsieina a rhanbarth gweinyddol Hong Kong, Tsieina neu sydd wedi'u hanfon oddi yno.

Mae gwaith dadansoddi gwyddonol wedi dangos bod y cynhyrchion hyn wedi bod yn rhyddhau mwy o aminau aromatig cynradd (PAAs) neu fformaldehyd i fwyd neu efelychwyr bwyd [1] nag a ganiateir gan ddeddfwriaeth yr UE ar ddeunyddiau sy'n dod i gysylltiad â bwyd.

Mae'r Comisiwn Ewropeaidd wedi cymryd sawl cam i wella gwybodaeth awdurdodau rheoli a diwydiant Tsieina am ddeddfwriaeth yr UE ar ddeunyddiau sy'n dod i gysylltiad â bwyd. Er gwaetha'r ymdrechion hyn, mae dau archwiliad gan Swyddfa Bwyd a Milfeddygol (FVO) y Comisiwn yn Tsieina yn 2009 wedi canfod gwendidau difrifol yn y systemau rheoli swyddogol ar gyfer deunyddiau plastig sy'n dod i gysylltiad â bwyd sy'n cael eu mewnforio i'r UE.

Rydym wedi derbyn nifer arwyddocaol o hysbysiadau a rhybuddion drwy System Rhybudd Cyflym yr UE ar gyfer Bwyd a Bwydydd Anifeiliaid (RASFF) yn dilyn ymweliadau'r FVO â

[1] Deunyddiau y bwriadwyd iddynt ddynwared nodweddion profion ymfudiad bwyd yw efelychwyr bwyd. Fe'u defnyddir yn y labordy i roi amcan ceidwadol o faint o'r sylweddau unigol a all drosglwyddo o'r deunydd pecynnu i'r bwyd.

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Tsieina. O ganlyniad, cynigiodd y Comisiwn fesurau rheoli ychwanegol ar gyfer mewnforio llestri plastig polyamid a melamin sy'n deillio o neu wedi eu hanfon o Tsieina. Mae'r rhain wedi eu mabwysiadu ar ffurf Rheoliad Llestri Cegin yr UE sy'n uniongyrchol berthnasol ac sy'n cynnwys amodau mewnforio a gweithdrefnau manwl. Bydd yn dod i rym ar 1 Gorffennaf 2011.

Mae'n rhaid torri'r rheol 21 diwrnod er mwyn diogelu iechyd cyhoeddus drwy sicrhau bod gan awdurdodau gorfodi'r pwerau y maent eu hangen i weithredu'r rheolaethau ychwanegol sy'n ofynnol dan Reoliad 284/2011 y Comisiwn.

Hefyd, ni chafodd Rheoliad 284/2011 y Comisiwn ei gyhoeddi'n ffurfiol yng Nghyfnodolyn Swyddogol yr UE tan 23 Mawrth 2011. Oherwydd bod angen ymgynghoriad cyhoeddus ffurfiol o hyd rhesymol ar Reoliadau cenedlaethol ac Asesiad Effaith a bod angen ystyried yr ymatebion, nid oedd llawer o amser ar ôl i ddod â'r offeryn i rym. Ni chafwyd unrhyw ymatebion i'r ymgynghoriad cyhoeddus yng Nghymru.

Disgwylir i Reoliadau cyfatebol ddod i rym yn Lloegr, yr Alban a Gogledd Iwerddon erbyn 1 Gorffennaf 2011 fan bellaf.

O'r herwydd, mae'r Gweinidog Iechyd a Gwasanaethau Cymdeithasol wedi penderfynu y dylai'r Rheoliadau ddod i rym yng Nghymru ar 1 Gorffennaf 2011, fel yng ngweddill y DU.

Mae Memorandwm Esboniadol wedi ei baratoi, a'i gyflwyno gyda'r Rheoliadau hyn yn y Swyddfa Gyflwyno.

Anfonwyd copi o'r llythyr hwn at David Melding, Cadeirydd y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol, a Stephen George, Clerc y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol.

Jane Hutt AC / AM

Y Gweinidog Cyllid ac Arweinydd y Tŷ
Minister for Finance and Leader of the House

Constitutional and Legislative Affairs Committee Draft Report

CLA10

Title: The Environmental Permitting (England and Wales) (Amendment) Regulations 2011

Procedure: **Affirmative**

These draft Regulations will apply to both England and Wales.

The Regulations amend some of the provisions relating to the regulation of radioactive substances in the Environmental Permitting (England and Wales) Regulations 2010 S.I.2010/675 in order to provide a more modern, transparent and user-friendly system for the regulation of radioactive substances which present a very low risk to people and the environment, while at the same time maintaining the necessary level of protection.

These draft Regulations also transpose provisions of the IPPC Directive (Directive 2008/1/EC) and the Water Framework Directive (Directive 2000/60/EC) that have been inserted by the Carbon Capture and Storage Directive (Directive 2009/31/EC) ("CSS Directive").

Technical Scrutiny
Under Standing Order 21.2 the Assembly is invited to pay special attention to the following instrument:-

1. These Regulations have not been made bilingually.

[21.2(ix) – that it is not made or to be made in both English and Welsh].

Merits Scrutiny
Under Standing Order 21.3 the Assembly is invited to pay special attention to the following instrument:-

1. Parts of these Regulations transpose provisions of the CSS Directive. The transposition deadline of the CSS Directive was 25th June 2011. These Regulations have failed to be implemented in England and Wales within the time frame set by the CSS Directive.

2. The explanatory memorandum prepared by the Department of Energy and Climate states that the provisions implementing Article 32 and 37 of the CSS Directive will come into force on the day after the day on which the regulations are made. It states that the short time period is justifiable in this case, in order that the draft Regulations can be brought into force as soon after the transposition deadline for the Directive as possible and in light of

the high level of awareness of the proposed change among those affected.

Legal Advisers
Constitutional and Legislative Affairs Committee

June 2011

The Government has responded as follows:

The Environmental Permitting (England and Wales) (Amendment) Regulations 2011

These composite Regulations amend some of the provisions relating to the regulation of radioactive substances in the Environmental Permitting (England and Wales) Regulations 2010 S.I. 2010.675 and transpose certain Articles of the Carbon Capture and Storage Directive (Directive 2009/31/EC) ("CCS Directive").

The Environmental Permitting regime streamlines the procedural parts of a raft of highly technical and complex legislation. It has enabled the simplification of the operation of the permitting system that industry and regulators work with without in any way compromising environmental or human health standards. This has brought much needed simplification to the complexity that industry and regulators in England and Wales previously faced . Due to the scale of the legislation, amendments are occasionally required. Securing these changes via composite instruments made with the Secretary of State is consistent with that aim of simplification. The composite instrument also minimises the inconvenience and potential confusion for those affected by the Regulations, especially as the Environment Agency (a regulator) is a cross border body. These composite Regulations apply to England and Wales and are subject to approval by the National Assembly for Wales and by Parliament. Accordingly, it is not considered reasonably practicable for this Instrument to be laid in draft, or made, bilingually.
The Government regrets that these amendments were not made in time to meet the transposition deadline for the CCS Directive. Issues arising from the internal pre-legislative clearance process impacted on the timetable for these Regulations to come into force.

EXPLANATORY MEMORANDUM TO

THE ENVIRONMENTAL PERMITTING (ENGLAND AND WALES) (AMENDMENT) REGULATIONS

2011 No. [DRAFT]

1. This explanatory memorandum has been prepared by the Department of Energy and Climate Change and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 The draft Regulations amend some of the provisions relating to the regulation of radioactive substances in the Environmental Permitting (England and Wales) Regulations 2010 S.I. 2010/675 ("EP Regulations 2010") in order to provide a more modern, transparent and user-friendly system for the regulation of radioactive substances which present a very low risk to people and the environment, while at the same time maintaining the necessary level of protection.

2.2 The draft Regulations achieve this by modifying the situations in which permits will be required, by amending what is defined as radioactive material or waste (and hence are subject to regulation) and by consolidating and revising the existing exemptions from the requirement to hold permits.

2.3 The draft Regulations also transpose provisions of the IPPC Directive (Directive 2008/1/EC) and the Water Framework Directive (Directive 2000/60/EC) that have been inserted by the Carbon Capture and Storage Directive (Directive 2009/31/EC) ("CCS Directive").

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 The Regulations implementing Articles 32 and 37 of the CCS Directive will come into force on the day after the day on which the regulations are made. DECC considers that the short time period is justifiable in this case, in order that the draft Regulations can be brought into force as soon after the transposition deadline for the Directive as possible and in light of the high level of awareness of the proposed change among those affected. The requirements of the Directive have been in the public domain for some time and have been publicly consulted on (see section 8). There is a small number of highly specialised operators engaged in or planning to engage in carbon capture and storage activities in the UK.

4. Legislative Context

4.1 These draft Regulations are the final stage in amending the regulatory framework following a UK-wide review of the regulation of radioactive substances. The primary aim of the regulatory regime is to license the use and disposal of radioactive substances such that the public and the environment are protected from the effects of ionising radiation.

4.2 The initial stage of the review extended to England and Wales, and involved changing the procedure of licensing to the common environmental permitting system by migrating the substantive provisions of the Radioactive Substances Act 1993 ("RSA 1993") into the EP Regulations 2010. This meant that the users of radioactive substances could benefit from the streamlined and less-burdensome common environmental permitting system.

4.3 This second stage involves more substantive changes to the regulatory regime. After a review, it has been decided to clarify and alter the scope of the regulatory system by amending the definitions of radioactive material and radioactive waste. Further, there are at present exemptions from the requirement for permits which are contained in 18 different statutory instruments. These orders are revoked by the draft Regulations and new, more transparent and user-friendly

exemption provisions are inserted in the EP Regulations 2010. In Scotland and Northern Ireland, equivalent changes will be achieved by amending RSA 1993 and by replacing the existing exemption orders with a single order.

4.4 The final remaining substantive provisions of RSA 1993 will be repealed and re-enacted by the draft Regulations. Because the changes to Schedule 23 of the EP Regulations 2010 are substantial, that Schedule is consolidated by the draft Regulations (as was requested by consultees).

4.5 The draft Regulations demonstrate clearer compliance with the Euratom Basic Safety Standards Directive (96/29/Euratom) (BSS Directive), which provides for a system of protection for workers and the public from the dangers of ionising radiation. Further, the consolidation of Schedule 23 of the EP Regulations 2010 by the draft Regulations re-transposes parts of that directive, and of the directive on the control of high-activity sealed radioactive sources and orphan sources (2003/122/EURATOM). Details of the re-transposition can be found in Annex A.

4.6 The draft Regulations also transpose Articles 32 and 37 of the CCS Directive which make amendments to the IPPC Directive and the Water Framework Directive. Both the IPPC Directive and the Water Framework Directive are transposed by the EP Regulations 2010. The remaining provisions of the CCS Directive will be transposed in other legislation where necessary.

5. Territorial Extent and Application

This instrument applies to England and Wales, including the sea to the edge of territorial waters.

6. European Convention on Human Rights

The Minister of State, Charles Hendry has made the following statement regarding Human Rights:

In my view the provisions of the draft Environmental Permitting (England and Wales) Regulations (Amendment) 2011 are compatible with the Convention rights.

7. Policy background

7.1 The first piece of legislation to regulate radioactive substances was the Radioactive Substances Act 1960 which did not come into effect until 1963, due to a number of anomalies, difficulties and instances of impractical regulation which were identified. These issues were addressed by a series of exemption orders which were introduced in a rather ad hoc way over time, without any underlying structure or philosophy. They were the mechanism for providing a degree of control, without excessive bureaucracy, over minor uses of radioactive substances where there was a clear benefit from use, whilst ensuring continued protection of the public and the environment. RSA 1993 was an amalgamation of the 1960 Act and parts of the Environment Protection Act 1990 and did not substantially change the structure of regulation.

7.2 The move in 2010 to the EP Regulations 2010 changed the mechanical process of regulation, but Government was not in a position at that point to alter the substantive detail of the system (including the 18 exemption orders), because of delay caused to that part of review by its highly technical nature.

7.3 Radioactive waste is a devolved matter, Scotland and Northern Ireland have chosen to retain RSA 1993, although they have agreed the need for modernisation in terms of the scope of regulation and the exemptions. This second stage review was therefore undertaken across the UK and involved extensive involvement of industry and regulators. The aim of the review was to provide a consistent UK-wide approach to the regulation of radioactive substances despite the use of different legislative vehicles.

7.4 The main effect of the draft Regulations will be to change the boundaries that define whether a particular substance is either outside the scope of legislation, capable of being exempt from full regulation or otherwise subject to permitting. This has been done for 3 main reasons:

(i) The current boundaries are in the wrong place. Whilst the current boundaries are based in part on risk, many of the demarcations appear to be arbitrary, contradictory across different exemption orders, or are based on risk assessments which are no longer available to us. Based on a consideration of risk, the boundaries have been redrawn and made substantially clearer.

(ii) The exact position of the boundary is currently vague in a number of circumstances. It can be difficult and time-consuming in some cases to work out on which side of a boundary to place certain materials and wastes (both for users and for the regulator who is often consulted due to the ambiguity). The new regime clears up a substantial number of these difficult areas.

(iii) There are gaps in the boundaries because the current exemption orders are up to 50 years old, and technology in this field continually advances. This means that situations which are proven to be of low risk are not exempted under the current legislation. The new regime has filled in a substantial number of these gaps to provide users and waste managers with a continuous set of boundaries.

7.5 The draft Regulations meet modern requirements in relation to practicality, durability, legal robustness, and a proportionate (i.e. risk-informed) regulatory burden on stakeholders. They also enable the UK to demonstrate clearer compliance with the BSS Directive and allow Government to respond to many stakeholders who believe the need to clarify and modernise the system is long overdue. Without a change to the exemptions regime there would be decreased confidence by users of the regulatory process.

7.6 The draft Regulations also transpose two Articles of the CCS Directive that impact on the permitting framework. Regulation 12 inserts a new regulated activity into Schedule 1 (activities, installations and mobile plant) of the EP Regulations 2010 relating to the capture of carbon dioxide; regulation 14 inserts a new activity for which the regulator is able to grant a permit into Schedule 22 (groundwater activities) of the EP Regulations 2010, in relation to the geological injection of carbon dioxide.

8. Consultation outcome

8.1 There has been substantial engagement with stakeholders during the development of the Regulations. Government has listened to the views of experts, industry, hospitals, universities and regulators throughout this process in workshops, by consultation and face-to-face meetings.

8.2 The overall architecture of the exemption regime was developed with input obtained at the very start of the programme during workshops with the non-nuclear industry, nuclear industry, interested groups and individuals. Subsequent events helped to clarify and discuss technical details of both draft Regulations and guidance.

8.3 Public consultation on the draft Regulations took place in 2009 and was supported by workshops to help explain the proposals and to receive feedback. There were 50 responses to the consultation which led to substantial alterations to the technical detail underpinning the new regime. In view of this, Government held a further round of stakeholder engagement in 2010 (50 responses received) and this led to the regime being refined to what is now contained in the draft Regulations.

8.4 The changes made in the Regulations have received universal acceptance by stakeholders. They have welcomed the clear risk-informed approach to categorising materials and wastes; the

reduction in ambiguity and conflict between different exemption orders as they exist now, and they have particularly welcomed the approach which not only fills in the gaps in the boundaries as perceived today, but attempts to future proof the legislation. More detailed analysis of the consultations can be found at http://www.decc.gov.uk/assets/decc/Consultations/Consultation%20-%20future%20exemptions%20regime%20-%20RSA%201993%20and%20EPR%202010/1_20091203170342_e_@@_exemptionsconsultationsummary.pdf and http://www.decc.gov.uk/publications/basket.aspx?FilePath=What+we+do%2fUK+energy+supply%2fEnergy+mix%2fNuclear%2f1810-future-exemptions-regime-revised-props.pdf&filetype=4&minwidth=true#basket

8.5 A consultation seeking views on the CCS proposals described in paragraph 7.6 above ran from 3 September to 26 November 2010 and 24 respondents replied. The consultation document can be found at http://archive.defra.gov.uk/corporate/consult/env-permitting-regs2010/index.htm. There were no objections or substantive comments on the proposals.

9. Guidance

9.1 There is one overarching guidance document (the Core Guidance) which provides advice on the EP Regulations 2010 and compliance with them, underpinned by separate Government guidance on each regime within the permitting framework.

9.2 Government will be issuing guidance to set out the intent of the legislation, primarily aimed at the regulator, the Environment Agency ("EA"). The EA will also be issuing regulators' guidance, which will give users more detail on the way in which EA will implement the regulations. The guidance will be published prior to the new regime coming into force.

10. Impact

10.1 The impact on business, charities or voluntary bodies is to simplify the often complex system for users of radioactive substances that present very low risk to people or the environment.

10.2 The impact on the public sector is to simplify the often complex system for users of radioactive substances that present very low risk to people or the environment.

10.3 An Impact Assessment is attached to this memorandum and will be published alongside the Explanatory Memorandum on www.legislation.gov.uk.

10.4 No Impact Assessment is required for the amendments transposing the two Articles of the CCS Directive as it has been agreed with the Better Regulation Executive that there are no impacts on the UK economy by effecting these changes.

11. Regulating small business

11.1 The legislation applies to small business.

11.2 To minimise the impact of the requirements on firms employing up to 20 people, the approach taken has focussed on risk-informed exemption provisions. It is not possible to simply exclude small firms from regulation, because of our obligations to transpose the BSS Directive.

11.3 The basis for the final decision on what action to take to assist small business was the guiding principles of the review itself, to reduce the regulatory burden on those users of radioactive substances which present a very low risk to people and the environment. This is a de-regulatory measure and by reducing administrative burdens its benefits will be greatest for small businesses who have less time to spend on administration.

12. Monitoring & review

12.1 A post implementation review of the EP Regulations 2010 is to be undertaken in 2015. The amendments made by these draft Regulations will be reviewed as part of that process.

12.2 The success criteria outlined at the start of the project will be used for the review. That is:

- Clarity of language and ease of use;
- Legal robustness;
- Comprehensiveness - dealing with all current and foreseen eventualities;
- Proportionality - the regulatory burden is risk-informed;
- The overall burden of regulation is reduced; and
- Businesses perceive that the exemption regime has been improved.

12.3 Government across the UK will be keeping regular contact with the environmental regulators and will be periodically seeking feedback from key stakeholders. The Post Implementation Review Plan can be found at Annex 1 of the Impact Assessment.

13. Contact

Steve Chandler at the Department of Energy and Climate Change Tel: 0300 068 6104 or email: steve.chandler@decc.gsi.gov.uk can answer any queries regarding the instrument.

Annex A: Transposition tables

The tables below show how the Environmental Permitting (England and Wales) Regulations 2010 (S.I. 2010/675), as amended, now transpose the relevant parts of the Basic Safety Standards Directive, the HASS Directive and the CCS Directive. References to a provision in regulations are therefore references to provisions in those regulations rather than to the draft Environmental Permitting (England and Wales) (amendment) Regulations 2011.

The Basic Safety Standards Directive
(Directive 1996/29/EURATOM)

Directive article	Objective	Regulations provision
3(1)	Requiring the reporting of certain practices involving radiation	Regulations 7, 8, 12(1)(a) and paragraphs 3-6 and 11 of Part 2 of Schedule 23
3(2) and Annex 1	Exempting certain practices from reporting	Part 7 of Schedule 23
4(1)/(2)	Requiring the authorisation of certain practices involving radiation	Regulations 7, 8, 12(1)(a) and paragraph 3-6 and 11 of Part 2 of Schedule 23
4(2)	Exempting certain practices from the requirement for authorisation	Part 7 of Schedule 23
5(1)	Authorisation and clearance for disposal, recycling or reuse of radioactive material	Regulations 7, 8, 12(1)(a) and paragraphs 3-6 and 11 of Part 2 of Schedule 23
5(2)	Exempting certain operations covered in article 5(1) from the requirement for authorisation	Sections 5-8 of Part 7 of Schedule 23
6(3)	Setting the general principle of 'optimisation'	Paragraph 1 of Part 4 of Schedule 23
7	Obligation to use dose constraints for protecting the public from radiation	Paragraph 2(1) of Part 4 of Schedule 23
13	Setting dose limits for members of the public	Paragraph 1(b) of Part 4 of Schedule 23
14	Requiring the exposure of the population as a whole to radiation to be as low as reasonably achievable	Paragraph 1(a) of Part 4 of Schedule 23
15, 16	Methodology for the estimation of the effective dose	Paragraph 2(2) of Part 4 of Schedule 23
40(3), 41	Obligation to apply radiation protection in relation to work activities involving natural radiation	Regulations 7, 8, 12(1)(a) and paragraph 2-4 and 11 of Part 2 of Schedule 23
45	Sets out requirements for the estimation of population exposure doses	Paragraph 2(2) of Part 4 of Schedule 23
47	Requires member states to ensure that certain requirements in relation to health and environmental protection are fulfilled	Paragraph 2(2) of Part 4 of Schedule 23
53	Requires a system to be in place for intervening in the case of potential lasting exposure; including the after-effects of a former practice	Paragraphs 3 and 4 of Part 4 of Schedule 23

European scrutiny: DECC does not hold scrutiny details in relation to this directive.

The HASS Directive
(Directive 2003/122/EURATOM)

Directive article	Objective	Regulations provision
Article 1(2)	To exclude certain sources from the scope of the Directive.	Schedule 23, Part 5, paragraph 1
Article 2(a), (b)	To define expressions used in the Directive.	Schedule 23, Part 5, paragraph 1
Article 3(1)	To ensure that holders of HASS have appropriate authorisation.	Regulations 7, 8, 12(1)(a), and paragraphs 3, 4, 5, 6 and 11 of Part 2 of Schedule 23
Article 3(2) and (3)	To ensure that before issuing authorisation adequate arrangements have been made for the safe management of HASS and to ensure that the authorisation covers certain minimum requirements.	Schedule 23, Part 5, paragraph 5(1)(a)
Article 4	Member States to set up a system to enable them to be adequately informed of individual transfers of sources.	Schedule 23, Part 5, paragraph 5(1)(b)
Article 5(1) and (2)	To ensure that the holder is required to keep records of HASS, their location and any transfers and provide them to the competent authority, updated as necessary.	Schedule 23, Part 5, paragraph 5(1)(c)
Article 5(3) and (4)	The competent authority to keep and update as necessary records of authorised holders and the sources they hold.	Schedule 23, Part 5, paragraph 6(a)(i)
Article 6	To ensure that the holder carries out suitable tests; periodically verifies the location and condition of HASS; has documented security measures; disposes of disused HASS promptly; checks the status of recipients of transferred HASS; and notifies the competent authority of loss, theft, or unauthorised use of a HASS and any unplanned exposure of workers or public.	Schedule 23, Part 5, paragraph 5 (1)(d)
Article 7	To ensure that the manufacturer or supplier identifies each source by a unique number and provides written information and photographs relating to the design type.	Schedule 23, Part 5, paragraph 5(1)(e)
Article 8	To ensure that staff training and information covers safe management of sources and possible consequences of loss of control.	Schedule 23, Part 5, paragraph 7
Article 9(1)	Competent authorities to have arrangements in place to deal with orphan source incidents.	Schedule 23, Part 5, paragraph 8(1)
Article 9 (2)	Member States to ensure technical advice and assistance is promptly available in suspected orphan source incidents.	Schedule 23, Part 5, paragraph 4
Article 10	Member States to ensure a system is in place to fund the recovery of orphan sources.	Schedule 23, Part 5, paragraph 8(2)
Article 12	Member States to establish a system of inspections.	Schedule 23, Part 5, paragraph 6 (b)
Article 13(1)	Member states to designate competent authority to carry out tasks in accordance with the directive	Regulation 32
Article 15	Member States to determine penalties, which are to be effective, proportionate and dissuasive.	Regulation 39
Article 16(1)	To make provision in relation to HASS placed on the market before 31/12/05 concerning information and hazard marking requirements	Schedule 23, Part 5, paragraph 5(2)

European scrutiny: DECC does not hold scrutiny details in relation to this directive.

The CCS Directive
(Directive 2009/31/EC)

Directive article	Objective	Regulations provision
Article 32	Amends Directive 2000/60/EC (the Water Framework Directive by adding to the list of exceptions from the prohibition of direct discharges of pollutants into groundwater. The amendment adds to those exceptions the injection of carbon dioxide streams into geological formations which for natural reasons are permanently unsuitable for other purposes.	Paragraph 8 of Schedule 22 to the EP Regulations 2010 The Environmental Permitting (England and Wales) Regulations 2010
Article 37	Amends the Integrated Pollution Prevention and Control Directive (2008/1/EC). The IPPC Directive applies to certain industrial activities listed in its Annex I and Article 37 extends that list to include the capture of carbon dioxide streams from installations already covered by the Directive.	Part 2 of Schedule 1 to The Environmental Permitting (England and Wales) Regulations 2010

European scrutiny: EM 5835/08 of 23 January 2008 was considered in (Commons) European Scrutiny Committee on 5 March 2008 and referred for debate in Europe Committee. The Commons cleared the EM on 2 June 2008. The EM was cleared by the Lords on 19 November 2008 after referral to sub-committee and requests for further information.

Title:	Impact Assessment (IA)
Lead department or agency:	**IA No:**
	Date: 01/01/2010
Other departments or agencies:	**Stage:** Final
	Source of intervention: Domestic
	Type of measure: Secondary legislation
	Contact for enquiries:

Summary: Intervention and Options

What is the problem under consideration? Why is government intervention necessary?

Maximum of 8 lines

What are the policy objectives and the intended effects?

Maximum of 8 lines

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

Maximum of 10 lines

Will the policy be reviewed? It will be reviewed. **If applicable, set review date:** Month/2012 **What is the basis for this review?** PIR. **If applicable, set sunset clause date:** Month/Year	
Are there arrangements in place that will allow a systematic collection of monitoring information for future policy review?	No

Ministerial Sign-off For final proposal stage Impact Assessments:

I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) the benefits justify the costs.

Signed by the responsible Minister:  Date: .....

Summary: Analysis and Evidence

Policy Option 1

Description:

Price Base Year	PV Base Year	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	**High:** Optional	**Best Estimate:**

COSTS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Optional		Optional	**Optional**
High	Optional		Optional	**Optional**
Best Estimate				

Description and scale of key monetised costs by 'main affected groups'

Maximum of 5 lines

Other key non-monetised costs by 'main affected groups'

Maximum of 5 lines

BENEFITS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional		Optional	**Optional**
High	Optional		Optional	**Optional**
Best Estimate				

Description and scale of key monetised benefits by 'main affected groups'

Maximum of 5 lines

Other key non-monetised benefits by 'main affected groups'

Maximum of 5 lines

Key assumptions/sensitivities/risks **Discount rate (%)**

Maximum of 8 lines

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs:	**Benefits:**	**Net:**	Yes	OUT

Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?			United Kingdom		
From what date will the policy be implemented?			01/01/2010		
Which organisation(s) will enforce the policy?					
What is the annual change in enforcement cost (£m)?					
Does enforcement comply with Hampton principles?			Yes		
Does implementation go beyond minimum EU requirements?			No		
What is the CO_2 equivalent change in greenhouse gas emissions? (Million tonnes CO_2 equivalent)			**Traded:**		**Non-traded:**
Does the proposal have an impact on competition?			No		
What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?			**Costs:**		**Benefits:**
Distribution of annual cost (%) by organisation size (excl. Transition) (Constant Price)	**Micro**	**< 20**	**Small**	**Medium**	**Large**
Are any of these organisations exempt?	No	No	No	No	No

Specific Impact Tests: Checklist

Set out in the table below where information on any SITs undertaken as part of the analysis of the policy options can be found in the evidence base. For guidance on how to complete each test, double-click on the link for the guidance provided by the relevant department.

Please note this checklist is not intended to list each and every statutory consideration that departments should take into account when deciding which policy option to follow. It is the responsibility of departments to make sure that their duties are complied with.

Does your policy option/proposal have an impact on…?	**Impact**	**Page ref within IA**
Statutory equality duties[1] Statutory Equality Duties Impact Test guidance	No	
Economic impacts		
Competition Competition Assessment Impact Test guidance	No	
Small firms Small Firms Impact Test guidance	No	
Environmental impacts		
Greenhouse gas assessment Greenhouse Gas Assessment Impact Test guidance	No	
Wider environmental issues Wider Environmental Issues Impact Test guidance	No	
Social impacts		
Health and well-being Health and Well-being Impact Test guidance	No	
Human rights Human Rights Impact Test guidance	No	
Justice system Justice Impact Test guidance	No	
Rural proofing Rural Proofing Impact Test guidance	No	
Sustainable development Sustainable Development Impact Test guidance	No	

[1] Public bodies including Whitehall departments are required to consider the impact of their policies and measures on race, disability and gender. It is intended to extend this consideration requirement under the Equality Act 2010 to cover age, sexual orientation, religion or belief and gender reassignment from April 2011 (to Great Britain only). The Toolkit provides advice on statutory equality duties for public authorities with a remit in Northern Ireland.

Evidence Base (for summary sheets) – Notes

Use this space to set out the relevant references, evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Please fill in **References** section.

References

Include the links to relevant legislation and publications, such as public impact assessments of earlier stages (e.g. Consultation, Final, Enactment) and those of the matching IN or OUTs measures.

No.	Legislation or publication
1	***Ref 1.*** 2009 Public Consultation package (including consultation document, impact assessment and references 2 to 7 below)
2	***Ref 2***. Exemption Order Review: Expert Group Elicitation Workshop Report, 11 July 2007 (Appendix 5)
3	***Ref 3***. Summary note of Expert Group Workshop on Options Assessment in Reading, 30 January 2008 (Appendix 6)
4	***Ref 4***. Informal consultation on suggested Exemption Order Framework 25 August 2008 (Appendix 7)
5	***Ref 5***. Schedule 1 of RSA93 – expert group recommendations (date?) (Appendix 9)
6	***Ref 6***. Summary note of Framework Workshop in Edinburgh, 30 January 2009 (Appendix 8)
7	***Ref 7***. Proposals for A Future Exemptions Regime under The Radioactive Substances Act 1993 and The Environmental Permitting Regulations 2010: Consultation Summary document, 4 December 2009
8	***Ref 8***. 2010 stakeholder engagement package (including engagement document and revised impact assessment)
9	***Ref 9***. Full list of EOs on the DECC website
10	***Ref 10***. RSA93
11	***Ref 11***. EPR10
12	***Ref 12***. BSSD
13	***Ref 13***. UK Government's Low Level Radioactive Waste Policy 2007

Evidence Base

Ensure that the information in this section provides clear evidence of the information provided in the summary pages of this form (recommended maximum of 30 pages). Complete the **Annual profile of monetised costs and benefits** (transition and recurring) below over the life of the preferred policy (use the spreadsheet attached if the period is longer than 10 years).

The spreadsheet also contains an emission changes table that you will need to fill in if your measure has an impact on greenhouse gas emissions.

Annual profile of monetised costs and benefits* - (£m) constant prices

	Y_0	Y_1	Y_2	Y_3	Y_4	Y_5	Y_6	Y_7	Y_8	Y_9
Transition costs										
Annual recurring cost										
Total annual costs										
Transition benefits										
Annual recurring benefits										
Total annual benefits										

* For non-monetised benefits please see summary pages and main evidence base section

Evidence Base (for summary sheets)

1. Introduction

1.1 The Radioactive Substances Act 1993 (RSA93) provides a prior permitting regime for the registration of premises keeping and using radioactive material, and for the authorisation of the accumulation and disposal of radioactive waste. Responsibility for the subject matter of the RSA93 lies with the administrations in England, Scotland, Wales and Northern Ireland, and it is administered by the Environment Agency in England and Wales, Scottish Environmental Protection Agency, and Northern Ireland Environment Agency (referred to as the "environmental regulators" throughout the rest of this document) leading to a consistent UK-wide approach to the regulation of radioactive substances.

1.2 A review of the exemptions regime (what falls in or out of the scope of the legislation and what does not need prior permitting) has resulted in proposals that, when implemented, will significantly update the 50 year old regulatory system in the UK. The proposed regulations will amend the definitions of radioactive materials and radioactive wastes resulting in a modern, transparent system for determining what radioactive substances are subject to the requirements of the RSA93. The exemptions regime will considerably simplify the often complex system for users of radioactive substances that present a very low risk to people or the environment.

