Public Document Pack

Constitutional and Legislative Affairs Committee

Cynulliad
Cenedlaethol
Cymru

National
Assembly for
Wales

Meeting Venue:
Committee Room 1 - Senedd

Meeting date:
19 September 2011

Meeting time:
14:30

For further information please contact:

Steve George
Committee Clerk
029 2089 8242
CLA.Committee@wales.gov.uk

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

CLA18 - The Poultrymeat (Wales) Regulations 2011
Negative Procedure. Date made 12 July 2011. Date laid 13 July 2011. Coming into force date 15 August 2011

CLA21 - The Extraction Solvents in Food (Amendment) (Wales) Regulations 2011
Negative Procedure. Date made 25 July 2011. Date laid 25 July 2011. Coming into force date 15 August 2011

CLA22 - The Housing (Purchase of Equitable Interests) (Wales) Regulations 2011
Negative Procedure. Date made 26 July 2011. Date laid 27 July 2011. Coming into force date 19 August 2011

CLA23 - The Housing (Service Charge Loans) (Amendment)(Wales) Regulations 2011
Negative Procedure. Date made 26 July 2011. Date laid 27 July 2011. Coming into force date 19 August 2011

CLA24 - The National Curriculum (Amendments to the Key Stage 2 and Key Stage 3 Assessment Arrangements) (Wales) Order 2011
Negative Procedure. Date made 29 July 2011. Date laid 3 August 2011. Coming into force date 1 September 2011

CLA25 - The School Governors' Annual Reports (Wales) Regulations 2011
Negative Procedure. Date made 29 July 2011. Date laid 3 August 2011. Coming into force date 1 September 2011

CLA26 - The National Health Service (Travelling Expenses and Remission of Charges) (Wales) (Amendment) (No.2) Regulations 2011
Negative Procedure. Date made 31 July 2011. Date laid 4 August 2011. Coming into force date in accordance with regulation 1.

CLA27 - The Pupil Information (Wales) Regulations 2011
Negative Procedure. Date made 29 July 2011. Date laid 4 August 2011. Coming into force date 1 September 2011.

CLA28 - The Head Teacher's Report to Parents and Adult Pupils (Wales) Regulations 2011
Negative Procedure. Date made 29 July 2011. Date laid 4 August 2011. Coming into force date 1 September 2011.

CLA29 - The School Information (Wales) Regulations 2011
Negative Procedure. Date made 29 July 2011. Date laid 4 August 2011. Coming into force date 1 September 2011.

CLA30 - The School Performance and Absence Targets (Wales) Regulations 2011
Negative Procedure. Date made 29 July 2011. Date laid 4 August 2011. Coming into force date 1 September 2011.

CLA33 - The School Performance Information (Wales) Regulations 2011
Negative Procedure. Date made 3 August 2011. Date laid 8 August 2011. Coming into force date 1 September 2011

CLA34 - The Education (Student Fees, Awards and Support) (Wales) Regulations 2011
Negative Procedure. Date made 9 August 2011. Date laid 10 August 2011. Coming into force date 31 August 2011

CLA35 - The Cockles and Mussels (Specified Area) (Wales) Order 2011
Negative Procedure. Date made 10 August 2011. Date laid 11 August 2011. Coming into force date 1 September 2011

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

CLA17 - The National Health Service (Concerns, Complaints and Redress Arrangements) (Wales) (Amendment) Regulations 2011 (Pages 1 - 10)
Negative Procedure. Date made 11 July 2011. Date laid 12 July 2011. Coming into force date 3 August 2011

CLA19 - The Head Teachers' Qualifications and Registration (Wales) (Amendment) Regulations 2011 (Pages 11 - 18)
Negative Procedure. Date made 15 July 2011. Date laid 19 July 2011. Coming into force date 1 September 2011

CLA20 - The Beef and Pig Carcase Classification (Wales) Regulations 2011 (Pages 19 - 50)
Negative Procedure. Date made 21 July 2011. Date laid 25 July 2011. Coming into force date 1 September 2011

CLA31 - The National Curriculum (Assessment Arrangements on Entry to the

Foundation Phase) (Wales) Order 2011 (Pages 51 - 65)
Negative Procedure. Date made 29 July 2011. Date laid 4 August 2011. Coming into force date 1in accordance with article 1(2).

CLA32 - The National Curriculum (End of Foundation Phase Assessment Arrangements and Revocation of the First Key Stage Assessment Arrangements) (Wales) Order 2011 (Pages 66 - 76)
Negative Procedure. Date made 29 July 2011. Date laid 5 August 2011. Coming into force date 1 September 2011.

CLA36 - The Wildlife and Countryside Act 1981 (Variation of Schedules 5 and 8) (England and Wales) Order 2011 (Pages 77 - 102)
Negative Procedure. Date made 11 August 2011. Date laid 22 August 2011. Coming into force date 1 October 2011

CLA37 - The Single Use Carrier Bags Charge (Wales) (Amendment) Regulations 2011 (Pages 103 - 174)
Negative Procedure. Date made 2 September 2011. Date laid 7 September 2011. Coming into force date 1 October 2011

Affirmative Resolution Instruments

None

4. Committee Correspondence

CLA5 - The Right of a Child to Make a Disability Discrimination Claim (Schools) (Wales) Order 2011 (Pages 175 - 193)
Papers:

A581 - The Waste (Miscellaneous Provisions) (Wales) Regulations 2011 (Pages 194 - 216)
Papers:

CSI1 - The Water Industry (Schemes for Adoption of Private Sewers) Regulations 2011 (Pages 217 - 229)
Papers:

Statutory Instruments laid before or during the dissolution of the Third Assembly: Social Care Charges Regulations (Pages 230 - 233)
Papers:

CLA10 - The Environmental Permitting (England and Wales) (Amendment) Regulations 2011 (Pages 234 - 307)
Papers:

Letter from the Presiding Officer to the Chair: Committee Portfolios and Responsibilities in the 4th Assembly (Pages 308 - 311)
Papers:

Letter from the Chair of the Commission on a Bill of Rights, Sir Leigh Lewis, to the Chair of the Constitutional and Legislative Affairs Committee, David Melding (Pages 312 - 336)
Papers:
CLA(4)-05-11(p.13) - Information on the Commission, including its membership and full terms of reference
http://www.justice.gov.uk/about/cbr/index.htm

5. Date of the next meeting

Transcript
View the meeting transcript.

Constitutional and Legislative Affairs Committee

(CLA(4)-05-11)

CLA17

Constitutional and Legislative Affairs Committee Draft Report

Title: The National Health Service (Concerns, Complaints and Redress Arrangements) (Wales) (Amendment) Regulations 2011

Procedure: Negative

These Regulations amend the National Health Service (Concerns, Complaints and Redress Arrangements) (Wales) Regulations 2011 ("the principal Regulations").
Regulation 2(1) delays the coming into force of Part 7 of the principal Regulations from 1 October 2011 to 1 April 2012. Part 7 of the principal Regulations deals with how redress is to be provided where an NHS Trust in Wales or a Local Health Board in Wales enters into an arrangement for the provision of health services with an NHS body in England, Scotland or Northern Ireland.

Technical Scrutiny

No points are identified for reporting under Standing Order 21.2 in respect of this instrument.

Merits Scrutiny

The Committee makes the following report to the Assembly under Standing Order 21.3(ii) that these regulations are of political or legal importance and give rise to issues of public policy likely to be of interest to the Assembly.

Background

The *NHS Redress (Wales) Measure 2008* was the first Assembly Measure to be passed by the Assembly. The Measure enables Welsh Ministers to make Regulations, which allow for redress to be provided in circumstances where there is a qualifying liability in tort in relation to the provision of qualifying services. Redress may encompass apologies, explanations, action plans, remedial treatment and, if appropriate, financial compensation.

The first set of regulations made by Welsh Ministers under this Measure was *The National Health Service (Concerns, Complaints and Redress Arrangements) (Wales) Regulations 2011* ("the principal

regulations") which were laid by the then Minister for Health and Social Services, Edwina Hart AM, on 7 February 2011.

The objective of the principal regulations is to make it easier for patients to raise concerns if they are dissatisfied or if things go wrong with their NHS care. They also aim to ensure that the NHS approach to such situations is more consistent and results in a fairer outcome for patients and staff.

In 2007, the then Subordinate Legislation Committee took evidence and reported on the Measure. The Committee recommended **a strong level of scrutiny for Regulations made under the Measure and that there should be widespread consultation on the Regulations**.

The principal regulations were considered by the Constitutional Affairs Committee of the third Assembly on 17 February 2011. That Committee produced a merits report on the principal regulations and made the following comments:

> *"We have considered the current Regulations in relation to the issues raised above, particularly whether the Regulations have been subject to adequate consultation and whether the Regulations as presented adequately reflect issues raised during consultation …*
>
> *While we believe that the general concerns about 'Framework' Measures remain valid (and while we note the considerable amount of time that has elapsed since the Measure was passed), we are content that consultation in respect of these draft Regulations has in our view been thorough, inclusive and responsive to concerns during it."*

The principal regulations were subject to the affirmative procedure and were approved by the Assembly in plenary on 8 March 2011. They came into force on 1 April 2011, except for provisions in Part 7 of the regulations which were initially due to come into force on 1 October 2011.

The National Health Service (Concerns, Complaints and Redress Arrangements) (Wales) (Amendment) Regulations 2011 ("the amending regulations") were tabled by the Minister for Health and Social Services, Lesley Griffiths AM, on 12 July 2011.

The objective of the amending regulations is to delay the coming into force of Part 7 of the principal Regulations, which deal with cross-border arrangements, from 1 October 2011 to 1 April 2012.

This is deemed necessary by the Welsh Government to allow for the detailed operational arrangements to be agreed between Welsh and

other UK NHS bodies. According to the accompanying Explanatory Memorandum:

> *"The reason for this change is to allow more time for this work to be completed since the initial assessment that a coming into force date of 1 October 2011 would be sufficient time to agree these amendments, is not now achievable."*

An additional amendment is made to regulation 52(5) of the principal regulations to reflect the new coming into force date for Part 7 of the Regulations and makes it clear that the cross border arrangements outlined in Part 7 will not apply to services provided by English NHS bodies, Scottish NHS bodies or Northern Irish NHS bodies on behalf of Welsh NHS bodies before 1 April 2012.

Consideration by the Constitutional and Legislative Affairs Committee

While we agree with the Constitutional Affairs Committee of the third Assembly that the principal regulations adequately reflect issues raised during consultation, the introduction of the amending regulations suggest that there may have been insufficient consultation with NHS bodies in other parts of the UK in relation to cross-border issues.

Legal Advisers
Constitutional and Legislative Affairs Committee

July 2011

2011 No. 1706 (W. 192)

NATIONAL HEALTH SERVICE, WALES

The National Health Service (Concerns, Complaints and Redress Arrangements) (Wales) (Amendment) Regulations 2011

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the National Health Service (Concerns, Complaints and Redress Arrangements) (Wales) Regulations 2011 ("the principal Regulations").

Regulation 2(1) delays the coming into force of Part 7 of the principal Regulations from 1 October 2011 to 1 April 2012. Part 7 of the principal Regulations deals with how redress is to be provided where an NHS Trust in Wales or a Local Health Board in Wales enters into an arrangement for the provision of health services with an NHS body in England, Scotland or Northern Ireland.

Regulation 2(2) substitutes a new regulation 52(5) into the principal Regulations to reflect the new coming into force date of Part 7 and to apply the cross border redress arrangements in that Part to services that have been provided on or after 1 April 2012.

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, it was not considered necessary to carry out a regulatory impact assessment as to the likely costs and benefits of complying with these Regulations.

WELSH STATUTORY INSTRUMENTS

2011 No. 1706 (W. 192)

NATIONAL HEALTH SERVICE, WALES

The National Health Service (Concerns, Complaints and Redress Arrangements) (Wales) (Amendment) Regulations 2011

Made	*11 July 2011*
Laid before the National Assembly for Wales	*12 July 2011*
Coming into force	*3 August 2011*

The Welsh Ministers make the following Regulations in exercise of the powers conferred by sections 1, 11(2)(d) and 11(3) of the NHS Redress (Wales) Measure 2008(**1**).

Title, commencement, application and interpretation

1.—(1) The title of these Regulations is the National Health Service (Concerns, Complaints and Redress Arrangements) (Wales) (Amendment) Regulations 2011 and they come into force on 3 August 2011.

(2) These Regulations apply to services provided as part of the health service in Wales.

(3) In these Regulations "the principal Regulations" ("*y prif Reoliadau*") means the National Health Service (Concerns, Complaints and Redress Arrangements) (Wales) Regulations 2011(**2**).

Amendment of the principal Regulations

2.—(1) In regulation 1(2) for "1 October 2011" substitute "1 April 2012".

(2) For regulation 52(5) substitute: "Complaints about services provided by English NHS bodies,

---

(**1**) 2008 nawm 1.
(**2**) S.I. 2011/704 (W.108).

Scottish NHS bodies or Northern Irish NHS bodies, as defined in regulation 34, before 1 April 2012 will not be considered under Part 7 of these Regulations.”.

Lesley Griffiths

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

11 July 2011

Explanatory Memorandum to the National Health Service (Concerns, Complaints and Redress Arrangements) (Wales) (Amendment) Regulations 2011

This Explanatory Memorandum has been prepared by the Department for Health, Social Services and Children and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the National Health Service (Concerns, Complaints and Redress Arrangements) (Wales) (Amendment) Regulations 2011.

Lesley Griffiths AM
Minister for Health and Social Services

11 July 2011

1. Description

The effect of these Regulations is to delay the coming into force date of Part 7 of the NHS (Concerns, Complaints and Redress Arrangements) (Wales) Regulations 2011 (the Regulations) which deals with cross border arrangements, from 1 October 2011 to 1 April 2012, to allow the detailed operational arrangements to be agreed. A further amendment to regulation 52(5) also reflects this change.

2. Matters of special interest to the Constitutional and Legislative Affairs Committee

There are no matters of special interest to highlight to the Committee.

3. Legislative background

The power to amend the Regulations is found in sections 1, 11(2)(d) and 11(3) of the NHS Redress (Wales) Measure 2008. These are powers of Welsh Ministers.

4. Purpose & intended effect of the legislation

The effect of these Regulations is to delaying the coming into force date of Part 7 of the NHS (Concerns, Complaints and Redress Arrangements) (Wales) Regulations 2011 (the Regulations) which deals with cross border arrangements, from 1 October 2011 to 1 April 2012 to allow the detailed operational arrangements to be agreed.

The reason for this change is to allow more time for this work to be completed since the initial assessment that a coming into force date of 1 October 2011 would be sufficient time to agree these arrangements, is not now achievable.

One of the tasks is to review the current contractual arrangements to include details about the operating arrangements cross-border and recovery of costs from English NHS bodies, to support the arrangements in the Regulations. It is proposed to establish a virtual working group of representatives from Wales and England with planning and contract experience to scope out what is required within existing and new contracts to facilitate the process of offering redress. This work will also need to take account of the use of sub-contractors by English NHS bodies for delivering a package of care or aspects of care, such as physiotherapy, and the subsequent indemnity arrangements where there is a qualifying liability in tort.

The aim is to develop model clauses for insertion into commissioning contracts. This would ensure there is a consistent approach to dealing with these matters and will ensure, for the mutual protection and benefit of contracting parties and, ultimately, Welsh patients that all relevant matters are covered in commissioning contracts.

It is necessary to support staff in Welsh NHS bodies and English NHS bodies in understanding and applying the cross-border redress arrangements. In conjunction with the Department of Health and NHSLA it is proposed to develop detailed operational guidance for Welsh and English NHS bodies to effectively implement and operate the cross border arrangements. This will outline how the process will work and provide guidance on the day-to-day management of cases. Similar guidance will need to be developed by Welsh Government officials to assist LHBs on the rare occasions when they may enter into an arrangement with an NHS body in Scotland or Northern Ireland.

A further amendment to regulation 52(5) of the Regulations reflects the new coming into force date for Part 7 of the Regulations and makes it clear that the cross border arrangements in part 7 will not apply to **services** provided by English NHS bodies, Scottish NHS bodies or Northern Irish NHS bodies on behalf of Welsh NHS bodies before 1 April 2012.

The current regulation 52(5) provides that complaints about services provided by such bodies on behalf of Welsh NHS bodies before 1 October 2011 will not be considered under Part 7.

The change is considered necessary as patients can have up to a year to bring a complaint (sometimes longer), therefore, under the provision as currently drafted it would be possible for a complaint to be reported about a service that was provided before the new contractual arrangements were in place. Whilst it is possible to draft the contracts to take this into consideration, this is not ideal as it would involve the contracts having an element of retrospectivity which would be particularly difficult where a body with whom a Welsh NHS body contracts for the provision of a service in turn sub-contracts for the provision of that service to a third party. It would also, if the provision remains as drafted, cause difficulty if a complaint was made about a service provided a year earlier under a contract that had expired as there would be nothing to amend to insert the relevant provisions relating to recovery etc. that are needed to implement redress.

If the legislation is annulled and the original coming into force date of 1 October 2011 remains unchanged, then this could cause considerable difficulties in setting up a workable process in good time. It would be better to spend more time in detailing the requirements, as this will ultimately benefit patients.