1.3 There has been extensive stakeholder engagement during the development of these proposals including intergovernmental meetings, stakeholder workshops, meetings with targeted groups, presentations at domestic and international professional radiological working groups, and informal consultations and full public consultations. These have provided a transparent approach to the development of the regime and have received a favourable reception from stakeholders.

1.4 In 2009, RSA93 was repealed (with the exception of exemption order provisions which await the outcome of this review) and migrated into the Environmental Permitting Regulations 2010 (EPR) in England and Wales. The changes made by incorporating RSA93 into the Environmental Permitting regime are essentially procedural, to help deliver the same level of public and environmental protection more efficiently and in a less burdensome manner.

1.5 The outcome of the proposal under consideration in this impact assessment will therefore be incorporated directly into EPR in England and Wales. In Scotland, the scope of RSA93 has already been amended by regulations under the European Communities Act 1972 and the new exemption order has been made under RSA 93; it will come into force in October 2011. An identical mechanism will be used to amend legislation in Northern Ireland after the elections in May 2011, with an intention to also come into force in October 2011.

1.6 Although different legislative vehicles are being used across the UK to implement the new regime, the substantive content of the proposals are the same. For the purposes of this document we refer to both EPR and RSA 93 as RSA 93.

2. Purpose and intended effect

Objective

2.1 Government's better regulation agenda aims to simplify regulations, by reducing the regulatory burden on industry through improvements in regulation. The review, which is re-evaluating the scope of regulation and exemption from some of RSA 93 provisions, is being undertaken across the UK in conjunction with the Devolved Administrations. It will introduce new secondary legislation which meets modern requirements in relation to practicality, durability, legal robustness, and a proportionate (i.e. risk-informed) regulatory burden on stakeholders. It will also enable the UK to demonstrate clearer compliance with the EU Basic Safety Standards Directive (96/29/EURATOM) and will allow Government to respond to many stakeholders who believe the need to clarify and modernise the system is long overdue.

2.2 In short, the aim is to produce a simpler, less burdensome exemptions regime whilst at the same time maintaining the necessary protection for people and the environment.

Background

2.3 The intent of the RSA93 and its exemption orders is the protection of human health and the environment from risks associated with the disposal of radioactive waste. Schedule 1 of RSA93 sets concentration thresholds for naturally-occurring radioactivity below which the Act does not apply. The Act currently applies to all man-made radioactive substances no matter how low the concentration. EOs are the mechanism for providing a degree of control, without excessive bureaucracy, over minor uses of radioactive substances where there is a clear benefit from their use, whilst ensuring continued protection of the environment and the public.

2.4 The first Radioactive Substances Act 1960 (RSA 60) came into full force in 1963. Almost immediately, a number of anomalies, difficulties and instances of over-regulation were identified. These were addressed by a series of EOs which were introduced to meet the needs of specific circumstances and were not developed with any underlying structure or philosophy. Since then a series of EO's have been added to the regime, totalling 18 overall, which are listed at the references link on page 4 (***Ref 9***).

2.5 In essence very little has changed in terms of the legislation since the early 1960's. In contrast the international framework for controlling radioactive substances has moved on considerably. The local government, educational, health, etc. systems within the UK on which the EOs were based have also moved on significantly, rendering some of the content out-of-date and much of it very difficult to follow or apply to today's activities.

Rationale for Government Intervention

2.6 The regulatory landscape has changed since the Act was first introduced with greater emphasis on a graded or proportional approach to regulation and a desire to reduce the administrative burden on industry. The EOs are now out-dated subordinate legislation for reasons including:

- The language, which is archaic making them difficult to follow and interpret. The scientific units used in most EOs have been superseded by new units, as recommended by the International Commission on Radiological Protection and adopted in European legislation.

- The requirements of users which have changed over time, with some EOs assuming greater significance and others bearing little or no current relevance or importance.

- The many anomalies which need to be addressed. The EOs have been amended piecemeal over the years to clear up some anomalies or cater for new practices, but this has, in some cases, lead to a lack of transparency and difficulty of use. In addition , the last version of government guidance was issued in 1982 and is now almost irrelevant. Clear and comprehensive government guidance is therefore required.

2.7 Recent experience has shown that even minor changes to existing EOs is time and resource intensive. An example of this is the Testing Instruments Exemption Order which was amended in 2006. This work highlighted that even minor modifications to some paragraphs often have ramifications for other paragraphs, for other EOs, or even for the Act itself. This turned what should have been a simple review, into a complicated and protracted legal process.

2.8 A wholesale review of the exemptions regime is long overdue and opportunities were missed in 1993 when RSA was consolidated, and again in the late 1990s when the revised Basic Safety Standards Directive came into force (***Ref 12***). There has been widespread pressure from a number of constituencies, including operators, regulators, government departments and the radiation protection community for such a review. This was confirmed by way of an informal consultation carried out in late 2005, and by discussions at the governmental Radioactive Waste Policy Group in February 2006. By undertaking this review, new secondary legislation will be enacted throughout the UK which will use plain English, meet current and future requirements, be legally robust, comprehensive and reduce the regulatory burden in what is a technically complex area. Without a change to the exemptions regime there will be decreased confidence by users of the regulatory process.

2.9 The rationale for reviewing the current exemption orders regime is therefore threefold:

- reducing regulatory burdens under the UK Government's better regulation agenda;
- demonstrating clearer compliance with the EU Basic Safety Standards Directive (96/29/Euratom) (BSSD) which protects the health of workers and the public from the dangers of ionising radiation; and
- responding to stakeholder views that a review of exemption orders is long overdue.

3. Consultation

3.1 There has been substantial engagement with stakeholders during the development of the regulations. Government has listened to the views of stakeholders throughout this process in workshops, by consultation and face-to-face meetings. The overall architecture of the exemptions regime was developed with input obtained during workshops with the nuclear industry, small users from the non-nuclear industry and other interested groups or individuals.

3.2 Formal public consultation on the draft regulations took place in 2009 and was supported by workshops to help explain the proposals and to receive feedback. The outcome of the consultation led to fairly substantial alterations to the regime. While the principles upon which the regime was based remained relatively unaltered, the detail of how they were implemented underwent substantial change. In view of this Government held a further round of stakeholder engagement in 2010. More detail on the 2009 and 2010 stakeholder engagement can be found in the reference links on page 4 (***Ref 1*** and ***8***).

Within Government

3.3 The consultation took into account the recommendations of government departments and agencies across the UK, such as the Ministry of Defence; the Nuclear Decommissioning Authority; the Health and Safety Executive; the Department of Health; the Department for Business, Innovation and Skills; the Department for Education and the Environment Agency.

Public consultation

3.4 The formal consultation paper was designed to obtain the views of those who had a technical knowledge of the issues regarding the nature, use and disposal of radioactive substances as well as those, with both technical and non-technical knowledge, who used the current system. This included professional and academic associations, industrial institutions, international oversight bodies and non-governmental organisations.

Business

3.5 The consultation process took UK businesses into account. These businesses span both the nuclear and non-nuclear industry, including international energy companies, manufacturing companies, fire industry, research industry, agriculture, heavy mineral industry and supply chain companies to the energy sector to name a few. The financial implications of the regulations are also relevant to hospitals who use radioactive material in medical and veterinary treatment, and schools and universities who use radioactive material for teaching and research.

4. Options

4.1 Following a stakeholder engagement workshop in 2007 six options for the framework of the proposed exemptions regime were developed. These options underwent a thorough assessment which involved extensive engagement with experts from Government, the environmental regulators and persons currently holding permits under RSA93. The options considered were:

Option 1. Do nothing
- The regime would be left entirely as it is.

Option 2. Minor updates of existing Exemption Orders
- The regime would be largely left as it is, with minor linguistic and stylistic changes to the EOs.

Option 3. Full updates of existing EOs
- All eighteen EOs would be reappraised and updated.

Option 4. Rebrigading of EOs
- The EOs would be reappraised and simplified into fewer EOs.

Option 5. Top level EO rationalisation and simplification with all the detail in schedules
- All the EOs would be revoked and replaced by a single EO, with numerical values specific to substances and practices contained in the schedules.

Option 6. Goal setting/ dose based approach
- All the EOs would be revoked and the dose, rather than the substance or the practice, would be regulated.

4.2 A workshop was held to test the inputs to the proposed new framework and the general principles were accepted by stakeholders. This workshop considered all 6 options against five agreed attributes and their conclusions are summarised in Table 1 on the following page.

4.3 Following the option assessment process detailed work was undertaken to populate the preferred framework (Option 5) with numerical values and conditions.

4.4 It was during the course of this detailed work to develop a new exemptions regime, that it became apparent that, in addition to the exemption orders, attention to the scope of RSA93 itself was important in order to provide a comprehensive and logical regime. This aspect was therefore added to Option 5, which essentially became a top level rationalisation and simplification of the existing regime. A consultation stakeholder workshop was held in July 2009 in parallel with a full public consultation exercise from June to September 2009 and a further round of stakeholder engagement was undertaken in 2010. A more detailed look at the options process and development of the preferred option, with details of how it simplifies the existing regime, can be found at **Annex 2**.

4.5 In view of the extensive engagement used in the selection and development of the preferred option (5), it is only considered appropriate to consider the two broad options in this assessment:

– Do nothing (baseline)

– Preferred option (top level rationalisation and simplification of the existing regime)

Table 1

Attributes	Option 1	Option 2	Option 3	Option 4	Option 5	Option 6
Compatibility with other policy/ regulatory initiatives	Least Compatible	Not Better Regulation	Potential conflict with Euratom	Likely to produce simplification and easier to update	Most compatible with Better Regulation and other environment legislation	Increases regulatory burden on user and regulator
Adaptability to future scientific and technological developments	Difficult to update and adapt	Difficult to update and adapt	Less easy to update and adapt than 4 and 5	Quicker to make changes as there would be fewer EOs	Very adaptable	Very Adaptable
Administrative or financial benefits	None	High cost for few benefits	No unique benefits	Same cost as 5 with fewer benefits	Significant up front expenditure, but sustainable ongoing savings	High cost and long time to wait for benefits, but would potentially drive innovation
Proportionate and risk informed	Neither	Neither	Proportionate	Proportionate and risk informed	Proportionate and risk informed	Proportionate and risk informed
Expected development time	Waste of time	Waste of time	Similar to 4 and 5	Similar to 3 and 5	Similar to 3 and 4	Short development time, but long implementation time

5. Analysis of Costs/Benefits

Proposed approach to analysis

5.1 Cost and benefit estimation for the option is not straight-forward for two reasons:

(i) We do not know exactly how many users of radioactive substances are currently employing the exemptions regime. This is because EOs are designed to reduce administrative burdens, and hence no reporting to a relevant authority is necessary. There are therefore no formal records of EO users in the UK. We have tried identifying users through extensive stakeholder engagement and the EA also commissioned a report looking at Current and Future Uses of Exemption Orders (EA, 2009); these have both assisted with identifying the breadth of use, but still have limited validity.

(ii) Stakeholders have found it difficult to quantify their costs and benefits in financial terms. We conducted an elicitation exercise in 2007, based on preliminary proposals, to ascertain the views of key stakeholders in various industry sectors on the costs and benefits of the proposals. This exercise was followed by a more formal request for cost and benefit information during the 2009 consultation. Although the responses were very encouraging ('we welcome these proposals and believe that they will have positive benefit to us in terms of ease of use…", etc.), and helped identify circumstances through which costs and benefits would arise from using the new regime, in general, respondents were unable to quantify the costs and benefits. This was also the case in the further 2010 stakeholder engagement exercise, although we have been able to elicit useful information to refine the methodology further as set out in paragraph 5.5 (ix) and **Annexes 2 and 3**.

5.2 Following the stakeholder engagement exercise in 2010,which did not provide specific time benefits data, we have worked with key experts who we believe are representative of the wider user pool. These covered extensive and non-extensive users, RPAs, as well as the environmental regulators from across the UK. We worked with them to refine the methodology and estimates used in this assessment following consultation to allow for the disparate uses of exemptions and incorporated sensitivity analysis to account for uncertainties in our assumptions. The main revisions include:

- Accounting for disparate use by splitting the user pool into extensive and non-extensive users.
- Refining the user and environmental regulator day costs to allow for industry biases.
- Incorporating costs for various industries to produce their own guidance.
- Refining the time costs and savings for the RPAs and environmental regulators to a more realistic range of values and incorporating agreed time costs and savings for industry users.

5.3 We believe that the main monetised costs and benefits of the preferred Option relative to 'do nothing' are limited to:

One-off transition costs:

- One-off transition cost of familiarisation with the new regime for existing EO users;
- One-off transition cost of familiarisation with the new regime for regulators;
- One-off transition cost of familiarisation with the new regime for Radiation Protection Advisors (RPAs);
- One-off cost for regulators producing procedural guidance for industry; and

- One-off cost for Industry producing internal procedural guidance.

Recurring benefits:

- Recurring benefits for RPAs from reduced time spent using EOs demonstrating compliance;
- Recurring benefits for existing users from reduced time spent using EOs demonstrating compliance;
- Recurring benefits for new users from reduced costs of familiarisation; and
- Recurring benefits to regulators for reduced time dealing with calls for advice about the exemptions regime

5.4 Confirmation of the methodology, assumptions and values (including ranges for input time and rate costs) was received at a meeting of experts from industry and environmental regulators (DECC, December 2010) (See Annex 3). General agreement was reached that the estimates of costs and benefits to each stakeholder group were prudent and reflect a realistic assessment of the requirements, on average, under the current and proposed new regimes. Due to the absence of a notification requirement, and therefore firm data on administrative burdens under the current arrangements, or on burdens from a yet to be introduced regime, the consensus reached on time savings (outlined in the assumptions section below) is considered the most robust method of monetising costs and benefits. This methodology has been used by administrations across the UK to assess the impact of the new regime.

Assumptions

5.5 The estimates set out in this impact assessment are based on assumptions, and have associated uncertainties. Due to the nature of the EO regime resulting in there being no official data on usage, the assumptions are in the main informed by consultation with stakeholders and experts in the area. It is assumed that all administrations across the UK will either retain or adopt a consistent regulatory framework, which will come into force at the same time, and currently scheduled for October 2011. The main assumptions are:

(i) **Total number of EO users**: The environmental regulators have estimated that there is a total user pool of 22,000 using the exemptions regime. This is derived from there being currently 3,850 permits issued across the UK and that, on average, a permit holder has 1.75 permits (thus the current number of permit holders is 2,200). They believe there are at least 10 EO users for every permit holder, giving the total user pool of 22,000.

(ii) **Annual entrants/exits from the EO regime**: It is estimated that around 1,100 new users per year would be required to use the exemptions regime. This is based on information presented by the environmental regulators that new applications account for around 5% of the 3,850 issued permits means 193 new permits per year. With an average of 1.75 permits per holder, this means 110 new organisations per year would enter the UK regulatory regime with an average of 10 EO users for every organisation this gives a total of 1,100 new users. The number of users exiting the regime is expected by the regulators to be broadly equivalent to the number of entrants and as a result it is assumed that the overall number of users over the appraisal period will remain constant at 22,000.

(iii) **Segregating EO users by level of use**: Due to differing usage of EOs by industry it has been necessary to provide an estimated segregation of the total user pool as follows: of the 22,000 users, 3,850 are categorised as extensive users, and 18,150 as non-extensive users. Within this breakdown (and assuming the same ratio), the 1,100 new entrants annually are estimated to comprise 192 extensive users and 908 non-extensive users (as existing users). These estimates are based on advice from stakeholders within the nuclear and non-nuclear industries and from the environmental regulators, e.g. Association of University Radiation Protection Officers, CLEAPSS (school representatives), UK Heavy Minerals and Sands

Association, Institute of Physics and Engineering in Medicine, Clearance and Exemption Working Group (nuclear industry).

(iv) **Cost of professional advice**: The Society of Radiological Protection (the UK organisation of professional radiation specialists) estimate that there are around 550 Radiological Protection Advisers (RPAs) in the UK and that the daily consultancy costs range from £500 to £1500 for non-nuclear and nuclear specialists respectively. The daily cost of professional advice required by a user is estimated at £750 based on advice from key stakeholders, including environmental regulators. It has been selected as an appropriate modal average figure as the majority of users are from the non-nuclear industry.

(v) **Cost of regulatory input**: Based on the advice from environmental regulators, their estimated daily cost for exemption related work is assumed at £900. The UK has around 60 regulators who currently spend on average 3% of their time dealing with EO matters. Regulators costs range from £700 per day for non-nuclear regulators to £1500 per day for nuclear regulators so an average of £900 per day has been selected as an appropriate figure (as most users are from the non-nuclear industry). This is based on advice from the environmental regulators.

(vi) **Cost of user time**: It is estimated that the average user cost is around £250/day (based on a range of £150 per day to £350 per day). These estimates are based on advice from stakeholders within the nuclear & non-nuclear industries.

(vii) **Permitting changes**: Although environmental regulators believe fewer permits will be required under the new regime, there will be a shift whereby some users will be permitted in the future who are not currently permitted, and vice versa. For the purposes of this impact assessment, it has been assumed that the number of permits will remain the same. This assumption will be considered as part of the PIR.

(viii) **Waste management costs**: Through discussions with environmental regulators and deliberations at workshops it is anticipated that waste management costs will decrease under the new exemptions regime. Although some users will have higher waste management costs (e.g. titanium dioxide producers, users of minerals/sands), others will see waste management costs decrease (e.g. nuclear industry, medical/veterinary practitioners), and hence for the purposes of this impact assessment, it is assumed that the overall waste management costs will not change. This assumption will be considered as part of the PIR.

(ix) **Cost and benefit time assumptions**: The estimated time costs and savings used in this impact assessment were arrived at through lengthy engagement with key experts from nuclear/non-nuclear industries and environmental regulators. Following review of the current proposals, a sample of responses from a variety of industries and from the environmental regulators who have extensive dealings with these industries, which are a good representation of the wider user pool, indicate that although there are uncertainties about the assumptions relating to time spent with the current and proposed regimes, the time estimates used are reasonable averages for extensive and non-extensive current and new users as well as for the RPAs and environmental regulators. As outlined in paragraph 5.1 (ii), while the engagement responses demonstrated a general consensus that the new regime would lead to time savings, the heterogeneous nature of the user groups and the lack of quantification in responses meant that it was not possible to directly identify a representative range. As a consequence, time savings had to be informed via consultation with industry experts and environmental regulators. Several examples, in a variety of contexts, of how such time savings will arise in practice are set out on page 26 in **Annex 2**.

(x) **Appraisal period**: The new regime will last for perpetuity but the NPV calculation is based on 10 years which is both prudent and in line with the Better Regulation Executive's guidance. All costs are transitional and incurred in 2011; the cost estimates are therefore not discounted. All benefits are on a recurring basis over the appraisal period 2011 - 2020.

Cost and benefits

Baseline - Do Nothing

5.6 If we do nothing, this would maintain the current situation where we have out of date legislation which is not proportionate or risk-informed and is over-burdensome to users without supporting guidance.

5.7 Costs and benefits of the new exemptions regime are estimated relative to a cost-neutral baseline; all stakeholder engagement exercises were undertaken with an assumption that all administrations throughout the UK would either retain the same regulatory system or adopt a common framework. In reality, with revised legislation very recently being laid in Scotland, and likely to be laid in Northern Ireland over the coming months, it is anticipated that there will be an additional burden to users that operate across the UK once legislation comes into force in these administrations. Due to the criticality of implementing these regulations within England and Wales, we have not had an opportunity to fully assess these anticipated costs, but have been contacted by stakeholders who have expressed nervousness at having inconsistent regulations throughout the UK.

The Preferred Option - Top Level Rationalisation and Simplification of Existing Regime

Option Summary

5.8 The revised exemptions regime replaces the present suite of 18 EOs with one set of exemption provisions and includes amendments to the definitions of radioactive material and radioactive waste which determines what material is outside the scope of legislation. Supporting guidance is also provided.

Costs

5.9 The main monetised costs highlighted in paragraph 5.3 are detailed below:

5.10 **Existing users – cost of familiarisation**: The one-off cost to existing users of familiarisation with the new regime is estimated to be £3.6 million. This is based on a combination of 3,658 extensive users, requiring 3 days for familiarisation at a cost of £250 per day giving a cost of £2.7 million; and 17,243 non-extensive users requiring 0.2 days for familiarisation at a cost of £250 per day giving a cost of £860,000. It should be noted that the time estimate provided for non-extensive users reflect an average and not all businesses will have a cost of familiarisation as they will be unaffected by the revised regime.

5.11 **RPAs – cost of familiarisation:** The one-off cost of familiarisation for RPAs is estimated at £2.06 million. This is based on 550 RPAs, requiring 5 days for familiarisation at a cost of £750 per day.

5.12 **Regulators – cost of familiarisation:** The one-off cost for regulators of familiarisation with the new regime is £162,000. This is based on 60 regulators requiring 3 days for familiarisation at a cost of £900 per day.

5.13 **Cost of regulators producing procedural guidance**: The one-off cost of regulators producing new guidance is estimated at £45,000. This is based on 50 days of regulatory staff time at a cost £900 per day.

5.14 **Cost of industry producing procedural guidance:** The one-off cost to industry for producing procedural guidance is estimated to be £5.4 million. This is based on 3,658 extensive users requiring 5 days to produce guidance at a cost of £250 per day giving a cost of £4.6 million; and 17,243 non extensive users spending 0.2 days at a cost of £250 per day giving a cost of £860,000. It should be noted that the time estimate provided for non-extensive users

reflect an average and not all businesses will have a cost of producing guidance as they will be unaffected by the revised regime.

The total costs are therefore estimated at £11.3 million, of which £11.1 million are identified as costs to business.

Benefits

5.15 The main monetised benefits highlighted in paragraph 5.3 are detailed below:

5.16 **All users - reduced compliance time:** Recurring discounted benefits for all users resulting from reduced time spent using EOs demonstrating compliance is estimated at £16.1 million. This is based on a combination of 3,850 extensive users spending 1 day less time ensuring compliance with the exemptions regime at a rate of £250 per day giving a discounted benefit of £8.28 million; and 18,150 non extensive users spending 0.2 days less time ensuring compliance with the regime at a rate of £250 per day giving a discounted benefit of £7.8 million. It should be noted that the time estimate provided for non-extensive users reflects an average because not all businesses will be affected by the revised regime.

5.17 **RPAs - reduced time spent advising on EOs:** Recurring discounted benefits for RPAs from reduced time spent advising users on demonstrating compliance under the new exemptions regime is estimated at £3.55 million. This is based on 550 RPAs, saving 1 day on EO matters at a rate of £750 per day.

5.18 **New user - reduced cost of familiarisation**: Recurring discounted benefits for new users from reduced costs of familiarisation is estimated at £1.2 million. This is based on a combination of 192 extensive users spend 2 days less time familiarising themselves with the new exemptions regime (compared with the existing regime) at a rate of £250 per day giving a discounted benefit of £830,000; and 908 non extensive users spending 0.2 days less familiarising themselves with the regime at a rate of £250 per day giving a cost of £390,000. It should be noted that the time estimate provided for non-extensive users reflect an average and not all businesses will have a reduced cost of familiarisation because they are actually not aware that they are using the exemption regime e.g. smoke detector users.

5.19 **Regulators – reduced time spent dealing with EO queries**: Recurring discounted benefits to regulators for reduced time dealing with calls for advice about the exemptions regime is estimated at £1.4 million. This is based on 60 regulators, saving 3 days dealing with EO matters at a rate of £900 per day.

The total recurring discounted benefits are therefore estimated at £22.3 million, of which the discounted benefits to business are estimated at £20.9 million.

Overall estimated discounted net benefit value of £11.0 million, of which the net benefit to business is estimated at £9.8 million.

5.20 During the development of the new regime, the non-monetised benefits which have been identified as important by stakeholders include:

Perception: - The use of proportionate, risk-informed regulation, which is transparent in its derivation will increase confidence of users in the regulatory process, and to society in general.

Trade: - Harmonisation with other national and international legislation and standards, which may have a positive effect on matters such as international trade.

New Business: - The proposals will introduce a simpler system with comprehensive guidance which will create an environment that is more conducive to new business start-up.

Regulatory: - A measure of future-proofing which will make the regime easier to amend in the future and reduce policy development costs in the future by relegating as much detail as possible from regulation to guidance.

5.21 A summary table of costs and benefits for the new regime is presented on page 17.

One-in, one-out

5.22 For the purposes of OIOO, prices need to be discounted from 2011 to 2009 prices. The net benefit to business, £9.8m, is therefore £9.3m after discounting. Using the OIOO formula and a time period of 10 years, this gives an OUT of £1.1m.

New exemptions regime summary of costs and benefits

		One-off	Recurring
COST TO BUSINESS (present value)	One-off transition cost of familiarisation with the new regime for existing EO users	£3.61 million	0
	One-off transition cost of familiarisation with the proposed regime for RPAs	£2.06 million	0
	One-off cost for industry producing internal procedural guidance	£5.44 million	0
Total Cost to Business		£11.11 million	0
COST TO REGULATORS (present value)	One-off transition cost of familiarisation with the new regime for regulators	£0.16 million	0
	One-off cost for regulators producing procedural guidance for industry	£0.05 million	0
Total Cost to Regulators		£0.21 million	0
TOTAL NPV COSTS		**£11.3 million**	**0**
BENEFITS TO BUSINESS (present value)	Recurring benefits for RPAs from reduced time spent using EOs demonstrating compliance	0	£3.55 million
	Recurring benefits for all users from reduced time spent using EOs demonstrating compliance	0	£16.10 million
	Recurring benefits for new users from reduced costs of familiarisation with the exemptions regime	0	£1.22 million
Total Benefits to Business		0	£20.87 million
BENEFITS TO REGULATORS	Recurring benefits to regulators for reduced time dealing with calls for advice about the exemptions regime	0	£1.39 million
Total Benefits to Regulators		0	£1.39 million
TOTAL NPV BENEFITS		**0**	**£22.3 million**
NPV (calculated over 10 years)		**£11.0 million**	

Sensitivity of net benefits of revised regime to key assumptions

5.23 The Net benefits of the new exemptions regime are sensitive to the assumptions made. The key assumptions are:

- Rate costs per day for users, RPAs and regulators; and
- Input time savings/costs for users, RPAs and regulators.

5.24 Below, we have examined the sensitivity of the net benefits by changing the input values for these central assumptions.

Rate costs for users, specialists and regulators

5.25 To examine the sensitivity of net benefits to the rate cost of users, RPAs and regulators time we:

- hold the population number in 2011 constant (22,000 users, 550 RPAs and 60 regulators);
- hold the time savings/costs for users, RPAs and regulators at their central values; and
- vary the rate cost of users, RPAs and regulators as summarised in the table below:

Scenario	Low	Central	High
Regulator time in £/day	***800**	**900**	***1300**
Specialist time in £/day	****625**	**750**	****1250**
User time in £/day	**150**	**250**	**350**
NPV (£ million)	**£7.3m**	**£11.0m**	**£15.8m**

*The rate costs used in the assumptions for regulators time (£700 – £1500 per day) have been adjusted in this sensitivity test to £800 - £1300/day as there is not a case for all 60 regulators to be solely engaged in either the non-nuclear work (£700/day) or nuclear work (£1500/day).

**The rate costs used in the assumptions for RPAs time (£500 – £1500 per day) have been adjusted in this sensitivity test to £625 – £1250/day as there is not a case for all 550 RPAs to be solely engaged in either the non-nuclear work (£500/day) or nuclear work (£1500/day).

Input time savings/costs

5.26 To examine sensitivity of net benefits to the time savings/costs for users, RPAs and regulators to the new exemptions regime we:

- hold the number of existing users in 2011 constant at 22,000;
- hold the rate costs of users, RPAs and regulators at their central value; and
- vary the time savings/costs as summarised in the table below:

Scenario		Low	Central	High
COSTS				
Users costs of familiarisation with the new regime	Extensive user	2 days	3 days	4 days
	Non-extensive user	0.1 day	0.2 day	0.3 day
RPAs costs of familiarisation with new regime		4 days	5 days	6 days
Regulators costs of familiarisation with new regime		2 days	3 days	4 days
Regulators – costs of producing guidance		40 days	50 days	60 days
Industry – costs of producing guidance	Extensive user	4 days	5 days	6 days
	Non-extensive user	0.1 day	0.2 day	0.3 days
BENEFITS				
Time savings for all users demonstrating compliance with exemptions regime	Extensive user	0.5 day	1 day	1.5 days
	Non-extensive user	0.1 day	0.2 day	0.3 day
New user reduced cost of familiarisation with exemptions regime	Extensive user	1 day	2 days	3 days
	Non-extensive user	0.1 day	0.2 day	0.3 day
Reduced RPAs time spent advising on EO regime		0.5 day	1 day	1.5 days
Reduced regulator time for handling enquiries		2 days	3 days	4 days
NPV (£ million)		£3.2m	£11.0m	£18.7m

Summary of sensitivity results

5.27 The most pessimistic set of assumptions (from all low rate cost/day and all low input time) results in net benefits (NPV) of £2.2 million.

5.28 The most optimistic set of assumptions (from all high rate cost/day and all high input time) results in net benefits (NPV) of £27.0 million.

6. Specific Impact Checklist

6.1 Each of the tests in the Specific Impact Checklist are considered below.

Competition Assessment

6.2 Considering the four questions posed in the competition assessment laid out by the Office of Fair Trading, the proposed regime is not expected to either directly or indirectly limit the number or range of suppliers. It is not expected to limit the ability of the suppliers to compete or to reduce suppliers' incentives to compete vigorously.

Small Firm Impact Assessment

6.3 The proposals are not anticipated to negatively affect small businesses, their customers or their competitors. Indeed any proposal which is proportionate and reduces administrative burden should not disproportionately affect small firms and may help as they will spend a lower proportion of their time on administrative tasks. By the nature of the material regulated it is not possible to remove impact on small businesses completely but by reducing administrative burdens its benefits will be greatest for small businesses who have less time to spend on administration.

Sustainable Development

6.4 The new exemptions regime is expected to have no material impact on sustainability, as they are not expected to materially change waste management practices.

Legal Aid

6.5 The policy is not going to introduce any new criminal sanctions or civic penalties. The proposals should therefore not have an impact on legal aid.

Health Impact Assessment

6.6 The policy proposals will not have an impact on health or health inequalities by virtue of its effects on the wider determinants of health contained in the Department of Health's screening questions for health impact assessment**.** The level of health protection provided by the legislation has not been changed.

Carbon Assessment

6.7 It is not considered there will be significant effects on emissions of greenhouse gases as a result of the implementation of this policy because the way activities are undertaken will not alter. Therefore, a full carbon assessment is not appropriate.

Equality Assessment

6.8 An initial screening of the equality impacts of this policy has been conducted. This has been completed in line with the Public Sector Equality Duty, due to come into force from April 2011, considering the equality impacts on the protected characteristics of: age; disability; gender reassignment; marriage and civil partnerships; pregnancy and maternity; race; religion or belief; sex; and sexual orientation. The policy has been assessed using the specific screening questions set out in the EHRC guidance on equality impact assessments (see page 25 of http://www.equalityhumanrights.com/uploaded_files/eiaguidance.pdf). Based on the answers to these questions, we have decided that a full equality impact assessment is not required and that the policy is not expected to have any negative equality impacts.

Human Rights

6.9 There are no human rights issues raised by these proposals.

Rural Proofing

6.10 The policy is most unlikely to have a different or disproportionate impact in rural areas due to particular rural circumstances or needs.

Annexes

Annex 1 should be used to set out the Post Implementation Review Plan as detailed below. Further annexes may be added where the Specific Impact Tests yield information relevant to an overall understanding of policy options.

Annex 1: Post Implementation Review (PIR) Plan

A PIR should be undertaken, usually three to five years after implementation of the policy, but exceptionally a longer period may be more appropriate. If the policy is subject to a sunset clause, the review should be carried out sufficiently early that any renewal or amendment to legislation can be enacted before the expiry date. A PIR should examine the extent to which the implemented regulations have achieved their objectives, assess their costs and benefits and identify whether they are having any unintended consequences. Please set out the PIR Plan as detailed below. If there is no plan to do a PIR please provide reasons below.

Basis of the review: [The basis of the review could be statutory (forming part of the legislation), i.e. a sunset clause or a duty to review , or there could be a political commitment to review (PIR)];
Review objective: [Is it intended as a proportionate check that regulation is operating as expected to tackle the problem of concern?; or as a wider exploration of the policy approach taken?; or as a link from policy objective to outcome?]
Review approach and rationale: [e.g. describe here the review approach (in-depth evaluation, scope review of monitoring data, scan of stakeholder views, etc.) and the rationale that made choosing such an approach]
Baseline: [The current (baseline) position against which the change introduced by the legislation can be measured]
Success criteria: [Criteria showing achievement of the policy objectives as set out in the final impact assessment; criteria for modifying or replacing the policy if it does not achieve its objectives]
Monitoring information arrangements: [Provide further details of the planned/existing arrangements in place that will allow a systematic collection systematic collection of monitoring information for future policy review]
Reasons for not planning a review: [If there is no plan to do a PIR please provide reasons here]

Annex 2

Options Development and the Preferred Option

This review has involved significant stakeholder engagement with experts from Government, the Health Protection Agency, environmental regulators, industry/public sector experts and

NGOs who have been involved in the development of the options from the original stages looking at what this review should consider (carried out in 2006/2007), through to the preferred option under consideration in this impact assessment.

Outcomes of the options assessment

The matrix below summarises the six options considered during the options assessment. Further details about the options assessment process and details (including the merits and disadvantages of each option) can be found in the 3 reports (***Ref 2, 3* and *4***).

Table 1: Summary of main architecture options for assessment

<table>
<tr><th rowspan="4">Option 1 – do nothing</th><th rowspan="4">Option 2 – minor updates of existing EOs</th><th>Option 3 – full updates of existing EOs</th><th>Option 4 – rebrigading of EOs</th><th>Option 5 – top level EOs with all the detail in schedules</th><th>Option 6 – goal setting/dose based approach</th></tr>
<tr><td colspan="3">Reappraisal of numerical values</td><td>N/A</td></tr>
<tr><td colspan="4">Reappraisal of the Substances of Low Activity Exemption Order – including material specific clearance/exemption levels for bulk quantities</td></tr>
<tr><td colspan="4">Reappraisal of Schedule 1 – possible change to a qualitative approach to exclusion</td></tr>
<tr><td></td><td colspan="5">Revocation of some EOs</td></tr>
<tr><td></td><td colspan="5">Guidance on operation of EO regime</td></tr>
</table>

Options assessment outcome

Whilst Options 3, 4 and 5 would produce similar end results, as a result of the options assessment process (using multi-attribute analysis), Option 5 was agreed by experts as the preferred framework for the EO regime, with one minor modification suggested that there should only be one exemption order and not two. In summary it was considered that option 5:

- was the most compatible with other better regulation initiatives such as the Environmental Permitting Regulations and other environmental protection legislation;
- was very adaptable to new circumstances and practices;
- had the potential to lower the regulatory burden if done well;
- would be risk-informed.

Preferred Option development process

Following the option assessment process, detailed work was undertaken to populate the preferred EO framework (Option 5) with numerical values and conditions. It was during the

course of this detailed work to develop a new exemptions regime, that it became apparent that attention to the scope of RSA 93 was important in order to provide a comprehensive and logical regime. This aspect was therefore added to Option 5, and an expert group was convened which made recommendations (***Ref 5***) as part of this review.

A workshop (***Ref 6***) was held to test the inputs to the proposed new framework and the general principles were accepted by stakeholders.

A full public consultation exercise took place from June to September 2009; a link to the consultation document and supporting material can be found here (http://www.decc.gov.uk/en/content/cms/consultations/exemptions/exemptions.aspx).

The consultation exercise raised a number of issues which required change to the detailed provisions to avoid a significant burden to a variety of industries; the consultation response summary document (***Ref 7***) summarises these issues.

An expert group comprising technical experts from Government, the environmental regulators, the Health Protection Agency (HPA), and external consultants made recommendations to revise the proposals following the consultation, with the changes proposed being modifications to details and expansion of some of the provisions (an important case in point being the extension of the exemptions regime to deal with naturally occurring radioactive material (NORM) wastes in significant volumes). The work of this group was supplemented by inputs from industry and professional associations, who were contacted throughout the process on specific technical matters. Firm proposals for the preferred option for a new exemptions regime were developed around these key changes/issues. To understand the impact of these changes, it was appropriate to test these through further stakeholder engagement in September 2010 (the stakeholder engagement material can be found here (http://www.decc.gov.uk/en/content/cms/what_we_do/uk_supply/energy_mix/nuclear/radioactivity/decc/legislation/exempt_review/stakeholder/stakeholder.aspx).

The stakeholder engagement exercise identified areas where additional refinement was required. Further work with experts from the HPA, environmental regulators and industry has resulted in changes, including:

- Simpler proposals for stakeholders to understand, including the scope of exemptions and transitional provisions
- Clarification on whether the limits for NORM industrial activities would apply solely to the wastes produced or to the material also
- Further clarity with definitions
- Extension of NORM waste provisions to apply to legacy wastes
- Extension of provisions for non-aqueous and aqueous liquids

Preferred option summary

The preferred option will modernise the definitions of radioactive material and waste in RSA93 and replace the 18 EOs with a single, consistent, conditional EO. The effect of this will be to change the boundaries of what is outside the scope of legislation; what is exempt from full regulation and what is subject to permitting. Currently legislation places material and waste into one of the following 3 categories:

- Excluded ('out of scope') from legislation. Materials and wastes in this category are of such low radiochemical concentrations that they pose an extremely low risk to members of the public – the radiation doses are extremely low whatever the chemical or physical nature of the materials or wastes, and whatever is done with them (e.g. any

form of uncontrolled disposal of waste). Also within this category are materials or wastes which cannot practically be controlled; an example of this is radioisotopes that are in circulation in the atmosphere as a result of atomic weapons testing in the 1960s. No practical permitting regime can be applied to this situation, but fortunately the risks (in terms of a radiation dose) are extremely low.

- Exempted materials and wastes. This category is for materials and wastes which pose a small risk in terms of radiation dose, but the risks are low enough such that a 'light touch' regulatory approach is appropriate and proportionate. This light touch approach does not involve applications to, or permitting by, the regulators. However, the management of such materials and wastes has to be subject to certain conditions; that is, uncontrolled disposal in unlimited quantities may compromise the well established risk criteria. Therefore, the current exemption regime is largely conditional. The proposed regime is entirely conditional.

- Materials and wastes which are subject to full regulation, involving direct permitting by the regulators. Such materials and wastes could pose significant risks, and in order to ensure that the safety criteria are not compromised, then case- or site-specific conditions have to be applied. This is done by way of a bespoke permit, and the conditions are audited by way of regulatory inspections.

The proposed regime retains this principle but makes changes to the boundaries between the categories for 3 reasons:

- The current boundaries are in the wrong place. Whilst the current boundaries are based, in part, on risks, many of the demarcations appear to be arbitrary, contradictory across different exemption orders, or are based on risk assessments which are no longer available to us. Based on a consideration of risk, we have redrawn the boundaries and made them substantially clearer.

- The exact position of the boundary is currently vague in a number of circumstances; it can be difficult and time-consuming in some cases to work out on which side of a boundary to place certain materials and wastes. Decisions of this nature are often taken with advice from the regulators, taking up their time as well as that of the users or waste managers. The new regime clears up a substantial number of these difficult areas.

- There are gaps in the boundaries because the current exemption orders are up to 50 years old, and technology in this field continually advances. There are situations which are quite obviously of low risk (and can be proven so), but are not exempted under the current legislation. Again, resolving these situations often involves advice from the regulators, who can sometimes be put at risk by making certain practical and essential judgements which could be challengeable from a legal perspective. The new regime, following widespread consultation with experts, waste managers, regulators etc, has filled in a substantial number of these gaps to provide users and waste managers with a continuous set of boundaries.

These changes to the boundaries between exclusion, exemption and permitting have received universal acceptance by our stakeholders. They have welcomed the clear risk-informed (and transparently fair) approach to categorising materials and wastes; the reduction in ambiguity and conflict between different exemption orders as they exist now, and they have particularly welcomed an approach which not only fills in the gaps in the boundaries as perceived today, but attempts to future proof the legislation such that many currently unforeseen developments could be accommodated within the new structure (in a way that the current legislative situation does not).

The regime will be supported, for the first time, by comprehensive guidance written by Government in order to explain to the regulators (and, by extension, users) the intent of the various exemption provisions. This guidance will be supplemented with more detailed guidance prepared by the environmental regulators.

Impacts

The changes described above will simplify the existing regime and the following examples demonstrate how this will affect stakeholders on the ground.

Medical/research sector

A research laboratory manager requires advice on the quantities of exempt aqueous liquid which can be disposed of to a laboratory sink and what conditions apply. In the course of dispensing the liquid, some will be emitted to a fume cupboard as a gas. There are two elements to this example – exempt gaseous release and exempt aqueous disposal. As far as gaseous disposal is concerned, under the present regime, there is no clear or explicit legislation or guidance on exempt gaseous releases. This will be rectified in the proposed regime. Currently, in determining whether the new activity is exempt or not, a RPA would have to:

- refer to the existing suite of numerous exemption orders. These have different limits which, sometimes, are not consistent with each other. The proposed discharges would need to be compared with these values;

- refer to Environment Agency (EA) guidance notes and other EA published determinations from, for example, the small users liaison group technical services updates;

- discuss with the EA (local Inspector and/or EA Technical Services);

- discuss with RPA colleagues in other organisations, either directly or by professional mailbases.

The RPA would then have to write a guidance and advice note for the laboratory manager which, if exemptions could be used, would need to detail the conditions (of the exemptions) under which the activity should be carried out. The content of these conditions, including numerical values and administrative provisions, would need to be ascertained from a number of sources.

Under the proposed regime, reference would have to be made to only one guidance document where:

- the position in respect of both gaseous and liquid disposals is clearly set out.

- all conditions applying to the exemptions are contained in one clearly referenced page of the guidance. This includes both numerical limits and administrative conditions.

Then, the guidance and advice note for the laboratory manager would have to be produced. In this case, the operational conditions could be copied/pasted directly from the guidance document, or the relevant page(s) from guidance copied and supplied directly to the laboratory manager. This work would be significantly less time consuming, and likely to take approximately 2 hours to produce compared to 6-7 hours under the current regime.

Nuclear site variation

A nuclear site wishing to excavate an area for a new plant, which pumps out tritium-contaminated water would currently have to apply for a variation to their permit. Under the new

regime they would have to notify the regulators and seek a new schedule to be added to their permit. They would not have to do a radiological impact assessment for the new waste stream, because a generic one has already been carried out under the EO review programme.

Under the existing regime the authorisation variation would require the following effort:

- Completion of application forms - 1 man day
- Supporting report setting out proposal - 4 man days
- Dose assessment (simple scaling approach) - 0.5 man day
- Preparation of covering letter - 0.5 man day
- Changes to reporting forms, spreadsheets, procedures etc - 2 man days
- Support and monitoring of the application and consultation: - 2 man days

Under the revised regime the following effort would be required:

- Letter requesting EO provisions - 0.5 man day
- Changes to reporting forms, spreadsheets, procedures etc - 1.5 man days
- Support and monitoring of the application - 0.5 man days

It is not possible to scale up this example to a national position for all nuclear sites over time because we have no information relating to the frequency of this event historically. For each occurrence, the cost savings are estimated to be around £3250.

Schools

RPAs get requests for advice on the disposal of redundant sealed sources. The main questions relate to the exempt nature of the source disposal and what conditions would apply to the disposal.

Under the current system this will entail reference to several exemption orders, EA guidance and possibly the EA helpdesk and precedents. It will involve calculations, including unit conversion, from one or more (sometimes inconsistent) exemption orders, followed by a comparison with the source in question. A list of the exemption conditions from one or more (sometimes inconsistent) exemption orders will the need to be compiled before the RPA can produce an advice note to the school on whether the source can be disposed of using an exemption order.

Under the revised regime, the RPA would need to make simple reference to the government guidance which deals with sealed sources and sets out activity limits for exemption and the administrative conditions associated with it. This would also provide the basis of the advice note the RPA would provide to the school.

Start up company

A manufacturer of scientific equipment wishes to branch out into a new line that requires the use of a small test source is an example of how the current exemption regime is restrictive and deters innovation and adds costs for new start. Manufacturers are not currently able to use the existing Testing Instruments Exemption Order. So a start up company would need to have a Category 5 Standard Rules Permit (Type B to allow for disposals) at an application cost of £600 and an annual subsistence fee of £300 together with the cost of an RPA to complete all the paperwork for them at a cost of around £600. Under the new system they would be exempt if they do not exceed the inventory limit. We cannot scale up these costs to a national picture

because we have no information as to how many similar situations are likely to occur, or have occurred historically.

Regulators

The Environment Agency have estimated that currently, on average, an RSR regulator/technical advisor/manager (60FTE) will spend approximately 3% of their working year on dealing with issues related to advice, guidance and interpretation of exemption provisions and the definitions of radioactive material and radioactive waste. Some of this time will be dealing with enquiries from EPR permit-holders who also use the current exemption orders, and some will be dealing with those who operate wholly within the exemption regime. None of this work is chargeable to the customer. The enquiries fall into a number of categories, typically they are of the type is my new sources/products exempt? Is my waste radioactive waste? Is my radioactive waste exempt? Can I use the exemption? What am I allowed to do with my exempt waste? What do the conditions mean? What do I need to do to comply with the conditions? How many sources can I hold under the exemption?

Many of the most time consuming issues that are dealt with by regulators are those related to very low concentration radioactive substances, deciding whether a waste is "out of scope", exempt or at the threshold of permitting. These cases have often been more difficult than determining whether a waste is Low Level Waste or Intermediate Level Waste. This in part is because of sampling and measurement issues, both of which will be addressed in guidance supporting the new regime.

Under the revised regime, with modern limits and conditions, underpinned by national assessments of risk carried out by the Health Protection Agency, together with comprehensive guidance from government and the regulators, it should be possible for most of the advice and guidance work the regulators do now by telephone and email to be avoided by directing customers to web based guidance. They forecast that these enquiries will, after the exemption provisions have bedded down, reduce by more than 50%, and that in addition because of the existence, for the first time, of comprehensive guidance, each enquiry should be able to be dealt with more quickly than previously. There has been a conscious effort made in the development of the new provisions to deal with the issues and sectors that have been the principal sources of these enquiries e.g. laboratories undertaking lifescience, pathology and tracer work generating small quantities of liquid radioactive waste, which will now be exempt.

In summary, the regulators believe that by providing exemption provisions to deal with a wider range of low-risk users/substances, together with comprehensive web-based guidance, it should conservatively reduce the current 3% figure to 1-1.5% once the regime has bedded down.

New User

It is very difficult to provide examples of the benefits of the revised exemptions regime to new users of radioactive material because by definition we do not know who they are. However, a recent example came to light when a manufacturer wanting to use a sealed source for measuring the rate of flow in a smart meter sought advice on when the new regime would be coming into force. They wished to make use of the proposed exemption for sealed sources because it was not clear to them that they were exempt under any existing exemption order. Feedback from the organisation was that the proposed regime clearly stated the level of alpha and beta activity for a sealed source for manufactured articles, which covered their application and the conditions of the exemption were also clearly stated. In the current regime they felt it was harder to understand which exemption order would cover the meter and they had sought confirmation from the regulators that it was exempt under the existing Testing Instruments Exemption Order which was not immediately clear to them. From their experience

they estimate that whilst it had taken approximately 4 days to understand the current regime this had been reduced to 2 days to understand the revised regime with its associated guidance.

Meeting Note

Summary Note - Meeting to discuss the EO Review Impact Assessment (22/12/2011)

Location: LG04, 3 Whitehall Place
Attendance: Binika Shah (DECC)
Anthony Moulds (DECC Economist)
By telephone conference:
Fiona Shand (DECC)
Allan Ashworth (DECC)
Stuart Hudson (Scottish Government)
Bob Russ (EA)
Adam Stackhouse (SEPA)
Chris Fayers (Clearance and Exemption Working Group – nuclear industry liaison)
Richard Harrison (Association of University Radiation Protection Officers – non-nuclear industry liaison)

1. Everyone was thanked for their input on the paper containing the impact assessment methodology which was circulated at the Programme Board meeting on 16 December and the subsequent spreadsheet circulated on 20 December. Following comments received and further discussions at the subsequent meeting on 20 December, the version of the spreadsheet circulated in advance of this meeting had taken on board the following comments:

    - The day cost estimates had been revised for users.
    - A day cost bias had been incorporated for the environmental regulators and RPAs (based on ratios indicated from the split of nuclear and non-nuclear permits).
    - The user pool had been split into extensive and non-extensive users with indicative estimates of costs and benefits incorporated, based on limited data from industry responses and estimates from environmental regulators based on the types of permit holders.
    - The number of environmental regulators dealing with queries relating to EOs had been revised, based on further investigations by the environmental regulators throughout the UK.

2. Both the nuclear industry and non-nuclear industry representatives had circulated the IA to their networks but very few responses had been received. It was reiterated that although the draft IA had been circulated to all stakeholders contacted as part of the engagement exercise, with the lack evidence provided relating to the benefits, it would not be possible to include specific data. It was therefore agreed that a judgement would need to be made on the costs and benefits based on the expertise available.

3. It was agreed that the methodology would not need to change further; the types of costs and benefits had been adequately identified and no others were identified; there was the potential that once the regulations were laid and tested, further information would come to light when undertaking the post implementation review.

4. Running through the spreadsheet circulated in advance of the meeting, the following changes were agreed:
    - The day costs for users still appeared to be a bit high, it would need to be reduced further; £250 was agreed to be a fair estimate.
    - The number of days for familiarisation and producing guidance for a non-extensive user appeared to be too high; 0.2 days for each was more appropriate.
    - The time saved by all non-extensive users demonstrating compliance was likely to be greater; 0.2 days was considered more appropriate.

    The agreed table can be found in the appendix below; the ranges would need refining further in light of these changes but were deemed to be of the right order of magnitude. This would then be circulated for final agreement.

5. It was agreed that the table would then be circulated to a small group of stakeholders from a variety of industries to check whether these estimates would be acceptable.

6. In terms of next step, this information would now be fed into the IA which was being developed further following the close of the engagement, and would be submitted to the Regulatory Policy Committee in spring 2011 (as per the timetable). Scottish Government and Department of Environment Northern Ireland had heard that they would need to submit their own impact assessments; they would use this methodology and submit as per their respective timetables.

EO Review Team
January 2011

Post meeting note

Response from stakeholders was that, appreciating that each circumstance for individual industries would result in monetary variations, the cost and benefit estimates used in the IA were deemed acceptable.

Appendix

One-off Transition Cost Assumptions

1	***Existing users - cost of familiarisation with new EO regime***	
	Extensive existing users (i.e. 95% of pool)	3,658
	Cost of familiarisation with new regime (£ / day)	250
	Number of days input required for intensive users	3
	Non-extensive existing users (net of new entrants)	17,243
	Cost of familiarisation with new regime (£ / day)	250
	Number of days input required	0.2
2	***RPAs - cost of familiarisation with new EO regime***	
	Number of RPAs	550
	Cost of familiarisation with new regime (£ / day)	750
	Number of days input required	5
3	***Regulators - costs of familiarisation***	
	Number of RSR regulators	60
	Costs of familiarisation with new regime per regulator / day	900
	Number of regulator days required for familiarisation with new regime	3
4	***User Guidance - cost of producing new guidance***	
	Extensive users	3,658
	Cost of developing guidance (£ / day)	250
	Number of days input to develop guidance	5
	Non-extensive users	17,243
	Cost of developing guidance (£ / day)	250
	Number of days input to develop guidance	0.2
5	**Regulator Guidance - cost of producing new guidance**	
	Number of days input	50
	Cost of developing guidance (£ / day)	900

Recurring Benefits Assumptions

1	***RPAs - reduced time spent advising on EOs under new regime***	
	Cost of professional advice for familiarisation (£ / day)	750
	Number of RPAs	550
	Number of reduced days RPA input	1
2	***All users - reduced time spent using EOs***	
	Extensive users	3,850
	Average user cost (£ per day)	250
	Reduction in EO use due to simplification (days / year)	1
	Non-extensive users	18,150
	Average user cost (£ per day)	250
	Reduction in EO use due to simplification (days / year)	0.2
3	***New Users - reduced costs of familiarisation***	

Extensive new entrant users	193
User cost (£ / day)	250
estimated reduction in EO cost (days / year)	2
Non extensive new entrant users	908
User cost (£ / day)	250
estimated reduction in EO cost (days / year)	0.2

4 ***Regulators - reduced time for handling enquiries***

Number of RSR regulators	60
Estimated cost of handling telephone calls (£ / day)	900
Reduction in time spent per regulator handling calls (days / year)	3

Draft Regulations laid before Parliament and the National Assembly for Wales under section 2(8) and (9)(d) and (e) of the Pollution Prevention and Control Act 1999 for approval by resolution of each House of Parliament and of the Assembly.

D R A F T S T A T U T O R Y I N S T R U M E N T S

2011 No. 0000

ENVIRONMENTAL PROTECTION, ENGLAND AND WALES

The Environmental Permitting (England and Wales) (Amendment) Regulations 2011

Made - - - - ***

Coming into force in accordance with regulation 1(b)

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Consequential amendments, repeals, savings and revocation

These Regulations are made in exercise of the powers conferred by sections 2 and 7(9) of, and Schedule 1 to, the Pollution Prevention and Control Act 1999(**a**).

The Secretary of State, in relation to England, and the Welsh Ministers, in relation to Wales, have in accordance with section 2(4) of that Act consulted(**b**)—

(a) the Environment Agency;

(b) such bodies or persons appearing to them to be representative of the interests of local government, industry, agriculture and small businesses respectively as they consider appropriate; and

(c) such other bodies or persons as they consider appropriate.

A draft of this instrument has been approved by a resolution of each House of Parliament and by the National Assembly for Wales pursuant to section 2(8) and (9)(d) and (e) of that Act(**c**).

Accordingly, the Secretary of State in relation to England, and the Welsh Ministers in relation to Wales, make the following Regulations.

(**a**) 1999 c. 24. Paragraph 9A was inserted by S.I. 2005/925, Schedule 6, paragraph 2(2)(a). Paragraph 21A was inserted by section 38 of the Waste and Emissions Trading Act 2003 (c. 33). Paragraph 24 was amended by S.I. 2005/925, Schedule 6, paragraph 2(2)(b). Paragraph 25 was amended by section 105(1)(a) and (b) of the Clean Neighbourhoods and Environment Act 2005 (c. 16). Functions of the Secretary of State under section 2 (except in relation to offshore oil and gas exploration and exploitation), so far as exercisable in relation to Wales, were transferred to the National Assembly for Wales by article 3 of the National Assembly for Wales (Transfer of Functions) Order 2005 (S.I. 2005/1958). Those functions were then transferred to the Welsh Ministers by section 162 of, and paragraph 30 of Schedule 11 to, the Government of Wales Act 2006 (c. 32).

(**b**) The requirement in that section to consult the bodies and persons mentioned was transferred from the National Assembly for Wales to the Welsh Ministers by paragraph 30 of Schedule 11 to the Government of Wales Act 2006 (c. 32). The consultation carried out by the National Assembly for Wales has effect as if it were carried out by the Welsh Ministers by virtue of paragraph 39(3) of that Schedule to that Act.

(**c**) The reference in section 2(8) to approval by each House of Parliament has effect in relation to exercise of functions by the Welsh Ministers as if it were a reference to approval by the National Assembly for Wales by virtue of paragraph 33 of Schedule 11 to the Government of Wales Act 2006 (c. 32).

PART 1

General

Citation and commencement

1. These Regulations—

(a) may be cited as the Environmental Permitting (England and Wales) (Amendment) Regulations 2011; and

(b) come into force on 1st October 2011, except regulations 2, 3, 12 and 14 which come into force on the day after the day on which these Regulations are made.

Interpretation

2. In these Regulations—

(a) "the 2010 Regulations" means the Environmental Permitting (England and Wales) Regulations 2010(**a**); and

(b) "the Act" means the Radioactive Substances Act 1993(**b**).

PART 2

Amendments to the 2010 Regulations

Amendment of the Environmental Permitting (England and Wales) Regulations 2010

3. The 2010 Regulations are amended in accordance with regulations 4 to 15.

Amendment of regulation 2 (interpretation: general)

4.—(1) Paragraph (1) of regulation 2 (interpretation: general) is amended as follows.

(2) In the definition of "radioactive material", for "paragraph 2" substitute "paragraph 3".

(3) In the definition of "radioactive substances activity", for "paragraph 5" substitute "paragraph 11".

(4) After the definition of "radioactive substances activity", insert—

> ""radioactive substances exemption" means an exemption under Part 7 of Schedule 23 from the requirement for an environmental permit in respect of a radioactive substances activity;".

(5) In the definition of "radioactive waste", for "paragraph 4" substitute "paragraph 3".

(6) In the definition of "waste", for "paragraph (4)" substitute "paragraph (5) where it applies".

(7) For paragraph (4) substitute—

> "(4) Paragraph (5) applies where a person ("A")—
>
> (a) carries on a radioactive substances activity described in paragraph 11(2)(b) or (c) or (4) of Part 2 of Schedule 23 in respect of radioactive waste;
>
> (b) is exempt under regulation 12(3) from the requirement for an environmental permit in respect of that activity and that waste ("the relevant exemption"); and
>
> (c) the waste ("the applicable radioactive waste") is—
>
> (i) NORM waste (as that term is defined in Part 7 of Schedule 23); or

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(**a**) S.I. 2010/675; relevant amendments by S.I. 2011/ 988.
(**b**) 1993 c.12; amended by S.I. 2001/4005, S.I. 2010/675, 1995 c. 25, 1993 c.11, 2009 c.23

(ii) the waste described in the first, second or sixth row of column 1 of table 6 in Part 7 of Schedule 23.".

(8) After paragraph (4), insert—

"(5) Where this paragraph applies, for so long as the relevant exemption applies to A, the applicable radioactive waste must be treated for the purposes of these Regulations as if it were waste other than radioactive waste.".

Amendment of regulation 5 (interpretation: exempt facilities)

5. In paragraph (1) of regulation 5 (interpretation: exempt facilities), for the definition of "exempt groundwater activity", substitute—

""exempt groundwater activity" means—

(a) a stand-alone groundwater activity that meets the requirements of paragraph 5 of Schedule 2; or

(b) a groundwater activity that—

(i) is a groundwater tracer test as defined in paragraph 1 of Part 3 of Schedule 3;

(ii) is also a radioactive substances activity by virtue of the using of radioactive material as a part of that test; and

(iii) meets the requirements of paragraph 5 of Schedule 2.".

Amendment of regulation 12 (requirement for an environmental permit)

6. In regulation 12 (requirement for an environmental permit), for paragraph (3) substitute—

"(3) In respect of a radioactive substances activity, paragraph (1) does not apply to a person to whom a radioactive substances exemption applies for that activity.

(4) Paragraph (5) applies to a person ("A") who—

(a) receives radioactive waste from another person ("B") for the purposes of A disposing of that waste; and

(b) subsequently disposes of that waste.

(5) Where this paragraph applies, A does not require an environmental permit—

(a) for the receipt of waste from B, where B holds an environmental permit which allows B to dispose of the waste to A; or

(b) for the subsequent disposal of that waste by A, where the waste is disposed of in accordance with the permit held by B.".

Amendment of regulation 14 (content and form of an environmental permit)

7. In regulation 14(6)(b) (content and form of an environmental permit), for "paragraph 5(5)" substitute "paragraph 11(5)".

Amendment of regulation 17 (Single site permits etc.)

8. In regulation 17(3) (single site permits etc.), for "paragraph 5(5)" substitute "paragraph 11(5)".

Amendment of regulation 67 (Interpretation of Part 7)

9.—(1) Regulation 67 is amended as follows.

(2) After the definition of "2007 transitional application", insert the following definition—

""article" and "substance" have the meaning given to them in Schedule 23 to these Regulations.".

(3) The definition of "radioactive substances exemption order" is revoked.

Revocation of regulation 72 (Radioactive substances exemption orders)

10. Regulation 72 is revoked.

Insertion of regulations 72A, 72B, 72C and 72D

11. After regulation 71, insert—

"**Previously excluded radioactive material and radioactive waste**

72A.—(1) Paragraph (3) applies to a person ("A") who was carrying on an activity ("the continuing activity") described in paragraph (2) immediately before 1st October 2011 and who continues to carry on the activity on or after that date.

(2) The continuing activity referred to in paragraph (1) means an activity carried on by A—

(a) in respect of a substance or article which—

(i) immediately before 1st October 2011 was not defined as radioactive material or radioactive waste; but

(ii) on that date became defined as radioactive material or radioactive waste by virtue of the amendments made to those definitions on that date ("the relevant amendments");

and

(b) which on that date became a radioactive substances activity described in paragraph 11(2), (4) or (5) of Part 2 of Schedule 23 by virtue of the relevant amendments.

(3) Where this paragraph applies, A is exempt from the requirement to hold an environmental permit in respect of the continuing activity until the end time set out in regulation 72C.

Previously exempt radioactive substances activities

72B.—(1) Paragraph (3) applies to a person ("A") who was carrying on an activity ("the continuing activity") described in paragraph (2) immediately before 1st October 2011 and who continues to carry on the activity on or after that date.

(2) The continuing activity referred to in paragraph (1) means an activity—

(a) described in paragraph 11(2), (4) or (5) of Part 2 of Schedule 23; and

(b) in respect of which, immediately before 1st October 2011, A was exempted under regulation 72 (as in force at that time) from the requirement to hold an environmental permit ("the existing exemption").

(3) Where this paragraph applies, the existing exemption continues to apply to A until the time set out in paragraph (4), subject to any conditions which applied to that exemption.

(4) The time referred to in paragraph (3) is—

(a) if A does not become exempt in respect of the continuing activity under a radioactive substances exemption before 1st April 2012, the end time set out in regulation 72C; or

(b) if A does become so exempt, the time at which the exemption begins to apply.

End time: regulations 72A and 72B

72C.—(1) For the purposes of regulations 72A and 72B, the end time is—

(a) where, before 1st April 2012, A makes a permit application—

(i) if that application is granted, the time of grant;

(ii) if that application is refused and—

(aa) A appeals against the refusal under regulation 31, the time at which the appeal is determined or withdrawn;

(bb) A does not appeal against the refusal, the end of the day which is the final appeal date;

or

(b) where no such application is made, the earliest of—

(i) 1st April 2012;

(ii) the time at which A ceases to carry on the continuing activity; or

(iii) for the purposes of regulation 72A only, the time a radioactive substances exemption first applies to A in respect of the continuing activity.

(2) In paragraph (1)—

"final appeal date" means the last day on which an appeal against a refusal to grant an environmental permit could have been brought under regulation 31, but not including any extension of the time limit for making an appeal allowed by the appropriate authority under paragraph 3(2) of Schedule 6; and

"permit application" means—

(a) an application for an environmental permit under regulation 13 in respect of (as applicable) the continuing activity under regulation 72A or 72B; or

(b) an application under regulation 20 for a variation of an existing environmental permit, in respect of the inclusion in the permit of that continuing activity.".

Existing radioactive substances permits

72D.—(1) Paragraph (4) applies to a person ("A") who was carrying on an activity described in paragraph (2) ("the continuing excluded activity") or paragraph (3) ("the continuing exempt activity") immediately before 1st October 2011 and who—

(a) continues to carry on that activity after that date; and

(b) holds an environmental permit in respect of the activity ("permit A").

(2) The continuing excluded activity referred to in paragraph (1) means an activity which—

(a) was a radioactive substances activity immediately before 1st October 2011; but

(b) ceases to be such an activity on that date because it was carried on in respect of a substance or article which ceased to be defined as radioactive material or radioactive waste on that date by virtue of the amendments made to the definitions in these Regulations of radioactive material and radioactive waste on that date.

(3) The continuing exempt activity referred to in paragraph (1) means an activity—

(a) described in paragraph 11(2), 11(4) or 11(5) of Part 2 of Schedule 23 to these Regulations; and

(b) in respect of which A—

(i) immediately before 1st October 2011, was not exempt under regulation 72 (as it was in force at that time); but

(ii) is exempt under a radioactive substances exemption.

(4) Where this paragraph applies, subject to paragraph (5), A may surrender any part of permit A that applies to the continuing excluded activity or the continuing exempt activity by notification to the regulator.

(5) A notification under paragraph (4) must be made to the regulator on or before 31st March 2012.

(6) Regulation 24(3) to (7) applies as if the notification were made under that regulation. ".