5. Consultation

The Welsh Government is already in discussion with the Department of Health and the NHS Litigation Authority in relation to these requirements. In terms of formal consultation, there have been two previous consultations on the principles behind the main Regulations. This change (a delay in the coming into force date) is administrative in nature, is required to ensure the best possible arrangements are put in place for the benefit of patients, and will be taken forward with the involvement of NHS colleagues on both sides of the border. It has therefore been concluded that it is not necessary to carry out further consultation on this occasion.

6. Regulatory Impact Assessment (RIA)

It is considered that no RIA is required to accompany this amending legislation since a full RIA was carried out on the main Regulations which were made earlier in the year and that document did not specifically cover the cross border implications - the likelihood of any impact in these situations being insignificant. This amending legislation has no impact on the statutory duties (sections 77 -79 GOWA 06) or statutory partners (sections 72-75 GOWA 06).

Constitutional and Legislative Affairs Committee

(CLA(4)-05-11)

CLA19

Constitutional and Legislative Affairs Committee Draft Report

Title: The Head Teachers' Qualifications and Registration (Wales) (Amendment) Regulations 2011

Procedure: Negative

These Regulations amend the Head Teachers' Qualifications and Registration (Wales) Regulations 2005 by altering the definition of "The National Professional Qualification for Headship in Wales" (NPHQ) in regulation 3(2) of those regulations. The requirements of the NPHQ will change from completion of a course of training approved by the Welsh Ministers to the fulfilment of certain standards approved by the Welsh Ministers.

Technical Scrutiny

No points are identified for reporting under Standing Order 21.2 in respect of this instrument.

Merits Scrutiny

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

These regulations come on the back of an Estyn report on the NPQH and the Welsh Government's own research. The Estyn report found the qualification ineffective and that:

- the supply of NPQH holders far exceeds the demand for headteachers in Wales;
- the current selection process does not necessarily identify the most suitable people for headship; and
- the content of the programme needs to be revised.

Teaching unions have been quoted in the *Times Educational Supplement* as welcoming the overhaul in the NPQH, but they expressed concerns that the supply of heads could be damaged if there is no immediate replacement, and concerns about funding for leadership training. In response the Welsh Government said that funding for NPQH was not being withdrawn and the current cohort of candidates will complete their programme. A pilot for the revised NPQH began earlier this year.

Legal Advisers
Constitutional and Legislative Affairs Committee

July 2011

WELSH STATUTORY INSTRUMENTS

2011 No. 1769 (W. 196)

EDUCATION, WALES

The Head Teachers' Qualifications and Registration (Wales) (Amendment) Regulations 2011

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Head Teachers' Qualifications and Registration (Wales) Regulations 2005 by altering the definition of "The National Professional Qualification for Headship in Wales" in regulation 3(2) of those regulations. The requirements of the "National Professional Qualification for Headship in Wales" will change from completion of a course of training approved by the Welsh Ministers to the fulfilment of certain standards approved by the Welsh Ministers.

WELSH STATUTORY INSTRUMENTS

2011 No. 1769 (W. 196)

EDUCATION, WALES

The Head Teachers' Qualifications and Registration (Wales) (Amendment) Regulations 2011

Made	*15 July 2011*
Laid before the National Assembly for Wales	*19 July 2011*
Coming into force	*1 September 2011*

The Welsh Ministers in exercise of the powers conferred upon the National Assembly for Wales by sections 135 and 145(1) and (2) of the Education Act 2002(**1**) and now exercisable by them(**2**) make the following Regulations:

Title, commencement and application

1.—(1) The title of these Regulations is the Head Teachers' Qualifications and Registration (Wales) (Amendment) Regulations 2011 and they come into force on 1 September 2011.

(2) These Regulations apply in relation to Wales.

(**1**) 2002 c.32; section 135 was amended by Schedule 2 to the Local Education Authorities and Children's Services Authorities (Integration of Functions) Order 2010 (S.I. 2010/1158) and section 145 was amended by Schedule 14 to the Education Act 2005 (c.18).

(**2**) The functions of the National Assembly for Wales under sections 135 and 145 of the Education Act 2002 were transferred to the Welsh Ministers by virtue of paragraphs 30(1) and 30(2)(c) of Schedule 11 to the Government of Wales Act 2006 (c.32).

Amendment of the Head Teachers' Qualifications and Registration (Wales) Regulations 2005

2.–(1) The Head Teachers' Qualifications and Registration (Wales) Regulations 2005(**1**) are amended as follows.

(2) In regulation 3(2) for the words "completed such course of training" substitute "met such standards".

Leighton Andrews

Minister for Education and Skills, one of the Welsh Ministers

15 July 2011

(**1**) S.I. 2005/1227 (W.85) as amended by the Education (Amendments to Regulations regarding the Recognition of Professional Qualifications) (Wales) Regulations 2007 (S.I. 2007/2811 (W.238)) and the Local Education Authorities and Children's Services Authorities (Integration of Functions) (Subordinate Legislation) (Wales) Order 2010 (S.I. 2010/1142 (W.101)).

Explanatory Memorandum to The Headteachers' Qualifications and Registration (Wales) (Amendment) Regulations 2011

This Explanatory Memorandum has been prepared by the Department for Education and Skills and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of The Headteachers' Qualifications and Registration (Wales) (Amendment) Regulations 2011.

Leighton Andrews

Minister for Education and Skills

15 July 2011

1. Description

These Regulations amend the definition of the National Professional Qualification for Headship ("NPQH") in the Head Teachers' Qualifications and Registration (Wales) Regulations 2005. The NPQH will now mean such standards as the Welsh Ministers may from time to time approve as opposed to a formal course of training in order to ensure full flexibility for the future.

2. Matters of special interest to the Constitutional and Legislative Affairs Committee

None

3. Legislative background

The power to make these Regulations is contained in sections 135 and 145 of the Education Act 2002. These Regulations amend the Head Teachers' Qualifications and Registration (Wales) Regulations 2005.

The Regulations follow the negative resolution procedure.

4. Purpose & intended effect of the legislation

Currently, the Head Teachers' Qualification and Registration (Wales) Regulations 2005 state that, with certain exceptions, no person may serve as a Head Teacher in Wales without holding the NPQH. The NPQH is defined in regulation 3(2) of the Head Teachers' Qualifications and Registration (Wales) Regulations 2005 as the successful completion of such course of training as the Welsh Ministers may from time to time approve.

The Department for Education and Skills are piloting a new rigorous approach to the NPQH to ensure that the most capable candidates are available for headship posts when they arise. This involves an assessment of practical experience against Leadership Standards based on a portfolio of evidence that teachers will develop throughout their career rather than a training course based approach.

In order to provide maximum flexibility during the pilot exercise and beyond, the definition of the NPQH is being amended in these Regulations to the fulfilment of such standards as approved by the Welsh Ministers. This will ensure flexibility to amend the programme following completion and evaluation of the pilot and indeed in the future.

5. Consultation

This is a technical amendment to existing legislation, and as such no formal consultation exercise has taken place.

We consulted in 2002 on the introduction of a mandatory requirement for first time headteachers in Wales to hold the NPQH with 81% of respondents in favour. In September 2004 a further consultation exercise was undertaken to consult on the draft Headteachers' Qualifications and Registration (Wales) Regulations 2005 as well as the content of the NPQH guidance document (Circular 001/2008).

Extensive discussions have taken place, and are ongoing, with stakeholders regarding the changes proposed to the NPQH arrangements. These have formed part of the wider review of Professional Standards, CPD and Performance Management of teachers and the school workforce.

6. Regulatory Impact Assessment (RIA)

A Regulatory Impact assessment has not been prepared as the Regulations do not impose any additional costs on businesses, employers or other third parties.

Constitutional and Legislative Affairs Committee

CLA20

Constitutional and Legislative Affairs Committee Draft Report

Title: The Beef and Pig Carcase Classification (Wales) Regulations 2011

Procedure: Negative

These Regulations:-

- revoke and replace the (i) Beef Carcase (Classification) Regulations 1991 (SI 1991 No.2242) and (ii) Pig Carcase (Grading Regulations 1994 (SI 1994 No. 2155 as amended) in relation to Wales; and
- enforce EU provisions on beef and pig carcase classification and associated price reporting where applicable as contained in EU legislation – Council Regulation (EC) No. 1234/2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products and Commission Regulation (EC) No. 1249/2008 laying down detailed rules on the implementation of the Community scales for the classification of beef, pig and sheep carcases and the reporting of prices thereof.

Technical Scrutiny

Under Standing Orders 21.2 the Assembly is invited to pay special attention to the following instrument:-

1. Regulation 4 (c) – the regulation purports to revoke the Beef Carcase (Classification) (Amendment) (Wales) Regulations 1994. The Regulations do not exist. Reference to the footnote suggest that it is the Beef Carcase (Classification) (Amendment) Regulations 1994 that are to be revoked in relation to Wales. **(Standing Order 21.2 (vi) –that its drafting appears to be defective or it fails to fulfil statutory requirements)**

2. Regulation 2 (1) and regulation 26- regulation 26 provides that any person who either fails to comply with any requirement or contravenes any prohibition contained in a European pig provision is guilty of an offence. Whilst "European pig provision" is defined in regulation 2 (1) in the English text of the regulations, there is no definition of "European pig provision" in the Welsh text.(**Standing Order 21.2 (vii) – that there appear to**

be inconsistencies between the meaning of its English and Welsh texts; and Standing Order 21.2 (vi) –that its drafting appears to be defective or it fails to fulfil statutory requirements)

Merits Scrutiny

No points are identified for reporting under Standing Order 21.3 in respect of this instrument:

Legal Advisers
Constitutional and Legislative Affairs Committee

July 2011

The Government has responded as follows:

The Beef and Pig Carcase Classification (Wales) Regulations 2011

" TECHNICAL REPORTING POINT NO. 1: Regulation 4 (c) - The text "(Wales)" in the title of the regulations is a typographical error. The footnote to the regulations explains that the instrument referred to is the Beef Carcase (Classfication) (Amendment) Regulations 1994, S.I. 1994/2853. S.I. 1994/2853 applied in relation to Great Britain. There were never any separate equivalent regulations which applied only to Wales. Regulation 4(c) revokes S.I. 1994/2853 in relation to Wales in line with the Welsh Ministers' powers to do so.
Furthermore, and in so far as its application to Wales, regulation 4(a) revokes the principal Beef Carcase (Classification) Regulations 1991: S.I. 1991/2242. Regulation 4(a) revokes S.I. 1991/2242 as amended. So regulation 4 (c) is arguably unnecessary as there is strictly speaking no need to revoke S.I. 1994/2853.
It is proposed to correct the typographical error upon publication. Namely to remove the reference to "(Wales)" in regulation 4 (c). Correction on publication is deemed to suffice for the reasons given.
TECHNICAL REPORTING POINT NO. 2: Regulations 2(1) & 26 - It is accepted that there should be a definition of "European pig provision" in the Welsh text of the regulations. This correction will be made, by way of an amendment to the regulations, as soon as possible.
PUBLICATION POINTS: The points raised as being suitable for correction upon publication will also be actioned."

W E L S H   S T A T U T O R Y
I N S T R U M E N T S

2011 No. 1826 (W. 198)

AGRICULTURE, WALES

The Beef and Pig Carcase Classification (Wales) Regulations 2011

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations which relate to the carcases of adult bovine animals and pigs apply in relation to Wales. These Regulations revoke and remake, in relation to Wales, the provisions of the Beef Carcase (Classification) Regulations 1991 (S.I. 1991/2242) and the Pig Carcase (Grading) Regulations 1994 (S.I. 1994/2155). These Regulations enforce Article 42 of, and Annex V to, Council Regulation (EC) No 1234/2007 (OJ No L 299, 16.11.2007, p 1), which relate to EU (European Union) scales for the classification of carcases, and Commission Regulation (EC) No 1249/2008 (OJ No L 337, 16.12.2008, p 3), which sets out further details regarding the implementation of those scales for the classification of carcases.

These Regulations provide for notifications to be made to the Welsh Ministers by operators of slaughterhouses which slaughter adult bovine animals or pigs (regulation 5).

These Regulations contain provisions regarding the holding of licences by persons who classify bovine carcases or in relation to classification of such carcases by automated grading equipment (regulations 9 to 11).

These Regulations require the keeping of certain records (regulations 12 and 16 and Schedules 3 and 4).

Part 5 of these Regulations concerns enforcement, and makes provision relating to the powers of authorised officers, enforcement notices, penalty notices, and criminal proceedings. Regulations 19(3) and 25 to 30 set out the offences under the Regulations, which are all punishable on summary conviction by a fine not exceeding level 5 on the

standard scale, except for offences under regulation 29(2) (false records and marks).

In particular regulations 25 and 26 provide that breach of specified provisions of EU legislation (set out in Schedules 1 and 2) is an offence.

A full regulatory impact assessment has been produced which is available from the Welsh Assembly Government and online from its website.

WELSH STATUTORY INSTRUMENTS

2011 No. 1826 (W. 198)

AGRICULTURE, WALES

The Beef and Pig Carcase Classification (Wales) Regulations 2011

Made	*21 July 2011*
Laid before the National Assembly for Wales	*25 July 2011*
Coming into force	*1 September 2011*

CONTENTS

PART 1
GENERAL PROVISIONS

1. Title, commencement and application
2. Interpretation
3. Notices
4. Revocations

PART 2
NOTIFICATIONS BY OPERATORS

5. Notifications by operators

PART 3
BOVINE CARCASES

6. Application of these Regulations to small-scale bovine operators
7. Competent authority etc.: bovine carcases
8. Labelling instead of marking
9. Licence to carry out classification
10. Licence for automated grading
11. Appeals regarding licences
12. Records: bovine carcases

PART 4
PIG CARCASES

13. Exemption for small-scale pig operators
14. Competent authority etc.: pig carcases
15. Records instead of marking
16. Records: pig carcases

PART 5
ENFORCEMENT AND OFFENCES

17. Powers of entry
18. Powers of authorised officers
19. Enforcement notices
20. Appeals against enforcement notices
21. Penalty notices
22. Restriction on proceedings for penalty offence
23. Payment of penalty
24. Withdrawal of penalty notice
25. Offences: European beef provisions
26. Offences: European pig provisions
27. Offences: notifications by operators
28. Offences: licences (bovine carcases)
29. Offences: records and marks
30. Offences: obstruction etc.
31. Period for bringing prosecution
32. Offences by bodies corporate
33. Defence of due diligence
34. Offences: punishment

SCHEDULE 1 — European provisions: bovine carcases
PART 1
PART 2
SCHEDULE 2 — European provisions: pig carcases
SCHEDULE 3 — Records: bovine carcases
SCHEDULE 4 — Records: pig carcases

The Welsh Ministers being designated(**1**) for the purposes of section 2(2) of the European Communities

(**1**) By virtue of article 3 of the European Communities (Designation) (No. 5) Order 2010, S.I. 2010/2690.

Act 1972(**1**) in relation to the common agricultural policy of the EU, make these Regulations in exercise of the powers conferred by that section and paragraph 1A of Schedule 2 to that Act(**2**).

These Regulations make provision for a purpose mentioned in section 2(2) of the European Communities Act 1972 and it appears to the Welsh Ministers that it is expedient for references in these Regulations to the following EU instruments to be construed as references to those instruments as amended from time to time—

(a) Council Regulation (EC) No 1234/2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products(**3**), and

(b) Commission Regulation (EC) No 1249/2008 laying down detailed rules on the implementation of the Community scales for the classification of beef, pig and sheep carcases and the reporting of prices thereof(**4**).

PART 1

GENERAL PROVISIONS

Title, commencement and application

1.—(1) The title of these Regulations is the Beef and Pig Carcase Classification (Wales) Regulations 2011.

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

Interpretation

2.—(1) In these Regulations—

"adult bovine animal" (*"anifail buchol llawn-dwf"*) means a bovine animal the live weight of which is more than 300 kilograms;

"approved slaughterhouse" *("lladd-dy cymeradwy")* means an establishment used for slaughtering and dressing adult bovine animals or pigs, the meat of which is intended for human consumption, and which—

(**1**) 1972 c. 68; section 2(2) was amended by section 27(1)(a) of the Legislative and Regulatory Reform Act 2006 (c. 51).

(**2**) Paragraph 1A of Schedule 2 was inserted by section 28 of the Legislative and Regulatory Reform Act 2006.

(**3**) OJ No L 299, 16.11.2007, p 1, to which there are amendments not relevant to these Regulations.

(**4**) OJ No L 337, 16.12.2008, p 3.

(a) is approved or conditionally approved under Article 31(2) of 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**), or

(b) (although lacking the approval or conditional approval that it requires under Article 4(3) of Regulation (EC) No 853/2004 of the European Parliament and of the Council laying down specific hygiene rules for food of animal origin(**2**)) was, on 31st December 2005, operating as a licensed slaughterhouse under the Fresh Meat (Hygiene and Inspection) Regulations 1995(**3**);

"authorised officer" (*"swyddog awdurdodedig"*) means a person authorised by the Welsh Ministers for the purposes of these Regulations, but does not include a person appointed for the purpose of considering an appeal under regulation 11;

"bovine carcase" (*"carcas buchol"*) means a carcase or half-carcase of a slaughtered adult bovine animal bearing a health mark provided for in Article 5(2) of, and Chapter III of Section I of Annex I to, Regulation (EC) No 854/2004 of the European Parliament and of the Council laying down specific rules for the organisation of official controls on products of animal origin intended for human consumption(**4**); and in this definition, "carcase" (*"carcas"*) means the whole body as presented after bleeding, evisceration and skinning, and "half-carcase" ("*hanner carcas"*) means the product obtained by separating such a carcase symmetrically through the middle of each cervical, dorsal, lumbar and sacral vertebra and through the middle of the sternum and the ischiopubic symphysis;

(**1**) OJ No L 165, 30.4.2004, p 1. The revised text of the Regulation is contained in a corrigendum (OJ No L 191, 28.5.2004, p 1), and there are further amendments not relevant to these Regulations.

(**2**) OJ No L 139, 30.4.2004, p 55. The revised text of the Regulation is contained in a corrigendum (OJ No L 226, 25.6.2004, p 22), and there are further amendments not relevant to these Regulations.

(**3**) S.I. 1995/539, revoked in relation to England by S.I. 2005/2059, in relation to Scotland by S.S.I. 2005/505 and in relation to Wales by S.I. 2005/3292.

(**4**) OJ No L 139, 30.4.2004, p 206. The revised text of the Regulation is contained in a corrigendum (OJ No L 226, 25.6.2004, p 83); relevant amendments were made by Commission Regulation (EC) No 2074/2005 (OJ No L 338, 22.12.2005, p 27), Commission Regulation (EC) No 2076/2005 (OJ No L 338, 22.12.2005, p 83), Council Regulation (EC) No 1791/2006 (OJ No L 363, 20.12.2006, p 1) and Commission Regulation (EC) No 1021/2008 (OJ No L 277, 18.10.2008, p 15).

"classification" (*"dosbarthu"*), except as otherwise indicated in regulation 6, means—

(a) the classification of bovine carcases in accordance with the European beef provisions, or

(b) the classification of pig carcases in accordance with the European pig provisions,

(c) as the case may be, and cognate terms are to be construed accordingly;

"clean pig" (*"mochyn glân"*) means a pig which has not been used for breeding;

"Commission Regulation" (*"Rheoliad y Comisiwn"*) means Commission Regulation (EC) No 1249/2008 laying down detailed rules on the implementation of the Community scales for the classification of beef, pig and sheep carcases and the reporting of prices thereof;

"Council Regulation" (*"Rheoliad y Cyngor"*) means Council Regulation (EC) No 1234/2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products;

"European beef provision" (*"darpariaeth eidion Ewropeaidd"*) means a provision which is specified in column 2 of Schedule 1, the subject matter of which is described in column 3 of that Schedule;

"European pig provision" (*"darpariaeth moch Ewropeaidd"*) means a provision which is specified in column 2 of Schedule 2, the subject matter of which is described in column 3 of that Schedule;

"operator" (*"gweithredwr"*) means a person carrying on the business of an approved slaughterhouse;

"pig carcase" (*"carcas mochyn"*) means the body of a slaughtered clean pig, bled and eviscerated, whole or divided down the mid-line;

"prescribed communication" (*"cyfathrebiad rhagnodedig"*) means a communication of the results of classification as required by Article 7(1) of the Commission Regulation;

"the 1991 Regulations" (*"Rheoliadau 1991"*) means the Beef Carcase (Classification) Regulations 1991(**1**); and

"the 1994 Regulations" (*"Rheoliadau 1994"*) means the Pig Carcase (Grading) Regulations 1994(**2**)

(**1**) S.I. 1991/2242.

(**2**) S.I. 1994/2155, amended in relation to Wales by S.I. 2004/106 (W. 13).

(2) Other terms used in these Regulations that are also used in the Commission Regulation or the Council Regulation have the meaning they bear in those EU instruments.

(3) In these Regulations—

(a) any reference to the Commission Regulation is a reference to the Commission Regulation as amended from time to time, and

(b) any reference to the Council Regulation is a reference to the Council Regulation as amended from time to time.

Notices

3.—(1) Any notice required or authorised under these Regulations to be given to any person must be in writing.

(2) Any such notice may be given by—

(a) delivering it to the person;

(b) leaving it at the person's proper address; or

(c) sending it by post to the person at that address.

(3) Where any such notice is to be given to a body corporate, it may be given to an officer of the body.

(4) For the purposes of this regulation and section 7 of the Interpretation Act 1978(**1**) (service of documents by post) in its application to this regulation, the proper address of any person to whom a notice is to be given is the person's last known address, except that in the case of a body corporate or an officer of the body, the proper address is the address of the registered or principal office of the body.

(5) In this regulation—

"director" (*"cyfarwyddwr"*), in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate; and

"officer" (*"swyddog"*), in relation to a body corporate, means any director, manager, secretary or other similar officer of the body corporate.

Revocations

4. The following are revoked—

(a) the 1991 Regulations, in so far as they apply in relation to Wales;

(b) the 1994 Regulations, in so far as they apply in relation to Wales;

(**1**) 1978 c. 30.

(c) the Beef Carcase (Classification) (Amendment) (Wales) Regulations 1994(1);

(d) the Pig Carcase (Grading) (Amendment) (Wales) Regulations 2004(2); and

(e) the following provisions of the Agriculture and Horticulture Development Board Order 2008(3), only in so far as they apply in relation to Wales—

(i) in paragraph 8 of Schedule 5, the entry relating to the 1994 Regulations, and

(ii) article 18 in so far as it relates to that entry.

PART 2

NOTIFICATIONS BY OPERATORS

Notifications by operators

5.—(1) Every person who on 1 September 2011 is, or who on a subsequent date becomes, an operator, must within 28 days of that date give notice to the Welsh Ministers of the particulars specified in paragraph (3).

(2) A person who has given notice under—

(a) regulation 4(1) or (2) of the 1991 Regulations, or

(b) regulation 4(1) or (2) of the 1994 Regulations,

is deemed to have given notice under paragraph (1).

(3) The particulars referred to in paragraph (1) are—

(a) the full name and address of the operator;

(b) where the operator is a partnership or joint owners, the full names and addresses of all the partners or joint owners;

(c) where the operator is a body corporate, the full name, registered office address and registration number of the body; and

(d) the address, telephone number and approval number of the slaughterhouse.

(4) Where any change occurs in any of the particulars specified in paragraph (3), the operator must within 28 days of the change give notice to the Welsh Ministers of particulars of the change.

(5) Where an operator ("O") ceases to be the operator of an approved slaughterhouse, O must within 10 days of such cessation give notice to the Welsh Ministers of—

(1) S.I. 1994/2853.
(2) S.I. 2004/106 (W. 13).
(3) S.I. 2008/576.

(a) the date of such cessation; and

(b) the person (if any) succeeding O as operator of that slaughterhouse.

(6) Where an approved slaughterhouse ceases to be such a slaughterhouse its operator must within 10 days of such cessation give notice to the Welsh Ministers of the date of such cessation.

PART 3

BOVINE CARCASES

Application of these Regulations to small-scale bovine operators

6.—(1) A small-scale bovine operator is not required to classify bovine carcases.

(2) These Regulations do not apply to a small-scale bovine operator which does not classify bovine carcases.

(3) But if a small-scale bovine operator chooses to classify bovine carcases, these Regulations apply in relation to that operator and the classification of those carcases.

(4) In paragraphs (2) and (3), "classify" (*"dosbarthu"*) means classify in accordance with the European beef provisions or otherwise than in accordance with those provisions, and "classification" (*"dosbarthiad"*) is to be construed accordingly.

(5) In this regulation, "small-scale bovine operator" (*"gweithredwr buchol ar raddfa fach"*) means an operator of an approved slaughterhouse at which not more than 75 adult bovine animals per week as an annual average are slaughtered.

(6) Nothing in this regulation prevents the application of these Regulations to an operator in relation to pig carcases if pigs are also slaughtered in that operator's slaughterhouse.

Competent authority etc.: bovine carcases

7.—(1) The Welsh Ministers are the competent authority for the purposes of—

(a) Article 9 of the Commission Regulation (authorisation of automated grading techniques);

(b) Article 10(2)(b) of the Commission Regulation (classification by automated grading techniques); and

(c) Article 16 of the Commission Regulation (reporting of weekly prices to the competent authority and calculation of weekly prices).

(2) The Welsh Ministers are responsible for on-the-spot checks as described in Article 11 of the Commission Regulation.

Labelling instead of marking

8. Subject to—

(a) the final paragraph of Article 6(4) of the Commission Regulation,

(b) Article 4(3)(c) of Commission Regulation (EC) No 1669/2006(**1**) laying down detailed rules for the application of Council Regulation (EC) No 1254/1999 as regards the buying-in of beef(**2**), and

(c) point I(a) of Annex I to Commission Regulation (EC) No 826/2008 laying down common rules for the granting of private storage aid for certain agricultural products(**3**),

an operator may, instead of marking a bovine carcase in accordance with Article 6(3) of the Commission Regulation, label it in accordance with Article 6(4) of that Regulation.

Licence to carry out classification

9.—(1) The Welsh Ministers must grant a licence to carry out classification of bovine carcases to any person who applies for such a licence and who appears to the Welsh Ministers to be qualified to carry out classification, but the Welsh Ministers may refuse to grant such a licence if the Welsh Ministers are satisfied that the applicant is not a fit and proper person to carry out classification of bovine carcases.

(2) In addition to the power to revoke a licence in the circumstances mentioned in Article 12(2) of the Commission Regulation (incorrect classifications or identifications), the Welsh Ministers may suspend or revoke a licence granted to a person under this regulation—

(a) if the person has contravened any of the terms or conditions of that licence; or

(b) if the Welsh Ministers are satisfied that the person holding that licence is no longer a fit and proper person to carry out classification of bovine carcases.

(3) Where the Welsh Ministers take any decision in relation to a licence under this regulation which gives

---

(**1**) OJ No L 312, 11.11.2006, p 6, to which there are amendments not relevant to these Regulations.

(**2**) OJ No L 160, 26.6.1999, p 21, to which there are amendments not relevant to these Regulations.

(**3**) OJ No L 223, 21.8.2008, p 3, to which there are amendments not relevant to these Regulations.

rise to a right of appeal under regulation 11, the Welsh Ministers must inform the person concerned of—

(a) the right of appeal; and

(b) the details of the person to whom an appeal may be made.

Licence for automated grading

10.—(1) The Welsh Ministers may grant, to the operator of an approved slaughterhouse, a licence authorising the use of automated grading equipment for classification of bovine carcases at that slaughterhouse.

(2) In addition to the power to revoke a licence in the circumstances mentioned in Article 12(2) of the Commission Regulation, the Welsh Ministers may suspend or revoke a licence granted to an operator under this regulation—

(a) if the operator has contravened any of the terms or conditions of that licence; or

(b) if the Welsh Ministers considers that the automated grading equipment no longer meets the standards required by Article 9 of, and Annex II to, the Commission Regulation, whether for reasons connected with the equipment itself or with the operator's manner of use of the equipment.

(3) Where the Welsh Ministers take any decision in relation to a licence under this regulation which gives rise to a right of appeal under regulation 11, the Welsh Ministers must inform the operator concerned of—

(a) the right of appeal; and

(b) the details of the person to whom an appeal may be made.

Appeals regarding licences

11.—(1) A person may appeal against—

(a) a decision by the Welsh Ministers to refuse an application by that person for a licence under regulation 9 or 10;

(b) a term or condition imposed by the Welsh Ministers in a licence granted to that person under regulation 9 or 10; or

(c) a decision by the Welsh Ministers to suspend or revoke a licence granted to that person under regulation 9 or 10.

(2) The appeal must be made to a person appointed for the purpose by the Welsh Ministers.

(3) The appointed person must consider the appeal (but may not consider any new information not available to the Welsh Ministers at the time of the original decision) and any representations made by the

Welsh Ministers, and must report in writing, with a recommended course of action, to the Welsh Ministers.

(4) The Welsh Ministers must then reach a final decision and notify the appellant of that decision and the reasons for it.

Records: bovine carcases

12.—(1) An operator of an approved slaughterhouse must keep a record of the particulars specified in Schedule 3 relating to each bovine carcase which is classified in that slaughterhouse.

(2) The operator must retain each record for a period of 12 months from the end of the calendar year to which the record relates.

PART 4

PIG CARCASES

Exemption for small-scale pig operators

13.—(1) These Regulations do not apply to an operator of an approved slaughterhouse at which not more than 200 clean pigs per week as an annual average are slaughtered.

(2) But nothing in paragraph (1) prevents the application of these Regulations in relation to bovine carcases if adult bovine animals are also slaughtered in that operator's slaughterhouse.

Competent authority etc.: pig carcases

14.—(1) The Welsh Ministers are the competent authority for the purposes of Article 22(2) of the Commission Regulation (carcase weight).

(2) The Welsh Ministers are responsible for on-the-spot checks as described in Article 24 of the Commission Regulation.

Records instead of marking

15. Except where a pig carcase is to be marketed uncut in another member State, an operator may, instead of marking a pig carcase in accordance with Article 21(3) of the Commission Regulation—

(a) identify a pig carcase, and

(b) complete a record in relation to that carcase,

as provided for by Article 21(4) of that Regulation.

Records: pig carcases

16.—(1) An operator of an approved slaughterhouse must keep a record of the particulars specified in

Schedule 4 relating to each pig carcase which is classified in that slaughterhouse.

(2) The operator must retain each record for a period of 12 months from the end of the calendar year to which the record relates.

PART 5

ENFORCEMENT AND OFFENCES

Powers of entry

17.—(1) An authorised officer may at any reasonable hour and on producing, if so required, a duly authenticated authorisation, enter an approved slaughterhouse and any associated premises in which carcases may be handled or records relating to those carcases may be kept, for the purpose of ascertaining whether—

(a) any offence under these Regulations is being or has been committed on the premises; or

(b) there is on the premises any evidence of any such offence.

(2) The officer may be accompanied by such other persons as the officer considers necessary, including any representative of the European Commission.

(3) If a justice of the peace, on sworn information in writing, is satisfied that there is reasonable ground for entry into premises for any purpose in paragraph (1) and that either—

(a) admission to the premises has been refused, or a refusal is anticipated, and that notice of the intention to apply for a warrant has been given to the operator; or

(b) an application for admission, or the giving of such notice, would defeat the object of the entry, or that the case is one of urgency, or that the premises are unoccupied or the operator temporarily absent,

the justice may by signed warrant authorise an authorised officer to enter the premises, if need be by reasonable force.

(4) A warrant granted under this regulation continues in force for three months.

(5) An officer who enters any unoccupied premises, or premises in which the operator is temporarily absent, must leave them as effectively secured against unauthorised entry as they were before entry.

Powers of authorised officers

18. An authorised officer entering premises under these Regulations may—

(a) inspect any bovine carcase or pig carcase or part of such a carcase, or any carcase or part of a carcase which the officer reasonably suspects to be a bovine carcase or pig carcase or part of such a carcase, on those premises;

(b) examine any record which an operator is required to keep under regulation 12 or 16 or under the Commission Regulation, and where any such record is kept by means of a computer, have access to and inspect and check the operation of any computer and associated apparatus or material which is or has been in use in connection with that record;

(c) require that copies of or extracts from any such record be produced and, where such record is kept by means of a computer, require it to be produced in a form in which it may be taken away; and

(d) retain any such record which the officer has reason to believe may be required as evidence in proceedings under these Regulations.

Enforcement notices

19.—(1) If the Welsh Ministers have reason to believe that a person has committed an offence under these Regulations, the Welsh Ministers may give that person a notice (an enforcement notice) in accordance with paragraph (2).

(2) An enforcement notice must—

(a) state the Welsh Ministers' grounds for believing this;

(b) specify the matter that constitutes the offence;

(c) specify what that person must stop doing, or the measure that, in the Welsh Ministers' opinion, that person must take in order to comply with these Regulations;

(d) require that person to stop doing the action specified in the notice, or take the measures specified in the notice, or measures at least equivalent to them, within the period (being not less than 14 days) specified in the notice;

(e) inform that person of the right of appeal conferred by regulation 20; and

(f) inform that person of the period within which such an appeal may be brought.

(3) Any person who contravenes or fails to comply with an enforcement notice is guilty of an offence.

Appeals against enforcement notices

20.—(1) A person may appeal to a magistrates' court against an enforcement notice if that person has reason to believe that the notice should not have been given.

(2) A person may appeal within the period of one month beginning with the date on which the notice was given.

(3) The procedure is by way of complaint for an order, and the Magistrates' Court Act 1980(**1**) applies to the proceedings.

(4) On an appeal the court may either cancel or affirm the notice and, if the court affirms the notice, it may do so either in its original form or with such modifications as the court thinks fit.

Penalty notices

21.—(1) If the Welsh Ministers have reason to believe that a person has committed an offence under these Regulations, the Welsh Ministers may give that person a notice (a penalty notice) in accordance with paragraphs (2) and (3).

(2) A penalty notice may be of any amount up to a maximum of £5,000.

(3) A penalty notice must—

(a) give such particulars of the circumstances alleged to constitute the offence as are necessary for giving reasonable information about the offence;

(b) state the amount of the penalty;

(c) state the period during which, by virtue of regulation 22, proceedings will not be taken for the offence;

(d) state the address at which the penalty may be paid; and

(e) state that payment must not be made in cash.

Restriction on proceedings for penalty offence

22.—(1) Where a person is given a penalty notice—

(a) no proceedings may be brought against that person for the offence to which that notice relates before the end of the period of 28 days, beginning with the date on which the notice was given; and

(b) that person may not be convicted of the offence if the penalty is paid in accordance with regulation 23 before the end of that period.