Amendment to Schedule 1 (activities, installations and mobile plant)

12. In part 2 of Schedule 1 (activities), after Section 6.9 (intensive farming), insert—

"SECTION 6.10

Carbon capture and storage

Part A(1)

(a) Capture of carbon dioxide streams from an installation for the purposes of geological storage pursuant to Directive 2009/31/EC of the European Parliament and of the Council on the geological storage of carbon dioxide(**a**).".

Amendment to Schedule 5 (environmental permits)

13. In paragraph 5(1)(b) of Part 1 of Schedule 5 (environmental permits), for "paragraph 5(5)" substitute "paragraph 11(5)".

Amendment to Schedule 22 (groundwater activities)

14. In paragraph 8 of Schedule 22 (groundwater activities for which a permit may be granted), after sub-paragraph (c) insert—

"(ca) the injection of carbon dioxide streams for storage purposes into geological formations which for natural reasons are permanently unsuitable for other purposes, provided that such injection is made in accordance with Directive 2009/31/EC of the European Parliament and of the Council on the geological storage of carbon dioxide(**b**), or excluded from the scope of that Directive pursuant to Article 2(2) of that Directive,".

Substitution of Schedule 23 (radioactive substances activities)

15. For Schedule 23 (radioactive substances activities), substitute the contents of Schedule 1 (new Schedule 23 to the 2010 Regulations) to these Regulations.

PART 3

Consequential amendments, repeals, savings and revocation

Consequential amendments

16. Schedule 2 (consequential amendments) has effect.

Repeals

17.—(1) The Act, except for the provisions referred to in paragraph (2), is repealed.

(2) Those provisions are—

(a) paragraphs 2, 5 to 9 and 11 of Schedule 4;

(b) section 49(1) so far as it relates to those paragraphs of that Schedule; and

(c) section 51.

(**a**) OJ No L 140, 5.6.2009, p 114.
(**b**) OJ No L 140, 5.6.2009, p 114.

Savings

18.—(1) Despite regulations 9(3) and 10, the following provisions continue to have effect for the purposes of regulations 72A and 72B of the 2010 regulations—

(a) the definition of "radioactive substances activity exemption order" in regulation 67 of the 2010 Regulations; and

(b) regulation 72 of those Regulations.

(2) Despite their lapse by virtue of regulation 17, the orders listed in Schedule 3 continue to have effect for the purposes of regulations 72A and 72B of the 2010 Regulations.

(3) Despite regulation 17—

(a) section 8 of the Act (exemptions from the requirement for an environmental permit);

(b) section 11 of the Act (exemptions from the requirement for an environmental permit for mobile radioactive apparatus); and

(c) section 15 of the Act (further exemptions from the requirement for an environmental permit)

continue to have effect so far as they provide authority for the orders listed in Schedule 3.

(4) Despite regulation 17, section 47 of the Act (general interpretation provisions) continues to have effect so far as it applies in relation to the provisions of the Act specified in paragraph (4).

(5) The amendments made by paragraph 1 of Part 1 of Schedule 2 (the Continental Shelf Act 1964) do not have effect in relation to the orders listed in Schedule 3 (and continuing to have effect by virtue of paragraph (3)), and despite regulation 15—

(a) paragraph 1 of Schedule 4 to the Act (consequential amendment to the Continental Shelf Act 1964) continues to have effect in relation to those orders; and

(b) section 49(1) of the Act (consequential amendments and transitional and transitory provisions) continues to have effect so far as it relates to that paragraph of that Schedule.

(6) The amendments made by paragraph 1 of Part 2 of Schedule 2 (The Civil Jurisdiction (Offshore Activities) Order 1987) do not have effect in relation to the orders listed in Schedule 3 (and continuing to have effect by virtue of paragraph (3)).

Revocation

19. The Radioactive Substances (Clocks and Watches) (England and Wales) Regulations 2001(**a**) are revoked.

Name
Minister of State,
Date Department of Energy and Climate Change

Name
Minister for Environment and Sustainable Development
Date one of the Welsh Ministers

(**a**) S.I. 2001/4005.

SCHEDULE 1

Regulation 15

New Schedule 23 to the 2010 Regulations

"SCHEDULE 23

Regulation 35(2)(q)

Radioactive substances activities

Contents

PART 1

Application

Application

1. This Schedule applies in relation to every radioactive substances activity.

PART 2

Interpretation

Interpretation

1.—(1) In this Schedule—

"article" includes a part of an article;

"the Basic Safety Standards Directive" means Council Directive 96/29/EURATOM(**a**) laying down basic safety standards for the protection of the health of workers and the general public against the dangers arising from ionising radiation;

"Bq" means becquerels;

"contamination" occurs where a substance or article is so affected by—

(a) absorption, admixture or adhesion of radioactive material or radioactive waste; or

(b) the emission of neutrons or ionising radiation,

as to become radioactive or to possess increased radioactivity;

"disposal" in relation to waste includes its removal, deposit, destruction, discharge (whether into water or into the air or into a sewer or drain or otherwise) or burial (whether underground or otherwise) and "dispose of" is to be construed accordingly;

"m", where it appears after a radionuclide, means a radionuclide in a metastable state of radioactive decay in which gamma photons are emitted;

"mobile radioactive apparatus" means any apparatus, equipment, appliance or other thing which is radioactive material and—

(a) is constructed or adapted for being transported from place to place; or

(b) is portable and designed or intended to be used for releasing radioactive material into the environment or introducing it into organisms;

"nuclear site" means—

(a) any site in respect of which a nuclear site licence is for the time being in force; or

(b) any site in respect of which, after the revocation or surrender of a nuclear site licence, the period of responsibility of the licensee has not yet come to an end,

and "licensee", when used in relation to a nuclear site, and "period of responsibility" have the same meaning as in the Nuclear Installations Act 1965(**b**);

"premises" includes any land, whether covered by buildings or not, including any place underground and any land covered by water;

"relevant liquid" means a liquid which—

(a) is non-aqueous; or

(**a**) OJ No L 159, 29.6.1996, p 1.
(**b**) 1965 c. 57. Section 5(3) was amended by S.I. 1974/2056, regulation 2 and Schedule 2, paragraph 1.

(b) is classified (or would be so classified in the absence of its radioactivity) under Council Regulation No. 1272/2008(**a**) as having any of the following hazard classes and hazard categories (as defined in that Regulation)—

(i) acute toxicity: categories 1, 2 or 3;

(ii) skin corrosion/irritation: category 1 corrosive, sub-categories: 1A, 1B or 1C; or

(iii) hazardous to the aquatic environment: acute category 1 or chronic categories 1 or 2;

"substance" means any natural or artificial substance, whether in solid or liquid form or in the form of a gas or vapour;

"Table 1", "Table 2", "Table 3" mean the tables with those numbers in Part 3 of this Schedule;

"undertaking" includes any trade, business or profession and—

(a) in relation to a public or local authority, includes any of the powers or duties of that authority, and

(b) in relation to any other body of persons (whether corporate or unincorporate), includes any of the activities of that body; and

"waste" should be construed in accordance with paragraph 3(2).

(2) In this Schedule, where any reference is made to a substance or article possessing a concentration or quantity of radioactivity which exceeds the value specified in a column in either of Tables 1 and 2, or either of Tables 5 and 7 in Part 7 of this Schedule, that value is exceeded if—

(a) where only one radionuclide which is listed or described in the relevant table is present in the substance or article, the concentration or quantity of that radionuclide exceeds the concentration or quantity specified in the appropriate entry of that column in that table; or

(b) where more than one radionuclide which is listed or described in the relevant table is present, the sum of the quotient values of all such radionuclides in the substance or article, as determined by the summation rule following the table (as it applies to that column), is greater than one,

and any reference to a concentration or quantity of radioactivity not exceeding such a value shall be construed accordingly.

Interpretation: NORM industrial activity

2.—(1) Subject to sub-paragraph (2), in this Schedule—

"type 1 NORM industrial activity" means—

(a) the production and use of thorium, or thorium compounds, and the production of products where thorium is deliberately added; or

(b) the production and use of uranium or uranium compounds, and the production of products where uranium is deliberately added; and

"type 2 NORM industrial activity" means—

(a) the extraction, production and use of rare earth elements and rare earth element alloys;

(b) the mining and processing of ores other than uranium ore;

(c) the production of oil and gas;

(**a**) OJ No. L 353, 31.12.2008, p.1.

(d) the removal and management of radioactive scales and precipitates from equipment associated with industrial activities;

(e) any industrial activity utilising phosphate ore;

(f) the manufacture of titanium dioxide pigments;

(g) the extraction and refining of zircon and manufacture of zirconium compounds;

(h) the production of tin, copper, aluminium, zinc, lead and iron and steel;

(i) any activity related to coal mine de-watering plants;

(j) china clay extraction;

(k) water treatment associated with provision of drinking water; or

(l) the remediation of contamination from any type 1 NORM industrial activity or any of the activities listed above.

(2) An activity which involves the processing of radionuclides of natural terrestrial or cosmic origin for their radioactive, fissile or fertile properties is not a type 1 NORM industrial activity or a type 2 NORM industrial activity.

Interpretation: "radioactive material", "radioactive waste" and "waste"

3.—(1) In this Schedule, except as provided by paragraph 7, 8, 9 or 10—

"radioactive material" means a substance or article which is not waste, and which satisfies the requirements of paragraph 4, 5 or 6 as they apply to such a substance or article;

"radioactive waste" means a substance or article which is waste, and which satisfies the requirements of paragraph 4, 5 or 6.

(2) In this Schedule—

(a) "waste" includes—

(i) any substance which constitutes scrap material or an effluent or other unwanted surplus substance arising from the application of any process, and

(ii) any substance or article which requires to be disposed of as being broken, worn out, contaminated or otherwise spoilt;

and

(b) any substance or article which, in the course of carrying on any undertaking, is discharged, discarded or otherwise dealt with as if it were waste is presumed to be waste unless the contrary is proved.

NORM industrial activities

4.—(1) Sub-paragraph (2) applies to a substance or article which—

(a) arises from or is used in a type 1 NORM industrial activity;

(b) is waste which arises from a type 2 NORM industrial activity; or

(c) is contaminated by a substance or article described in paragraph (a) or (b), including where such contamination occurs indirectly through another contaminated substance or article.

(2) A substance or article to which this sub-paragraph applies is radioactive material or radioactive waste where it has a concentration of radioactivity which exceeds the following values in Table 1—

(a) for a substance or article which is a solid or a substance which is a relevant liquid, the value specified in column 2;

(b) for a substance which is any other liquid, the value specified in column 3; or

(c) for a substance which is a gas, the value specified in column 4.

Processed radionuclides of natural terrestrial or cosmic origin

5. A substance or article is radioactive material or radioactive waste where—

(a) the substance or article contains one or more of the radionuclides of natural terrestrial or cosmic origin which are listed in column 1 of Table 2;

(b) the substance or article—

(i) is processed or is intended to be processed for the radioactive, fissile or fertile properties of those radionuclides; or

(ii) is contaminated by a substance or article to which sub-paragraph (i) applies, including where such contamination occurs indirectly through another contaminated substance or article;

and

(c) the substance or article is—

(i) a solid or a relevant liquid and it has a concentration of radioactivity which exceeds the value specified in column 2 of Table 2; or

(ii) any other liquid or a gas.

Radionuclides not of natural terrestrial or cosmic origin

6. A substance or article which contains one or more radionuclides that are not of natural terrestrial or cosmic origin is radioactive material or radioactive waste where—

(a) the substance or article is a solid or a relevant liquid and it has a concentration of radioactivity which exceeds the value specified in column 2 of Table 2; or

(b) the substance is any other liquid or a gas.

Radionuclides with a short half-life

7. A substance or article is not radioactive material or radioactive waste where none of the radionuclides which it contains or which it consists of has a half-life exceeding 100 seconds.

Radionuclides not of natural terrestrial or cosmic origin in background radioactivity

8.—(1) A substance or article is not radioactive material or radioactive waste where—

(a) the substance or article is contaminated as a result of a climatic process, or a combination of such processes, by radionuclides which—

(i) are not of natural terrestrial or cosmic origin; and

(ii) are not present in the substance or article at a concentration that exceeds that found normally in such a substance or article in the United Kingdom;

and

(b) in the absence of such contamination, the substance or article would not otherwise be radioactive material or radioactive waste under this Schedule.

(2) In this paragraph, a "climatic process" includes wind, precipitation and the general circulation of the atmosphere and oceans.

Contaminated substances or articles

9.—(1) Subject to sub-paragraph (2), a substance or article is not radioactive material where—

(a) the substance or article is contaminated, but has not been so contaminated with the intention of utilising its radioactive, fissile or fertile properties; and

(b) in the absence of such contamination, the substance or article would not otherwise be radioactive material under this Schedule.

(2) Sub-paragraph (1) only applies while the substance or article is kept on the premises on which the contamination occurred.

Substances or articles after disposal

10.—(1) A substance or article is not radioactive material or radioactive waste during the excluded period where—

(a) the substance or article has been disposed of lawfully, and at the time of the disposal no further act of disposal is intended in respect of it; or

(b) the substance or article—

(i) is contaminated by a substance or article to which paragraph (a) applies, including where such contamination occurs indirectly through another contaminated substance or article;

(ii) in the absence of such contamination, would not otherwise be radioactive material or radioactive waste under this Schedule; and

(iii) is not contaminated with the intention of using its radioactive, fissile or fertile properties.

(2) In sub-paragraph (1), "the excluded period" means the period—

(a) beginning at the relevant start time; and

(b) ending at the time that there is an increase in the radiation exposure of the public or of any plant or animal which is caused by the substance or article being subject to a process after the relevant start time.

(3) Sub-paragraph (4) applies to a substance or article which—

(a) is disposed of by burial (whether underground or otherwise) on premises in respect of which an environmental permit in respect of the radioactive substances activity in paragraph 11(2)(b) is held at the time of disposal;

(b) is disposed of in accordance with that permit; and

(c) is solid at the time of the disposal.

(4) Where this sub-paragraph applies, the relevant start time is—

(a) where the environmental permit in sub-paragraph (3)(a) is surrendered, the time at which the surrender takes effect; or

(b) where that permit is revoked and—

(i) regulation 23 applies to that permit, the time at which the regulator issues the certificate described in paragraph (4) or (6) of that regulation; or

(ii) regulation 23 does not apply to that permit, the time at which the revocation takes effect.

(5) Sub-paragraph (6) applies to a substance or article ("A") described in sub-paragraph (1)(b), where the substance or article ("B") which contaminates it (directly or indirectly) is described in sub-paragraph (3).

(6) Where this sub-paragraph applies, the relevant start time for A is the later of—

(a) the time at which A becomes contaminated; and

(b) the relevant start time for B.

(7) In respect of a substance or article ("C") to which sub-paragraphs (4) and (6) do not apply, the relevant start time is—

(a) where sub-paragraph (1)(a) applies to C, the time at which C is disposed of; or

(b) where sub-paragraph (1)(b) applies to C, the time at which C becomes contaminated.

Interpretation: radioactive substances activity

11.—(1) Subject to paragraphs 12 and 13, "radioactive substances activity" means an activity described in sub-paragraph (2), (4), (5) or (6).

(2) A radioactive substances activity is carried on where a person uses premises for the purposes of an undertaking and that person—

(a) except where sub-paragraph (5) applies, keeps or uses radioactive material on those premises;

(b) disposes of radioactive waste on or from those premises; or

(c) accumulates radioactive waste on those premises,

knowing or having reasonable grounds for believing the material or waste to be radioactive material or radioactive waste.

(3) For the purposes of sub-paragraph (2)(c), where—

(a) radioactive material is produced, kept or used on any premises;

(b) any substance arising from the production, keeping or use of that material is accumulated in a part of the premises appropriated for the purpose; and

(c) that substance is retained there for a period of not less than 3 months,

that substance, unless the contrary is proved, is presumed to be radioactive waste.

(4) A radioactive substances activity is carried on where, in the course of a person carrying on an undertaking, that person—

(a) receives radioactive waste for the purposes of disposing of that waste; and

(b) knows or has reasonable grounds for believing the waste to be radioactive waste.

(5) A radioactive substances activity is carried on where a person keeps or uses mobile radioactive apparatus for—

(a) testing, measuring or otherwise investigating any of the characteristics of substances or articles; or

(b) releasing quantities of radioactive material into the environment or introducing such material into organisms.

(6) A radioactive substances activity is carried on where a person carries out intrusive investigation work or other excavation, construction or building work—

(a) to determine the suitability of any premises; or

(b) to enable the use of any premises,

as a place that may be used wholly or substantially for underground disposal.

(7) In sub-paragraph (6)—

"intrusive investigation work" means the drilling of boreholes into, or excavation of, sub-soil or rock to determine geological or hydrogeological conditions; and

"underground disposal" means—

(a) the disposal of solid radioactive waste in an engineered facility, or in part of an engineered facility, which is beneath the surface of the ground, and

(b) where the natural environment which surrounds the facility acts, in combination with any engineered measures, to inhibit the transit of radionuclides from the facility to the surface,

and does not include the disposal of radioactive waste in a facility which is beneath the surface of the ground only by virtue of the placing of rocks or soil above it.

Nuclear sites

12.—(1) Paragraph 11(2)(a) does not apply to the activity carried on by a licensee of a nuclear site on any premises situated on that site at any time—

(a) while a nuclear site licence is in force in respect of that site; and

(b) after the revocation or surrender of such a licence but before the period of responsibility of the licensee has come to an end.

(2) In respect of any premises which—

(a) are situated on a nuclear site; but

(b) have ceased to be used for the purposes of an undertaking carried on by the licensee,

paragraph 11(2)(b) applies to those premises as if the premises were used for the purposes of an undertaking carried on by the licensee.

(3) Paragraph 11(2)(c) does not apply to the accumulation of radioactive waste on any premises situated on a nuclear site.

Vehicles, vessels and aircraft

13. In determining whether any radioactive material is kept or used on any premises, no account must be taken of any radioactive material kept or used in or on any railway vehicle, road vehicle, vessel or aircraft if—

(a) the vehicle, vessel or aircraft is on the premises in the course of a journey; or

(b) in the case of a vessel which is on those premises otherwise than in the normal course of a journey, the material is used in propelling the vessel or is kept in or on the vessel for use in propelling it.

PART 3

Tables of radionuclides and summation rules

Table 1

1. The Table 1 referred to in paragraph 4 (NORM industrial activities) of Part 2 is—

Table 1

Concentration of radionuclides: NORM industrial activities

Radionuclide	*Solid or relevant liquid concentration in becquerels per gram (Bq/g)*	*Any other liquid concentration in becquerels per litre (Bq/l)*	*Gaseous concentration in becquerels per cubic metre (Bq/m^3)*
U-238sec(**a**)	0.5	0.1	0.001
U-238+	5	10	0.01
U-234	5	10	0.01
Th-230	10	10	0.001
Ra-226+	0.5	1	0.01
Pb-210+	5	0.1	0.01
Po-210	5	0.1	0.01
U-235sec	1	0.1	0.0001
U-235+	5	10	0.01
Pa-231	5	1	0.001
Ac-227+	1	0.1	0.001

(**a**) For the meaning of 'sec' and '+' in this part see paragraph 5.

Radionuclide	*Solid or relevant liquid concentration in becquerels per gram (Bq/g)*	*Any other liquid concentration in becquerels per litre (Bq/l)*	*Gaseous concentration in becquerels per cubic metre (Bq/m^3)*
Th-232sec	0.5	0.1	0.001
Th-232	5	10	0.001
Ra-228+	1	0.1	0.01
Th-228+	0.5	1	0.001

2. The Table 1 summation rule in respect of column 2, 3 or 4 means the sum of the quotients A/B where—

(a) "A" means the concentration of each radionuclide listed in column 1 of Table 1 that is present in the substance or article; and

(b) "B" means the concentration of that radionuclide specified in column 2, 3 or 4 (as appropriate) of Table 1.

Table 2

3. The Table 2 referred to in paragraphs 5 (processed radionuclides of natural terrestrial or cosmic origin) and 6 (radionuclides not of natural terrestrial or cosmic origin) of Part 2 is—

Table 2

Concentration of radionuclides

Radionuclide	*Concentration in becquerels per gram (Bq/g)*
H-3	10^2
Be-7	10
C-14	10
F-18	1
Na-22	0.1
Na-24	0.1
Si-31	10^2
P-32	10^2
P-33	10^2
S-35	10^2
Cl-36	1
Cl-38	1
K-42	10
K-43	1
Ca-45	10^2
Ca-47	1
Sc-46	0.1
Sc-47	10
Sc-48	0.1
V-48	0.1
Cr-51	10
Mn-51	1
Mn-52	0.1
Mn-52m	1
Mn-53	10^3

Radionuclide	*Concentration in becquerels per gram (Bq/g)*
Mn-54	0.1
Mn-56	1
Fe-52+	1
Fe-55	10^2
Fe-59	0.1
Co-55	1
Co-56	0.1
Co-57	1
Co-58	0.1
Co-58m	10^2
Co-60	0.1
Co-60m	10^3
Co-61	10^2
Co-62m	1
Ni-59	10^2
Ni-63	10^2
Ni-65	1
Cu-64	10
Zn-65	1
Zn-69	10^2
Zn-69m+	1
Ga-72	1
Ge-71	10^4
As-73	10^2
As-74	1
As-76	1
As-77	10^2
Se-75	1
Br-82	0.1
Rb-86	10
Sr-85	1
Sr-85m	10
Sr-87m	10
Sr-89	10
Sr-90+	1
Sr-91+	1
Sr-92	1
Y-90	10^2
Y-91	10
Y-91m	1
Y-92	10
Y-93	10
Zr-93	10
Zr-95+	0.1
Zr-97+	1
Nb-93m	10^2
Nb-94	0.1
Nb-95	1
Nb-97+	1
Nb-98	1

Radionuclide	*Concentration in becquerels per gram (Bq/g)*
Mo-90	1
Mo-93	10
Mo-99+	1
Mo-101+	1
Tc-96	0.1
Tc-96m	10
Tc-97	10
Tc-97m	10
Tc-99	1
Tc-99m	10^2
Ru-97	1
Ru-103+	1
Ru-105+	1
Ru-106+	1
Rh-103m	10^4
Rh-105	10
Pd-103+	10^3
Pd-109+	10^2
Ag-105	1
Ag-108m+	0.1
Ag-110m+	0.1
Ag-111	10
Cd-109+	10
Cd-115+	1
Cd-115m+	10
In-111	1
In-113m	10
In-114m+	1
In-115m	10
Sn-113+	1
Sn-125	1
Sb-122	1
Sb-124	0.1
Sb-125+	1
Te-123m	1
Te-125m	10^2
Te-127	10^2
Te-127m+	10
Te-129	10
Te-129m+	10
Te-131	10
Te-131m+	1
Te-132+	0.1
Te-133+	1
Te-133m+	1
Te-134	1
I-123	10
I-125	1
I-126	1
I-129	0.1

Radionuclide	*Concentration in becquerels per gram (Bq/g)*
I-130	1
I-131+	1
I-132	1
I-133	1
I-134	1
I-135	1
Cs-129	1
Cs-131	10^3
Cs-132	1
Cs-134	0.1
Cs-134m	10^3
Cs-135	10
Cs-136	0.1
Cs-137+	1
Cs-138	1
Ba-131	1
Ba-140	0.1
La-140	0.1
Ce-139	1
Ce-141	10
Ce-143	1
Ce-144+	10
Pr-142	10
Pr-143	10^2
Nd-147	10
Nd-149	10
Pm-147	10^2
Pm-149	10^2
Sm-151	10^2
Sm-153	10
Eu-152	0.1
Eu-152m	10
Eu-154	0.1
Eu-155	10
Gd-153	10
Gd-159	10
Tb-160	0.1
Dy-165	10^2
Dy-166	10
Ho-166	10
Er-169	10^2
Er-171	10
Tm-170	10
Tm-171	10^2
Yb-175	10
Lu-177	10
Hf-181	1
Ta-182	0.1
W-181	10
W-185	10^2

Radionuclide	*Concentration in becquerels per gram (Bq/g)*
W-187	1
Re-186	10^2
Re-188	10
Os-185	1
Os-191	10
Os-191m	10^3
Os-193	10
Ir-190	0.1
Ir-192	0.1
Ir-194	10
Pt-191	1
Pt-193m	10^2
Pt-197	10^2
Pt-197m	10^2
Au-198	1
Au-199	10
Hg-197	10
Hg-197m	10
Hg-203	1
Tl-200	1
Tl-201	10
Tl-202	1
Tl-204	10
Pb-203	1
Pb-210+	0.01
Pb-212+	1
Bi-206	0.1
Bi-207	0.1
Bi-210	10
Bi-212+	1
Po-203	1
Po-205	1
Po-207	1
Po-210	0.01
At-211	10^2
Ra-223+	1
Ra-224+	1
Ra-225	1
Ra-226+	0.01
Ra-227	10
Ra-228+	0.01
Ac-227+	0.01
Ac-228	1
Th-226+	10^2
Th-227	1
Th-228+	0.1
Th-229+	0.1
Th-230	0.1
Th-231	10^2
Th-232	0.01

Radionuclide	*Concentration in becquerels per gram (Bq/g)*
Th-232+	0.01
Th-232sec	0.01
Th-234+	10
Pa-230	1
Pa-231	0.01
Pa-233	1
U-230+	1
U-231	10
U-232+	0.1
U-233	1
U-234	1
U-235+	1
U-235sec	0.01
U-236	1
U-237	10
U-238+	1
U-238sec	0.01
U-239	10^2
U-240+	10
Np-237+	0.1
Np-239	10
Np-240	1
Pu-234	10^2
Pu-235	10^2
Pu-236	0.1
Pu-237	10
Pu-238	0.1
Pu-239	0.1
Pu-240	0.1
Pu-241	1
Pu-242	0.1
Pu-243	10^2
Pu-244+	0.1
Am-241	0.1
Am-242	10^2
Am-242m+	0.1
Am-243+	0.1
Cm-242	1
Cm-243	0.1
Cm-244	0.1
Cm-245	0.1
Cm-246	0.1
Cm-247+	0.1
Cm-248	0.1
Bk-249	10
Cf-246	10
Cf-248	1
Cf-249	0.1
Cf-250	0.1
Cf-251	0.1

Radionuclide	*Concentration in becquerels per gram (Bq/g)*
Cf-252	0.1
Cf-253	1
Cf-253+	1
Cf-254	0.1
Es-253	1
Es-254+	0.1
Es-254m+	1
Fm-254	10^2
Fm-255	10
Any other solid or non-aqueous liquid radionuclide that is not of natural terrestrial or cosmic origin	0.01 or that concentration which gives rise to a dose to a member of the public of 10 microsieverts per year calculated by reference to guidance by Euratom in RP 122 part 1(**a**).

4. The Table 2 column 2 summation rule means the sum of the quotients A/B where—

(a) "A" means the concentration of each radionuclide listed in column 1 of Table 2 that is present in the substance or article, and

(b) "B" means the concentration of that radionuclide specified in column 2 of Table 2.

References in Table 1 and Table 2 to + and sec

5. Where any radionuclide carries the suffix "+" or "sec" in Table 1 or Table 2—

(a) that radionuclide represents the parent radionuclide in secular equilibrium with the corresponding daughter radionuclides which are identified in column 2 of Table 3 in respect of that parent radionuclide; and

(b) a concentration value given in a table in this Part in respect of such a parent radionuclide is the value for the parent radionuclide alone, but already takes into account the daughter radionuclides present.

Table 3

6. The Table 3 referred to in paragraph 5 is—

Table 3

Radionuclides in secular equilibrium

Parent radionuclide	*Daughter radionuclides*
Fe-52+	Mn-52m
Zn-69m+	Zn-69
Sr-90+	Y-90
Sr-91+	Y-91m
Zr-95+	Nb-95m
Zr-97+	Nb-97m, Nb-97
Nb-97+	Nb-97m

(**a**) EC 2000. Radiation Protection 122: Practical use of the concepts of clearance and exemption, Part 1. Report RP122 Luxembourg. European Commission.

Parent radionuclide	*Daughter radionuclides*
Mo-99+	Tc-99m
Mo-101+	Tc-101
Ru-103+	Rh-103m
Ru-105+	Rh-105m
Ru-106+	Rh-106
Pd-103+	Rh-103m
Pd-109+	Ag-109m
Ag-108m+	Ag-108
Ag-110m+	Ag-110
Cd-109+	Ag-109m
Cd-115+	In-115m
Cd-115m+	In-115m
In-114m+	In-114
Sn-113+	In-113m
Sb-125+	Te-125m
Te-127m+	Te-127
Te-129m+	Te-129
Te-131m+	Te-131
Te-132+	I-132
Te-133+	I-133, Xe-133m, Xe-133
Te-133m+	Te-133, I-133, Xe-133m, Xe-133
I-131+	Xe-131m
Cs-137+	Ba-137m
Ce-144+	Pr-144, Pr-144m
Pb-210+	Bi-210, Po-210
Pb-212+	Bi-212, Tl-208
Bi-212+	Tl-208
Ra-223+	Rn-219, Po-215, Pb-211, Bi-211, Tl-207
Ra-224+	Rn-220, Po-216, Pb-212, Bi-212, Tl-208
Ra-226+	Rn-222, Po-218, Pb-214, Bi-214, Po-214
Ra-228+	Ac-228
Ac-227+	Th-227, Fr-223, Ra-223, Rn-219, Po-215, Pb-211, Bi-211, Tl-207, Po-211
Th-226+	Ra-222, Rn-218, Po-214
Th-228+	Ra-224, Rn-220, Po-216, Pb-212, Bi-212, Tl-208
Th-229+	Ra-225, Ac-225, Fr-221, At-217, Bi-213, Tl-209, Pb-209
Th-232+	Ra-228, Ac-228, Th-228, Ra-224, Rn-220, Po-216, Pb-212, Bi-212, Tl-208
Th-232sec	Ra-228, Ac-228, Th-228, Ra-224, Rn-220, Po-216, Pb-212, Bi-212, Po-212, Tl-208
Th-234+	Pa-234m, Pa-234
U-230+	Th-226, Ra-222, Rn-218, Po-214
U-232+	Th-228, Ra-224, Rn-220, Po-216, Pb-212, Bi-212, Tl-208
U-235+	Th-231
U-235sec	Th-231, Pa-231, Ac-227, Th-227, Fr-223, Ra-223, Rn-219, Po-215, Pb-211, Bi-211, Tl-207, Po-211
U-238+	Th-234, Pa-234m, Pa-234
U-238sec	Th-234, Pa-234m, Pa-234, U-234, Th-230, Ra-226, Rn-222, Po-218, Pb-214, Bi-214, Po-214, Pb-210, Bi-210, Po-210
U-240+	Np-240m, Np-240

Parent radionuclide	*Daughter radionuclides*
Np-237+	Pa-233
Pu-244+	U-240, Np-240m, Np-240
Am-242m+	Np-238
Am-243+	Np-239
Cm-247+	Pu-243
Cf-253+	Cm-249
Es-254+	Bk-250
Es-254m+	Fm-254

PART 4

The Basic Safety Standards Directive

SECTION 1

Exposures and doses

Optimisation and dose limits

1. In respect of a radioactive substances activity that relates to radioactive waste, the regulator must exercise its relevant functions to ensure that—

(a) all exposures to ionising radiation of any member of the public and of the population as a whole resulting from the disposal of radioactive waste are kept as low as reasonably achievable, taking into account economic and social factors; and

(b) the sum of the doses resulting from the exposure of any member of the public to ionising radiation does not exceed the dose limits set out in Article 13 of the Basic Safety Standards Directive subject to the exclusions set out in Article 6(4) of that Directive.

Specific dose limits and calculation

2.—(1) In exercising those relevant functions in relation to the planning stage of radiation protection, the regulator must have regard to the following maximum doses to individuals which may result from a defined source—

(a) 0.3 millisieverts per year from any source from which radioactive discharges are first made on or after 13th May 2000; or

(b) 0.5 millisieverts per year from the discharges from any single site.

(2) In exercising those relevant functions, the regulator must observe the requirements of the following provisions of the Basic Safety Standards Directive—

(a) in estimating effective dose and equivalent dose, Articles 15 and 16;

(b) in estimating population doses, Article 45; and

(c) in relation to the responsibilities of undertakings, Article 47.

SECTION 2

Interventions

Radioactive waste: power of the Secretary of State to provide facilities for disposal or accumulation

3.—(1) If it appears to the Secretary of State that adequate facilities are not available for the safe disposal or accumulation of radioactive waste, the Secretary of State may—

(a) provide such facilities; or

(b) make arrangements for their provision by such persons as the Secretary of State may think fit.