(2) Paragraph (1) does not apply if the penalty notice is withdrawn in accordance with regulation 24.

(**1**) 1980 c. 43; sections 51 and 52 have been substituted by the Courts Act 2003 (c. 39), section 47.

Payment of penalty

23.—(1) Payment of any penalty must be made to the Welsh Ministers by sending it by post or by such method as may be specified in the notice.

(2) In any proceedings a certificate purporting to be signed by or on behalf of the Welsh Ministers stating that payment of a penalty was or was not received by the date specified in the certificate is evidence of the facts stated.

Withdrawal of penalty notice

24.—(1) A penalty notice may be withdrawn if the Welsh Ministers have reason to believe that it ought not to have been given (whether to the person named in the penalty notice or otherwise).

(2) A penalty notice may be withdrawn by the Welsh Ministers giving notice to the person named in the penalty notice before or after payment of the penalty.

(3) Where a penalty notice is withdrawn, the Welsh Ministers must repay any penalty paid under the penalty notice to the person named in the penalty notice within 28 days, beginning with the date on which notice of the withdrawal of the penalty notice was sent.

Offences: European beef provisions

25.—(1) Subject to regulation 8 (labelling instead of marking), any person who—

(a) fails to comply with any requirement under a European beef provision, or

(b) contravenes any prohibition contained in a European beef provision,

is guilty of an offence.

(2) But a person falling within paragraph (3) does not commit an offence if that person—

(a) fails to comply with any requirement under a Part 2 European beef provision; or

(b) contravenes any prohibition contained in a Part 2 European beef provision.

(3) A person falls within this paragraph if the person is—

(a) an operator of an approved slaughterhouse which itself bones all the bovine carcases which it obtains; or

(b) responsible for the classification of bovine carcases in such a slaughterhouse.

(4) In this regulation, "Part 2 European beef provision" (*"darpariaeth eidion Ewropeaidd Rhan 2"*) means a provision of the Commission Regulation which is specified in column 2 of Part 2 of Schedule 1.

Offences: European pig provisions

26. Subject to regulation 15 (records instead of marking), any person who—

(a) fails to comply with any requirement under a European pig provision, or

(b) contravenes any prohibition contained in a European pig provision,

is guilty of an offence.

Offences: notifications by operators

27. Any person who fails to comply with any requirement of regulation 5 (notifications by operators) is guilty of an offence.

Offences: licences (bovine carcases)

28.—(1) If classification of a bovine carcase is carried out at an approved slaughterhouse—

(a) without a licence granted under regulation 9, or

(b) in breach of any term or condition of such a licence,

the person who carries out the classification and the operator of that slaughterhouse are each guilty of an offence.

(2) If classification of a bovine carcase is carried out at an approved slaughterhouse by means of automated grading equipment—

(a) without a licence granted under regulation 10 for the use of that equipment at that slaughterhouse, or

(b) in breach of any term or condition of such a licence,

the person who carries out the classification and the operator of that slaughterhouse are each guilty of an offence.

(3) Any person who makes an alteration to a licence granted under regulation 9 or 10 is guilty of an offence.

Offences: records and marks

29.—(1) Any person who fails to comply with any requirement of regulation 12 (records: bovine carcases) or regulation 16 (records: pig carcases) is guilty of an offence.

(2) Any person who—

(a) applies to a bovine carcase or part of such a carcase a mark—

(i) prescribed by Article 6(3) of the Commission Regulation, or

(ii) closely resembling a mark prescribed by that provision,

which is likely to mislead;

(b) applies to a pig carcase or part of such a carcase a mark—

(i) prescribed by Article 21(3) of the Commission Regulation, or

(ii) closely resembling a mark prescribed by that provision,

which is likely to mislead;

(c) applies to a label relating to a bovine carcase or part of such a carcase an indication—

(i) prescribed by Article 6(4) of that Regulation, or

(ii) closely resembling an indication prescribed by that provision,

which is likely to mislead; or

(d) applies to a pig carcase or part of such a carcase a label prescribed by the last sub-paragraph of Article 21(3) of the Commission Regulation which is likely to mislead,

is guilty of an offence.

Offences: obstruction etc.

30. Any person who—

(a) without reasonable excuse, obstructs any person acting under these Regulations,

(b) without reasonable cause, fails to give any person acting under these Regulations any assistance or information that that person may reasonably require for the purpose of carrying out functions under these Regulations,

(c) gives any person acting under these Regulations any information knowing it to be false or misleading, or

(d) fails to produce any document or record when required to do so by any person acting under these Regulations,

is guilty of an offence.

Period for bringing prosecution

31.—(1) Proceedings for an offence under regulation 19(3), 25, 26, 27, 28, 29(1) or 30 may be brought within a period of 12 months from the date on which the prosecutor first knows of evidence sufficient, in the prosecutor's opinion, to justify proceedings.

(2) But no such proceedings may be brought more than 18 months from the commission of the offence.

(3) For the purposes of paragraph (1)—

(a) a certificate signed by or on behalf of the prosecutor and stating the date on which the prosecutor first knew of evidence sufficient to justify the proceedings is conclusive evidence of that fact;

(b) a certificate stating that matter and purporting to be so signed is deemed to be so signed unless the contrary is proved.

Offences by bodies corporate

32.—(1) If an offence under these Regulations committed by a body corporate is shown to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, an officer, that officer as well as the body corporate is guilty of the offence and is liable to be proceeded against and punished accordingly.

(2) If the affairs of a body corporate are managed by its members, paragraph (1) applies in relation to the acts and defaults of a member in connection with that member's functions of management as if that member were a director of the body.

(3) In this regulation, "officer" (*"swyddog"*) , in relation to a body corporate, means a director, member of the committee of management, chief executive, manager, secretary or other similar officer of the body, or a person purporting to act in any such capacity.

Defence of due diligence

33. It is a defence for a person charged with an offence under these Regulations ("P") to prove that P took all reasonable precautions and exercised all due diligence to avoid the commission of the offence by P or by a person under P's control.

Offences: punishment

34.—(1) A person guilty of an offence under—

(a) regulation 19(3) (enforcement notices),

(b) regulation 25 (European beef provisions),

(c) regulation 26 (European pig provisions),

(d) regulation 27 (notifications by operators),

(e) regulation 28 (licences (bovine carcases)),

(f) regulation 29(1) (records), or

(g) regulation 30 (obstruction etc.),

is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(2) A person guilty of an offence under regulation 29(2) (misleading marks etc.) is liable—

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

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

Alun Davies

Deputy Minister for Agriculture, Food, Fisheries and European Programmes, under authority of the Minister for Business, Enterprise, Technology and Science, one of the Welsh Ministers

21 July 2011

SCHEDULE 1

Regulation 2

European provisions: bovine carcases

PART 1

(1) Regulation containing European provision	*(2) Provision*	*(3) Subject matter*
Council Regulation	Annex V, point A(II), together with Article 2(3) and (4) and 6(6) of the Commission Regulation	Requirement to indicate the category of carcase as specified in these provisions
	Annex V, point A(III), together with Article 3 of, and Annex I to, the Commission Regulation	Requirement to indicate, in relation to a carcase, the class of conformation and fat cover, as specified in these provisions
	Annex V, point A(IV)	Requirement to present carcases in the specified manner
	Annex V, point A(V), first sub-paragraph	Requirement for approved slaughterhouses to classify carcases in accordance with the Community scale
Commission Regulation	Article 6(1)	Requirement as to the place of classification and identification
	Article 6(2)	Requirements as to the time of classification, identification and weighing
	Article 7(1) and (2) and the first sub-paragraph of Article 7(3)	Requirements as to the prescribed communication
	Article 9(4)	Prohibition on modifications of the technical specifications of licensed automatic grading techniques without approval of the Welsh Ministers
	Article 10	Requirements as to classification by automated grading techniques
	Article 13(2) and (5) and Annex III	Requirements concerning weighing of the carcase and

		adjustments to the weight
	Article 13(3)	Requirement to present carcase in specified manner, for the purpose of establishing market prices
	Article 15	Requirements as to recording of prices
	Article 16(1), (2) and (3)	Requirements as to reporting of prices

PART 2

(1) Regulation containing European provision	*(2) Provision*	*(3) Subject matter*
Commission Regulation	Article 6(3)	Requirements as to marking of carcases to indicate the category and class of conformation and fat cover
	Article 6(4)	Requirements in relation to labelling of a carcase
	Article 6(5)	Prohibition on removal of marks and labels before boning

SCHEDULE 2

Regulation 2

European provisions: pig carcases

(1) Regulation containing European provision	*(2) Provision*	*(3) Subject matter*
Council Regulation	Annex V, point B(II)	Requirement to classify carcases into one of the specified classes
	Annex V, point B(III), as modified by Articles 3 and 4 of Commission Decision 2004/370/EC authorising methods for grading pig carcases in the United Kingdom(**1**)	Requirement to present carcases in a manner specified in these provisions
	Annex V, point B(IV), sub-	Requirement to grade

(**1**) OJ No L 116, 22.4.2004, p 32, to which there are amendments not relevant to these Regulations.

	paragraph 1, together with Article 1 of, and Annex I to, Commission Decision 2004/370/EC	carcases by methods authorised by the Commission
Commission Regulation	Article 21(1)	Requirement as to timing of classification of carcases
	Article 21(3)	Requirements as to marking or labelling of carcases
	Article 21(4)	Requirements as to identifying a carcase and keeping a record in respect of it
	Article 21(5)	Prohibition on removing fat, muscle or other tissue before weighing, grading and marking
	Article 22(1) and (2)	Requirements as to weighing of carcase and weight adjustments
	Article 23(1), (2) and Annex IV	Requirements concerning assessment of lean-meat content of carcases

SCHEDULE 3 Regulation 12

Records: bovine carcases

1. The results of the classification.

2. The approval number of the slaughterhouse.

3. The kill or slaughter number of the animal from which the carcase was obtained, as allocated by the operator.

4. The date of slaughter.

5. The weight of the carcase.

6. The dressing specification used.

7. A record that the prescribed communication has been effected.

8. The name, signature and classification licence serial number of the person who carried out the classification.

SCHEDULE 4 Regulation 16

Records: pig carcases

9. The results of the classification.

10. The approval number of the slaughterhouse.

11. The kill or slaughter number of the animal from which the carcase was obtained, as allocated by the operator.

12. The date of slaughter.

13. The warm weight of the carcase, together with a note of—

(a) any adjustment made for the cold carcase weight, and

(b) any coefficient applied.

14. The lean meat percentage of the carcase.

15. An indication as to whether the tongue, flare fat, kidneys and diaphragm were attached or removed.

16. The name and signature of the person who carried out the classification.

Explanatory Memorandum
to
The Beef and Pig Carcase Classification (Wales) Regulations 2011

This Explanatory Memorandum has been prepared by the Rural Affairs Department and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of **the Beef and Pig Carcase Classification (Wales) Regulations 2011.** I am satisfied that the benefits outweigh any costs.

Alun Davies AM – Deputy Minister for Agriculture, Food, Fisheries and European Programmes

21 July 2011

1. Description

This instrument

- Revokes and replaces the (i) Beef Carcase (Classification) Regulations 1991 (S I 1991 No. 2242) and (ii) Pig Carcase (Grading) Regulations 1994 (SI 1994 No. 2155 as amended) in relation to Wales; and
- enforces EU provisions on beef and pig carcase classification and associated price reporting where applicable as contained in EU legislation - Council Regulation (EC) No. 1234/2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products and Commission Regulation (EC) No. 1249/2008 laying down detailed rules on the implementation of the Community scales for the classification of beef, pig and sheep carcases and the reporting of prices thereof.

2. Matters of special interest to the Constitutional and Legislative Affairs Committee

These Regulations do not amend any provision of an Act or Measure and the Welsh Ministers have determined that they are to be subject to the negative procedure.

3. Legislative background

These Regulations are made in exercise of powers contained in section 2(2) of the European Communities Act 1972. The Welsh Ministers were designated to exercise these powers, in relation to the EU Common Agricultural Policy, by virtue of the European Communities (Designation) (No. 5) Order 2010, SI 2010/2690.
This instrument is made under the negative procedure.

4. Purpose & intended effect of the legislation

This instrument is being made using the powers under the European Communities Act 1972 and has been the subject of consultation with interested Stakeholders.

Section 80 of the Government of Wales Act 2006 places Welsh Ministers under a statutory duty to give effect to EU obligations where they have the powers to do so. Welsh Ministers must give effect to the relevant EU legislation. Welsh Ministers are required to create a statutory enforcement mechanism to give effect to Commission Regulation (EC) No. 1249/2008. In the rest of the UK this was achieved in 2010.

The Beef and Pig Carcase Classification (Wales) Regulations 2011 will:

- Revoke and replace the (i) Beef Carcase (Classification) Regulations 1991 (S I 1991 No. 2242) and (ii) Pig Carcase (Grading) Regulations 1994 (SI 1994 No. 2155 as amended) in relation to Wales; and
- Enforce EU provisions on beef and pig carcase classification and associated price reporting where applicable as contained in EU legislation - Council Regulation (EC) No. 1234/2007 establishing a common organisation of agricultural markets and on specific provisions

for certain agricultural products and Commission Regulation (EC) No. 1249/2008 laying down detailed rules on the implementation of the Community scales for the classification of beef, pig and sheep carcasses and the reporting of prices thereof.

5. Impact

This instrument applies in relation to Wales. Similar instruments have already been introduced in England, Scotland, and Northern Ireland. Introducing this Instrument will bring Wales up to date and in line with the rest of the UK and avoid any distortion issues.

The EU legislation lays down rules on the implementation of the community scales for the classification of beef, pig and sheep carcases and the associated price reporting to the EU Commission. EU beef and pig classification and deadweight price reporting continue to be compulsory for Member States, though under the EU legislation carcase classification according to the Community scale remains optional for the sheep sector; it has therefore been decided that the instrument will not cover the sheep sector.

Most of the new EU implementing legislation does not represent any significant change from the previous EU Regulation, except in the way beef carcases may be presented on the slaughter line (their 'dressing specification') for classification and pricing. Ongoing discussions over a long period have been held with interested stakeholders (including farmer organisations and the meat industry) to reach agreement on a new UK beef dressing specification, which was subsequently approved by the European Commission in mid 2008. Following this agreement, Defra and the Rural Payments Agency (RPA) met with stakeholders in July 2008 to discuss the implementation of the new UK beef dressing specification, the details of which were subsequently incorporated into Commission Regulation (EC) No. 1249/2008.

There is no impact on charities or voluntary bodies, or the industry at large. No significant impact on the public sector is anticipated.

6. Consultation

The draft Regulations were the subject of a five-week consultation (which ended on 05 May 2011) with stakeholders in the Welsh red meat industry. Four responses were received [Farmers' Union of Wales, Hybu Cig Cymru - Meat Promotion Wales (HCC), the National Beef Association (NBA) and NFU Cymru]. No objections were received although a few corrections to the SI were suggested which have been considered and incorporated.

Regulatory Impact Assessment

Part 1

1.1 Title of the regulatory proposal

The Beef and Pig Carcase Classification (Wales) Regulations 2011

1.2. Purpose and intended effect of the regulations

1. 2.1 The European Commission has consolidated legislation governing agricultural commodity markets into a single common organisation of the markets (Single CMO) regulation. This incorporates three regulations setting rules on the classification of and price reporting on beef, sheep and pig carcases. Most of the EU implementing regulation does not represent any significant change, except in the way beef carcasses may be presented for classification and pricing.

1. 2.2 Wales (and the rest of the UK) is required to introduce measures to enforce EU legislation which was directly applicable from 1 January 2009 The purpose of the regulation is to comply with this requirement. This instrument applies in relation to Wales.

1.2.3 This instrument is being made using the powers contained in section 2(2) European Communities Act 1972 .

1. 2.4 Section 80 of the Government of Wales Act 2006 places Welsh Ministers under a statutory duty to give effect to EU obligations where they have the powers to do so. Welsh Ministers must give effect to the relevant EU legislation. Welsh Ministers are required to create a statutory enforcement mechanism to give effect to Council Regulation (EC) No. 1234/2007 and Commission Regulation (EC) No. 566/2008. In the rest of the UK this was achieved in 2010.

1. 2.5 These Regulations will be made in exercise of powers contained in section 2(2) of the European Communities Act 1972. The National Assembly for Wales was designated to exercise these powers, in relation to food and the primary production of food, by virtue of the European Communities (Designation) (No 5) Order 2010, SI 20102690.

Policy objective

1.2.6 The policy objective is to implement the consolidated articles of the Single CMO on carcase classification and price reporting into domestic legislation across the UK. A secondary objective is to reduce the number of dressing specifications for beef carcasses used in the UK from 5 to 3 with the new UK specification recently approved by the Commission becoming the standard one used in GB. It is aimed at improving transparency in price reporting on cattle sold between farmers and the meat industry.

Options - Compliance with EU legislation

1.3.1 The EU legislation must be given effect by domestic legislation. There is no option to do otherwise and a failure to make a SI could lead to infraction action being taken by the European Commission which could involve significant financial penalty. After considerable discussion bewteen stakeholders, industry as well as Government agreement was reached and the UK specification approved by the EU in 2008. There has been consultation in other parts of the UK on parallel regulations which were introduced in 2010.