(2) Before exercising the power under sub-paragraph (1), the Secretary of State must consult with—

(a) any local authority in whose area the facilities would be situated; and

(b) such other public or local authorities (if any) as appear to the Secretary of State to be proper to be consulted.

(3) Reasonable charges for the use of any facilities provided under sub-paragraph (1) may be made by—

(a) the Secretary of State; or

(b) the person providing such facilities, unless the arrangements made by the Secretary of State with that person provide to the contrary.

Radioactive waste: power of disposal by the regulator

4.—(1) Sub-paragraph (2) applies if there is radioactive waste on any premises and the regulator is satisfied that the waste ought to be disposed of but that it is unlikely that the waste will be lawfully disposed of—

(a) because the premises are unoccupied;

(b) because the occupier is absent or insolvent; or

(c) for any other reason.

(2) The regulator may dispose of the waste and recover any expenses it reasonably incurs in that disposal from—

(a) the occupier of the premises; or

(b) if the premises are unoccupied, the owner of the premises.

(3) In sub-paragraph (2)—

(a) "owner" has the same meaning as in section 343 of the Public Health Act 1936(**a**); and

(b) the provisions of section 294 of that Act (which limits the liability of owners who are only agents or trustees) apply but as if reference in that section to a council recovering expenses under that Act were to the regulator recovering expenses under sub-paragraph (2).

PART 5

The HASS Directive

SECTION 1

Security of sources

Interpretation

1. In this Part—

"the HASS Directive" means Council Directive 2003/122/EURATOM(**b**) on the control of high-activity sealed radioactive sources and orphan sources;

"high-activity or similar source" means—

(a) a high-activity source; or

(**a**) 1936 c. 49.
(**b**) OJ No L 346, 31.12.2003, p 57.

(b) such other sealed source which, in the opinion of the regulator, is of a similar level of potential hazard to a high-activity source;

"high-activity source" has the same meaning as in the HASS Directive but excluding any such source once its activity level has fallen below the exemption levels specified in column 2 of Table A to Annex I to the Basic Safety Standards Directive;

"orphan source" has the same meaning as in the HASS Directive; and

"sealed source" has the same meaning as in the HASS Directive.

Site security: inspection

2.—(1) In exercising relevant functions in relation to a radioactive substances activity, the regulator must comply with sub-paragraph (3) where a high-activity or similar source is, or will be, kept, used, disposed of or accumulated on any premises.

(2) Sub-paragraph (1) does not apply where the premises are, or are part of, a nuclear site.

(3) In considering if the measures taken, or to be taken, by the operator ensure the adequate security of any premises, the regulator must where appropriate inspect those premises.

(4) Where the regulator inspects any premises under sub-paragraph (3), it may be accompanied by such other persons as are appropriate to assist it in assessing the measures.

(5) An operator must permit the regulator (and any person accompanying it) reasonable access to any premises the regulator wishes to inspect under sub-paragraph (3).

(6) If the operator fails to comply with sub-paragraph (5), the regulator may refuse the application or revoke the permit insofar as it relates to the sources referred to in sub-paragraph (1).

Site security: security measures and advice

3.—(1) In exercising relevant functions in relation to a radioactive substances activity, the regulator must comply with sub-paragraph (2) where a high-activity or similar source is, or will be, kept, used, disposed of or accumulated on any premises.

(2) The regulator—

(a) must satisfy itself that there are in place measures concerning site security, including the security measures in sub-paragraph (3), as are appropriate to the source and premises in question;

(b) where it considers it appropriate to do so, must consult the police, security services or other appropriate persons on site security;

(c) must have regard to any advice given by them, if it is issued within such time as the regulator believes is reasonable before it exercises a relevant function; and

(d) must impose appropriate environmental permit conditions concerning site security.

(3) The security measures referred to in sub-paragraph (2)(a) are—

(a) measures to ensure the physical security of the premises, including the installation of alarm and detection systems, and the retaining of documentary evidence of those measures;

(b) measures, which are evidenced in writing—

(i) to prevent unauthorised access to, or loss or theft of, a high-activity or similar source;

(ii) to detect such matters; and

(iii) to review and enhance the physical security of the premises in response to any increased risk of unauthorised access, loss or theft;

(c) written procedures to ensure that before a person is authorised to have access to a high-activity or similar source—

(i) that person has passed checks to verify their identity, and

(ii) satisfactory written references have been obtained which confirm, as far as reasonably practicable, that there is no information to indicate that the person presents any security risk to the sources; and

(d) measures to keep secure, and prevent unauthorised access to, information relating to—

(i) a high-activity or similar source, and

(ii) the measures referred to in paragraphs (a), (b) and (c).

SECTION 2

Advice and assistance in relation to orphan sources

Advice and assistance in respect of orphan sources

4.—(1) The relevant person must ensure that specialised technical advice and assistance is promptly made available to persons who—

(a) are not normally involved in operations subject to radiation protection requirements, and

(b) suspect the presence of an orphan source.

(2) The relevant person must ensure that the primary aim of such advice and assistance is—

(a) the safety of the source; and

(b) protecting the public and workers from radiation.

(3) The relevant person means—

(a) in relation to the protection of workers, the Secretary of State;

(b) in relation to the protection of the public (other than workers)—

(i) in England, the Secretary of State,

(ii) in Wales, the Welsh Ministers.

SECTION 3

Exercise of relevant functions and matters in relation to orphan sources

General

5.—(1) In exercising relevant functions in relation to a radioactive substances activity, the regulator must comply with the following provisions of the HASS Directive—

(a) Article 3(2) and (3);

(b) Article 4;

(c) Article 5(1) and (2);

(d) Article 6;

(e) subject to sub-paragraph (2), Article 7(1) and (2).

(2) In relation to a high-activity source placed on the market before 31st December 2005, sub-paragraph (1)(e) has effect as if it referred to the provisions contained in Article 16(1)(b) of the HASS Directive.

Records and inspections

6. In relation to a high-activity source, the regulator must—

(a) keep records of those matters—

(i) required by Article 5(3) and (4) of the HASS Directive; and

(ii) notified to it under Article 6 of that Directive;

and

(b) establish or maintain a system of inspections to enforce the following provisions of the HASS Directive—

(i) Articles 3 to 6;

(ii) as appropriate, Article 7(1) and (2) or Article 16(1)(b).

Training and information

7.—(1) In relation to a high-activity source, the appropriate training and adequate information required by the Ionising Radiations Regulations 1999(**a**) must include—

(a) specific requirements for the safe management of such a source;

(b) particular emphasis on the necessary safety requirements in relation to such a source; and

(c) specific information on possible consequences of the loss of adequate control of such a source.

(2) The training and information on the matters in sub-paragraph (1) must be repeated at regular intervals and documented, with a view to preparing the employees and other persons referred to in those Regulations for such matters.

Orphan sources

8.—(1) The regulator must—

(a) be prepared, or have made provision (including the assignment of responsibilities), to recover any orphan source; and

(b) have drawn up appropriate response plans and measures.

(2) The regulator may recover any expenses reasonably incurred by it in the recovery and disposal of an orphan source from—

(a) the person carrying on the radioactive substances activity involving that source; or

(b) the occupier or owner of the premises where the source is located.

(3) In relation to sub-paragraph (2)—

(a) "owner" has the same meaning as in section 343 of the Public Health Act 1936(**b**); and

(b) the provisions of section 294 of that Act (which limits the liability of owners who are only agents or trustees) apply but as if reference in that section to a council recovering expenses under that Act were to the regulator recovering expenses under sub-paragraph (2).

(**a**) S.I. 1999/3232.
(**b**) 1936 c. 49.

PART 6

Conditions in environmental permits

Posting on premises of environmental permits

1.—(1) Subject to sub-paragraph (3), the regulator must impose environmental permit display conditions on an environmental permit granted under these Regulations if the permit—

(a) relates to a radioactive substances activity described in paragraph 11(2) of Part 2 of this Schedule; and

(b) does not relate to a sealed source.

(2) Where an existing radioactive substances permit—

(a) becomes an environmental permit by virtue of regulation 69(a); and

(b) does not relate to a sealed source,

the environmental permit has effect subject to environmental permit display conditions in addition to any conditions that apply to it by virtue of regulation 69(b).

(3) The regulator, if required to do so on the grounds of national security by any direction issued to it under these Regulations or under any other enactment—

(a) must vary or revoke environmental permit display conditions or any similar environmental permit conditions that applied to an existing radioactive substances permit at the relevant time; or

(b) must not impose such conditions.

(4) In this paragraph—

"environmental permit display conditions" means a requirement that the operator—

(a) keep copies of the permit posted on the premises, and

(b) post the permit in such characters and positions as to be conveniently read by persons who have duties on the premises which are or could be affected by the matters set out in the permit; and

"existing radioactive substances permit" means—

(a) an authorisation under section 13 or 14 of the 1993 Act, or

(b) a registration under section 7 of the 1993 Act.

PART 7

Radioactive substances activity exemptions

SECTION 1

General

Interpretation

1. In this Part—

"Ba-137m eluting source" means a source which consists of Cs-137 in a sealed container which is designed and constructed to allow the elution of Ba-137m, and which is radioactive material or radioactive waste solely because of that Cs-137;

"Class A gaseous tritium light device" means a gaseous tritium light device where the activity of the device does not exceed 2 x 10^{10} Bq of tritium;

"Class B gaseous tritium light device" means a gaseous tritium light device which is installed or intended to be installed on premises and where the activity—

(a) in each sealed container in the device does not exceed 8×10^{10} Bq of tritium; and

(b) of the device does not exceed 1×10^{12} Bq of tritium;

"Class C gaseous tritium light device" means a gaseous tritium light device installed or intended to be installed—

(a) in a vessel or aircraft; or

(b) in a vehicle or other equipment used or intended to be used by the armed forces of the Crown;

"disposal permit" means—

(a) an environmental permit to carry on the radioactive substances activity described in paragraph 11(2)(b) of Part 2 of this Schedule; or

(b) an authorisation under the 1993 Act to dispose of radioactive waste held in respect of premises situated in Northern Ireland or Scotland;

"electrodeposited source" means an article where radionuclides are electrodeposited onto a metal substrate and which is radioactive material or radioactive waste solely because it contains Ni-63 or Fe-55;

"gaseous tritium light device" means a sealed source in a device which is an illuminant, instrument, sign or indicator which—

(a) incorporates tritium in one or more sealed containers constructed to prevent dispersion of that tritium in normal use; and

(b) is radioactive material solely because it contains that tritium;

"luminised article" means an article which is made wholly or partly from a luminescent substance in the form of a film or a paint and which—

(a) is radioactive material or radioactive waste solely because it contains Pm-147 or H-3; and

(b) is not a sealed source;

"management", in respect of waste, means—

(a) the preparation by checking, cleaning or repairing that waste for its re-use without further processing;

(b) the recovery of that waste;

(c) the disposal of that waste; or

(d) the application of any treatment process to that waste which is preparatory to the recovery or disposal of it,

and cognate expressions shall be construed accordingly;

"relevant river" means a river or a part of a river which—

(a) is not a part of the sea; and

(b) at the place and time of any disposal into it of aqueous radioactive waste from a sewage disposal works or directly from premises, has a flow-rate which is not less than $1 m^3 s^{-1}$;

"relevant sewer" means—

(a) a public sewer; or

(b) a disposal main which leads to a sewage disposal works that—

(i) has the capacity to handle a minimum of $100 m^3$ of effluent per day; and

(ii) discharges treated effluent only to the sea or to a relevant river,

and "public sewer", "disposal main", "sewage disposal works" and "effluent" have the same meaning as in the Water Industry Act 1991(**a**);

(**a**) 1991 c. 56; the definition of public sewer was amended by the Water Act 2003 (c. 37).

"relevant standard conditions" has the meaning given in paragraph 10;

"sea" includes any area submerged at mean high water springs and also includes, so far as the tide flows at mean high water springs, an estuary or arm of the sea and the waters of any channel, creek, bay or river;

"sealed source" means a radioactive source containing radioactive material where the structure is designed to prevent, under normal use, any dispersion of radioactive substances, excluding such a source where it is an electrodeposited source or a tritium foil source;

"stored in transit" means the storage in the course of transit of radioactive material or radioactive waste but does not include any storage of such material or waste where it is removed from its container;

"Table 4", "Table 5", "Table 6", "Table 7" or "Table 8" means the table with that number in this Part;

"a tritium foil source" means an article which—

(a) has a mechanically tough surface into which tritium is incorporated; and

(b) is radioactive material or radioactive waste solely because of that tritium;

"uranium or thorium compound" means a substance or article which is radioactive material or radioactive waste solely because it is or contains metallic uranium or thorium or prepared compounds of uranium or thorium, and in respect of which metal or compound the proportion of—

(a) U-235 in the uranium it contains is no more than 0.72% by mass; and

(b) any isotope of thorium it contains is present in the isotopic proportions found in nature;

"waste permitted person" means, in relation to the radioactive waste where the term appears, a person who holds—

(a) an environmental permit to carry on the radioactive substances activity described in paragraph 11(2)(b) or (c) of Part 2 of this Schedule; or

(b) in respect of premises in Scotland or Northern Ireland, an authorisation under section 13 or 14 of the 1993 Act;

"week" means any period of seven consecutive days; and

"year" means a calendar year.

Interpretation: NORM

2.—(1) In this Part, "NORM waste" means a substance or article which is solid radioactive waste under—

(a) paragraph 4 of Part 2 of this Schedule; or

(b) except where sub-paragraph (2) applies, paragraph 5 of that Part where the waste arises from the remediation of land.

(2) Land is not contaminated under sub-paragraph (1)(b) where the land is on a site in respect of which a nuclear site licence is or has been in force and the contamination occurred—

(a) when that licence was in force; or

(b) before that licence was granted, when the site was used for the purpose of installing or operating an installation described in subsection (1) of section 1 of the Nuclear Installations Act 1965(**a**) (restriction of certain nuclear installations to licensed sites) or in regulations made under that subsection.

(**a**) 1965 c.57, as relevantly amended by S.I. 1974/2056 and 1990/1918, Schedule 1, paragraph 1.

(3) In these Regulations, "NORM waste concentration" means, in respect of radionuclides contained in NORM waste, the sum of the concentrations of the single radionuclide with the highest concentration in each of the natural decay chains beginning with—

(a) U-238;

(b) U-235; and

(c) Th-232.

SECTION 2

Exemption for keeping and using radioactive material and accumulating radioactive waste

Exemption for keeping and using radioactive material

3.—(1) A person ("A") is exempt from the requirement for an environmental permit to carry on the radioactive substances activity described in paragraph 11(2)(a) of Part 2 of this Schedule in respect of—

(a) subject to sub-paragraph (2), the radioactive material described in paragraph 5, where A complies with the relevant standard conditions and—

(i) in respect of radioactive material described in paragraph 5(1)(a), the condition in paragraph 6(1); and

(ii) in respect of radioactive material described in paragraph 5(1)(b), the condition in paragraph 6(2);

or

(b) radioactive material stored in transit.

(2) A is not exempt from the requirement for an environmental permit under sub-paragraph (1)(a) in respect of a high activity source where A takes possession of it.

Exemption for accumulating radioactive waste

4.—(1) This paragraph applies to the following radioactive substances activities—

(a) the activity described in paragraph 11(2)(c) of Part 2 of this Schedule ("Activity A"); and

(b) the activity described in paragraph 11(4) of Part 2 of this Schedule ("Activity B").

(2) In this paragraph, "paragraph 5 waste" means radioactive waste described in paragraph 5.

(3) A person ("A") is exempt from the requirement for an environmental permit to carry on Activity A or B, in respect of radioactive waste which is stored in transit.

(4) Subject to sub-paragraph (5), a person ("B") is exempt from the requirement for an environmental permit to carry on Activity A or B in respect of paragraph 5 waste where—

(a) B receives that waste for accumulation on premises (with a view to its subsequent management by B on those premises);

(b) in respect of those premises B manages substantial quantities of waste which is not radioactive waste; and

(c) the management of the radioactive waste will be completed by B as soon as is reasonably practicable, with the radioactive waste dispersed in non-radioactive waste.

(5) B is not exempt under sub-paragraph (4) from the requirement for an environmental permit to carry on Activity B where the waste received by B is or contains a high-activity source.

(6) A person ("C") is exempt from the requirement for an environmental permit to carry on Activity A in respect of paragraph 5 waste, where C complies with the relevant standard conditions and—

(a) in respect of radioactive waste described in paragraph 5(1)(a), the condition in paragraph 6(1); and

(b) in respect of radioactive waste described in paragraph 5(1)(b), the condition in paragraph 6(2).

(7) A person ("D") is exempt from the requirement for an environmental permit to carry on Activity A in respect of radioactive waste which is a sealed source, an electrodeposited source or a tritium foil source which—

(a) contains a quantity of radionuclides which exceeds the value specified in column 2 of Table 4 in respect of the relevant type of source;

(b) immediately before it became radioactive waste, was radioactive material in the form of a sealed source, an electrodeposited source or a tritium foil source (as appropriate); and

(c) has not been received by D for the purpose of D disposing of it,

where D complies with the relevant standard conditions.

Radioactive substances exempted under paragraphs 3 and 4

5.—(1) Subject to sub-paragraph (2), paragraphs 3(1)(a) and 4(4) and (6) apply to—

(a) a substance or article described in an entry in column 1 of Table 4 which contains a quantity of radionuclides that does not exceed the value specified in column 2 of Table 4 in respect of that substance or article; or

(b) any substance or article which is not described in an entry in column 1 of Table 4.

(2) Sub-paragraph (1) does not apply to NORM waste with a NORM waste concentration which is less than or equal to 10 Bq/g.

Conditions in respect of the total quantity or concentration of radioactive substances on any premises

6.—(1) The condition referred to in paragraphs 3(1)(a)(i) and 4(6)(a) is that, in respect of the total amount of a substance or article described in paragraph 5(1)(a) (including any mobile radioactive apparatus) on the premises, the quantity of radionuclides must not exceed the value specified for that substance or article in column 3 of Table 4.

(2) The condition referred to in paragraphs 3(1)(a)(ii) and 4(6)(b) in respect of a substance or article described in paragraph 5(1)(b) is that—

(a) in respect of the total amount of such substances and articles on the premises, the quantity of radioactivity does not exceed the value specified in column 2 of Table 5; or

(b) no such substance or article on the premises contains a concentration of radioactivity that exceeds the value specified in column 3 of Table 5.

Exemption for accumulating NORM waste

7.—(1) This paragraph applies—

(a) to the following radioactive substances activities—

(i) the activity described in paragraph 11(2)(c) of Part 2 of this Schedule ("Activity A");

(ii) the activity described in paragraph 11(4) of Part 2 of this Schedule ("Activity B");

and

(b) where Activity A or B is carried on in respect of NORM waste with a NORM waste concentration that does not exceed 10 Bq/g ("Qualifying NORM Waste").

(2) Subject to sub-paragraph (5) where it applies, a person ("A") is exempt from the requirement for an environmental permit to carry on Activity A or Activity B in respect of Qualifying NORM Waste, where another person ("B") transfers that waste to A—

(a) in accordance with—

(i) a disposal permit held by B; or

(ii) an exemption from holding such a permit that applied to B in respect of the transfer to A;

and

(b) for the purpose of its accumulation by A with a view to its subsequent management by A on the premises on which it is received by A.

(3) Subject to sub-paragraph (5) where it applies, a person ("C") is exempt from the requirement for an environmental permit to carry on Activity A in respect of Qualifying NORM Waste where C complies with the relevant standard conditions.

(4) Sub-paragraph (5) applies to a person ("D") who holds an environmental permit to carry on Activity A on premises ("the relevant premises") in respect of NORM waste with a NORM waste concentration which is more than 10 Bq/g.

(5) The exemptions in sub-paragraphs (2) and (3) do not apply to D in respect of Qualifying NORM waste—

(a) with a NORM waste concentration which exceeds 5 Bq/g; and

(b) which is accumulated on the relevant premises.

SECTION 3

Exemption for keeping or using mobile radioactive apparatus

Exemption for keeping or using mobile radioactive apparatus

8.—(1) A person ("A") is exempt from the requirement for an environmental permit to carry on the radioactive substances activity described in paragraph 11(5) of Part 2 of this Schedule in respect of—

(a) a mobile radioactive apparatus described in an entry in column 1 of Table 4 where—

(i) that apparatus contains a quantity of radionuclides that does not exceed the value specified in column 2 of Table 4 in respect of an apparatus of that description; and

(ii) A complies with the conditions in sub-paragraph (2);

or

(b) mobile radioactive apparatus stored in transit.

(2) The conditions in this sub-paragraph are that A must—

(a) ensure that in relation to the total amount of all such mobile radioactive apparatus that A holds, the quantity of radionuclides does not exceed the value specified, in respect of an apparatus of that description, in column 3 of Table 4; and

(b) comply with the relevant standard conditions.

SECTION 4

Relevant standard conditions

Interpretation of this section

9. In this section, "radioactive substances" means radioactive material, mobile radioactive apparatus and radioactive waste, and "exempt radioactive substances" means radioactive substances in respect of which an exemption in section 2 or 3 of this Part applies.

Relevant standard conditions

10.—(1) Reference to the relevant standard conditions in sections 1 to 3 of this Part, means in respect of the exemption provided for in—

(a) paragraph 3(1)(a), the conditions in paragraphs 11 and 12;

(b) paragraph 4(6), 4(7) or 7(3), the conditions in paragraphs 11, 12 and 14;

(c) paragraph 8(1)(a), the conditions in paragraphs 11 (except paragraph 11(e)(ii) and 11(f)) and 13.

(2) A condition in paragraph 11, 12 or 13 does not apply in respect of an exemption in section 2 or 3 of this Part unless that condition is a relevant condition in respect of that exemption.

General conditions

11. A person ("A") to whom the conditions in this paragraph apply must—

(a) keep an adequate record of any exempt radioactive substances which A holds, and—

(i) in respect of exempt radioactive substances which are mobile radioactive apparatus, the locations at which they are kept or used;

(ii) in respect of other exempt radioactive substances, the location within the premises where A holds them;

(b) ensure that where reasonably practicable exempt radioactive substances or the containers of such radioactive substances, are marked or labelled as radioactive;

(c) in respect of exempt radioactive substances which are sealed sources, electrodeposited sources or tritium foil sources, not modify or mutilate those sources or cause a loss of containment such that radioactive material or radioactive waste may be released outside the source;

(d) allow the regulator access to such records or such premises as the regulator may request in order to determine that all of the conditions in respect of the relevant exemption are complied with;

(e) hold the exempt radioactive substances safely and securely to prevent, so far as reasonably practicable—

(i) accidental removal, loss or theft from the premises where they are held; or

(ii) loss of containment;

and

(f) in respect of exempt radioactive substances in a container—

(i) not modify or mutilate that container; and

(ii) prevent any uncontrolled or unintended release of radioactive material or radioactive waste from the container.

Loss or theft conditions

12.—(1) Subject to sub-paragraph (2), in the event of an incident of loss or theft (or suspected loss or theft) of exempt radioactive substances (except mobile radioactive apparatus) from the premises where they are held, a person to whom the condition in this paragraph applies must—

(a) notify the incident to the regulator as soon as reasonably practicable; and

(b) include in that notification the details of any other incidents of loss or theft (or suspected loss or theft) of any radioactive substances from those premises over the 12 months preceding the incident being notified.

(2) In respect of an incident described in sub-paragraph (1), a notification to the regulator is not required where in respect of the aggregated total amount of exempt radioactive substances (excluding mobile radioactive apparatus) lost or stolen (or suspected to have been lost or stolen) from the premises in the incident and in all other such incidents in the 12 months preceding it, the total quantity of radioactivity does not exceed the value that is ten times the value in column 2 of Table 5.

Loss or theft conditions: mobile radioactive apparatus

13.—(1) Subject to sub-paragraph (2), in the event of an incident of loss or theft (or suspected loss or theft) of mobile radioactive apparatus from a person ("A") to whom the condition in this paragraph applies, A must—

(a) notify the incident to the regulator as soon as reasonably practicable; and

(b) include in that notification the details of any other incidents of loss or theft (or suspected loss or theft) of any mobile radioactive apparatus from A over the 12 months preceding the incident being notified.

(2) In respect of an incident described in sub-paragraph (1), a notification to the regulator is not required where in respect of the aggregated total amount of mobile radioactive apparatus lost or stolen (or suspected to have been lost or stolen) from A in the incident and in all other such incidents in the 12 months preceding it, the total quantity of radioactivity does not exceed the value that is ten times the value in column 2 of Table 5.

Condition to dispose of accumulated waste

14. A person to whom the condition in this paragraph applies must dispose of the radioactive waste which is the subject of the exemption to which this condition applies—

(a) as soon as reasonably practicable after it has become waste; and

(b) in the case of such waste where it is a sealed source, a tritium foil source or an electrodeposited source, in any event within 26 weeks after it has become waste unless the regulator advises in writing that a longer period of accumulation is allowed.

SECTION 5

Exemption for disposing of solid radioactive waste

Exemption for receiving and disposing of solid radioactive waste

15.—(1) This paragraph applies to the following radioactive substances activities—

(a) the activity described in paragraph 11(2)(b) of Part 2 of this Schedule ("Activity A");

(b) the activity described in paragraph 11(4) of Part 2 of this Schedule ("Activity B").

(2) A person ("A") is exempt from the requirement for an environmental permit to carry on Activity A or Activity B in respect of solid radioactive waste described in paragraph 16(1)(a) where—

(a) A receives the waste on premises for the purpose of it being managed by A on those premises;

(b) in respect of those premises A manages substantial quantities of waste which is not radioactive waste; and

(c) the radioactive waste will be disposed of by A as soon as is reasonably practicable with the radioactive waste dispersed in non-radioactive waste.

(3) A person ("B") is exempt from the requirement for an environmental permit to carry on Activity A in respect of solid radioactive waste described in paragraph 16(1) where—

(a) in respect of a sealed source, an electrodeposited source or a tritium foil source, B complies with the conditions in paragraph 17(2); and

(b) in respect of any other waste described in paragraph 16(1)(a), B complies with the conditions in paragraph 17(1) and (2).

Solid radioactive waste

16.—(1) Solid radioactive waste referred to in paragraph 15 means—

(a) subject to sub-paragraph (2), solid radioactive waste described in an entry in column 1 of Table 6 which does not contain a concentration of radionuclides that exceeds the value specified in column 2 of that table in respect of that kind of waste; or

(b) a sealed source, an electrodeposited source or a tritium foil source which is not described in paragraph (a).

(2) Sub-paragraph (1)(a) does not apply to waste—

(a) where, prior to the disposal of that waste, a person has diluted it with the intention of ensuring that sub-paragraph (1)(a) is met; or

(b) which is NORM waste with a NORM waste concentration which is less than or equal to 10 Bq/g.

Conditions in respect of solid radioactive waste

17.—(1) The condition referred to in paragraph 15(3)(b) is that B must ensure that, in respect of the total amount of a waste to which this condition applies that is disposed of on or from the premises, the quantity of radioactivity which that waste contains must not exceed the value specified in column 3 of Table 6 in respect of that waste during the period stated in that column.

(2) The conditions referred to in paragraph 15(3)(a) and (b) are that B must—

(a) keep an adequate record of the solid radioactive waste which B disposes of on or from any premises under that paragraph;

(b) dispose of the waste by any of the routes described in sub-paragraph (3);

(c) where the disposal route in sub-paragraph (3)(a) is used, ensure that where reasonably practicable any marking or labelling of the waste or its container is removed before the person disposes of that waste;

(d) where the waste is or was a high-activity source, notify the details of the disposal to the regulator within 14 days of the disposal (including the information required by Annex II of the HASS Directive), in such form as may be required by the regulator; and

(e) allow the regulator access to such records or such premises as the regulator may request in order to determine that all of the conditions that apply in respect of the relevant exemption in paragraph 15(3) are complied with.

(3) The routes referred to in sub-paragraph (2)(b) are that the waste is transferred to—

(a) subject to sub-paragraph (4), a person who manages substantial quantities of non-radioactive waste and where the radioactive waste will be so managed with the radioactive waste dispersed in non-radioactive waste;

(b) a waste permitted person; or

(c) where the waste is a sealed source, an electrodeposited source or a tritium foil source, to a licensee of a nuclear site or to a person who is situated in another country and who is lawfully entitled to receive such waste.

(4) The route in sub-paragraph (3)(a) does not apply in respect of waste—

(a) described in paragraph 16(1)(b); or

(b) which is described in paragraph 16(1)(a) and which is a sealed source, an electrodeposited source or a tritium foil source, where in respect of the total amount of such a source which is disposed of on or from the premises under paragraph 15(3), the quantity of radioactivity which that waste contains exceeds the value specified in column 3 of Table 6 in respect of that source during the period stated in that column.

SECTION 6

Exemption for disposing of NORM waste

Exemption for receiving and disposing of NORM waste

18.—(1) This paragraph applies—

(a) to the following radioactive substances activities—

(i) the activity described in paragraph 11(2)(b) of Part 2 of this Schedule ("Activity A");

(ii) the activity described in paragraph 11(4) of Part 2 of this Schedule ("Activity B");

and

(b) where Activity A or B is carried on in respect of NORM waste—

(i) with a NORM waste concentration that does not exceed 5 Bq/g ("type 1 NORM Waste"); or

(ii) with a NORM waste concentration that exceeds 5 Bq/g but does not exceed 10 Bq/g ("type 2 NORM waste").

(2) Subject to sub-paragraph (6), a person ("A") is exempt from the requirement for an environmental permit to carry on Activity A or Activity B in respect of type 1 NORM waste or type 2 NORM waste where another person ("B") transfers that waste to A—

(a) in accordance with—

(i) a disposal permit held by B; or

(ii) an exemption from holding such a permit that applied to B in respect of the transfer to A;

and

(b) for the purpose of its disposal by A on the premises on which A receives it.

(3) Where a person ("C") disposes of—

(a) type 1 NORM waste on or from premises, sub-paragraph (4) applies to C; or

(b) type 2 NORM waste on or from premises, sub-paragraph (5) applies to C.

(4) C is exempt from the requirement for an environmental permit to carry on Activity A in respect of type 1 NORM waste where in relation to the total amount of such waste disposed of on or from the premises by C per year—

(a) the quantity of radionuclides does not exceed 5 x 10^{10} Bq, and C complies with the conditions in paragraph 19(1); or

(b) subject to sub-paragraph (6), the quantity of radionuclides exceeds 5 x 10^{10} Bq, and C complies with—

(i) the conditions in paragraph 19(1); and

(ii) where C intends to dispose of the waste by one of the methods in paragraph 19(2)(a), the conditions in paragraph 19(3).

(5) Subject to sub-paragraph (6), C is exempt from the requirement for an environmental permit to carry on Activity A in respect of type 2 NORM waste where C complies with the conditions in paragraph 19(1) and (3).

(6) Sub-paragraph (7) applies to a person ("E") where E holds an environmental permit to carry on Activity A for the disposal on or from premises ("the relevant premises") of NORM waste with a NORM waste concentration which exceeds 10 Bq/g.

(7) The following exemptions do not apply to E—

(a) the exemptions in sub-paragraph (2) in respect of type 2 NORM waste;

(b) the exemption in sub-paragraph (4)(b); and

(c) the exemption in sub-paragraph (5).

Conditions in respect of NORM waste

19.—(1) The conditions referred to in the exemptions in paragraph 18(4)(a) and (b)(i) and (5) are that C must—

(a) keep an adequate record of the NORM waste which C disposes of under those exemptions;

(b) dispose of the waste by any of the methods described in sub-paragraph (2);

(c) where the disposal method in sub-paragraph (2)(a) or (b) is used, ensure that where reasonably practicable any marking or labelling of the waste or its container is removed before C disposes of that waste; and

(d) allow the regulator access to such records or such premises as the regulator may request in order to determine that all of the conditions that apply to C in respect of the relevant exemption in that paragraph are complied with.

(2) The methods referred to in sub-paragraph (1)(b) are that the waste is disposed of—

(a) subject to sub-paragraph (3) where it applies, by burial in landfill or by the transfer of the waste to a person for the purpose of—

(i) the burial in landfill of the waste; or

(ii) the application of a treatment process to the waste which is preparatory to the burial in landfill of that waste;

(b) by incineration (or transfer to a person for such incineration or treatment which is preparatory to the incineration of the waste), but not in respect of—

(i) type 1 NORM waste, where in respect of the total amount of that waste that is incinerated (or transferred to a person for preparation or incineration) per year the quantity of radionuclides in the total amount of that waste exceeds 1 x 10^{8} Bq; or

(ii) type 2 NORM waste;

or

(c) by transfer to a waste permitted person.