1. 3.2 EU regulations are directly applicable in Member States and non-compliance or under-implementation would be in breach of EU obligations. Failure to make these Regulations could lead to costly infraction proceedings by the Commission against the UK with Wales having to meet the considerable sum from allocated funds. It is considered that the regulations should be introduced as they will ensure that the Welsh Government can fulfil its obligations under the EU law. The compelling argument is therefore to introduce as required. . There are no implications in respect of equality and fairness.

1. 3.3 The instrument will not have any impact on economic, social or environmental sustainability issues.

4. Consultation

1. 4.1 This RIA formed part of a formal consultation which raised no objections. There is a duty to introduce these regulations. The impact on the industry is expected to be minimal partly due to the fact that the EU regulations have already been implemented in other parts of the UK and the industry throughout GB is already working to these rules. It is recommended that the regulations are introduced in Wales as per the proposed SI.

Constitutional and Legislative Affairs Committee

(CLA(4)-05-11)

CLA31

Constitutional and Legislative Affairs Committee Draft Report

Title: The National Curriculum (Assessment Arrangements on Entry to the Foundation Phase) (Wales) Order 2011

Procedure: Negative

Under section 108(2)(b)(iii) of the Education Act 2002 the Welsh Ministers may specify, by order, such assessment arrangements as they consider appropriate for the foundation phase. This Order sets out those arrangements.

Technical Scrutiny

No points are identified for reporting under Standing Order 21.2 in respect of this instrument.

Merits Scrutiny

The Assembly is invited to pay special attention under Standing Order 21.3(ii) in respect of this instrument - (ii) that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Assembly.

Article 5 contains the following unusual provision –
"The Welsh Ministers may make such provision giving full effect to or otherwise supplementing the provisions of this Order (other than provision conferring or imposing functions as mentioned in section 108(6) of the 2002 Act) as appears to them to be expedient."

The enabling power is section 108(11) of the Education Act 2002 which reads as follows-
"An order under subsection (2)(b)(iii) or (3)(c) may authorise the making of such provisions giving full effect to or otherwise supplementing the provisions made by the order (other than provision conferring or imposing functions as mentioned in subsection (6) or (7)) as appear to the Welsh Ministers to be expedient; and **any provisions made <u>under</u> such an order shall, on being published as specified in the order, have effect for the purposes of this Part as if made by the order."**

Thus Welsh Ministers will be able to make further provision to give full effect to or supplement the provisions of the current Order without

having to make an amending order that would be subject to Assembly scrutiny. Nevertheless, it is a power that has been used on a number of occasions by the Assembly (to which the power was originally granted) and by Welsh Ministers (to whom the power was transferred following the Government of Wales Act 2006.

This is not an unusual or unexpected use of the power in section 108(11), which would be reported under Standing Order 21.2(ii), but a power that is itself unusual, and therefore of importance.

Legal Advisers
Constitutional and Legislative Affairs Committee

August 2011

WELSH STATUTORY INSTRUMENTS

2011 No. 1947 (W. 213)

EDUCATION, WALES

The National Curriculum (Assessment Arrangements on Entry to the Foundation Phase) (Wales) Order 2011

EXPLANATORY NOTE

(This note is not part of the Order)

Under section 108(2)(b)(iii) of the Education Act 2002 the Welsh Ministers may specify, by order, such assessment arrangements as they consider appropriate for the foundation phase. This Order sets out those arrangements. The provisions of this Order come into force on 1 September 2011 for those pupils taught the foundation phase in a maintained school or a maintained nursery school, and on 1 September 2012 for all other pupils taught the foundation phase in a different foundation phase setting (article 2).

This Order provides that a foundation phase assessment must be carried out by a practitioner in relation to each pupil in the foundation phase, other than a pupil who has been assessed in accordance with the Education (Baseline Assessment) (Wales) Regulations 1999. This Order sets out the purpose of such assessments (article 3) and sets time limits for carrying out the assessments (article 4).

This Order enables the Welsh Ministers to make provision giving effect to or otherwise supplementing the provisions made by this Order (article 5).

This Order also sets out the duties of the proprietor of a foundation phase setting (article 6 and the Schedule), the duties of the responsible person (article 7 and the Schedule) and of relevant local authorities (article 8 and the Schedule) in relation to the assessment arrangements.

WELSH STATUTORY INSTRUMENTS

2011 No. 1947 (W. 213)

EDUCATION, WALES

The National Curriculum (Assessment Arrangements on Entry to the Foundation Phase) (Wales) Order 2011

Made 29 July2011

Laid before the National Assembly for Wales 4 *August 2011*

Coming into force in accordance with article 1(2)

The Welsh Ministers, in exercise of the powers conferred on the National Assembly for Wales by sections 108(2)(b)(iii), (5), (6), (9) and (11) and 210 of the Education Act 2002(**1**) and now vested in them(**2**), make the following Order:

Title and commencement

1.—(1) The title of this Order is the National Curriculum (Assessment Arrangements on Entry to the Foundation Phase) (Wales) Order 2011.

(2) This Order comes into force on—

(a) 1 September 2011 for maintained schools in Wales and maintained nursery schools in Wales; and

(b) 1 September 2012 for establishments in Wales where nursery education is provided under the arrangements mentioned in section 98(2)(b) of the 2002 Act at which the foundation phase is taught.

(**1**) 2002 c.32. Subsection (2) of section 108 was amended by section 21(1) and (7)(a) of the Education (Wales) Measure 2009 (nawm 5). Subsection (6) of section 108 was amended by S.I. 2010/1158 and subsection (11) was amended by paragraphs 11 to 13 of the Schedule to the Learning and Skills (Wales) Measure 2009 (nawm 1).

(**2**) The functions of the Secretary of State under those sections were transferred to the Welsh Ministers by paragraph 30 of Schedule 11 to the Government of Wales Act 2006 (c.32).

Interpretation

2. In this Order—

"the 2002 Act" ("*Deddf 2000*") means the Education Act 2002;

"the assessment document" ("*y ddogfen asesu*") means the "Foundation Phase child development assessment profile Record Form" document published by the Welsh Ministers in May 2011;

"developmental areas" ("*meysydd datblygiadol*") means the following developmental areas set out in the profile document—

(i) personal, social and emotional;

(ii) speaking and listening;

(iii) reading and writing;

(iv) sort, order and number;

(v) approach to learning, thinking and reasoning; and

(vi) physical;

"foundation phase assessment" ("*asesiad cyfnod sylfaen*") means an assessment by a practitioner of a pupil's attainment based upon the practitioner's observation, including an assessment of the child's level of attainment in relation to the developmental areas;

"foundation phase setting" ("*lleoliad cyfnod sylfaen*") means a maintained school, a maintained nursery school or an establishment where nursery education is provided under the arrangements mentioned in section 98(2)(b) of the 2002 Act and at which the foundation phase is taught;

"practitioner" ("*addysgwr*") means any person who teaches the foundation phase in a foundation phase setting;

"the profile document" ("*y ddogfen proffil*") means the "Foundation Phase child development assessment profile"(**1**) published by the Welsh Ministers in May 2011;

"proprietor" ("*perchennog*") means—

(a) where the foundation phase setting is a maintained school or a maintained nursery school, the governing body of that school; and

(b) in relation to any other foundation phase setting, the person or body responsible for the management of the foundation phase setting;

"relevant local authority" ("*awdurdod lleol perthnasol*") means the local authority in Wales by which a foundation phase setting is maintained or funded;

(**1**) ISBN numbers 978 0 7504 6158 0 and 978 0 7504 6159 7.

"responsible person" ("*person cyfrifol*") means the head teacher of a maintained school or maintained nursery school or the person responsible for the provision of nursery education in the foundation phase setting under the arrangements mentioned in section 98(2)(b) of the 2002 Act;

"unique pupil number" ("*rhif unigryw'r disgybl*") means a combination of numbers allocated to a pupil by use of a formula determined by the Welsh Ministers and are particular to that pupil; and

"working day" ("*diwrnod gwaith*") means any day other than a Saturday, Sunday or a day which is a bank holiday within the meaning of section 1 of the Banking and Financial Dealings Act 1971(**1**).

Foundation phase assessment

3.—(1) The responsible person must make arrangements for a foundation phase assessment to be carried out by a practitioner in relation to each pupil in the foundation phase (subject to paragraph (2)).

(2) The duty in paragraph (1) does not apply in relation to a pupil who has been assessed in accordance with the Education (Baseline Assessment) (Wales) Regulations 1999(**2**).

(3) The purpose of the assessment is to determine the pupil's level of attainment in relation to each of the developmental areas.

(4) The results of the assessment must be recorded by the practitioner in an assessment document and a record of attainment.

(5) The record of attainment must consist of the results of the foundation phase assessment together with a brief statement by the practitioner of the pupil's level of attainment in relation to the developmental areas.

Timing of assessment

4.—(1) Where a pupil entered the foundation phase after the coming into force of this Order, the foundation phase assessment must be completed—

(a) before the end of 30 working days after the pupil first enters the foundation phase; or

(b) as soon as reasonably practicable, if exceptionally and for reasons outside the control of the responsible person, the assessment cannot be completed within the period defined in sub-paragraph (a).

(2) Where a pupil first entered the foundation phase before the coming into force of this Order, the

(**1**) 1971 c.80.

(**2**) S.I. 1999/1188 as amended by S.I. 2010/1142 (W.101).

foundation phase assessment for that pupil must be completed as soon as reasonably practicable.

Supplementary powers of the Welsh Ministers

5. The Welsh Ministers may make such provision giving full effect to or otherwise supplementing the provisions of this Order (other than provision conferring or imposing functions as mentioned in section 108(6) of the 2002 Act) as appears to them to be expedient.

Duties of the proprietor

6. The proprietor of a foundation phase setting has the duties set out in Part 1 of the Schedule to this Order.

Duties of responsible persons

7. The responsible person of a foundation phase setting has the duties set out in Part 2 of the Schedule to this Order.

Duties of relevant local authorities

8. Every relevant local authority has the duties set out in Part 3 of the Schedule to this Order.

Leighton Andrews

Minister for Education and Skills, one of the Welsh Ministers.

29 July 2011

SCHEDULE

Articles 6, 7 and 8

Duties in relation to assessments

Part 1

Duties of proprietors

1. In so far as duties in connection with assessments carried out in accordance with articles 3 and 4 are conferred or imposed on the responsible person, the proprietor must exercise that person's functions generally with a view to securing that any requirements imposed upon the responsible person by this Order are complied with.

Part 2

Duties of responsible persons

2. The responsible person must provide to the parent of every pupil in relation to whom a foundation phase assessment has been carried out at that foundation phase setting—

(a) a copy of the record of attainment; and

(b) where the parent requests it, a copy of the assessment document.

3. The responsible person must notify the relevant local authority in writing of—

(a) in respect of each pupil in the foundation phase setting who is assessed in accordance with articles 3 and 4, that the foundation phase assessment has been carried out and the results of that assessment; and

(b) in respect of each pupil in the foundation phase setting for whom a foundation phase assessment in accordance with articles 3 and 4 has not been carried out that, that the assessment has not been carried out and the reason for its not having been carried out.

4.—(1) This paragraph applies where a pupil who has been assessed in accordance with articles 3 and 4 ceases to attend one foundation phase setting ("the old foundation phase setting") and starts to attend another foundation phase setting ("the new foundation phase setting").

(2) The responsible person of the new foundation phase setting must notify the responsible person of the old foundation phase setting in writing that the pupil has ceased to attend the old foundation phase setting, and must give the address of the new foundation phase setting.

(3) On receipt of the notification, the responsible person of the old foundation phase setting must notify the responsible person of the new foundation phase setting of the following matters in writing—

(a) the results of any foundation phase assessment carried out in relation to the pupil in the old foundation phase setting in accordance with articles 3 and 4; or

(b) if no foundation phase assessment was carried out in relation to the pupil in the old foundation phase setting in accordance with those articles, the reason why no such assessment was carried out.

5.—(1) A notification required by paragraph 3 must be given no later than 10 working days after the date the assessment required by articles 3 and 4 is carried out.

(2) A notification required by paragraph 4(2) must be given no later than 15 working days after the pupil starts to attend the new foundation phase setting.

(3) A notification required by paragraph 4(3) must be given no later than 15 working days after notification is received from the new foundation phase setting.

(4) Any notification that is not given in accordance with the relevant requirements in sub-paragraphs (1), (2) or (3) must be given as soon as reasonably practicable afterwards.

6. A notification required by paragraph 3(a) or by paragraph 4(3)(a) must contain the following information in respect of the assessment to which it relates—

(a) the name and address of the foundation phase setting; and

(b) the number of the school (where applicable).

7. A notification required by paragraph 3(a) or paragraph 4(3)(a) must contain the following information relating to the pupil to whom it relates—

(a) first name;

(b) further name or names (if applicable);

(c) surname;

(d) unique pupil number (if known);

(e) sex;

(f) date of birth;

(g) the month and year of the assessment;

(h) the results of the foundation phase assessment carried out in accordance with articles 3 and 4 in each of the developmental areas (but such information must not include a copy of the assessment document); and

(i) the date the pupil first entered the foundation phase.

8.—(1) This paragraph applies where a responsible person is required to give a notification under paragraph 3(b) or paragraph 4(3)(b) that a foundation phase assessment has not been carried out in respect of a pupil.

(2) If the responsible person has been notified that a foundation phase assessment has been carried out in respect of a pupil at a previous foundation phase setting, the responsible person must include a copy of that earlier notification unless sub-paragraph (3) applies.

(3) This sub-paragraph applies only where—

(a) the notification is required by paragraph 3(b), and

(b) the foundation phase setting in relation to which the notification is required is,, and at the time of the assessment of the pupil the previous foundation phase setting was, a foundation phase setting maintained or funded by the same local authority.

9.—(1) The responsible person must offer to the parent of a pupil in relation to whom an assessment has been carried out at the foundation phase setting a reasonable opportunity for the parent to discuss the results of the assessment with a practitioner at the foundation phase setting.

(2) The offer must be made before the end of the school term in which the foundation phase assessment was carried out and the responsible person must secure that any resulting discussion takes place during that term or as soon as is reasonably practicable after the end of that term.

Part 3

Duties of relevant local authorities

10. Every relevant local authority must receive and keep the notifications made to them under Parts 1 and 2 of this Schedule.

11. Within 14 working days of receiving a request in writing from the Welsh Ministers, a relevant local authority must provide to the Welsh Ministers, in machine readable format, through a secure internet website provided for that purpose by the Welsh Ministers, such of the notifications made to it under Parts 1 and 2 of this Schedule as the Welsh Ministers request.

Explanatory Memorandum to the Education (National Curriculum) (Assessment Arrangements on Entry to the Foundation Phase)(Wales) Order 2011

This Explanatory Memorandum has been prepared by Department for Education and Skills and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.

Minister's Declaration

In my view this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Education (National Curriculum)(Assessment Arrangements on Entry to the Foundation Phase)(Wales) Order 2011.

I am satisfied that the benefits outweigh any costs.

Leighton Andrews AM, Minister for Education and Skills
29 July 2011

Description

This order will apply to all practitioners/teachers and head teachers of maintained schools that are delivering the Foundation Phase from September 2011 and to leaders of funded non-maintained settings from September 2012.

This order will require all children to be assessed, against six Developmental Areas when they first enter the Foundation Phase. Those areas are:

- Personal, Social and Emotional;
- Speaking and Listening;
- Reading and Writing;
- Sort, Order and Number;
- Approach to Learning, Thinking and Reasoning; and
- Physical.

Although the prime purpose will be to inform each child's developmental needs around which their learning programmes can be prepared; the information will also be collected centrally to provide a national picture of each cohort's basic skills and developmental needs.

Matters of special interest to the relevant Assembly Committee

There are no matters of special interest raised by the statutory instrument.

Legislative Background

The Order is made in exercise of the power conferred upon Welsh Ministers by sections 108(2)(b)(iii), (5), (6) and (9) and 210 of the Education Act 2002.

The Statutory Instrument is to be made using the negative resolution procedure.

Purpose and intended effect of the legislation

This order introduces assessment arrangements appropriate to the new Foundation Phase curriculum which will be fully implemented from the start of the 2011/12 school year.

The Education (Baseline Assessment) (Wales) Regulations 1999 currently contain the assessment arrangements for the start of the first key stage. However, all references to the first key stage will be removed from primary legislation to coincide with the Foundation Phase being fully rolled out on 1 September 2011. The Foundation Phase will of course replace the first key stage. These regulations will therefore become redundant and will have no legal effect. The enabling power under which those regulations were made has in any event been repealed, albeit that the repeal has not been

commenced. It is our intention to commence this repeal on 1 September 2011.

A new Child Development Assessment Profile has been developed for use with the Foundation Phase and will be used by all schools and funded non-maintained settings that are delivering the curriculum for 3 to 7-year-olds. The introduction of the Profile will ensure that all learners will be assessed against the same developmental areas when they enter the Foundation Phase. The Order will require schools and funded non-maintained settings to use the Profile.

We intend to collect the results of the assessments centrally to provide a national picture of each cohort's basic skills and developmental needs. Without the introduction of this new Order and the single national assessment profile it would not be possible to collect any meaningful data.

Consultation

There is no statutory requirement to consult prior to making the Order. Officials have and will continue to engage with stakeholder on the development of supporting guidance.

Regulatory Impact Assessment

a) Options

Option 1: Do nothing

If the Education (National Curriculum) (Assessment Arrangements on Entry to the Foundation Phase) (Wales) Order 2011 is not made, the result would be that:

- there will be no consistency or standardisation on how children's developmental needs are assessed on-entry to the Foundation Phase in order to take their learning programmes forward;
- the funded non-maintained settings would continue to have no statutory duty to undertake any assessment of children as they enter the Foundation Phase;
- schools would to be required to administer assessment arrangements which are not fit for purpose.

Option 2: Introduce new Order

If the Education (National Curriculum) Assessment Arrangements on Entry to the Foundation Phase) (Wales) Order 2011 is made, the result will be that:

- all children will be statutorily assessed on entry to the Foundation Phase (whether in a funded-non maintained setting or in a maintained setting) against the same developmental areas;
- we will be able to introduce the Child Development Assessment Profile which has been developed to specifically address the assessment requirements of the Foundation Phase and to replace the current schemes which are not fit for purpose;
- the introduction of a single national assessment profile will enable meaningful data to be collected centrally which will provide a national "baseline" of children as they enter the Foundation Phase.

b) Costs and Benefits

Option 1: Do nothing

There are no discernible or specific benefits or costs from not introducing the Order.

If it is not made, schools will continue to be required to administer a baseline scheme that is not fit for purpose or relevant to the Foundation Phase.

Funded non-maintained settings would not be required to undertake a statutory assessment of their children on entry to the Foundation Phase and potentially not providing the appropriate developmental learning programmes for all children.

Option 2: Introduce Order

A number of benefits will accrue from implementation of this Order;

- there will be a uniform assessment procedure in place for all providers delivering the Foundation Phase whether in a funded non-maintained setting or a maintained school;

- children's developmental needs will be assessed on-entry to the Foundation Phase against the same developmental areas in order to take their learning programmes forward;

- the introduction of a single national assessment profile will enable meaningful data to be collected centrally which will provide a national "baseline" of children as they enter the Foundation Phase.

This is the most effective option which fully addresses the policy aims and objectives of the Foundation Phase – the delivery of a holistic development curriculum which aims to give all children the best possible start in life and meet the diverse needs of children including those who are at an earlier stage of development and those who are more able.

The costs of providing these rich experiences for children of 3 to 7- years is directly supported by a specific grant to local authorities to support the implementation of the Foundation Phase and the associated workforce development and training. The introduction of the Profile and the on-entry assessment requirements will be accommodated and funded by this specific grant. The costs of £60,000 of producing the Profile and the associated guidance will be met from DfES publications budget.

c) Competition Assessment

The Order will have no detrimental effect on competition.

d) Consultation

There is no statutory requirement to consult prior to making the Order. Officials have and will continue to engage with stakeholders on the development of supporting guidance.

e) Post implementation review

The effect of the Order and the introduction of the profile will form part of the full evaluation of the Foundation Phase which will commence during the Summer of 2011. That evaluation will consider the administrative arrangements for the on-entry assessment both in schools and non-maintained settings, the appropriateness of the Profile and the benefits that accrue to children as they move through the Foundation Phase and into Key Stage 2.

Constitutional and Legislative Affairs Committee

(CLA(4)-05-11)

CLA32

Constitutional and Legislative Affairs Committee Draft Report

Title: The National Curriculum (End of Foundation Phase Assessment Arrangements and Revocation of the First Key Stage Assessment Arrangements) (Wales) Order 2011

Procedure: Negative

Under section 108(2)(b)(iii) of the Education Act 2002 the Welsh Ministers may specify by order, such assessment arrangements as they consider appropriate for the foundation phase. This Order provides for pupils to be assessed in the final year of the foundation phase by a teacher, and sets out the purpose of such assessments.

Technical Scrutiny

No points are identified for reporting under Standing Order 21.2 in respect of this instrument.

Merits Scrutiny

The Assembly is invited to pay special attention under Standing Order 21.3(ii) in respect of this instrument - (ii) that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Assembly.

Article 5 contains the following unusual provision –
"The Welsh Ministers may make such provision giving full effect to or otherwise supplementing the provisions of this Order (other than provision conferring or imposing functions as mentioned in section 108(6) of the 2002 Act) as appears to them to be expedient."

The enabling power is section 108(11) of the Education Act 2002 which reads as follows-
"An order under subsection (2)(b)(iii) or (3)(c) may authorise the making of such provisions giving full effect to or otherwise supplementing the provisions made by the order (other than provision conferring or imposing functions as mentioned in subsection (6) or (7)) as appear to the Welsh Ministers to be expedient; and **any provisions made under such an order shall, on being published as specified in the order, have effect for the purposes of this Part as if made by the order."**

Thus Welsh Ministers will be able to make further provision to give full effect to or supplement the provisions of the current Order without having to make an amending order that would be subject to Assembly scrutiny. Nevertheless, it is a power that has been used on a number of occasions by the Assembly (to which the power was originally granted) and by Welsh Ministers (to whom the power was transferred following the Government of Wales Act 2006.

This is not an unusual or unexpected use of the power in section 108(11), which would be reported under Standing Order 21.2(ii), but a power that is itself unusual, and therefore of importance.

Legal Advisers

Constitutional and Legislative Affairs Committee

August 2011

WELSH STATUTORY INSTRUMENTS

2011 No. 1948 (W. 214)

EDUCATION, WALES

The National Curriculum (End of Foundation Phase Assessment Arrangements and Revocation of the First Key Stage Assessment Arrangements) (Wales) Order 2011

EXPLANATORY NOTE

(This note is not part of the Order)

Under section 108(2)(b)(iii) of the Education Act 2002 the Welsh Ministers may specify by order, such assessment arrangements as they consider appropriate for the foundation phase.

This Order provides for pupils to be assessed in the final year of the foundation phase by a teacher, and sets out the purpose of such assessments (articles 3 and 4). This Order also enables the Welsh Ministers to make provision giving effect to or otherwise supplementing the provisions made by the Order (article 5).

In addition this Order also provides for the repeal of the assessment arrangements for the first key stage set out in the Education (National Curriculum) (Assessment Arrangements for English, Welsh, Mathematics and Science) (Key Stage 1) (Wales) Order 2002 (article 1(4)).

WELSH STATUTORY INSTRUMENTS

2011 No. 1948 (W. 214)

EDUCATION, WALES

The National Curriculum (End of Foundation Phase Assessment Arrangements and Revocation of the First Key Stage Assessment Arrangements) (Wales) Order 2011

Made *29 July 2011*

Laid before the National Assembly for Wales 5 August 2011

Coming into force *1 September 2011*

The Welsh Ministers in exercise of the powers conferred on them by sections 108(2)(b)(iii), (3)(c), and (5) to (11) and 210 of the Education Act 2002(**1**) make the following Order:

Title, commencement, application and revocation

1.—(1) The title of this Order is the National Curriculum (End of Foundation Phase Assessment Arrangements and Repeal of the First Key Stage Assessment Arrangements) (Wales) Order 2011 and it comes into force on 1 September 2011.

(2) The provisions of this Order apply for the purposes of ascertaining the achievements in the relevant areas of learning of pupils who are in the final year of the foundation phase.

(3) This Order applies in relation to maintained schools in Wales.

(4) The Education (National Curriculum) (Assessment Arrangements for English, Welsh,

(**1**) 2002 c.32. Sub-section (2) of section 108 was amended by section 21(1) and (7)(a) of the Education (Wales) Measure 2009 (nawm 5). Sub-section (6) of section 108 was amended by S.I. 2010/1158 and sub-section (11) was amended by paragraphs 11 to 13 of the Schedule to the Learning and Skills (Wales) Measure 2009 (nawm 1).

Mathematics and Science) (Key Stage 1) (Wales) Order 2002(**1**) is revoked.

Interpretation

2. In this Order—

"areas of learning" ("*meysydd dysgu*") means the areas of learning set out in the document;

"the document" ("*y ddogfen*") means the document entitled "Foundation Phase Framework for Children's Learning for 3-7 year olds in Wales"(**2**) published by the Welsh Ministers and specifying the areas of learning, and the outcomes and educational programmes in relation to those areas of learning;

"foundation phase outcomes" ("*deilliannau cyfnod sylfaen*") means the outcomes set out in the document;"

"relevant areas of learning" ("*meysydd dysgu perthnasol*") means—

(i) mathematical development,

(ii) personal and social development, well-being and cultural diversity, and

(iii) language, literacy and communication skills;

"summer term" ("*tymor yr haf*") means the final term in a school year; and

"working day" ("*diwrnod gwaith*") means any day other than a Saturday, Sunday or a day which is a bank holiday within the meaning of section 1 of the Banking and Financial Dealings Act 1971(**3**).

Teacher assessment - general

3.—(1) The head teacher must make arrangements for each pupil to be assessed by a teacher in each relevant area of learning in accordance with the provisions of this article and for a written record of the results to be made by the teacher.

(2) The pupil shall be assessed and a written record of the results made by the teacher not later than twenty working days before the end of the summer term.

Teacher assessment – relevant areas of learning

4.—(1) The purpose of the assessment is to determine the foundation phase outcome attained by the pupil in each relevant area of learning.

(**1**) S.I. 2002/45 (W.4).
(**2**) ISBN number 978 0 7504 4429 3.
(**3**) 1971 c.80.

(2) The record of the results must consist of a brief statement of each foundation phase outcome attained by the pupil in each relevant area of learning.

Supplementary powers of the Welsh Ministers

5. The Welsh Ministers may make such provisions giving full effect to or otherwise supplementing the provisions made by this Order (other than provisions conferring or imposing functions as mentioned in section 108(6) of the Education Act 2002) as appear to them to be expedient.

Leighton Andrews
Minister for Education and Skills, one of the Welsh Ministers.

29 July 2011

Explanatory Memorandum to the Education (National Curriculum) (End of Foundation Phase Assessment Arrangements and Revocation of the First Key Stage Assessment Arrangements) (Wales) Order 2011

This Explanatory Memorandum has been prepared by Department for Education and Skills and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.

Minister's Declaration

In my view this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Education (National Curriculum) (End of Foundation Phase Assessment Arrangements and Revocation of the First Key Stage Assessment Arrangements) (Wales) Order 2011.

I am satisfied that the benefits outweigh any costs.

Name of Minister: Leighton Andrews AM, Minister for Education and Skills
29 July 2011

Description

This order will apply to practitioners/teachers and head teachers of maintained schools that are delivering the Foundation Phase and who are responsible for undertaking assessments when a child is at the end of the final year of the Foundation Phase.

The provisions of this order apply for the purposes of ascertaining the attainment in three of the Foundation Phase Areas of Learning. Those areas are:

- Personal and Social Development, Well-being and Cultural Diversity;
- Language, Literacy and Communication Skills in either Welsh or English;
- Mathematical Development.

The Order provides for pupils to be assessed by a teacher at the end of the Foundation Phase and sets out the purpose for such assessments. The Order also provides for Welsh Ministers to undertake an evaluation of the assessment arrangements.

Matters of special interest to the relevant Assembly Committee

There are no matters of special interest raised by the statutory instrument.

Legislative Background

The order is made in exercise of the power conferred upon Welsh Ministers by sections 108(2)(b)(iii), (5), (6), (9) and (11) and 108(3)(c), (7) to (11) and 210 of the Education Act 2002.

The Statutory Instrument is to be made using the negative resolution procedure.

Purpose and intended effect of the legislation

This order puts in place assessment arrangements which are appropriate to the new Foundation Phase curriculum which will be fully implemented from the start of the 2011/12 school year.

The current order which, will be replaced, sets out the assessment arrangements which were designed for the first Key Stage of the National Curriculum and which has been replaced by the Foundation Phase

The effect of the proposed changes to the assessment arrangement is that the existing Order covering end of the first Key Stage - the Education (National Curriculum) Assessment Arrangements for English, Welsh, Mathematics and Science) (Key Stage 1) (Wales) Order 2002 - will be repealed and replaced with the Education (National Curriculum) (End of Foundation Phase Assessment Arrangements and Revocation of the First Key Stage Assessment Arrangements) (Wales) Order 2011.

The proposed end-of-phase assessment arrangements mirror those already in place for the end of First Key Stage. Currently the core subjects of English or Welsh, mathematics and science are statutorily assessed and the results collected centrally as part of the National Data Collection exercise. The results are included in the annual report to parents along with their child's progress in all other curriculum subjects.

In effect the three Areas of Learning replace the National Curriculum core subjects which are statutorily assessed at the end of the First Key Stage. As with the current arrangements for the core subjects, the end-of-phase results will be collected centrally and included in the report to parents, as will the other Areas of Learning that make up the Foundation Phase.

Consultation

There is no statutory requirement to consult prior to amending the order. Officials will, however, engage with stakeholder on the development of supporting guidance.

Regulatory Impact Assessment

a) Options

Option 1: Do nothing

If the Education (National Curriculum) (End of Foundation Phase Assessment Arrangements and Revocation of the First Key Stage Assessment Arrangements) (Wales) Order 2011 is not made, the result would be that:

- schools would continue to be required to administer National Curriculum assessment arrangements against the First Key Stage of the National Curriculum which has been replaced by the Foundation Phase. The current arrangements would therefore not be fit for purpose.

Option 2: Introduce new order

If the Education (National Curriculum) (End of Foundation Phase Assessment Arrangements and Revocation of the First Key Stage Assessment Arrangements) (Wales) Order 2011 is made, the result will be that:

- the existing regulations covering end of the First Key Stage - the Education (National Curriculum) Assessment Arrangements for English, Welsh, Mathematics and Science) (Key Stage 1) (Wales) Order 2002 - will be repealed and replaced with the Education (National Curriculum) (End of Foundation Phase Assessment Arrangements and Revocation of the First Key Stage Assessment Arrangements) (Wales) Order 2011;

- all pupils will be statutorily assessed by a teacher at the end of the Foundation Phase against three key "Areas of Learning" covering: Personal and Social Development, Wellbeing and Cultural Diversity; Language Literacy and Communication Skills; and Mathematical Development.

b) Costs and Benefits

Option 1: Do nothing

There are no discernible or specific costs or benefits from not introducing the Order. If it is not made, schools will continue to be required to administer assessment arrangements that are not fit for purpose or relevant to the Foundation Phase.

Option 2: Introduce Order

The benefit from implementing this Order will be that the statutory requirements placed on schools to assess children will be appropriate and relevant to the Foundation Phase. Therefore this is the only realistic option if we are to fully implement all aspects of the Foundation Phase curriculum and its associated assessment arrangements.

There are no direct cost implications with the introduction of this order as it simply replaces current Key Stage 1 requirements with equivalent ones that are appropriate to the Foundation Phase.

c) Consultation

There is no statutory requirement to consult prior to amending the Order. However, officials have, and will continue to engage with stakeholder on the development of supporting guidance.

d) Post implementation review

The Foundation Phase will be the subject of a full evaluation which will commence during the summer of 2011. That evaluation will consider the administrative and assessment arrangements for the Foundation Phase, and the benefits that accrue to children as they move through the Foundation Phase and into the Second Key Stage.

Constitutional and Legislative Affairs Committee Draft Report

CLA36

Title: The Wildlife and Countryside Act 1981 (Variation of Schedules 5 and 8) (England and Wales) Order 2011

Procedure: **Negative**

This draft Order will apply to both England and Wales.

This Order deals with the protection of specified plants and animals under the Wildlife and Countryside Act 1981 ("the Act"). The Order adds four new animals to Schedule 5 of the Act and removes two existing entries from protection. The Order also extends protection afforded to two animals and decreases the level of protection afforded to two animals. The Order also adds two new plant entries to Schedule 8 and removes four existing plant entries. Schedule 5 lists animals protected under section 9 of the Act. Schedule 8 lists plants protected under section 13 of the Act.

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. This Order could have been made in Wales by Welsh Ministers and therefore bilingually.

   [21.3((ii) that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Assembly].

Legal Advisers
Constitutional and Legislative Affairs Committee

August 2011

Government's response

The Government has responded as follows:

The Wildlife and Countryside Act 1981 (Variation of Schedules 5 and 8) (England and Wales) Order 2011

Technical Response

This composite Order amends Schedules 5 and 8 of the Wildlife and Countryside Act 1981.The Order adds four new animals to Schedule 5 and removes two existing entries from protection. The Order also extends the protection to two animals and decreases the level of protection afforded to two animals. The Order also adds two new plant entries to Schedule 8 and removes 4 existing plant entries. Schedule 5 lists animals protected under section 9 of the Wildlife and Countryside Act and Schedule 8 lists plants protected under section 13 of the Wildlife and Countryside Act.

Merits Response

The composite Order was made following representations by the GB conservation bodies through the Joint Nature Conservation Committee. This Order applies to England and Wales and accordingly, it is not considered reasonably practicable for this Instrument to be made bilingually."

STATUTORY INSTRUMENTS

2011 No. 2015

WILDLIFE, ENGLAND AND WALES

The Wildlife and Countryside Act 1981 (Variation of Schedules 5 and 8) (England and Wales) Order 2011

Made - - - -	*11th August 2011*
Laid before Parliament	*22nd August 2011*
Laid before the National Assembly for Wales	*22nd August 2011*
Coming into force - -	*1st October 2011*

The Secretary of State, in relation to England, and the Welsh Ministers, in relation to Wales—

(a) have received a representation made to them by the GB conservation bodies acting through the Joint Nature Conservation Committee in accordance with Part 2 of the Natural Environment and Rural Communities Act 2006(**a**);

(b) in accordance with section 26(4)(a) of the Wildlife and Countryside Act 1981(**b**), have given any local authority affected and any other person affected an opportunity to submit objections or representations with respect to the subject matter of this Order;

(c) are of the opinion that the animals and plants referred to in articles 2(2), (5), (6) and 3(2) of this Order are in danger of extinction in Great Britain or likely to become so endangered unless conservation measures are taken; and

(d) are of the opinion that the animals and plants referred to in articles 2(3) and 3(3) of this Order are no longer so endangered or likely to become so endangered.