(3) The conditions referred to in paragraph 18(4)(b)(ii) and (5) are that C must—

(a) make a written radiological assessment of the reasonably foreseeable pathways for the exposure of the public and workers to radiation in respect of—

(i) the application of any treatment process to the waste which is preparatory to its burial in landfill, at the place of that treatment; and

(ii) the burial in landfill of that waste, at the place of disposal;

(b) be satisfied that the assessment demonstrates that radiation doses are not expected to exceed—

(i) 1 millisievert per year to any worker at the place of treatment or disposal; and

(ii) 300 microsievert per year to any member of the public;

(c) provide that assessment to the regulator at least 28 days before the first disposal is made; and

(d) not dispose of that waste (or continue to do so) if the regulator objects in writing to that assessment.

SECTION 7

Exemption for disposing of aqueous radioactive waste

Exemption for disposing of aqueous radioactive waste in Table 6

20.—(1) Subject to sub-paragraph (2), a person ("A") is exempt from the requirement for an environmental permit to carry on the radioactive substances activity described in paragraph 11(2)(b) of Part 2 of this Schedule in respect of aqueous radioactive waste described in an entry in column 1 of Table 6, where A complies with the conditions in sub-paragraph (3).

(2) A is not exempt under sub-paragraph (1) where the person who generated that waste did not minimise the quantity of radionuclides generated as waste to the extent reasonably practicable.

(3) The conditions referred to in sub-paragraph (1) are that, in respect of the waste described in that sub-paragraph, A must—

(a) ensure that in respect of the total amount of that waste that is disposed of on or from the premises in a year, the quantity of radioactivity which that waste contains does not exceed the value specified in column 3 of Table 6 in respect of that waste;

(b) dispose of that waste to a relevant sewer or to a waste permitted person;

(c) keep an adequate record of that waste which A disposes of on or from the premises; and

(d) allow the regulator access to such records or such premises as the regulator may request in order to determine that the preceding conditions in this sub-paragraph are complied with.

Exemption for disposing of other aqueous radioactive waste

21.—(1) Subject to sub-paragraph (2), a person ("A") is exempt from the requirement for an environmental permit to carry on the radioactive substances activity described in paragraph 11(2)(b) of Part 2 of this Schedule in respect of aqueous radioactive waste described in sub-paragraph (3) where A disposes of that waste in accordance with the conditions in paragraph 22(1).

(2) A is not exempt under sub-paragraph (1) in respect of premises, where A holds an environmental permit to carry on the radioactive substances activity described in paragraph 11(2)(b) of Part 2 of this Schedule for the disposal of aqueous radioactive waste on or from those premises.

(3) Subject to sub-paragraph (4), the waste referred to in sub-paragraph (1) is aqueous radioactive waste—

(a) which is not described in an entry in column 1 of Table 6; and

(b) with a total concentration of radioactivity which does not exceed 100 Bq/ml.

(4) Sub-paragraph (3) does not apply to aqueous radioactive waste—

(a) which a person has diluted with the intention that—

(i) the waste has a concentration of radioactivity which is below the value in sub-paragraph (3)(b); or

(ii) the condition in paragraph 22(3)(a) or (4)(b) is complied with in respect of that waste;

or

(b) where the person who generated that waste did not minimise the quantity of radionuclides generated as waste to the extent reasonably practicable.

Conditions in respect of aqueous radioactive waste in paragraph 21

22.—(1) The conditions referred to in paragraph 21(1) are that A must—

(a) subject to sub-paragraph (2), dispose of the waste to which that paragraph applies—

(i) directly into a relevant river or the sea;

(ii) to a relevant sewer; or

(iii) to a waste permitted person.

(b) keep an adequate record of the waste which A disposes of from the premises under that paragraph;

(c) in respect of the disposal of aqueous non-table 6 waste, comply with sub-paragraph (3) or (4) as appropriate; and

(d) allow the regulator access to such records or such premises as the regulator may request in order to determine that all of the preceding conditions are complied with.

(2) In respect of aqueous non-Table 6 waste disposed of from the premises, A must not use both of the disposal routes described in sub-paragraph (1)(a)(i) and (ii) in a year and where—

(a) A uses the route in sub-paragraph (1)(a)(i), the conditions in sub-paragraph (3) apply to A; or

(b) A uses the route in sub-paragraph (1)(a)(ii), or A does not use the route in either sub-paragraph (1)(a)(i) or (ii), the conditions in sub-paragraph (4) apply to A.

(3) Where this sub-paragraph applies and A disposes of the aqueous non-table 6 waste directly into a relevant river or the sea, A must—

(a) in respect of any aqueous non-Table 6 waste which A disposes of, ensure that the concentration of radioactivity does not exceed the value specified in column 2 of Table 7; and

(b) in respect of the total amount of aqueous non-Table 6 waste which A disposes of from the premises in a year, ensure that the quantity of radioactivity does not exceed the value specified in column 4 of Table 7.

(4) Where this sub-paragraph applies and A disposes of the aqueous non-table 6 waste to a relevant sewer (or only to a waste permitted person), A must ensure that, in respect of the total amount of aqueous non-Table 6 waste which is disposed of from those premises in a year, the total quantity of radioactivity does not exceed—

(a) where any of that waste has a concentration of radioactivity which exceeds the value specified in column 2 of Table 7, the value in sub-paragraph (5); or

(b) where none of that waste has a concentration of radioactivity which exceeds the value specified in column 2 of Table 7, the value in sub-paragraph (5) or (6).

(5) The value referred to in sub-paragraph (4)(a) and (b) is—

(a) 1×10^8 Bq for the sum of the following radionuclides: H-3, C-11, C-14, F-18, P-32, P-33, S-35, Ca-45, Cr-51, Fe-55, Ga-67, Sr-89, Y-90, Tc-99m, In-111, I-123, I-125, I-131, Sm-153, Tl-201; and

(b) 1×10^6 Bq for the sum of all other radionuclides.

(6) The value referred to in sub-paragraph (4)(b) is the value specified in column 3 of Table 7.

(7) In this paragraph, "aqueous non-Table 6 waste" means aqueous radioactive waste which is not described in an entry in column 1 of Table 6.

SECTION 8

Exemption for disposal of gaseous radioactive waste

Exemption for disposal of gaseous radioactive waste

23.—(1) Subject to sub-paragraph (2), a person ("A") is exempt from the requirement for an environmental permit to carry on the radioactive substances activity described in paragraph 11(2)(b) of Part 2 of this Schedule in respect of gaseous radioactive waste where—

(a) the only radionuclide contained in that waste is Kr-85 and A—

(i) ensures that in respect of the total amount of such waste which is disposed of from the premises in a year, the total quantity of radioactivity does not exceed 10^{11} Bq; and

(ii) complies with the conditions in paragraph 24(1);

or

(b) subject to sub-paragraph (3), that waste—

(i) is released from within a container at the time that the container is opened; and

(ii) is emitted by solid or liquid radioactive material within the container,

and A complies with the conditions in paragraph 24(1).

(2) Sub-paragraph (1) does not apply to waste where the person who generated that waste did not minimise the quantity of radionuclides generated as waste to the extent reasonably practicable.

(3) Sub-paragraph (1)(b) does not apply in respect of any gas which arises as a result of a process applied by a person to the contained radioactive material.

Conditions in respect of gaseous radioactive waste

24.—(1) The conditions referred to in paragraph 23(1) are that A must—

(a) to the extent that is reasonably practicable—

(i) in respect of relevant gaseous waste which arises in a building, cause the waste to be disposed of by an extraction system which removes the waste from the area where it arose and which vents the waste into the atmosphere; and

(ii) prevent the entry or, where sub-paragraph (i) applies, the re-entry, of relevant gaseous waste into a building;

and

(b) allow the regulator access to such records or such premises as the regulator may request in order to determine that all of the conditions that apply to A in respect of the relevant exemption in that paragraph are complied with.

(2) In this paragraph "relevant gaseous waste" means waste which is described in paragraph 23(1) and disposed of under the exemption in that paragraph.

SECTION 9

Tables and summation rules in this Part

Table 4

25. The Table 4 referred to in sections 2 and 3 of this Part—

Table 4

Radioactive material and accumulated radioactive waste: values of maximum quantities

Substance or article	*Maximum quantity of radionuclides for each substance or article*	*Maximum quantity of radionuclides:* *(a) on any premises in items which satisfy the limit in column 2; or* *(b) in mobile radioactive apparatus held by a person*
A sealed source of a type not described in any other row of this table.	4×10^6 Bq	2×10^8 Bq
A Class A gaseous tritium light device.	2×10^{10} Bq	5×10^{12} Bq
A Class B gaseous tritium light device.	1×10^{12} Bq	3×10^{13} Bq
A Class C gaseous tritium light device.	1×10^{12} Bq	No limit.
Any sealed source which is solely radioactive material or radioactive waste because it contains tritium.	2×10^{10} Bq	5×10^{12} Bq
A tritium foil source.	2×10^{10} Bq	5×10^{12} Bq
A smoke detector affixed to premises.	4×10^6 Bq	No limit.
An electrodeposited source.	6×10^8 Bq Ni-63 or 2×10^8 Bq Fe-55	6×10^{11} Bq
A luminised article.	8×10^7 Bq Pm-147 or 4×10^9 Bq H-3	4×10^{10} Bq Pm-147 or 2×10^{11} Bq H-3
A Ba-137m eluting source.	4×10^4 Bq Cs-137+	4×10^5 Bq Cs-137+
A substance or article which is or contains magnesium alloy or thoriated tungsten in which the thorium concentration does not exceed 4% by mass.	No limit.	No limit.
A uranium or thorium compound.	Up to a total of 5 kg of uranium and thorium.	Up to a total of 5 kg of uranium and thorium.

Substance or article	*Maximum quantity of radionuclides for each substance or article*	*Maximum quantity of radionuclides:* *(a) on any premises in items which satisfy the limit in column 2; or* *(b) in mobile radioactive apparatus held by a person*
A substance or article (other than a sealed source) which is intended for use for medical or veterinary diagnosis or treatment or clinical or veterinary trials.	1 x 10^9 Bq Tc-99m and in respect of the total for all other radionuclides— (i) 1 x 10^8 Bq if the substance or article is radioactive material; or (ii) 2 x 10^8 Bq if the substance or article is radioactive waste.	1 x 10^9 Bq Tc-99m and 2 x 10^8 Bq of all other radionuclides, (no more than 1 x 10^8 Bq of which is contained in radioactive material).

Table 5

26. The Table 5 referred to in sections 2 and 4 of this Part is—

Table 5

Radionuclides: values of quantities and concentrations

Radionuclides	*Maximum quantity of radioactivity (Bq) on any premises*	*Maximum concentration (Bq/g)*
H-3	10^9	10^6
Be-7	10^7	10^3
C-14	10^7	10^4
O-15	10^9	10^2
F-18	10^6	10
Na-22	10^6	10
Na-24	10^5	10
Si-31	10^6	10^3
P-32	10^5	10^3
P-33	10^8	10^5
S-35	10^8	10^5
Cl-36	10^6	10^4
Cl-38	10^5	10
Ar-37	10^8	10^6
Ar-41	10^9	10^2
K-42	10^6	10^2
K-43	10^6	10
Ca-45	10^7	10^4
Ca-47	10^6	10
Sc-46	10^6	10
Sc-47	10^6	10^2
Sc-48	10^5	10
V-48	10^5	10

Radionuclides	*Maximum quantity of radioactivity (Bq) on any premises*	*Maximum concentration (Bq/g)*
Cr-51	10^7	10^3
Mn-51	10^5	10
Mn-52	10^5	10
Mn-52m	10^5	10
Mn-53	10^9	10^4
Mn-54	10^6	10
Mn-56	10^5	10
Fe-52	10^6	10
Fe-55	10^6	10^4
Fe-59	10^6	10
Co-55	10^6	10
Co-56	10^5	10
Co-57	10^6	10^2
Co-58	10^6	10
Co-58m	10^7	10^4
Co-60	10^5	10
Co-60m	10^6	10^3
Co-61	10^6	10^2
Co-62m	10^5	10
Ni-59	10^8	10^4
Ni-63	10^8	10^5
Ni-65	10^6	10
Cu-64	10^6	10^2
Zn-65	10^6	10
Zn-69	10^6	10^4
Zn-69m	10^6	10^2
Ga-72	10^5	10
Ge-71	10^8	10^4
As-73	10^7	10^3
As-74	10^6	10
As-76	10^5	10^2
As-77	10^6	10^3
Se-75	10^6	10^2
Br-82	10^6	10
Kr-74	10^9	10^2
Kr-76	10^9	10^2
Kr-77	10^9	10^2
Kr-79	10^5	10^3
Kr-81	10^7	10^4
Kr-83m	10^{12}	10^5
Kr-85	10^4	10^5
Kr-85m	10^{10}	10^3
Kr-87	10^9	10^2
Kr-88	10^9	10^2
Rb-86	10^5	10^2
Sr-85	10^6	10^2
Sr-85m	10^7	10^2

Radionuclides	*Maximum quantity of radioactivity (Bq) on any premises*	*Maximum concentration (Bq/g)*
Sr-87m	10^6	10^2
Sr-89	10^6	10^3
Sr-90+(**a**)	10^4	10^2
Sr-91	10^5	10
Sr-92	10^6	10
Y-90	10^5	10^3
Y-91	10^6	10^3
Y-91m	10^6	10^2
Y-92	10^5	10^2
Y-93	10^5	10^2
Zr-93+	10^7	10^3
Zr-95	10^6	10
Zr-97+	10^5	10
Nb-93m	10^7	10^4
Nb-94	10^6	10
Nb-95	10^6	10
Nb-97	10^6	10
Nb-98	10^5	10
Mo-90	10^6	10
Mo-93	10^8	10^3
Mo-99	10^6	10^2
Mo-101	10^6	10
Tc-96	10^6	10
Tc-96m	10^7	10^3
Tc-97	10^8	10^3
Tc-97m	10^7	10^3
Tc-99	10^7	10^4
Tc-99m	10^7	10^2
Ru-97	10^7	10^2
Ru-103	10^6	10^2
Ru-105	10^6	10
Ru-106+	10^5	10^2
Rh-103m	10^8	10^4
Rh-105	10^7	10^2
Pd-103	10^8	10^3
Pd-109	10^6	10^3
Ag-105	10^6	10^2
Ag-108m+	10^6	10
Ag-110m	10^6	10
Ag-111	10^6	10^3
Cd-109	10^6	10^4
Cd-115	10^6	10^2
Cd-115m	10^6	10^3
In-111	10^6	10^2
In-113m	10^6	10^2

(**a**) For the meaning of "+" and "sec" in this Part see paragraph 34.

Radionuclides	*Maximum quantity of radioactivity (Bq) on any premises*	*Maximum concentration (Bq/g)*
In-114m	10^6	10^2
In-115m	10^6	10^2
Sn-113	10^7	10^3
Sn-125	10^5	10^2
Sb-122	10^4	10^2
Sb-124	10^6	10
Sb-125	10^6	10^2
Te-123m	10^7	10^2
Te-125m	10^7	10^3
Te-127	10^6	10^3
Te-127m	10^7	10^3
Te-129	10^6	10^2
Te-129m	10^6	10^3
Te-131	10^5	10^2
Te-131m	10^6	10
Te-132	10^7	10^2
Te-133	10^5	10
Te-133m	10^5	10
Te-134	10^6	10
I-123	10^7	10^2
I-125	10^6	10^3
I-126	10^6	10^2
I-129	10^5	10^2
I-130	10^6	10
I-131	10^6	10^2
I-132	10^5	10
I-133	10^6	10
I-134	10^5	10
I-135	10^6	10
Xe-131m	10^4	10^4
Xe-133	10^4	10^3
Xe-135	10^{10}	10^3
Cs-129	10^5	10^2
Cs-131	10^6	10^3
Cs-132	10^5	10
Cs-134m	10^5	10^3
Cs-134	10^4	10
Cs-135	10^7	10^4
Cs-136	10^5	10
Cs-137+	10^4	10
Cs-138	10^4	10
Ba-131	10^6	10^2
Ba-140+	10^5	10
La-140	10^5	10
Ce-139	10^6	10^2
Ce-141	10^7	10^2
Ce-143	10^6	10^2

Radionuclides	*Maximum quantity of radioactivity (Bq) on any premises*	*Maximum concentration (Bq/g)*
Ce-144+	10^5	10^2
Pr-142	10^5	10^2
Pr-143	10^6	10^4
Nd-147	10^6	10^2
Nd-149	10^6	10^2
Pm-147	10^7	10^4
Pm-149	10^6	10^3
Sm-151	10^8	10^4
Sm-153	10^6	10^2
Eu-152	10^6	10
Eu-152m	10^6	10^2
Eu-154	10^6	10
Eu-155	10^7	10^2
Gd-153	10^7	10^2
Gd-159	10^6	10^3
Tb-160	10^6	10
Dy-165	10^6	10^3
Dy-166	10^6	10^3
Ho-166	10^5	10^3
Er-169	10^7	10^4
Er-171	10^6	10^2
Tm-170	10^6	10^3
Tm-171	10^8	10^4
Yb-175	10^7	10^3
Lu-177	10^7	10^3
Hf-181	10^6	10
Ta-182	10^4	10
W-181	10^7	10^3
W-185	10^7	10^4
W-187	10^6	10^2
Re-186	10^6	10^3
Re-188	10^5	10^2
Os-185	10^6	10
Os-191	10^7	10^2
Os-191m	10^7	10^3
Os-193	10^6	10^2
Ir-190	10^6	10
Ir-192	10^4	10
Ir-194	10^5	10^2
Pt-191	10^6	10^2
Pt-193m	10^7	10^3
Pt-197	10^6	10^3
Pt-197m	10^6	10^2
Au-198	10^6	10^2
Au-199	10^6	10^2
Hg-197	10^7	10^2
Hg-197m	10^6	10^2

Radionuclides	*Maximum quantity of radioactivity (Bq) on any premises*	*Maximum concentration (Bq/g)*
Hg-203	10^5	10^2
Tl-200	10^6	10
Tl-201	10^6	10^2
Tl-202	10^6	10^2
Tl-204	10^4	10^4
Pb-203	10^6	10^2
Pb-210+	10^4	10
Pb-212+	10^5	10
Bi-206	10^5	10
Bi-207	10^6	10
Bi-210	10^6	10^3
Bi-212+	10^5	10
Po-203	10^6	10
Po-205	10^6	10
Po-207	10^6	10
Po-210	10^4	10
At-211	10^7	10^3
Rn-220+	10^7	10^4
Rn-222+	10^8	10
Ra-223+	10^5	10^2
Ra-224+	10^5	10
Ra-225	10^5	10^2
Ra-226+	10^4	10
Ra-227	10^6	10^2
Ra-228+	10^5	10
Ac-228	10^6	10
Th-226+	10^7	10^3
Th-227	10^4	10
Th-228+	10^4	1
Th-229+	10^3	1
Th-230	10^4	1
Th-231	10^7	10^3
Th-232 sec	10^3	1
Th-234+	10^5	10^3
Pa-230	10^6	10
Pa-231	10^3	1
Pa-233	10^7	10^2
U-230+	10^5	10
U-231	10^7	10^2
U-232+	10^3	1
U-233	10^4	10
U-234	10^4	10
U-235+	10^4	10
U-236	10^4	10
U-237	10^6	10^2
U-238+	10^4	10
U-238 sec	10^3	1

Radionuclides	*Maximum quantity of radioactivity (Bq) on any premises*	*Maximum concentration (Bq/g)*
U-239	10^6	10^2
U-240	10^7	10^3
U-240+	10^6	10
Np-237+	10^3	1
Np-239	10^7	10^2
Np-240	10^6	10
Pu-234	10^7	10^2
Pu-235	10^7	10^2
Pu-236	10^4	10
Pu-237	10^7	10^3
Pu-238	10^4	1
Pu-239	10^4	1
Pu-240	10^3	1
Pu-241	10^5	10^2
Pu-242	10^4	1
Pu-243	10^7	10^3
Pu-244	10^4	1
Am-241	10^4	1
Am-242	10^6	10^3
Am-242m+	10^4	1
Am-243+	10^3	1
Cm-242	10^5	10^2
Cm-243	10^4	1
Cm-244	10^4	10
Cm-245	10^3	1
Cm-246	10^3	1
Cm-247	10^4	1
Cm-248	10^3	1
Bk-249	10^6	10^3
Cf-246	10^6	10^3
Cf-248	10^4	10
Cf-249	10^3	1
Cf-250	10^4	10
Cf-251	10^3	1
Cf-252	10^4	10
Cf-253	10^5	10^2
Cf-254	10^3	1
Es-253	10^5	10^2
Es-254	10^4	10
Es-254m	10^6	10^2
Fm-254	10^7	10^4
Fm-255	10^6	10^3
Any other radionuclide that is: (a) not of natural terrestrial or cosmic origin; or (b) listed in Table 2 in this Schedule.	10^3, or the quantity given in respect of that radionuclide in the Health Protection Agency's publication *'Exempt Concentrations and Quantities for Radionuclides*	1, or the concentration given in respect of that radionuclide in the publication referenced in column 2.

Radionuclides	*Maximum quantity of radioactivity (Bq) on any premises*	*Maximum concentration (Bq/g)*
	not Included in the European Basic Safety Standards Directive'(**a**).	

27. The summation rule in respect of column 2 of Table 5 is the sum of the quotients A/B where—

(a) "A" means the quantity of each radionuclide listed in column 1 of Table 5 that is present in the material and waste; and

(b) "B" means the quantity of that radionuclide specified in column 2 of Table 5.

28. The summation rule in respect of column 2 of Table 5 is the sum of the quotients C/D where—

(a) "C" means the concentration of each radionuclide listed in column 1 of Table 5 that is present in the material and waste; and

(b) "D" means the concentration of that radionuclide specified in column 3 of Table 5.

Table 6

29. The Table 6 referred to in sections 5 and 7 of this Part is—

Table 6

Radioactive waste: values of quantities and concentrations

Radioactive waste	*Maximum concentration of radionuclides*	*Maximum quantity of radioactivity to be disposed of in the period stated*
Solid radioactive waste, with no single item > 4×10^4 Bq.	4×10^5 Bq for the sum of all radionuclides per $0.1m^3$.	2×10^8 Bq/year.
Solid radioactive waste containing tritium and C-14 only, with no single item > 4×10^5 Bq.	4×10^6 Bq of tritium and C-14 per $0.1m^3$.	2×10^9 Bq/year.
Individual sealed sources.	2×10^5 Bq for the sum of all radionuclides per $0.1m^3$.	1×10^7 Bq/year.
Individual sealed sources which are solely radioactive waste because they contain tritium.	2×10^{10} Bq of tritium per $0.1m^3$.	1×10^{13} Bq/year.
Luminised articles with no single item containing > 8×10^7 Bq of Pm-147 or > 4×10^9 of tritium.	8×10^7 Bq per $0.1m^3$ of Pm-147 or 4×10^9 Bq per $0.1m^3$ for tritium.	2×10^9 Bq/year of Pm-147 or 1×10^{11} Bq/year of tritium.

(**a**) NRPB- R306 - Exempt Concentrations and Quantities for Radionuclides not Included in the European Basic Safety Standards Directive (April 1999), ISBN 0-85951-429-3.

Radioactive waste	*Maximum concentration of radionuclides*	*Maximum quantity of radioactivity to be disposed of in the period stated*
Solid radioactive waste which consists of magnesium alloy, thoriated tungsten or dross from hardener alloy in which the thorium concentration does not exceed 4% by mass.	No limit.	No limit.
Solid uranium or thorium compound.	No limit.	0.5 kg of uranium or thorium per week.
Aqueous liquid uranium or thorium compound.	No limit.	0.5 kg of uranium or thorium per year.
Aqueous liquid human excreta.	No limit.	1×10^{10} Bq/year of Tc-99m and 5×10^{9} Bq/year for the sum of all other radionuclides.

Table 7

30. The Table 7 referred to in section 7 of this Part is—

Table 7

Aqueous radioactive waste values

Radionuclide	*Concentration in Bq/ litre*	*Maximum annual quantity of radionuclides to a relevant sewer (Bq/ year)*	*Maximum annual quantity of radionuclides directly into a relevant river or the sea (Bq/ year)*
H-3	10^3	10^{10}	10^{10}
Be-7	1	10^7	10^7
C-14	0.1	10^6	10^6
F-18	0.1	10^6	10^6
Na-22	1	10^6	10^7
Na-24	1	10^7	10^7
Si-31	10	10^8	10^8
P-32	0.001	10^4	10^4
P-33	0.001	10^4	10^4
S-35	10	3×10^7	10^8
Cl-36	10	10^7	10^8
Cl-38	0.1	10^6	10^6
K-42	0.01	10^5	10^5
K-43	0.01	10^5	10^5
Ca-45	1	10^7	10^7
Ca-47	0.1	10^6	10^6
Sc-46	0.001	10^4	10^4
Sc-47	0.01	10^5	10^5
Sc-48	0.001	10^4	10^4
V-48	1	10^7	10^7

Radionuclide	*Concentration in Bq/ litre*	*Maximum annual quantity of radionuclides to a relevant sewer (Bq/ year)*	*Maximum annual quantity of radionuclides directly into a relevant river or the sea (Bq/ year)*
Cr-51	10	10^8	10^8
Mn-51	0.001	10^4	10^4
Mn-52	0.001	10^4	10^4
Mn-52m	0.001	10^4	10^4
Mn-53	1	10^7	10^7
Mn-54	0.01	10^5	10^5
Mn-56	0.001	10^4	10^4
Fe-52	0.01	10^5	10^5
Fe-55	1	10^7	10^7
Fe-59	0.01	10^5	10^5
Co-55	0.001	10^4	10^4
Co-56	0.001	10^4	10^4
Co-57	0.1	10^6	10^6
Co-58	0.1	10^6	10^6
Co-58m	1	10^7	10^7
Co-60	0.01	10^5	10^5
Co-60m	1	10^7	10^7
Co-61	0.1	10^6	10^6
Co-62m	0.001	10^4	10^4
Ni-59	1	10^7	10^7
Ni-63	10^2	10^9	10^9
Ni-65	0.01	10^5	10^5
Cu-64	0.1	10^6	10^6
Zn-65	0.1	3×10^5	10^6
Zn-69	10	10^8	10^8
Zn-69m	0.1	10^6	10^6
Ga-67	0.1	10^6	10^6
Ga-72	0.001	10^4	10^4
Ge-71	1	10^7	10^7
As-73	10	10^8	10^8
As-74	1	10^7	10^7
As-76	1	10^7	10^7
As-77	1	10^7	10^7
Se-75	0.1	3×10^5	10^6
Br-82	0.1	10^6	10^6
Rb-86	0.1	10^6	10^6
Sr-85	0.1	10^6	10^6
Sr-85m	0.1	10^6	10^6
Sr-87m	0.1	10^6	10^6
Sr-89	1	10^7	10^7
Sr-90+	0.1	3×10^5	10^6
Sr-91	0.01	10^5	10^5
Sr-92	0.01	10^5	10^5
Y-90	1	10^7	10^7
Y-91	1	10^7	10^7

Radionuclide	*Concentration in Bq/ litre*	*Maximum annual quantity of radionuclides to a relevant sewer (Bq/ year)*	*Maximum annual quantity of radionuclides directly into a relevant river or the sea (Bq/ year)*
Y-91m	0.01	10^5	10^5
Y-92	0.1	10^6	10^6
Y-93	0.1	10^6	10^6
Zr-93	10	10^8	10^8
Zr-95+	0.001	10^4	10^4
Zr-97	0.01	10^5	10^5
Nb-93m	10	10^8	10^8
Nb-94	0.1	10^6	10^6
Nb-95	1	10^7	10^7
Nb-97	1	10^7	10^7
Nb-98	0.1	10^6	10^6
Mo-90	0.1	10^6	10^6
Mo-93	1	10^7	10^7
Mo-99	0.1	10^6	10^6
Mo-101	0.01	10^5	10^5
Tc-96	1	10^7	10^7
Tc-96m	10^2	10^9	10^9
Tc-97	10^2	10^9	10^9
Tc-97m	10	10^8	10^8
Tc-99	10	10^7	10^8
Tc-99m	10	3×10^7	10^8
Ru-97	0.01	10^5	10^5
Ru-103	0.01	10^5	10^5
Ru-105	0.01	10^5	10^5
Ru-106+	0.1	10^6	10^6
Rh-103m	10	10^8	10^8
Rh-105	1	10^7	10^7
Pd-103	0.1	10^6	10^6
Pd-109	0.1	10^6	10^6
Ag-105	1	10^7	10^7
Ag-108m	0.1	10^6	10^6
Ag-110m	0.1	10^6	10^6
Ag-111	10	10^8	10^8
Cd-109	1	10^7	10^7
Cd-115	0.1	10^6	10^6
Cd-115m	1	10^7	10^7
In-111	0.01	10^5	10^5
In-113m	0.01	10^5	10^5
In-114m	0.01	10^5	10^5
In-115m	0.01	10^5	10^5
Sn-113	0.1	10^6	10^6
Sn-125	0.01	10^5	10^5
Sb-122	0.1	10^6	10^6
Sb-124	0.1	10^6	10^6
Sb-125	1	10^7	10^7

Radionuclide	*Concentration in Bq/ litre*	*Maximum annual quantity of radionuclides to a relevant sewer (Bq/ year)*	*Maximum annual quantity of radionuclides directly into a relevant river or the sea (Bq/ year)*
Te-123m	1	10^7	10^7
Te-125m	1	10^7	10^7
Te-127	10	10^8	10^8
Te-127m	1	10^7	10^7
Te-129	10	10^8	10^8
Te-129m	1	10^7	10^7
Te-131	1	10^7	10^7
Te-131m	1	10^7	10^7
Te-132	0.1	10^6	10^6
Te-133	1	10^7	10^7
Te-133m	1	10^7	10^7
Te-134	1	10^7	10^7
I-123	1	10^7	10^7
I-125	1	10^7	10^7
I-126	0.1	10^6	10^6
I-129	0.1	10^6	10^6
I-130	0.1	10^6	10^6
I-131	0.1	10^6	10^6
I-132	0.1	10^6	10^6
I-133	0.1	10^6	10^6
I-134	0.1	10^6	10^6
I-135	0.1	10^6	10^6
Cs-129	0.01	10^5	10^5
Cs-131	0.1	10^6	10^6
Cs-132	0.01	10^5	10^5
Cs-134	0.01	10^5	10^5
Cs-134m	0.1	10^6	10^6
Cs-135	0.1	10^6	10^6
Cs-136	0.001	10^4	10^4
Cs-137+	0.01	10^5	10^5
Cs-138	0.001	10^4	10^4
Ba-131	0.1	10^6	10^6
Ba-140	0.1	10^6	10^6
La-140	0.001	10^4	10^4
Ce-139	0.1	10^6	10^6
Ce-141	0.1	10^6	10^6
Ce-143	0.01	10^5	10^5
Ce-144	0.1	10^6	10^6
Pr-142	0.1	10^6	10^6
Pr-143	10	10^8	10^8
Nd-147	0.01	10^5	10^5
Nd-149	0.01	10^5	10^5
Pm-147	10	10^8	10^8
Pm-149	1	10^7	10^7
Sm-151	10^2	10^9	10^9

Radionuclide	*Concentration in Bq/ litre*	*Maximum annual quantity of radionuclides to a relevant sewer (Bq/ year)*	*Maximum annual quantity of radionuclides directly into a relevant river or the sea (Bq/ year)*
Sm-153	0.1	10^6	10^6
Eu-152	0.01	10^5	10^5
Eu-152m	0.01	10^5	10^5
Eu-154	0.01	10^5	10^5
Eu-155	0.1	10^6	10^6
Gd-153	0.1	10^6	10^6
Gd-159	0.1	10^6	10^6
Tb-160	0.01	10^5	10^5
Dy-165	0.1	10^6	10^6
Dy-166	0.1	10^6	10^6
Ho-166	0.1	10^6	10^6
Er-169	10	10^8	10^8
Er-171	0.01	10^5	10^5
Tm-170	1	10^7	10^7
Tm-171	10	10^8	10^8
Yb-175	0.1	10^6	10^6
Lu-177	0.1	10^6	10^6
Hf-181	0.01	10^5	10^5
Ta-182	0.001	10^4	10^4
W-181	0.1	10^6	10^6
W-185	1	10^7	10^7
W-187	0.01	10^5	10^5
Re-186	1	10^7	10^7
Re-188	1	10^7	10^7
Os-185	0.01	10^5	10^5
Os-191	0.1	10^6	10^6
Os-191m	1	10^7	10^7
Os-193	0.1	10^6	10^6
Ir-190	0.001	10^4	10^4
Ir-192	0.01	10^5	10^5
Ir-194	0.1	10^6	10^6
Pt-191	0.01	10^5	10^5
Pt-193m	1	10^7	10^7
Pt-197	0.1	10^6	10^6
Pt-197m	0.1	10^6	10^6
Au-198	1	10^7	10^7
Au-199	1	10^7	10^7
Hg-197	1	10^7	10^7
Hg-197m	0.1	10^6	10^6
Hg-203	0.1	10^6	10^6
Tl-200	0.01	10^5	10^5
Tl-201	0.1	10^6	10^6
Tl-202	0.01	10^5	10^5
Tl-204	0.1	10^6	10^6
Pb-203	0.01	10^5	10^5

Radionuclide	*Concentration in Bq/ litre*	*Maximum annual quantity of radionuclides to a relevant sewer (Bq/ year)*	*Maximum annual quantity of radionuclides directly into a relevant river or the sea (Bq/ year)*
Pb-210	0.001	10^4	10^4
Pb-212	0.1	10^6	10^6
Bi-206	0.01	10^5	10^5
Bi-207	0.1	10^6	10^6
Bi-210	10	10^8	10^8
Bi-212	1	10^7	10^7
Po-203	0.001	10^4	10^4
Po-205	0.001	10^4	10^4
Po-207	0.001	10^4	10^4
Po-210	0.001	10^4	10^4
At-211	1	10^7	10^7
Ra-223	0.01	10^5	10^5
Ra-224+	0.01	10^5	10^5
Ra-225	0.01	10^5	10^5
Ra-226+	0.01	10^5	10^5
Ra-227	1	10^7	10^7
Ra-228	0.01	10^5	10^5
Ac-227	0.1	10^6	10^6
Ac-228	0.001	10^4	10^4
Th-226	0.1	10^6	10^6
Th-227	0.01	10^5	10^5
Th-228	1	10^7	10^7
Th-229	0.01	10^5	10^5
Th-230	1	10^7	10^7
Th-231	0.1	10^6	10^6
Th-232	1	10^6	10^7
Th-234	0.1	10^6	10^6
Pa-230	0.01	10^5	10^5
Pa-231	0.01	10^5	10^5
Pa-233	0.1	10^6	10^6
U-230	0.1	10^6	10^6
U-231	10	10^8	10^8
U-232	0.1	10^6	10^6
U-233	0.1	10^6	10^6
U-234	0.1	10^6	10^6
U-235+	0.1	10^6	10^6
U-236	0.1	10^6	10^6
U-237	10	10^8	10^8
U-238+	0.1	10^6	10^6
U-239	10	10^8	10^8
U-240	10	10^8	10^8
Np-237	0.1	10^6	10^6
Np-239	1	10^7	10^7
Np-240	0.1	10^6	10^6
Pu-234	0.01	10^5	10^5

Radionuclide	*Concentration in Bq/ litre*	*Maximum annual quantity of radionuclides to a relevant sewer (Bq/ year)*	*Maximum annual quantity of radionuclides directly into a relevant river or the sea (Bq/ year)*
Pu-235	0.01	10^5	10^5
Pu-236	1	10^7	10^7
Pu-237	0.1	10^6	10^6
Pu-238	0.1	10^6	10^6
Pu-239	0.1	10^6	10^6
Pu-240	0.1	10^6	10^6
Pu-241	10	10^8	10^8
Pu-242	0.1	10^6	10^6
Pu-243	0.1	10^6	10^6
Pu-244	0.1	10^6	10^6
Am-241	0.1	10^6	10^6
Am-242	0.1	10^6	10^6
Am-242m	0.1	10^6	10^6
Am-243	0.1	10^6	10^6
Cm-242	1	10^7	10^7
Cm-243	0.1	10^6	10^6
Cm-244	0.1	10^6	10^6
Cm-245	0.01	10^5	10^5
Cm-246	0.1	10^6	10^6
Cm-247	0.01	10^5	10^5
Cm-248	0.1	10^6	10^6
Bk-249	10^2	10^9	10^9
Cf-246	1	10^7	10^7
Cf-248	1	10^7	10^7
Cf-249	0.01	10^5	10^5
Cf-250	0.1	10^6	10^6
Cf-251	0.01	10^5	10^5
Cf-252	0.1	10^6	10^6
Cf-253	10	10^8	10^8
Cf-254	0.0001	10^3	10^3
Es-253	1	10^7	10^7
Es-254	0.1	10^6	10^6
Es-254m	0.01	10^5	10^5
Fm-254	1	10^7	10^7
Fm-255	0.1	10^6	10^6
Any other radionuclide that is not of natural terrestrial or cosmic origin	0.0001 or that concentration which gives rise to a dose to a member of the public of 10 microsieverts per year calculated in accordance with the methodology used to calculate other	10^3 or that quantity which corresponds to 3000m^3 of aqueous radioactive waste up to the appropriate concentration as calculated in accordance with	10^3 or that quantity which corresponds to 10000m^3 of aqueous radioactive waste up to the appropriate concentration as calculated in accordance with

Radionuclide	*Concentration in Bq/ litre*	*Maximum annual quantity of radionuclides to a relevant sewer (Bq/ year)*	*Maximum annual quantity of radionuclides directly into a relevant river or the sea (Bq/ year)*
	concentrations in this table(**a**).	column 2.	column 2.

31. The summation rule in respect of column 2 of Table 7 is the sum of the quotients A/B where—

(a) "A" means the concentration in Bq/ litre of each radionuclide listed in column 1 of Table 7 that is present in aqueous waste which is not described in a row in column 1 of Table 6; and

(b) "B" means the concentration of that radionuclide specified in column 2 of Table 7.

32. The summation rule in respect of column 3 of Table 7 is the sum of the quotients C/D where—

(a) "C" means the quantity in Bq of each radionuclide listed in column 1 of Table 7 that is present in the aqueous waste which is not described in a row in column 1 of Table 6 which is disposed of in the year; and

(b) "D" means the quantity of that radionuclide specified in column 3 of Table 7.

33. The summation rule in respect of column 4 of Table 7 is the sum of the quotients C/E where—

(a) "C" means the quantity in Bq of each radionuclide listed in column 1 of Table 7 that is present in the aqueous waste which is not described in a row in column 1 of Table 6 which is disposed of in the year; and

(b) "E" means the quantity of that radionuclide specified in column 4 of Table 7.

Interpretation of this section

34. In this section, where any radionuclide carries the suffix "+" or "sec"—

(a) that radionuclide represents the parent radionuclide in secular equilibrium with the corresponding daughter radionuclides which are identified in column 2 of Table 8 adjacent to that parent radionuclide; and

(b) a concentration or activity value given in respect of such a parent radionuclide is the value for the parent radionuclide alone, but already takes into account the daughter radionuclides in column 2 that are present.

Table 8

35. The Table 8 referred to in paragraph 34 is—

Table 8

Radionuclides in secular equilibrium

Parent radionuclide	*Daughter radionuclides*
Sr-90+	Y-90

(**a**) The concentrations in this table were calculated using methods adopted by the Health Protection Agency in their document HPA-CRCE-005 - Derivation of Liquid Exclusion or Exemption Levels to Support the RSA93 Exemption Order Review, published in August 2010 (ISBN 0-978-85951-673-0).

Parent radionuclide	*Daughter radionuclides*
Zr-93+	Nb-93m
Zr-95+	Nb-95
Zr-97+	Nb-97
Ru-106+	Rh-106
Ag-108m+	Ag-108
Cs-137+	Ba-137m
Ba-140+	La-140
Ce-144+	Pr-144
Pb-210+	Bi-210, Po-210
Pb-212+	Bi-212, Tl-208, Po-212
Bi-212+	Tl-208, Po-212
Rn-220+	Po-216
Rn-222+	Po-218, Pb-214, Bi-214, Po-214
Ra-223+	Rn-219, Po-215, Pb-211, Bi-211, Tl-207
Ra-224+	Where Ra-224+ is referred to in Table 5: Rn-220, Po-216, Pb-212, Bi-212, Tl-208, Po-212 Where Ra-224+ is referred to in Table 7: Pb-212
Ra-226+	Where Ra-226+ is referred to in Table 5: Rn-222, Po-218, Pb-214, Bi-214, Pb-210, Bi-210, Po-210, Po-214 Where Ra-226+ is referred to in Table 7: Rn-222, Po-218, Pb-214, Bi-214, Po-214
Ra-228+	Ac-228
Th-226+	Ra-222, Rn-218, Po-214
Th-228+	Ra-224, Rn-220, Po-216, Pb-212, Bi-212, Po-212, Tl-208
Th-229+	Ra-225, Ac-225, Fr-221, At-217, Bi-213, Po-213, Pb-209
Th-232 sec	Ra-228, Ac-228, Th-228, Ra-224, Rn-220, Po-216, Pb-212, Bi-212, Po-212, Tl-208
Th-234+	Pa-234m
U-230+	Th-226, Ra-222, Rn-218, Po-214
U-232+	Th-228, Ra-224, Rn-220, Po-216, Pb-212, Bi-212, Tl-208, Po-212
U-235+	Th-231
U-238+	Th-234, Pa-234m, Pa-234
U-238 sec	Th-234, Pa-234m, U-234, Th-230, Ra-226, Rn-222, Po-218, Pb-214, Bi-214, Pb-210, Bi-210, Po-210, Po-214
U-240+	Np-240
Np-237+	Pa-233
Am-242m+	Am-242
Am-243+	Np-239

PART 8

Radioactivity to be disregarded

SECTION 1

Provisions

Interpretation

1.—(1) For the purposes of the matters referred to in sub-paragraph (2), no account is to be taken of any radioactivity possessed by a substance or article or by a part of any premises.

(2) The matters are—

(a) the operation of a provision to which this Part applies;

(b) the exercise of a power conferred by, or for the enforcement of, a provision to which this Part applies; and

(c) the performance of a duty imposed by, or for the enforcement of, a provision to which this Part applies.

2.—(1) This Part applies to a provision—

(a) specified in paragraph 3;

(b) contained in an instrument made under a provision so specified;

(c) which has effect by virtue of a provision so specified; or

(d) which extends or applies a provision so specified.

(2) This Part also applies to a provision of a local enactment (whenever passed or made and however expressed) in so far as it—

(a) prohibits or restricts—

(i) the disposal or accumulation of waste;

(ii) the disposal or accumulation of a substance which is or causes a nuisance; or

(iii) a disposal or accumulation which causes pollution; or

(b) confers a power, or imposes a duty, on a public authority or an officer of a public authority to take action to prevent, restrict or abate a disposal or accumulation of a description given in paragraph (a).

(3) In sub-paragraph (2)—

(a) a reference to "disposal" in relation to a provision to which this Part applies, means—

(i) the discharge or deposit of a substance; or

(ii) the allowing of a substance to escape or to enter a stream or other place,

as may be mentioned in that provision; and

(b) "local enactment" means—

(i) a local or private Act;

(ii) an order confirmed by Parliament or brought into operation in accordance with special parliamentary procedure; or

(iii) an order confirmed by the National Assembly for Wales or brought into operation in accordance with special procedure in the Assembly.

Provisions of enactments

3.—(1) The provisions referred to in paragraph 2(1) are those listed in table 9 below.

(2) References to provisions of the Water Resources Act 1991(**a**) have effect subject to the power conferred by section 98 of that Act.

Table 9

Statutory provisions in respect of which radioactivity is to be disregarded

Act	*Provisions*
Public Health Act 1936 (c. 49)	Sections 48, 79, 81, 82, 141, 259 and 261.
Water Act 1945 (c. 42)	Section 18 so far as it continues to have effect by virtue of Schedule 2 to the Water Consolidation (Consequential Provisions) Act 1991(**b**) or by virtue of provisions of the Control of Pollution Act 1974 not having been brought into force.
Salmon and Freshwater Fisheries Act 1975 (c. 51)	Section 4.
Building Act 1984 (c. 55)	Section 59.
The Planning (Hazardous Substances) Act 1990 (c. 10)	The whole Act.
Environmental Protection Act 1990 (c. 43)	Part III (subject to regulation 47(3) of the Waste (England and Wales) Regulations 2011)(**c**).
Water Industry Act 1991 (c. 56)	Sections 72, 111, and 113(6); In Part IV, Chapter III; In Schedule 8, paragraphs 2 to 4 so far as they re-enact provisions of sections 43 and 44 of the Control of Pollution Act 1974(**d**).
Water Resources Act 1991 (c. 57)	Sections 82, 84, 92, 93, 161-161D, 190, 202, and 203; In Schedule 25, paragraph 6.
Clean Air Act 1993 (c. 11)	Section 16.
Marine and Coastal Access Act 2009 (c. 23)	Section 155.”

(**a**) 1991 c. 57.
(**b**) 1991 c. 60.
(**c**) S.I. 2011/988.
(**d**) 1974 c. 40.

SCHEDULE 2

Regulation 16

Consequential amendments

PART 1

Public General Acts

Continental Shelf Act 1964

1. In section 7 of the Continental Shelf Act 1964(**a**)(radioactive substances), omit—

(a) "for the purposes of the Radioactive Substances Act 1993 (and any orders and regulations made thereunder), or", and

(b) "of that Act or".

Control of Pollution Act 1974

2. In section 30(5)(b) of the Control of Pollution Act 1974 (power to apply Part 1 of that Act to radioactive waste)(**b**) omit "the Radioactive Substances Act 1993,".

PART 2

Subordinate legislation

The Civil Jurisdiction (Offshore Activities) Order 1987

1. In article 4 of the Civil Jurisdiction (Offshore Activities) Order 1987(**c**), (the title to which article becomes "Application of the Wireless Telegraphy Act 1949 and the Environmental Permitting (England and Wales) Regulations 2010"), omit the words "the Radioactive Substances Act 1993, any regulations or orders under either of those Acts (subject, however, in the case of such regulations or orders made hereafter, to any contrary intention appearing therein) and".

The Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999

2. In Schedule 2 to the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999(**d**), in paragraph 3(g) of the table, in column 2, for "paragraph 5(2)(b)" substitute "paragraph 11(2)(b)".

The Hazardous Waste (England and Wales) Regulations 2005

3.—(1) The Hazardous Waste (England and Wales) Regulations 2005(**e**) are amended as follows.

(2) In regulation 5(1), insert the following definition after the definition of "radioactive substances activity"—

(**a**) 1964 c. 29; section 7 amended by the Radioactive Substances Act 1993 (c. 12), the Petroleum Act 1998 (c. 17) and S.I. 2010/675.

(**b**) 1974 c. 40. Section 30 was prospectively repealed by the Environmental Protection Act 1990 (c. 43), section 162 and Schedule 16, Part 2, on a date to be appointed, and amended by S.I. 2010/675.

(**c**) S.I. 1987/2197, amended by S.I. 2010/675.

(**d**) S.I. 1999/293.

(**e**) S.I. 2005/894; regulations 5(1) and 15(1) were amended by S.I. 2010/675.

""radioactive substances exemption" has the meaning given in regulation 2(1) of the Environmental Permitting Regulations;".

(3) In regulation 15(1)(a), for "section 15 of the Radioactive Substances Act 1993", substitute "a radioactive substances exemption".

The Hazardous Waste (Wales) Regulations 2005

4. The Hazardous Waste (Wales) Regulations 2005(**a**) are amended as follows

(a) in regulation 5(1) (general interpretation), insert the following definition after the definition of "radioactive substances activity"—

""radioactive substances exemption" has the meaning given in regulation 2(1) of the Environmental Permitting Regulations;"; and

(b) in regulation 15(1)(a) (radioactive waste), for "section 15 of the Radioactive Substances Act 1993", substitute "a radioactive substances exemption".

The Offshore Marine Conservation (Natural Habitats, &c) Regulations 2007

5. Regulation 6(2)(h) of the Offshore Marine Conservation (Natural Habitats, &c) Regulations 2007(**b**) (duty of competent authorities) is omitted.

The Waste (England and Wales) Regulations 2011

6.—(1) Regulation 47 of the Waste (England and Wales) Regulations 2011(**c**) (radioactive waste) is amended as follows.

(2) For paragraph (1), substitute—

"(1) This regulation applies to radioactive waste—

(a) which is a specified waste; and

(b) in respect of which a person—

(i) is carrying on a radioactive substances activity described in paragraph 11(2)(b) or (c) or (4) of Part 2 of Schedule 23 to the Environmental Permitting (England and Wales) Regulations 2010; and

(ii) is exempt from the requirement for an environmental permit under regulation 12(2A) of those Regulations for that activity.".

(3) In paragraph (4)—

(a) in the definition of ""radioactive waste" and "radioactive substances activity"" for "paragraphs 4 and 5" substitute "paragraphs 3 and 11";

(b) omit the definition of "specified order";

(c) insert the following definitions in the appropriate place alphabetically—

""radioactive substances exemption" means an exemption under Part 7 of Schedule 23 to the Environmental Permitting (England and Wales) Regulations 2010 from the requirement for an environmental permit under regulation 12 of those regulations in respect of a radioactive substances activity;"

""specified waste" means—

(a) NORM waste (as that term is defined in Part 7 of Schedule 23 to the Environmental Permitting (England and Wales) Regulations 2010; or

(**a**) S.I. 2005/1806 (W 138); regulations 5(1) and 15(1) were amended by S.I. 2010/675.
(**b**) S.I. 2007/1842.
(**c**) S.I. 2011/988.

(b) the waste described in the first, second or sixth row of column 1 of table 6 in Part 7 of Schedule 23 to the Environmental Permitting (England and Wales) Regulations 2010.".

SCHEDULE 3

Regulation 18

Exemption orders

Statutory Instrument Number	*Citation*
S.I. 1962/2645	The Radioactive Substances (Exhibitions) Exemption Order 1962
S.I. 1962/2646	The Radioactive Substances (Storage in Transit) Exemption Order 1962
S.I. 1962/2648	The Radioactive Substances (Phosphatic Substances, Rare Earths etc) Exemption Order 1962
S.I. 1962/2649	The Radioactive Substances (Lead) Exemption Order 1962
S.I. 1962/2710	The Radioactive Substances (Uranium and Thorium) Exemption Order 1962
S.I. 1962/2711	The Radioactive Substances (Prepared Uranium and Thorium Compounds) Exemption Order 1962
S.I. 1962/2712	The Radioactive Substances (Geological Specimens) Exemption Order 1962
S.I. 1963/1831	The Radioactive Substances (Waste Closed Sources) Exemption Order 1963
S.I. 1963/1832	The Radioactive Substances (Schools etc) Exemption Order 1963
S.I. 1963/1836	The Radioactive Substances (Precipitated Phosphate) Exemption Order 1963
S.I. 1967/1797	The Radioactive Substances (Electronic Valves) Exemption Order 1967
S.I. 1980/953	The Radioactive Substances (Smoke Detectors) Exemption Order 1980
S.I. 1985/1047	The Radioactive Substances (Gaseous Tritium Light Devices) Exemption Order 1985
S.I. 1985/1048	The Radioactive Substances (Luminous Articles) Exemption Order 1985
S.I. 1986/1002	The Radioactive Substances (Substances of Low Activity) Exemption Order 1986
S.I. 1990/2512	The Radioactive Substances (Hospitals) Exemption Order 1990
S.I. 1991/477	The Radioactive Substances (Smoke Detectors) Exemption (Amendment) Order 1991
S.I. 1992/647	The Radioactive Substances (Substances of Low Activity) Exemption (Amendment) Order 1992
S.I. 1995/2395	The Radioactive Substances (Hospitals) Exemption (Amendment) Order 1995
S.I. 2002/1177	The Radioactive Substances (Natural Gas) Exemption Order 2002
S.I. 2006/1500	The Radioactive Substances (Testing Instruments) Exemption (England and Wales) Order 2006

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Environmental Permitting (England and Wales) Regulations 2010 (S.I. 2010/675) ("the Environmental Permitting Regulations") by substituting a Schedule 23 to provide a modernised and transparent framework for the regulation of radioactive substances and to demonstrate clearer compliance with Council Directive 96/29/Euratom laying down basic safety standards for the protection of the health of workers and the general public against the dangers arising from ionizing radiation (OJ No L 159, 29.6.1996, p 1).

The amendments also implement amendments which have been made, in respect of carbon capture and storage, to Directive 2008/1/EC of the European Parliament and of the Council concerning integrated pollution prevention and control (OJ No L 24, 29.01.2008, p 8) and to Directive 2000/60/EC of the European Parliament and of the Council establishing a framework for Community action in the field of water policy (OJ No L 327, 22.12.2000, p 1), by Directive 2009/31/EC of the European Parliament and of the Council on the geological storage of carbon dioxide (OJ No L 140, 5.6.2009, p 114.)

Regulations 4, 7, 8 and 13 amend the Environmental Permitting Regulations in consequence of the insertion of the new Schedule 23 by these Regulations.

Regulation 5 makes an amendment to extend the provisions in the Environmental Permitting Regulations relating to groundwater activities to allow a tracer test involving a radioactive substance to fall within the exemption.

Regulation 6 is a technical amendment to clarify the scope of an exception from the requirement to hold an environmental permit which applies to particular persons who dispose of radioactive waste.

Regulations 9 to 11 insert transitional arrangements into the Environmental Permitting Regulations which apply to existing users of radioactive substances (or substances which become radioactive substances by virtue of these Regulations) who are affected by the amendments made by these Regulations. Where a person requires an environmental permit for an activity because of the change to the definitions of radioactive material or waste, that person has until 1st April 2012 to apply for a permit or to comply with a new exemption (if applicable). A person who was exempt but is no longer exempt has until 1st April 2012 to apply for an environmental permit. Until 1st April 2012, a person who, as a consequence of these Regulations, no longer requires a permit in part or whole may, by use of the procedure under regulation 24 of the Environmental Permitting Regulations, surrender that permit or part thereof by notification to the regulator.

Regulation 12 inserts a new regulated activity into Schedule 1 (activities, installations and mobile plant) of the Environmental Permitting Regulations relating to the capture of carbon dioxide.

Regulation 14 inserts into Schedule 22 (groundwater activities) of the Environmental Permitting Regulations a new activity for which the regulator is able to grant a permit, in relation to the geological injection of carbon dioxide.

Regulation 15 replaces Schedule 23 of the Environmental Permitting Regulations with a consolidated version which includes additions and amendments. In particular, the definitions of radioactive material and radioactive waste are amended. Part 7 is inserted into Schedule 23 to provide conditional exemptions from the requirement to hold an environmental permit in respect of certain radioactive substances. Part 8 is inserted to re-enact section 40 of the Radioactive Substances Act 1993.

Three documents are referred to in the tables in the substituted Schedule 23. The document referred to in Table 2 in Part 3 of that Schedule (Radiation Protection 122: Practical use of the

concepts of clearance and exemption, Part 1) is available on the European Commission's website (www.ec.europa.eu/energy/nuclear/radiation_protection/doc/publication/122_part1.pdf). The document referred to in Table 5 of Part 7 of that Schedule (Exempt Concentrations and Quantities for Radionuclides not Included in the European Basic Safety Standards Directive) is available to order from the Health Protection Agency (www.hpa.org.uk). The document referred to in Table 7 in Part 7 of that Schedule (Derivation of Liquid Exclusion or Exemption Levels to Support the RSA93 Exemption Order Review) is available on the website of the Health Protection Agency (www.hpa.org.uk/web/HPAwebFile/HPAweb_C/1281952965539).

Regulation 16 makes consequential amendments to other legislation as a consequence of the amendments made to the Environmental Permitting Regulations and the repeal of the Radioactive Substances Act 1993.

Regulations 17 to 19 repeal the majority of the remainder of the Radioactive Substances Act 1993 in England and Wales, and the single exemption order that was not made or deemed to be made under that Act, as well as making savings for the purposes of the transitional arrangements.

The effect of these Regulations is that the Environmental Permitting Regulations regulate, and include exemptions from regulation of, activities in respect of radioactive substances and replace the system which previously existed under the Radioactive Substances Act 1993.

A transposition note and a full regulatory impact assessment of the effect that this instrument will have on the costs of business and the voluntary sector is available and is annexed to the Explanatory Memorandum which is available alongside the instrument on www.legislation.gov.uk.

SUPPLEMENTARY LEGISLATIVE CONSENT MEMORANDUM
LOCALISM BILL

Supplementary Legislative Consent Motion

1. "That the National Assembly for Wales, in accordance with Standing Order 29.6, agrees that, in addition to the provisions referred to in motions NNDM4642 and NNDM4722, those further provisions which have been brought forward in the Localism Bill relating to Tenancy Deposit Schemes and HMO licensing, in so far as they fall within the legislative competence of the National Assembly for Wales, should be considered by the UK Parliament."

Background

2. The Legislative Consent Motion at paragraph 1 above has been tabled by Huw Lewis AM, Minister for Housing, Regeneration and Heritage, under Standing Order 29.6 of the Standing Orders (SO) of the National Assembly for Wales (the National Assembly). This Legislative Consent Memorandum is laid under SO 29.2. SO 29 prescribes that a Legislative Consent Motion must be tabled, and a Legislative Consent Memorandum laid, before the National Assembly if a UK Parliamentary Bill makes provision in relation to Wales, for a purpose within the legislative competence of the National Assembly.

3. The Localism Bill (the Bill) was introduced on the 13th December 2010. The Bill can be found at: http://services.parliament.uk/bills/2010-11/localism.html

Summary of the Bill and its Policy Objectives

4. The Bill is sponsored by the Department for Communities and Local Government. It is the UK Government's aim that the Bill is to devolve greater powers to councils and neighbourhoods, give local communities control over decision making, including through the use of financial incentives, and is a key piece of legislation that affects a wide range of existing housing, planning and local government legislation.

5. The Bill contains provisions to enable the empowerment of local people, the freeing of local government from central and regional control, provision of a share in local growth for local communities and a more efficient and local planning system.

6. The Localism Bill has already been the subject of Legislative Consent Motions (NNDM4642 and NNDM4722) in the National Assembly, where the National Assembly gave its consent for the relevant provisions of the Bill, in so far as they fell within the competence of the National Assembly, to be considered by Parliament**.**

7. The Memoranda that accompanied those Motions are attached at **Annex 1 and 2.**

Further provisions which require the consent of the National Assembly and policy objectives.

8. Since the time of introduction of the Bill in December 2010, the UK Government has introduced a number of further provisions by way of Government amendments.

9. A number of amendments were tabled by the UK Government on 5th July 2011 which made minor and technical amendments to the primary legislation covering Tenancy Deposit Schemes and HMO licensing as contained within the Housing Act 2004. The tabled amendments may be accessed on the Parliamentary website at: http://services.parliament.uk/bills/2010-11/localism.html

10. It is the view of the Welsh Government that the provisions referred to in paragraph 9 fall within the National Assembly's legislative competence as set out in Paragraph 11 of Schedule 7 ("Housing") to the Government of Wales Act 2006.

11. As the proposed amendments to the Localism Bill go beyond the consent previously given by the National Assembly, a further Legislative Consent Motion is required under SO 29.

12. These amendments to existing clauses in the Bill and the new clauses will give effect to the following:

a) **Tenancy Deposit Schemes:** It is proposed that the Housing Act 2004 is amended to make minor technical amendments to sections of the Act covering Tenancy Deposit Protection to ensure that the legislation fully protects tenants' deposits and closes loopholes in the current legislation as drafted.

b) **HMO Licensing:** The amendments will also change existing legislation on licensing of Houses in Multiple Occupation (HMO) to exclude buildings managed or controlled by fully mutual housing co-operatives that are not registered social landlords from the licensing requirements.

13. This Legislative Consent Memorandum has therefore been laid, and the Legislative Consent Motion tabled, before the National Assembly for consideration.

Advantages of utilising this Bill

14. It is the view of the Welsh Government that it is appropriate to deal with these provisions in this UK Bill as it is represents the most appropriate and proportionate legislative vehicle to enable these provisions to apply in Wales at the earliest opportunity

Financial Implications

15. There are no anticipated financial implications for the Welsh Government of any subsequent implementation of the relevant provisions of the Localism Bill which cannot be absorbed as part of existing obligations.

Huw Lewis AM
Welsh Minister for Housing, Regeneration and Heritage
July 2011

ANNEXE 1

LEGISLATIVE CONSENT MEMORANDUM

LOCALISM BILL

Legislative Consent Motion

1. "To propose that the National Assembly for Wales, in accordance with Standing Order 26.4, agrees that provisions relating to local government pay accountability, the abolition of the duty to promote local democracy, the abolition of the petitions duty, the discharge of homelessness duties into the private rented sector and the Tenant Services Authority reform in Parts 1 and 6 of the Localism Bill ("the Bill"), as introduced into the House of Lords on 13th December 2010, in so far as they fall within the legislative competence of the National Assembly for Wales, should be considered by the UK Parliament."

Background

2. The Legislative Consent Motion at paragraph 1 above has been tabled by Carl Sargeant AM, Minister for Social Justice and Local Government, under Standing Order 26.4 of the Standing Orders ("SO") of the National Assembly for Wales (the "National Assembly"). This Legislative Consent Memorandum is laid under SO 26.2. SO 26 prescribes that a Legislative Consent Motion must be tabled, and a Legislative Consent Memorandum laid before the National Assembly, if a UK Parliamentary Bill makes provision in relation to Wales for a purpose that falls within the legislative competence of the National Assembly, or has a negative impact on that competence.

3. The Localism Bill was introduced into the House of Lords on the 13th December 2010. The Bill can be found at:

http://services.parliament.uk/bills/2010-11/localism.html

Summary of the Bill and its Policy Objectives

4. The Bill is sponsored by the Department for Communities and Local Government. It is the UK Government's aim that the Bill is to devolve greater powers to councils and neighbourhoods, give local communities control over decision making, including through the use of financial incentives, and is a key piece of legislation that affects a wide range of existing housing, planning and local government legislation.

5. The Bill contains provisions to enable the empowerment of local people, the freeing of local government from central and regional control, provision of a share in local growth for local communities and a more efficient and local planning system.

Provisions in the Bill for which consent is sought

6. Clauses 21 to 26 of the Bill **(Local Government Pay Accountability):** These provisions aim to increase the transparency of local authority spending on staff in order to aid public understanding and lead to efficiency savings. The provisions require authorities to develop and publish an annual policy on senior officers pay. The senior officers to be covered by the provisions are those appointed upon joint negotiating committee (JNC) terms and conditions. The proposals will apply to principal councils and fire and rescue authorities in Wales.

7. The provisions within the Bill relating to senior officers' pay policy statements fall within the legislative competence of the National Assembly as provided for within Matter 12.5(a) of Schedule 5 to the Government of Wales Act 2006 ("GoWA 2006") as they relate to "the making of arrangements by relevant Welsh authorities to secure improvement in the way in which they exercise their functions", namely the way in which they determine the terms and conditions of their senior members of staff.

8. Clauses 27 and 28 of the Bill **(Abolish the duty to Promote Local Democracy and Abolish Petitions Duty):** These provisions within the Bill repeal the duties placed on local authorities within the Local Democracy, Economic Development and Construction Act 2009 (the 2009 Act) to provide facilities for making petitions, and to promote democracy. The relevant sections of the 2009 Act are yet to be commenced in Wales, and have only been brought into partial force in England.

   The petitions sections of the 2009 Act require local authorities to make, publicise and comply with a scheme for handling both paper and electronic petitions, and place duties upon them regarding the provision of facilities for the submission of electronic petitions. The intention was to make local decision-making in relation to petitions presented to principal local authorities more transparent, by requiring them to respond to petitions which meet certain criteria and making the responses to petitions publicly available.

   The duty to promote democracy requires local authorities to promote understanding amongst the public of public bodies in their area, in terms of what these bodies do and their democratic arrangements and how the public can take part in those arrangements. These provisions are considered ineffective in both England and Wales.