In exercise of the powers conferred on them by section 22(3) of the Wildlife and Countryside Act 1981(**c**), the Secretary of State and the Welsh Ministers make the following Order.

Citation, commencement and extent

1. This Order—

(a) may be cited as the Wildlife and Countryside Act 1981 (Variation of Schedules 5 and 8) (England and Wales) Order 2011;

(**a**) 2006 c. 16.

(**b**) 1981 c. 69. The functions of the Secretary of State under section 26(4), so far as exercisable in relation to Wales, were transferred to the National Assembly for Wales by article 2 of, and Schedule 1 to, the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672), and were subsequently transferred to the Welsh Ministers by section 162 of, and paragraph 30 of Schedule 11 to, the Government of Wales Act 2006 (c. 32).

(**c**) Section 22(3) was amended by paragraph 11(5) of Schedule 9 to the Environmental Protection Act 1990 (c. 43), and paragraph 74(1) and (2) of Schedule 11, and Schedule 12, to the Natural Environment and Rural Communities Act 2006. The functions of the Secretary of State under section 22(3), so far as exercisable in relation to Wales, were transferred to the National Assembly for Wales by article 2 of, and Schedule 1 to, the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672), and were subsequently transferred to the Welsh Ministers by section 162 of, and paragraph 30 of Schedule 11 to, the Government of Wales Act 2006.

(b) comes into force on 1st October 2011; and

(c) extends to England and Wales only(**a**).

Variation of Schedule 5

2.—(1) Schedule 5 to the Wildlife and Countryside Act 1981(**b**) (animals which are protected) is amended as follows.

(2) Insert, at the appropriate place in each case, the animals listed in Schedule 1.

(3) Omit the animals listed in Schedule 2.

(4) In the entry relating to "Lagoon Worm, Tentacled", in the first column, after "Tentacled" insert "(in respect of section 9(4)(a) only)".

(5) In the entry relating to "Shad, Twaite", in the first column, for "section 9(4)(a)" substitute "section 9(1) and (4)(a)".

(6) In the entry relating to "Shark, Angel", in the first column, for the words from "(in respect of" to "waters, only)" substitute "(in respect of section 9(1), (2) and (5) only)".

(7) In the entry relating to "Shrimp, Lagoon Sand", in the first column, after "Sand" insert "(in respect of section 9(4)(a) only)".

(8) Omit Note 2.

Variation of Schedule 8

3.—(1) Schedule 8 to the Wildlife and Countryside Act 1981(**c**) (plants which are protected) is amended as follows.

(2) Insert, at the appropriate place in each case, the plants listed in Schedule 3.

(3) Omit the plants listed in Schedule 4.

Richard Benyon
Parliamentary Under Secretary of State
Department for Environment, Food and Rural Affairs

11th August 2011

John Griffiths
Minister for Environment and Sustainable Development,
one of the Welsh Ministers

9th August 2011

SCHEDULE 1

Article 2(2)

Animals Added to Schedule 5 to the Act

Common name	*Scientific name*
Frog, Pool (Northern Clade) (in respect of section 9(4)(b) and (c)(**d**) only and with respect to England only)	Pelophylax lessonae
Moth, Talisker Burnet (in respect of section	Zygaena lonicerae subspecies jocelynae

(**a**) By virtue of section 27(5) of the Wildlife and Countryside Act 1981, Part I of that Act extends to the territorial waters of Great Britain, and for the purposes of that Part England and Wales are to be taken to include the adjacent territorial waters.

(**b**) As previously varied in relation to England and Wales by S.I. 1988/288, 1989/906, 1991/367, 1992/2350, 1998/878, 2007/1843, 2008/431, 2008/1927, 2008/2172.

(**c**) As previously varied in relation to England and Wales by S.I. 1988/288, 1992/2350, 1998/878, 2007/1843.

(**d**) Section 9(4) was substituted by S.I. 2007/1843, regulation 7(1) and (4).

9(5) only)	
Moth, Slender Scotch Burnet (in respect of section 9(5) only)	Zygaena loti subspecies scotica
Skate, White (in respect of section 9(1), (2) and (5) only)	Rostroraja alba

SCHEDULE 2

Article 2(3)

Animals Removed from Schedule 5 to the Act

Common name	*Scientific name*
Moth, Essex Emerald	Thetidia smaragdaria
Lagoon Snail	Paludinella littorina

SCHEDULE 3

Article 3(2)

Plants Added to Schedule 8 to the Act

Common name	*Scientific name*
Rock Nail	Calicium corynellum
Tree Lungwort (in respect of section 13(2) only)	Lobaria pulmonaria

SCHEDULE 4

Article 3(3)

Plants Removed from Schedule 8 to the Act

Common name	*Scientific name*
Helleborine, Young's	Epipactis youngiana
Lecanactis, Churchyard	Lecanactis hemisphaerica
Moss, Dune Thread	Bryum mamillatum
Threadmoss, Long-leaved	Bryum neodamense

EXPLANATORY NOTE

(This note is not part of the Order)

This Order, which extends to England and Wales, varies Schedules 5 and 8 to the Wildlife and Countryside Act 1981. Schedule 5 lists animals protected under section 9 of that Act, and Schedule 8 lists plants protected under section 13 of that Act.

Article 2 amends Schedule 5 (animals which are protected) by—

(a) adding four new animals and conferring limited protection on these animals;

(b) extending the protection afforded to two animals, and decreasing the level of protection afforded to two animals; and

(c) removing two existing entries from protection.

The amendment relating to "Shark, Angel" removes the exclusion from the protection afforded to the Angel Shark in respect of the excluded waters (the part of the territorial waters adjacent to England and Wales which is more than 6 nautical miles from the baselines from which the breadth of those waters are measured), and thus extends the protection afforded to the Angel Shark throughout the territorial waters adjacent to England and Wales.

Article 3 amends Schedule 8 (plants which are protected) by—

(a) adding two new plant entries, conferring general protection on one plant type and limited protection on the other; and

(b) removing four existing entries from protection.

A full impact assessment of the effect that this instrument will have on the costs of business, the voluntary sector and the public sector is available from http://www.defra.gov.uk/corporate/consult/wildlife-act/100127-wildlife-act-condoc-ia.pdf.

EXPLANATORY MEMORANDUM TO

THE WILDLIFE AND COUNTRYSIDE ACT 1981 (VARIATION OF SCHEDULES 5 AND 8) (ENGLAND AND WALES) ORDER 2011

2011 No. 2015

1. This explanatory memorandum has been prepared by the Department for Environment Food and Rural Affairs and the Welsh Government. It is laid before Parliament by Command of Her Majesty. It is also laid before the National Assembly for Wales.

2. **Purpose of the instrument**

2.1 The Wildlife and Countryside Act 1981 (Variation of Schedules 5 and 8) (England and Wales) Order 2011 adds four new animals to Schedule 5 of the Wildlife and Countryside Act 1981 (WCA) and removes two existing entries from protection. The Order also extends the protection afforded to two animals and decreases the level of protection afforded to two animals. The Order also adds two new plant entries to Schedule 8 and removes four existing plant entries. Schedule 5 lists animals protected under section 9 of the Act. Schedule 8 lists plants protected under section 13 of the WCA. These Schedules are amended under section 22 of the Act.

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

3.1 None

Matters of special interest to the Constitutional and Legislative Affairs Committee

3.2 This Order is made following representations by the GB Conservation bodies through the Joint Nature Conservation Committee. It is made on a composite basis to ensure consistency of application between England and Wales.

4. **Legislative Context**

4.1 The WCA protects all wild birds, certain wild animals and certain wild plants. Under Section 9 species listed in Schedule 5 to the Act are afforded certain protection. Depending on the protection detailed it can be an offence amongst other things, to: intentionally kill, injure or take any such wild animal, to have any such wild animal in one's possession or control, intentionally to damage or destroy any structure or place used for shelter or protection, or to sell or expose for sale any such wild animal (and in certain circumstances, things deriving from any such animal).

4.2 Section 13 affords particular protection to plants listed in Schedule 8, and makes it an offence, amongst other things, (a) intentionally to pick, uproot or destroy, or (b) sell or expose for sale, or have in one's possession for sale, any such wild plant.

4.3 Under Section 24 of the WCA the JNCC is required to review Schedules 5 and 8 every five years and to advise the Secretary of State and the Welsh Ministers whether, in the collective opinion of the conservation agencies, any animal or plant should be added to or removed from the Schedules.

4.4 The Secretary of State's and the Welsh Ministers' powers to vary the Schedules are set out in section 22 of the Act.

4.5 Part 1 of the WCA applies in relation to the territorial waters of Great Britain: 12 nautical miles from the baseline (usually the low water mark around the coast). The WCA does not apply in relation to the offshore marine area or international waters.

5. Territorial Extent and Application

5.1 This instrument applies to England and Wales, and is being made on a composite basis with the Welsh Ministers.

6. European Convention on Human Rights

6.1 Parliamentary Under Secretary of State Richard Benyon has made the following statement regarding Human Rights:

6.2 In my view the provisions of the Wildlife and Countryside Act 1981 are compatible with the Convention rights.

7. Policy background

7.1 Defra's new business plan, which was launched in November 2010, incorporates the Department's Structural Reform Plan which includes among its three key priority areas 'enhance the environment and biodiversity to improve quality of life'. The Welsh Government's *Living Wales* Programme initiated in September 2010 seeks to secure a more integrated approach to managing the natural environment to ensure that Wales has increasingly resilient and diverse ecosystems that deliver a range of social, environmental and economic benefits. The programme will deliver a new Natural Environment Framework that is compatible with the Welsh Government's Sustainable Development and biodiversity duties.

7.2 In keeping with both policy positions these amendments aim to promote the protection of vulnerable species and the protection the public's interest in relation to biodiversity. There is a variety of reasons as to why the existence of native species is being threatened. These include impacts from human activity, non-native species and climate change. Many native plants and animals have become extinct as a result of one or

more of the above impacts and more species are in danger of the same fate. The Wildlife and Countryside Act 1981 is one part of the strategic approach to the protection of endangered species. We use this to ensure that there is an appropriate legal protection. Where this is not appropriate or possible we have other measures we can use such as providing informed advice and guidance where necessary, encouraging cooperation and promoting best practice.

7.3 During 2008 the JNCC carried out a public consultation in which it sought views on the addition of species to, or removal of species from, Schedules 5 and 8 to the WCA. It also asked whether existing protections should be adjusted. Once the JNCC had summarised the responses to this consultation and evaluated these, it made recommendations to Defra and the Welsh Government in December 2008. After considering these recommendations, Defra and the Welsh Government published a public consultation in January 10 and took into account the responses from this exercise when making final decisions on amendments to Schedules 5 and 8 of the WCA.

8. Consultation outcome

Responses on the Marine Species

8.1 Generally, there was support for listing the proposed marine species for the following reasons:

A. There has been significant decline of the species in UK waters.
B. Protection would prohibit targeted fishing and protection from possession and trade.
C. Protection would require the return of any by-catch individuals to the sea (because possession would be an offence) and if done quickly, survival rates in these cases would be high.
D. Protection would prevent targeted recreational fishing.
E. Protection would positively progress the Species Action Plan targets for these species.

8.2 The overriding reason given for not supporting the listing of proposed marine species was that the species is/are already protected under the CFP, and if there were any change to the CFP Total Allowable Catch (TAC), UK fishermen would be disadvantaged.

Responses on other animal species

8.3 There was strong support for JNCC recommendations regarding the proposed scheduling of other animal species. For example, of the seven respondents who replied on the shad species, five agreed with JNCC's recommendation to increase protection of allis under 9(4)(c) and to increase protection for twaite under 9(1) and 9(4)(c) in England and Wales. Furthermore, all respondents who commented on the pool frog agreed with the JNCC recommendation to protect under 9(4)(b) and (c) for England only.

Plant species

8.4 There was strong support for JNCC recommendations regarding the proposed addition and removal of certain plant species. For example, all consultees who commented on the Long-leaved Thread-moss agreed with JNCC's recommendation to remove protection. Both respondents who commented on Tree Lungwort agreed with JNCC's recommendation to protect from sale under 13(2) only.

9. Guidance

9.1 Further information regarding amendments to Schedules 5 & 8 of the Wildlife and Countryside Act 1981 can be found on either the Defra website at: http://www.defra.gov.uk/wildlife-pets/wildlife-management/rare-exploited-species/ , or on the Joint Nature Conservation Committee website at: http://jncc.defra.gov.uk/default.aspx?page=4630 or the Welsh Government's website at: www.wales.gov.uk/environment .

10. Impact

10.1 The impact on business, charities or voluntary bodies is expected to be minimal. Groups whose trade may be affected by the protection of particular marine species include fishermen, collectors of species and Chinese medicine suppliers. Local authorities may also be affected in terms of higher insurance payments.

10.2 The impact on the public sector is expected to be negligible.

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

11. Regulating small business

11.1 The legislation applies to small business.

11.2 The Impact Assessment indicated that any costs to businesses would be negligible.

12. Monitoring & review

12.1 Section 24 of the Wildlife & Countryside Act 1981 requires the GB conservation bodies of Natural England, the Countryside Council for Wales and Scottish Natural Heritage, acting through the Joint Nature Conservation Committee (JNCC), to review Schedules 5 and 8 of the Act every five years and to recommend any changes to the Secretary of State in relation to England, and the Welsh Ministers in relation to Wales.

13. Contact

13.1 Matt Ashton at the Department for Environment, Food and Rural Affairs, tel: 0117 372 3611 or email: matthew.ashton@defra.gsi.gov.uk.

Title: **Review of Schedules 5 & 8 of the Wildlife and Countryside Act 1981**	**Impact Assessment (IA)**
Lead department or agency: Defra	**IA No:**
Other departments or agencies:	**Date: 31/01/2011**
	Stage: Final
	Source of intervention: Domestic
	Type of measure: Secondary legislation
	Contact for enquiries: Alison.elliott@defra.gsi.gov.uk

Summary: Intervention and Options

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

Plants and animals present in the wild face constant threats from human activity such as land-use changes, amateur and commercial collection, and both recreational and commercial fishing. These threats can impact significantly on species population numbers and, over time, even cause extinction if nothing is done to halt the decline. There are presently a number of species which research suggests are threatened or even critically endangered. It is important that government legislation is used to regulate human activities and prevent further species loss.

What are the policy objectives and the intended effects?

Protection for native species at risk due to population decline. Listing on Schedules 5 (animals) or 8 (plants) will make it an offence (depending on the protection detailed on a species by species basis) to kill, injure or take, possess or sell any specimen or destroy any structure or place used for shelter or protection; or to intentionally pick, uproot, possess, sell or destroy listed plants.

What policy options have been considered? Please justify preferred option (further details in Evidence Base)

The options considered were whether to provide legislative protection and amend or remove existing legislative protection for the detailed species or not. The preferred option has been to revise Schedules 5 and 8 of the Act as advised by the JNCC unless there is evidence that this is not the most appropriate/effective course of action. The following criteria have been applied in the decision making process: for marine species covered by the Common Fisheries Policy, the Wildlife and Countryside Act will only be used where it offers additional safeguards; is use of legislation the best approach and is the Wildlife and Countryside Act the most effective means of legislating; does the evidence support the decision or is there a need to be precautionary; and is the benefit of protection justified against the potential cost to businesses affected.

When will the policy be reviewed to establish its impact and the extent to which the policy objectives have been achieved?	It will be reviewed in 2013
Are there arrangements in place that will allow a systematic collection of monitoring information for future policy review?	Yes

<u>SELECT SIGNATORY Sign-off</u> For consultation stage Impact Assessments:

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible SELECT SIGNATORY:.. Date:....................................

URN 10/899 Ver. 1.0 04/10

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	Negligible		Negligible	**Negligible**

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

Overall costs and benefits of listing species are difficult to quantify. Collectors will be impacted by the protection afforded to the moth species as they will no longer be able to sell individuals or larvae of the species concerned. Given that the species concerned only have populations in the hundreds and larvae have been known to trade for £4 per fifteen this is not a huge market.

Churches and local authorities may be impacted by protection afforded to the Rock Nail. This is known on only a handful of sites so will involve a very small number of churches. They will potentially be be required to adopt less intensive land management practices and may – in circumstances where the species is known to be present - be required to carry out Environmental Impact Assessments and apply for licenses if they intend to carry out activities which could impact the species, for example repairs to gravestones that host them.

Chinese medicine suppliers could also be impacted if they intended to harvest tree lungwort (an ingredient for a medicine) in the UK. We believe this is currently imported from countries such as Bulgaria and sells for around £9 per kilo. If they wished to harvest it in this country they would need to apply for a licence to do so.

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

Although responses to the consultation did not raise any additional non-monetised costs the most likely group to be affected is recreational anglers who will be affected by the protection afforded to the fish species. Some fishermen may need to change their behaviour by following best practice to ensure that they do not target the protected species and if they catch them they are returned unharmed to the water.