9. The provisions in the Bill repealing the duties in relation to petitions and the promotion of democracy fall within the legislative competence of the National Assembly as provided for within Matter 12.5 (b) of Schedule 5 to the Government of Wales Act 2006 ("GoWA 2006") which permits the

National Assembly to legislate for the making of arrangements by authorities for the involvement in the exercise of their functions of people who are likely to be affected by, or interested in, the exercise of their functions.

10. Clauses 124 and 125 of the Bill **(Homelessness – Discharge of homelessness duties into the private rented sector):** These clauses amend the Housing Act 1996 with regard to the discharge of homelessness duties to homeless persons by local authorities. Local authorities owe a range of duties to homeless people, and in cases where the household is in a priority need category and have not been responsible for making themselves homeless, the authority is obliged to find housing for them temporarily until they are rehoused. The rehousing duty is at present normally met by providing social housing, and although the duty can be met by providing private rented sector housing, this has to be with the consent of the applicant. The amendment will permit a discharge of the duty on a local authority by provision of private rented sector housing without the consent of the applicant (subject to certain safeguards).

11. The National Assembly has legislative competence in relation to Homelessness under Matter 11.8 of Part 1 to Schedule 5 of the Government of Wales Act 2006 (''GoWA 2006'') to legislate in relation to Wales and this provision is within the legislative competence of the National Assembly''.

12. Clause 150 of the Bill **(Transfer of functions from the Office for Tenants and Social Landlords (the Office) to the Homes and Communities Agency (HCA):** Clause 150(2)(a)-(c) amends Part 1 of Schedule 16 to the Housing and Regeneration Act 2008 so as to abolish the Office (known as the Tenant Services Authority (“the TSA”). The 2008 Act is amended so as to create the Regulation Committee of the HCA and to transfer the functions of the Office to the HCA (ie functions concerning the regulation of providers of social housing registered in England). The clauses also contain some changes to the regulatory functions.

13 The National Assembly has legislative competence in relation to Matter(s) 11.2 (social housing providers) and 11.3 (social housing bodies) in Part 1 of Schedule 5 to the Government of Wales Act 2006 (“GoWA 2006”) to legislate in relation to Wales. There is no provision for Wales in the Bill relating to TSA reforms, however, because some English registered providers of social housing are landlords of dwellings situated in Wales, it is considered that these provisions are within legislative competence.

14. It is the view of the Assembly Government, therefore, that, to the extent that these provisions are within the National Assembly’s legislative competence under Matter(s) 12.5a, 12.5b, 11.8, 11.2 and 11.3, the agreement of the National Assembly is required under SO 26. SO 26

prescribes that a Legislative Consent Motion and Memorandum needs to be tabled and laid, respectively, before the National Assembly, if a UK Parliamentary Bill makes provision in relation to Wales that falls within the legislative competence of the National Assembly.

Advantages of utilising this Bill

15. These new clauses will;
    - increase the transparency of local authority spending on staff in order to aid public understanding and lead to efficiency savings;
    - repeal provisions which impose duties upon local authorities in relation to the receiving and handling of petition and the promotion of democracy that are considered to be ineffective;
    - amend local authority duties towards homeless persons
    - transfer functions from the Office for Tenants and Social Landlords to the Homes and Communities Agency.

16. It is the view of the Welsh Assembly Government that it is appropriate to deal with these provisions in this UK Bill as it represents the most appropriate and proportionate legislative vehicle to enable these provisions to apply in Wales.

17. This Legislative Consent Memorandum has therefore been laid, and the Legislative Consent Motion tabled, before the National Assembly for consideration.

Financial Implications

18. There are no anticipated financial implications for the Welsh Assembly Government of any subsequent implementation of the relevant provisions of the UK Localism Bill which cannot be absorbed as part of existing obligations.

Carl Sargeant AM
Welsh Minister for Social Justice and Local Government
February 2011

LEGISLATIVE CONSENT MOTION

LOCALISM BILL

"To propose that the National Assembly for Wales, in accordance with Standing Order 26.4, agrees that the provisions relating to local government pay accountability, the abolition of the duty to promote local democracy, the abolition of the petitions duty, the discharge of homelessness duties into the private rented sector and the Tenant Services Authority reform in Part(s) 1 and 6 of the Localism Bill, as introduced into the House of Lords on 13th December 2010, in so far as these provisions fall within the legislative competence of the National Assembly for Wales, should be considered by the UK Parliament."

This Legislative Consent Motion is tabled by Carl Sargeant, Minister for Social Justice and Local Government, under Standing Order 26.4 of the National Assembly for Wales' Standing Orders.

Dated

ANNEXE 2

LEGISLATIVE CONSENT MEMORANDUM
LOCALISM BILL

Supplementary Legislative Consent Motion

1. "That the National Assembly for Wales, in accordance with Standing Order 29.6, agrees that, in addition to the provisions referred to in motion NNDM4642, those further provisions which have been brought forward in the Localism Bill relating to the general and charging powers for fire and rescue authorities in Wales and the community right to buy, in so far as they fall within the legislative competence of the National Assembly for Wales, should be considered by the UK Parliament."

Background

2. The Legislative Consent Motion at paragraph 1 above has been tabled by Carl Sargeant AM, Minister for Local Government and Communities, under Standing Order 29.6 of the Standing Orders (SO) of the National Assembly for Wales (the National Assembly). This Legislative Consent Memorandum is laid under SO 29.2. SO 29 prescribes that a Legislative Consent Motion must be tabled, and a Legislative Consent Memorandum laid, before the National Assembly if a UK Parliamentary Bill makes provision in relation to Wales, for a purpose that falls within the legislative competence of the National Assembly.

3. The Localism Bill (the Bill) was introduced on the 13th December 2010. The Bill can be found at: http://services.parliament.uk/bills/2010-11/localism.html

Summary of the Bill and its Policy Objectives

4. The Bill is sponsored by the Department for Communities and Local Government. It is the UK Government's aim that the Bill is to devolve greater powers to councils and neighbourhoods, give local communities control over decision making, including through the use of financial incentives, and is a key piece of legislation that affects a wide range of existing housing, planning and local government legislation.

5. The Bill contains provisions to enable the empowerment of local people, the freeing of local government from central and regional control, provision of a share in local growth for local communities and a more efficient and local planning system.

6. The Localism Bill has already been the subject of a Legislative Consent Motion (NNDM4642) in the National Assembly, where the National Assembly gave its consent for the relevant provisions of the Bill, in so far as they fell within the competence of the National Assembly, to be considered by Parliament.

7. The Memorandum that accompanied that Motion is attached at **Annex 1.**

Further provisions which require the consent of the National Assembly and policy objectives.

8. Since the time of introduction of the Bill in December 2010, the UK Government has introduced a number of further provisions by way of Government amendments.

9. A number of amendments were tabled by the UK Government on 10th May 2011 which proposed that the clauses in the Bill which provide certain fire and rescue authorities in England with a general power of competence and charging powers, should also be applied to fire and rescue authorities in Wales. The tabled amendments may be accessed on the Parliamentary website at: http://services.parliament.uk/bills/2010-11/localism.html

10. It is the view of the Welsh Government that the provisions referred to in paragraph 9 fall within the National Assembly's legislative competence as set out in Part 4 of, and Subject 7 (fire and rescue services and fire safety) of Schedule 7 to the Government of Wales Act 2006..

11. An amendment tabled by the UK Government on 10th May 2011 proposes new Clauses to be inserted into the Bill. In relation to Wales, one of the Clauses provides that the Welsh Ministers will be able to provide advice and assistance in relation to land of community value in Wales. The tabled amendment may be accessed on the Parliamentary website at: http://services.parliament.uk/bills/2010-11/localism.html

12. It is the view of the Welsh Government that the provisions referred to in paragraph 11 fall within the National Assembly's legislative competence as set out in Subject 12 (local government) in Part 1 of Schedule 7 to the Government of Wales Act 2006 .

13. As the proposed amendments to the Localism Bill go beyond the consent previously given by the National Assembly, a further Legislative Consent Motion is required under SO 29.

14. These amendments to existing clauses in the Bill and the new clauses will:

a) **General Power and Charging Powers for Fire and Rescue Authorities**

Provide fire and rescue authorities (FRAs) in Wales with equivalent powers to those contained in the Bill on introduction for FRAs in England. These provisions will extend powers of competence for certain FRAs in England. In accordance with these powers, the FRAs will be able to do anything they consider appropriate for the purposes of carrying out any of their functions, anything they consider appropriate for purposes incidental to their functions, anything they consider appropriate for purposes indirectly incidental to their functions, and anything they consider to be connected with any of their functions or which is incidental to their functions. In addition they will also be

able to do anything for a commercial purpose that they are otherwise authorised to do.

Effectively FRAs in England will be able to do anything, so long as they believe the activity is connected with any of their functions as a Fire and Rescue Authority. The activity does not have to be a direct one, and it will be sufficient if the activity is intended to be beneficial to the performance of their functions. In exercising these powers, FRAs will have the same restrictions placed upon them as local authorities in England under the new general power of competence, in that the power cannot be used to raise taxes or borrow money (other than in line with existing arrangements) and it cannot be used to override existing legislation so as to enable FRAs to do anything that they are already prohibited from doing by any statute.

The Bill also provided FRAs in England with extended charging powers. In accordance with the extended powers FRAs will be able to charge any person (including another FRA) for any action taken by them within the UK, (up to full cost recovery), subject to a number of express exceptions, for example, extinguishing fires, or protecting life and property in the event of fires. The Secretary of State also has the power, by order, to disapply the charging power in respect of the provision of particular services.

The current charging power of FRAs is to be found within section 19 of the Fire and Rescue Services 2004 Act. It permits the Welsh Ministers to prescribe, by order, the activities for which FRAs are permitted to charge. Under the new powers being introduced FRAs in England will be given an autonomous power to charge and there will be no need for the Secretary of State to make an order authorising charging.

The Welsh Ministers considered the clauses relating to the competence and charging powers of FRAs in England and determined that they should be applied to Welsh FRAs. The UK Government amendments introduced at Commons report stage on this topic have the effect of applying these powers to the Welsh FRAs.

b) **Community Right to Buy amendment- clauses about provision of advice and assistance**

Makes provision for a relevant authority to provide advice and assistance in relation to land of community value in England in Wales. In relation to Wales, the relevant authority is the Welsh Ministers. The amendment will enable the Welsh Ministers to do anything that they consider appropriate for the purpose of giving advice and assistance to anyone in relation to taking steps or preparing, considering or deciding whether to take steps under the community right to buy provisions, or to a community interest group in relation to bidding or acquiring or preparing to bid for land on an authority's list or bring such land into effective use. Advice or assistance can include the making of arrangements or the provision of financial assistance.

15. This Legislative Consent Memorandum has therefore been laid, and the Legislative Consent Motion tabled, before the National Assembly for consideration.

Advantages of utilising this Bill

16. It is the view of the Welsh Government that it is appropriate to deal with these provisions in this UK Bill as it is represents the most appropriate and proportionate legislative vehicle to enable these provisions to apply in Wales at the earliest opportunity and will allow the Welsh Ministers to introduce appropriate legislation in accordance with Welsh priorities and concerns.

Financial Implications

17. The financial implications of any subsequent consultation, legislation or guidance arising from a future decision to exercise the power to make Orders under the relevant provisions will be subject to full consideration of affordability and to a Regulatory Impact Appraisal which would include an analysis of costs and benefits.

Carl Sargeant AM
Welsh Minister for Local Government and Communities
May 2011

AMENDMENTS

TO BE MOVED

IN COMMITTEE

Clause 135

BARONESS HANHAM

1 Page 127, line 30, leave out "secure" and insert "flexible"

Clause 135

BARONESS HANHAM

2 Page 127, line 39, leave out "("the original flexible tenancy")"

Clause 135

BARONESS HANHAM

3 Page 127, leave out line 41 and insert "that is a flexible tenancy for a term certain of the length specified in the notice, and sets out the other express terms of the tenancy, and

(e) the length of the term specified in the notice is at least two years.

(3A) The length of the term of a flexible tenancy that becomes such a tenancy by virtue of subsection (3) is that specified in the notice under paragraph 4ZA(2) of Schedule 1.

(3B) The other express terms of the flexible tenancy are those set out in the notice, so far as those terms are compatible with the statutory provisions relating to flexible tenancies; and in this subsection "statutory provision" means any provision made by or under an Act."

Clause 136

BARONESS HANHAM

4 Page 131, line 23, leave out subsection (6)

Clause 136

BARONESS HANHAM

5 Page 131, line 31, leave out "for the purposes of the Housing Act 1985" and insert "for a term certain"

Clause 136

BARONESS HANHAM

6 Page 131, line 38, leave out from second "tenancy" to end of line 39 and insert "that would be a flexible tenancy for a term certain of the length specified in the notice,"

Clause 136

BARONESS HANHAM

7 Page 132, line 1, after "specifying" insert "a period of at least two years as"

Clause 136

BARONESS HANHAM

8 Page 132, line 1, at end insert ", and

(c) setting out the other express terms of the tenancy.

(3) The length of the term of a flexible tenancy that becomes such a tenancy by virtue of this section is that specified in the notice under subsection (2).

(4) The other express terms of the flexible tenancy are those set out in the notice, so far as those terms are compatible with the statutory provisions relating to flexible tenancies; and in this subsection "statutory provision" means any provision made by or under an Act.""

Clause 136

BARONESS HANHAM

9 Page 132, line 2, leave out subsection (8)

Clause 136

BARONESS HANHAM

10 Page 132, line 8, leave out "This section" and insert "Subsection (2)"

Clause 136

BARONESS HANHAM

11 Page 132, line 10, after "tenancy" insert "within the meaning of section 107A of the Housing Act 1985"

Clause 136

BARONESS HANHAM

12 Page 132, line 13, after "(2)" insert "If the landlord has served a notice within subsection (3) on the tenant before the end of the demoted tenancy then,"

Clause 136

BARONESS HANHAM

13 Page 132, line 14, at end insert—

"(3) The notice must—

(a) state that, on ceasing to be a demoted tenancy, the tenancy will become a secure tenancy that is a flexible tenancy for a term certain of the length specified in the notice,

(b) specify a period of at least two years as the length of the term of the tenancy, and

(c) set out the other express terms of the tenancy.

(4) The length of the term of a flexible tenancy that becomes such a tenancy by virtue of this section is that specified in the notice under subsection (3).

(5) The other express terms of the flexible tenancy are those set out in the notice, so far as those terms are compatible with the statutory provisions relating to flexible tenancies; and in this subsection "statutory provision" means any provision made by or under an Act.""

Clause 136

BARONESS HANHAM

14 Page 132, line 15, leave out subsection (10)

Before Clause 137

BARONESS HANHAM

15 Insert the following new Clause—

"Creation of tenancies of social housing

(1) In section 52 of the Law of Property Act 1925 (requirement that conveyances of land and interests in land be made by deed) in subsection (2) (exceptions) after paragraph (d) insert—

"(da) flexible tenancies;

(db) assured tenancies of dwelling-houses in England that are granted by private registered providers of social housing and are not long tenancies or shared ownership leases;".

(2) After that subsection insert—

"(3) In this section—

"assured tenancy" has the same meaning as in Part 1 of the Housing Act 1988;

"dwelling-house" has the same meaning as in Part 1 of the Housing Act 1988;

"flexible tenancy" has the meaning given by section 107A of the Housing Act 1985;

"long tenancy" means a tenancy granted for a term certain of more than 21 years, whether or not it is (or may become) terminable before the end of that term by notice given by the tenant or by re-entry or forfeiture;

"shared ownership lease" means a lease of a dwelling-house—

(a) granted on payment of a premium calculated by reference to a percentage of the value of the dwelling-house or of the cost of providing it, or

(b) under which the lessee (or the lessee's personal representatives) will or may be entitled to a sum calculated by reference, directly or indirectly, to the value of the dwelling-house.""

Before Clause 137

BARONESS HANHAM

16 Insert the following new Clause—

"Registration of tenancies of social housing

(1) The Land Registration Act 2002 is amended as follows.

(2) In section 3 (voluntary registration of title) after subsection (4) insert—

"(4A) A person may not make an application under subsection (2) in respect of a leasehold estate in land under a relevant social housing tenancy."

(3) In section 4 (compulsory registration of title) after subsection (5) insert—

"(5A) Subsection (1) does not apply to the transfer or grant of a leasehold estate in land under a relevant social housing tenancy."

(4) In section 27 (dispositions required to be registered) after subsection (5) insert—

"(5A) This section does not apply to—

(a) the grant of a term of years absolute under a relevant social housing tenancy, or

(b) the express grant of an interest falling within section 1(2) of the Law of Property Act 1925, where the interest is created for the benefit of a leasehold estate in land under a relevant social housing tenancy."

(5) In section 33 (interests in respect of which notice may not be entered on the register) after paragraph (b) insert—

"(ba) an interest under a relevant social housing tenancy,".

(6) In section 132(1) (interpretation) at the appropriate places insert—

""assured tenancy" has the same meaning as in Part 1 of the Housing Act 1988;";

""dwelling-house" has the same meaning as in Part 1 of the Housing Act 1988;";

""flexible tenancy" has the meaning given by section 107A of the Housing Act 1985;";

""long tenancy" means a tenancy granted for a term certain of more than 21 years, whether or not it is (or may become) terminable before the end of that term by notice given by the tenant or by re-entry or forfeiture;";

""relevant social housing tenancy" means—

(a) a flexible tenancy, or

(b) an assured tenancy of a dwelling-house in England granted by a private registered provider of social housing, other than a long tenancy or a shared ownership lease;";

""shared ownership lease" means a lease of a dwelling-house—

(a) granted on payment of a premium calculated by reference to a percentage of the value of the dwelling-house or of the cost of providing it, or

(b) under which the lessee (or the lessee's personal representatives) will or may be entitled to a sum calculated by reference, directly or indirectly, to the value of the dwelling-house;".

(7) In Schedule 1 (unregistered interests which override first registration) after paragraph 1 insert—

"Relevant social housing tenancies

1A A leasehold estate in land under a relevant social housing tenancy."

(8) In Schedule 3 (unregistered interests which override registered dispositions) after paragraph 1 insert—

"Relevant social housing tenancies

1A A leasehold estate in land under a relevant social housing tenancy.""

Clause 139

BARONESS HANHAM

17 Page 134, line 44, leave out from beginning to end of line 5 on page 135

Clause 139

BARONESS HANHAM

18 Page 135, line 17, at end insert—

"(6) The amendments made by this section do not apply in relation to a secure tenancy that—

(a) was granted before the day on which this section comes into force, or

(b) came into being by virtue of section 86 of the Housing Act 1985 (periodic tenancy arising on termination of fixed term) on the coming to an end of a secure tenancy within paragraph (a)."

Clause 140

BARONESS HANHAM

19 Page 136, line 48, at end insert—

"(7) This section does not apply to a fixed term assured tenancy that is a lease of a dwelling-house—

(a) granted on payment of a premium calculated by reference to a percentage of the value of the dwelling-house or of the cost of providing it, or

(b) under which the lessee (or the lessee's personal representatives) will or may be entitled to a sum calculated by reference, directly or indirectly, to the value of the dwelling-house.""

After Clause 140

BARONESS HANHAM

20 Insert the following new Clause—

"Secure and assured tenancies: recovery of possession after tenant's death

(1) In section 90 of the Housing Act 1985 (devolution of fixed term secure tenancy) after subsection (4) insert—

"(5) The following provisions apply where a tenancy that was a secure tenancy of a dwelling-house in England—

(a) has been vested or otherwise disposed of in the course of the administration of the secure tenant's estate, and

(b) has ceased to be a secure tenancy by virtue of this section.

(6) Subject as follows, the landlord may apply to the court for an order for possession of the dwelling-house let under the tenancy.

(7) The court may not entertain proceedings for an order for possession under this section unless—

(a) the landlord has served notice in writing on the tenant—

(i) stating that the landlord requires possession of the dwelling-house, and

(ii) specifying a date after which proceedings for an order for possession may be begun, and

(b) that date has passed without the tenant giving up possession of the dwelling-house.

(8) The date mentioned in subsection (7)(a)(ii) must fall after the end of the period of four weeks beginning with the date on which the notice is served on the tenant.

(9) On an application to the court for an order for possession under this section, the court must make such an order if it is satisfied that subsection (5) applies to the tenancy.

(10) The tenancy ends when the order is executed."

(2) In Part 3 of Schedule 2 to that Act (grounds on which court may order possession of dwelling-house let on secure tenancy if reasonable and if alternative accommodation is available) after Ground 15 insert—

"Ground 15A

The dwelling-house is in England, the accommodation afforded by it is more extensive than is reasonably required by the tenant and—

(a) the tenancy vested in the tenant by virtue of section 89 (succession to periodic tenancy) or 90 (devolution of term certain) in a case where the tenant was not the previous tenant's spouse or civil partner, and

(b) notice of the proceedings for possession was served under section 83 (or, where no such notice was served, the proceedings for possession were begun) more than six months but less than twelve months after the relevant date.

For this purpose "the relevant date" is—

(a) the date of the previous tenant's death, or

(b) if the court so directs, the date on which, in the opinion of the court, the landlord (or, in the case of joint landlords, any one of them) became aware of the previous tenant's death.

The matters to be taken into account by the court in determining whether it is reasonable to make an order on this ground include—

(a) the age of the tenant,

(b) the period (if any) during which the tenant has occupied the dwelling-house as the tenant's only or principal home, and

(c) any financial or other support given by the tenant to the previous tenant."

(3) In section 7 of the Housing Act 1988 (orders for possession of assured tenancies) after subsection (6) insert—

"(6A) In the case of a dwelling-house in England, subsection (6)(a) has effect as if it also referred to Ground 7 in Part 1 of Schedule 2 to this Act."

(4) In Part 1 of Schedule 2 to that Act (grounds for possession of dwelling-houses let on assured tenancies: grounds on which court must order possession) in Ground 7 (devolution of tenancy under will or intestacy)—

(a) in the first unnumbered paragraph, after "tenancy)" insert ", or a fixed term tenancy of a dwelling-house in England,",

(b) in the second unnumbered paragraph—

(i) omit "periodic", and

(ii) after "period" insert "or length of term", and

(c) after that paragraph insert—

" This ground does not apply to a fixed term tenancy that is a lease of a dwelling-house—

(a) granted on payment of a premium calculated by reference to a percentage of the value of the dwelling-house or of the cost of providing it, or

(b) under which the lessee (or the lessee's personal representatives) will or may be entitled to a sum calculated by reference, directly or indirectly, to the value of the dwelling-house.""

After Clause 161

BARONESS HANHAM

21 Insert the following new Clause—

"Tenants' deposits

Tenancy deposit schemes

(1) The Housing Act 2004 is amended as follows.

(2) In section 213 (requirements relating to tenancy deposits)—

(a) in subsection (3) (landlord's requirement to comply with initial requirements within 14 days of receipt of deposit) for "14" substitute "30", and

(b) in subsection (6)(b) (landlord's requirement to give tenant information within 14 days of receipt of deposit) for "14" substitute "30".

(3) Section 214 (proceedings relating to tenancy deposits) is amended as follows.

(4) In subsection (1) (grounds for an application to a county court) for paragraph (a) substitute—

"(a) that section 213(3) or (6) has not been complied with in relation to the deposit, or".

(5) After subsection (1) insert—

"(1A) Subsection (1) also applies in a case where the tenancy has ended, and in such a case the reference in subsection (1) to the tenant is to a person who was a tenant under the tenancy."

(6) In subsection (2) (conditions for a remedy)—

(a) in the opening words—

(i) for "Subsections (3) and (4)" substitute "Subsection (3) (subject to subsection (3A)) and subsection (4)",

(ii) omit "such", and

(iii) after "application" insert "under subsection (1)", and

(b) for paragraph (a) substitute—

"(a) is satisfied that section 213(3) or (6) has not been complied with in relation to the deposit, or".

(7) After subsection (3) insert—

"(3A) Subsection (3) does not apply in a case where the tenancy has ended at the time of the application under subsection (1), and in such a case the court may order the person who appears to the court to be holding the deposit to repay all or part of it to the applicant within the period of 14 days beginning with the date of the making of the order."

(8) In subsection (4) (amount of penalty payment)—

(a) omit "also", and

(b) for "equal to" substitute "not less than the amount of the deposit and not more than".

(9) Section 215 (sanctions for non-compliance) is amended as follows.

(10) In subsection (1) (prevention of service of notice under section 21 of the Housing Act 1988)—

(a) at the beginning insert "Subject to subsection (2A),", and

(b) for paragraph (b) substitute—

"(b) section 213(3) has not been complied with in relation to the deposit."

(11) In subsection (2) (prevention of service of notice under section 21 of the Housing Act 1988) at the beginning insert "Subject to subsection (2A),".

(12) After subsection (2) insert—

"(2A) Subsections (1) and (2) do not apply in a case where—

(a) the deposit has been returned to the tenant in full or with such deductions as are agreed between the landlord and tenant, or

(b) an application to a county court has been made under section 214(1) and has been determined by the court, withdrawn or settled by agreement between the parties."

(13) In Schedule 10 (provisions relating to tenancy deposit schemes) in paragraph 5A(9)(b) (modification of section 213(3)) for "14" substitute "30"."

After Clause 161

BARONESS HANHAM

22 Insert the following new Clause—

"Houses in multiple occupation

Exemption from HMO licensing for buildings run by co-operatives

(1) In Schedule 14 to the Housing Act 2004 (buildings which are not HMOs for the purposes of that Act (excluding Part 1)) after paragraph 2A insert—

"Buildings controlled or managed by a co-operative society

2B (1) A building where—

(a) the person managing or having control of it is a co-operative society whose rules are such as to secure that each of the conditions set out in sub-paragraph (2) is met, and

(b) no person who occupies premises in the building does so by virtue of an assured tenancy, a secure tenancy or a protected tenancy.

(2) The conditions are—

(a) that membership of the society is restricted to persons who are occupiers or prospective occupiers of buildings managed or controlled by the society,

(b) that all management decisions of the society are made by the members (or a specified quorum of members) at a general meeting which all members are entitled to, and invited to, attend,

(c) that each member has equal voting rights at such a meeting, and

(d) that, if a person occupies premises in the building and is not a member, that person is an occupier of the premises only as a result of sharing occupation of them with a member at the member's invitation.

(3) For the purposes of sub-paragraph (1) "co-operative society" means a body that—

(a) is registered—

(i) as a co-operative society under section 1 of the 1965 Act, or

(ii) is a pre-2010 Act society (as defined by section 4A(1) of the 1965 Act) which meets the condition in section 1(2) of the 1965 Act, and

(b) is neither—

(i) a non-profit registered provider of social housing, nor

(ii) registered as a social landlord under Part 1 of the Housing Act 1996.

(4) In this paragraph—

"the 1965 Act" means the Co-operative and Community Benefit Societies and Credit Unions Act 1965;

"assured tenancy" has the same meaning as in Part 1 of the Housing Act 1988;

"protected tenancy" has the same meaning as in the Rent Act 1977;

"secure tenancy" has the same meaning as in Part 4 of the Housing Act 1985."

(2) Until the coming into force of section 1 of the 2010 Act, the paragraph 2B inserted by subsection (1) of this section has effect as if for sub-paragraph (3)(a) of that paragraph there were substituted—

"(a) is a society registered, or treated as registered, under section 1 of the 1965 Act in the case of which the condition

in section 1(2)(a) of that Act is fulfilled (bona fide co-operative society),".

(3) Until the coming into force of section 2 of the 2010 Act, the paragraph 2B inserted by subsection (1) of this section has effect as if in sub-paragraph (4) of that paragraph "Industrial and Provident Societies Act 1965" were substituted for "Co-operative and Community Benefit Societies and Credit Unions Act 1965".

(4) In subsections (2) and (3) "the 2010 Act" means the Co-operative and Community Benefit Societies and Credit Unions Act 2010."

Cynulliad Cenedlaethol Cymru
National Assembly for Wales

Constitutional and Legislative Affairs Committee

Report: CLA(4)-02-11 : 29 June 2011

The Committee reports to the Assembly as follows:

Instruments that raise no reporting issues under Standing Order 21.2 or 21.3

Negative Resolution Instruments

CLA6 - The Housing Renewal Grants (Prescribed Form and Particulars) (Revocation) (Wales) Regulations 2011
Procedure: Negative.
Date made: 14 June 2011.
Date laid: 16 June 2011.
Coming into force date: 7 July 2011

CLA7 - The Barry College Further Education Corporation and Coleg Glan Hafren Further Education Corporation (Dissolution) Order 2011
Procedure: Negative.
Date made: 14 June 2011.
Date laid: 17 June 2011.
Coming into force date: 1 August 2011

Affirmative Resolution Procedure

CLA8 - The Scheme for Construction Contracts (England and Wales) Regulations 1998 (Amendment) (Wales) Regulations 2011
Procedure: Affirmative.
Date made: Not stated.
Date laid: Not stated.
Coming into force date: 1 October 2011

CLA9 - The Construction Contracts (Wales) Exclusion Order 2011
Procedure: Affirmative.
Date made: Not stated.
Date laid: Not stated.
Coming into force date: 1 October 2011

Instruments that raise reporting issues under Standing Order 21.2 or 21.3.

Affirmative Resolution Procedure

CLA5 - The Right of a Child to Make a Disability Discrimination Claim (Schools) (Wales) Order 2011
Procedure: Affirmative.
Date made: 2001.
Date laid: Not stated.
Coming into force date: 6 July 2011.

The Committee agreed the Report under S.O.21.3 on this statutory instrument, which is attached as Annex 1.

Other Business

Role of the Committee and Working Methods during the 4th Assembly

Paper: CLA(4)-02-11(p1)

The Committee considered the paper from the Committee Clerk and discussed its role and general approach to its remit.

The Committee agreed:

- that it was content with the working arrangements for subordinate legislation outlined in paragraphs 10-16 of paper CLA(4)-02-11(p1);
- to use its discretion under Standing Order 21.11, to delegate to the Committee Chair its functions under Standing Order 21.9 (European Subsidiarity) during any non-sitting week.
- to ask the Research Service to scope an Inquiry into the arrangements for delegating powers to the Welsh Ministers through Acts of the UK Parliament. The inquiry would also look at related issues such as the operation of Devolution Guidance Notes. The aim would be for an Inquiry to start early in the autumn term; and
- to ask the Research Service to scope possible inquiries on Welsh Governmental structures and the Governance of the Crown Estates to start later in the Autumn and, for the slightly longer term, on the question of a separate Welsh jurisdiction.

The Committee agreed that it would be helpful to have a separate paper in due course looking at the European aspects of the Committee's remit.

The Committee also agreed to invite the Counsel General to attend a meeting of the Committee at a later time to gain a better understanding of his role and its relationship with the work of the Committee.

David Melding AM
Chair, Constitutional and Legislative Affairs Committee

29 June 2011

Annex 1

Constitutional and Legislative Affairs Committee

(CLA(4)-02-11)

CLA5

Constitutional and Legislative Affairs Committee Report

Title: The Right of a Child to Make a Disability Discrimination Claim (Schools) (Wales) Order 2011

Procedure: Affirmative

The Education (Wales) Measure 2009 ("the Measure") amended Part 4 of the Disability Discrimination Act 1995, which related to discrimination in schools, to enable children themselves to make a disability discrimination claim to the Special Educational Needs Tribunal for Wales. The Equality Act 2010 repeals the Disability Discrimination Act 1995.
This Order, made under section 20 of the Measure, amends the Measure to remove the provisions that amended the Disability Discrimination Act 1995, and to insert instead corresponding and other appropriate provisions amending the Equality Act 2010.

Technical Scrutiny

No points are identified for reporting under Standing Order 15.2 in respect of this instrument.

Merits Scrutiny

The Assembly is invited to pay special attention to this instrument under Standing Order 21.3(i) in that, for the following reasons, it raises matters of legal importance–

This Order is made under unique circumstances. When the Assembly considered the Measure, extensive changes to equality legislation were under consideration at Westminster. However, it was not clear what the final form of those changes would be or the timescale for their implementation. For that reason, the Measure gave Welsh Ministers the unusual power referred to above to make extensive amendments to a Measure being considered by the Assembly

Section 20 limits the nature of the permitted amendments, but because the changes arising from the Equality Act 2010 are so extensive, those amendments do not precisely reflect the legislation passed by the Assembly. The changes made to the Measure by this

Order correspond as closely as is practicable to what was agreed by the Assembly, ensuring that the rights given to children by the Measure are secured under the new arrangements.

David Melding AM
Chair, Constitutional and Legislative Affairs Committee

29 June 2011