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	Non quantified		Non quantified	**Non quantified**

Description and scale of key monetised benefits by 'main affected groups'
In cases where protection is provided by the Common Fisheries Policy (CFP), the Wildlife and Countryside Act is filling a 'gap' in protection by protecting the species from recreational fishermen who are not subject to the CFP. The benefits in many cases are likely to be modest but close an important loophole. A number of species have had their protection removed. In cases where the population still exists this will reduce the burden on land managers and conservationists who currently have to apply for a licence to disturb the species. It will have the benefit of facilitating recording and research, and better recording could assist in the conservation of the species, both at sites where it has already been recorded and, potentially, at new localities.
Other key non-monetised benefits by 'main affected groups'
The key objective of this review is species protection. Specific objectives include reduction of human impacts on threatened species, increase in species population figures and biodiversity, reduction in the likelihood of threatened fish caught by recreational fishing; ensuring that threatened animals and their habitats are not disturbed by land use change and amateur and commercial collection.
Key assumptions/sensitivities/risks — **Discount rate (%)**
There is an assumption that the Common Fisheries Protection policies for the marine species we will be protecting are long-term and will not be changed in the near future. If they did we would be contravening the Common Fisheries Policy and our legislation would have to be amended quickly.

Impact on admin burden (AB) (£m):			**Impact on policy cost savings (£m):**	**In scope**
New AB:	**AB savings:**	**Net:**	**Policy cost savings:**	No

Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?		England and Wales			
From what date will the policy be implemented?		10/10/2011			
Which organisation(s) will enforce the policy?		Police/local authority			
What is the annual change in enforcement cost (£m)?		£ Negligible			
Does enforcement comply with Hampton principles?		Yes			
Does implementation go beyond minimum EU requirements?		Yes			
What is the CO_2 equivalent change in greenhouse gas emissions? (Million tonnes CO_2 equivalent)		**Traded:** £0		**Non-traded:** £0	
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:**	
Annual cost (£m) per organisation (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	p.7
Economic impacts		
Competition Competition Assessment Impact Test guidance	No	p.7
Small firms Small Firms Impact Test guidance	No	p.7
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] Race, disability and gender Impact assessments are statutory requirements for relevant policies. Equality statutory requirements will be expanded 2011, once the Equality Bill comes into force. Statutory equality duties part of the Equality Bill apply to GB 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 assessment of earlier stages (e.g. Consultation, Final, Enactment).

No.	Legislation or publication
1	
2	
3	
4	

+ Add another row

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	<0.001	0	0	0	0	0	0	0	0	0
Annual recurring cost	<0.001	<0.001	<0.001	<0.001	<0.001	<0.001	<0.001	<0.001	<0.001	<0.001
Total annual costs	<0.001	<0.001	<0.001	<0.001	<0.001	<0.001	<0.001	<0.001	<0.001	<0.001
Transition benefits	0	0	0	0	0	0	0	0	0	0
Annual recurring benefits	0	0	0	0	0	0	0	0	0	0
Total annual benefits	0	0	0	0	0	0	0	0	0	0

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

Microsoft Office Excel Worksheet

Evidence Base (for summary sheets)

Problem under consideration

Schedules 5 and 8 of the Wildlife and Countryside Act 1981 list species of animal and plant respectively, which need protection from human activity to prevent them from becoming endangered or extinct. JNCC has a statutory obligation to review the Schedules every five years and advise the Secretary of State of their recommendations. The Schedules need updating regularly to ensure that it remains relevant, protecting species before it is too late and removing species that no longer require that protection.

Rationale for intervention

Most of the species covered in this review have been identified in recent years as candidates for addition to Schedule 5 and 8 because of the threats which they face to their existence from human activity. The scale of the potential threat justifies the use of regulatory measures to prevent further population decline. Government intervention can be used alone or as part of a suite of mechanisms that would effectively dissuade, discourage or deter people from behaviours that lead to, or could lead to, further population decline and even extinction of these species. The aim is to legislate only where it would be effective to do so. The rest have been identified for removal or reduced protection because they have become extinct, are not threatened or have been reclassified.

Protecting species in the wild which are under threat from human activity is a key element of conserving our native flora and fauna and contributes towards achieving the aim of halting the loss of biodiversity in the EU by 2020.

Policy Objective

It serves our obligation under The Convention on the Conservation of European Wildlife and Natural Habitats (Bern Convention), which states under Article 3 (1) that 'each Contracting Party shall take steps to promote national policies for the conservation of wild flora, wild fauna and natural habitats, with particular attention to endangered and vulnerable species, especially endemic ones, and endangered habitats, in accordance with the provisions of this Convention'.

The purpose of this review is to revisit and, if necessary amend Schedules 5 and 8 to the Wildlife and Countryside Act 1981 (the Act) to ensure that it is effectively regulating a species which requires protection because it is threatened and its population size is decreasing at a rate that requires action before the species becomes extinct. Alternatively it ensures that a species which no longer requires the protection for whatever reason is removed. This is the fifth review of Schedules 5 and 8 since the Wildlife and Countryside Act was enacted in 1981.

Description of options considered (including do nothing)

1. **Update Schedules** - Schedules 5 and 8 would be updated to protect animals and plant species proposed by the JNCC. All species on the Schedules or proposed to be included in the Schedules were appraised on a case by case basis as follows:

- for species currently on the schedule the option considered was whether to retain them or not (retaining them was the baseline against which costs and benefits of removal were considered)

- for new potential species the option considered was whether to add them or not (not adding them was the baseline against which costs and benefits addition were considered)

The culmination of these case by case assessments is an updated Schedule 5 and 8, which is our preferred option.

The individual species decisions are explained in Annex 2 to this evidence base, the analysis supported the addition of a number of species of animal and plant, and the removal of some species of animal and plant. The rationale for including or excluding species from the list are presented in the annex with the types of costs and benefits assessed in deciding whether to update or not the list of species.

2. **Do nothing** – We would not amend the Schedules as advised by the JNCC, our statutory conservation advisors. This would result in rare and endangered species not being protected under Schedule 5 and 8 of the Wildlife and Countryside Act 1981 contrary to our obligations under the Bern Convention and there would be unnecessary regulatory burdens placed on people as a consequence of protecting species that no longer required this.

Costs and Benefits of each option

Sectors and groups affected

Addition to Schedules 5 and 8 is unlikely to restrict the trade of any sector. While listing a species on the Schedules will restrict or prohibit the capture, killing, sale etc of the species, these are mostly rare species which are not targeted or of low commercial value. The group most likely to be affected are recreational fishermen. However, the species concerned are rare in UK waters and are not subject to targeted fishing, so the effects will be very small. In effect the listing of many species is complementing other measures taken, such as protection under the CFP, and in this case closing off a small but important loophole.

Chinese medicine practitioners may be affected by the ban on possessing for the purpose of sale and actual selling of Tree Lungwort, which is considered to be of benefit in Chinese medicine. There is no evidence that it is being collected in great numbers in the UK at this time.

Churches and local authorities in a very limited number of locations will be impacted by the listing of Rock Nail as it could require them to move to more sensitive estate management and require them to apply for a license to carry out repair work on gravestones where this species is found. Moth collectors will be affected by the protection given to the Talisker Burnet Moth and the Slender Scotch Burnet Moth as they will not be able to sell wild specimens any longer.

Developers may face minor incremental costs as protecting further species under the Wildlife and Countryside Act implies that they would need to examine impacts upon a longer list of species when assessing the environmental impact of new proposals.

NB Specific Impact Tests were considered but were deemed not to be necessary. In particular the listing of these species does not raise any equalities issues and where there were potential impacts on small firms or on competition the species that may have caused concerns have not been listed.

1. Updating the Schedules

Benefits:
This option allows the list of species to be brought up to date and targeted towards those species which are known to be endangered by human activity such as targeted fishing or collection. Conversely it will also remove protection where a species is no longer in danger, for whatever reason, preventing unnecessary public restriction and enforcement action. It is difficult to quantify the benefit of adding species to Schedules 5 and 8 as this is a measure aimed at preventing loss of biodiversity which is not easily quantified. There are no obvious economic benefits, although it could be argued that complementing existing restrictions on commercial fishing legislation under the WCA could increase stock recovery levels in the future.

Environmental benefits: The listing of threatened species on Schedule 5 and 8 will enhance their status and protect them from certain human activities. For example listing the Twaite Shad on Schedule 5 would prevent targeted fishing of the species and would also result in the release,

unharmed, of specimens taken accidentally. Protecting fish species in this way will also help to maintain the diversity of marine species.

Protecting further species under the Wildlife and Countryside Act would also raise the awareness of developers and planners about the legal status of such species and therefore is likely to improve the direct protection of the species as well as their habitat. Species such as the Pool Frog, which is a European Protected Species, would benefit because the listing would add to the legal protection the species has under the Habitats Regulations, as it would also allow prosecution for reckless damage to the species' places of shelter which is not possible at present.

Costs:

Protection of Schedule 5 and 8 species would incur only a negligible administrative burden of having to apply for a licence to take, disturb etc. It is unlikely that this will happen for the majority of new species to be protected, however should a licence be required, no charge would be incurred.

A Total Allowable Catch (TAC) of zero under the Common Fisheries Policy (CFP) already applies to the marine species proposed for addition to Schedule 5 (Angel Shark, White Skate). Therefore by listing such species we would not expect any loss to the fishing industry. There was a concern from consultees that if the CFP removed the ban on catching and landing these species they would lose out. However, we are aware that, for the species proposed, the ban is unlikely to be lifted in the foreseeable future. The only costs would therefore be for targeted recreational fishing and we are not aware that these exist.

Rock Nail is usually found on old gravestones and the protection of the species may prevent the movement of gravestones and general graveyard maintenance work. This may affect health and safety policies or other issues regarding graveyard management, although licenses can be granted for public health and safety purposes. The protection of Tree Lungwort would prevent the collection and sale of this species for Chinese medicine. Although there is no evidence of wide-spread collection in the UK at the moment it was felt that action was required to prevent this in the future.

Compliance costs: Offences under the Act are enforced by the police. It is not envisaged that the proposed amendments will impose any significant additional burden upon the enforcement authorities. Though there will be a small one off cost associated with authorities needing to familiarise themselves with the new list of species covered.

2. Not updating the Schedules (Do nothing).

Benefits:

The benefits of not revising the species protection Schedules is that there will be no additional burdens on those who wish to fish recreationally or those who wish to collect wild specimens of the species proposed. There would be a negligible financial benefit of not having to apply for a licence to take, disturb, sell etc any of the proposed species.

Costs:

This would impose no additional immediate financial costs, as it preserves the status quo although, for species which we propose to remove, there may be the maintenance of an unnecessary burden of having to protect the species for no ecological benefit. The other non-monetary cost would be to our reputation. The GB conservation bodies and the JNCC have a statutory obligation to review the Schedules every 5 years. To not act upon the advice we have been given would be contrary to our statutory responsibility to conserve biodiversity. Our failure to do so may be seen by some as a signal of our weakening resolve to abide by our commitments under the BERN Convention. For the species concerned, this would mean greater risk of the continuing decline of populations.

Wider Impacts

As stated earlier our failure to implement this revision may be seen by some as a signal of our weakening resolve to abide by our obligations under The BERN Convention and under The Convention on Biological Diversity; and more importantly as a failure to comply with the general duty to conserve biodiversity in section 40 of the Natural Environment and Rural Communities Act 2006.

Summary and preferred option with description of implementation plan

We propose amending Schedules 5 and 8 in accordance with the table at Annex 2. Certain species in the wild are threatened by human activity such as fishing, habitat destruction (due to housing development or deforestation for example) and the taking of species by collectors. If nothing is done to prevent the further decline of these species, there is a risk that they could become extinct in Great Britain in the near future. Activities leading to their demise such as target fishing of the Shads or collection of tree lungwort are unlikely to be deterred by voluntary approaches such as a code a practice, so consequently government intervention and amendments to legislation is necessary.

Affording legal protection to these species, with which comes the risk of prosecution, will raise awareness of their poor conservation status and the need for particular care to ensure their continued existence as part of our rich fauna and flora. Species protection under the Wildlife and Countryside Act 1981 is likely to encourage a more cautious approach amongst groups, which could have a potential impact on wildlife. It is difficult to gauge the cost implications for sectors such as the fishing trade or developer, but we believe them to be minimal.

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. 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), it could be to review existing policy or there could be a political commitment to review]; Schedules 5 and 8 are reviewed every 5 years in accordance with section 24(1) of the Wildlife and Countryside Act 1981.
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?] 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] Contact with organisations directly involved such as the Environment Agency, conservation agencies, CEFAS and NGO's such as the Shark Trust and Buglife.
Baseline: [The current (baseline) position against which the change introduced by the legislation can be measured] It is extremely difficult to establish a baseline for endangered species, especially the marine species but the research to date which formed the rationale for recommended inclusions and exclusions can be used as a baseline.
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] Evidence that the population of species that have been added to the schedules are at least steady if not improving.
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] The variety and scarcity of species we are protecting makes systematic monitoring specifically for assessing this action prohibitively expensive. However, we will be asking a lead organisation in each case to report back on whether they felt that the inclusion of these species on Schedules 5 or 8 was effective.
Reasons for not planning a PIR: [If there is no plan to do a PIR please provide reasons here]

Annex 2 – Decisions on Individual Species

Species	Recommendation	Cost	Benefit
White Skate	Protect from killing, taking ...... to 12 nautical miles	As the white skate is now extremely rare the costs involved will be minimal and will essentially involve recreational fishermen following best practice to ensure the safe return of the species if caught accidentally. There is no evidence of the species being deliberately targeted in English and Welsh waters.	Protection under the WCA is part of a wider range of measures to help in the recovery of this species. In comparison to protection under the CFP the impact of this measure will be very small.
Angel Shark	Increase protection from killing, taking ...... to 12 nautical miles	As the Angel Shark is extremely rare in English and Welsh waters this is a measure closing a loophole that bans commercial fishing but allows recreational fishing of the species. The costs involved will be minimal as Angel Shark is not seen to have a commercial value. It will essentially involve recreational fishermen following best practice to ensure the safe return of the species if caught accidentally as sale or possession would be banned.	Protection under the WCA is part of a wider range of measures to help in the recovery of these species. In comparison to protection under the CFP the impact of this measure will be very small.
Twaite Shad	Increase protection to s9(1) – protection from killing and taking.	Data does not exist to show the extent of fishing for this species so this is a precautionary measure. Costs involved for anglers will be minimal as the small numbers that deliberately target the species will be able to target other species instead. They will also need to follow best practice to ensure that fish caught accidentally can be safely returned to the	Will protect the species as it moves to its spawning grounds. Will also give further protection to the Allis Shad, which is indistinguishable from the Twaite Shad. This is one measure in a wider range of actions to protect the shad species.

		water.	
Pool Frog	Protect under 9(4)(a) and (b) only.	This species is present at only one site. There will be no cost involved as the additional protection it will receive here will only prevent reckless damage of it's site.	Will tighten legislation for this European Protected Species which already has full protection under Schedule 2 of the Conservation of Habitats and Species Regulations 2010.
Talisker Burnet and Slender Scotch Burnet	Protect under 9(5), preventing sale or possession.	The cost involved would be to those involved in the commercial sale of the species. Advertising in the *Entomological Livestock Group Newsletter, List 470* (published on 15 August 1999) offered larvae for sale at £4 per fifteen. It is unlikely that the market is significant in scale as the total population of the species is likely to be in the 100s.	Evidence has been obtained of commercial collecting of larvae, for sale as live stock, at such a large scale as to be a significant threat to this subspecies. Protecting them from sale will reduce the possibility that they will be targeted by collectors.
Rock Nail	Protect under 13(1) and (2)	In England this species has only been recorded on three sites so costs will be very localised. However, where the species is present it could require a more costly maintenance regime which may require consultants input. If Church or local authorities are proposing to stabilise and repair any potentially dangerous gravestones then additional cost will be involved in a) seeking expert advice b) putting together a license application to carry out any work. As even the handling or use of machinery to check the stability of gravestones could be extremely damaging there is likely to be a significant inconvenience.	Protection of an endangered species.
Tree Lungwort	Protect under 13(1) and (2)	Tree lungwort is an	Stamping out a

		ingredient in Chinese medicine and requires a substantial amount of live plant to be used. Currently it fetches around £9 per kilo. It is believed that it is currently sourced from overseas.	potential commercial operation building up here will help ensure that this species does not quickly become endangered.
Essex Emerald Moth	Remove protection	Extinct so no cost.	Removing protection will prevent unnecessary public restriction and enforcement action.
Tentacled lagoon worm, Lagoon Sand Shrimp, Lagoon Snail	Reduce protection to 9(4)(a) only.	This will result in reduction in cost as licenses will no longer need to be applied for.	Reducing protection will allow recording and research without a licence.
Long-leaved thread-moss, Young's helleborine, Churchyard lecanactis, Dune thread-moss	Remove protection	No cost.	Removing protection will prevent unnecessary public restriction and enforcement action.

Annex 3 – Role of Joint nature Conservation Committee

Under Section 24 of the WCA the JNCC is required to review Schedules 5 and 8 of the WCA every five years and to advise the Secretary of State whether, in the collective opinion of the conservation agencies, any animal or plant should be added to or removed from the Schedules. The JNCC is also empowered to make recommendations at any time, outside the constraints of the five-yearly reviews. Recommendations have to be accompanied by a statement of the reasons that led to the advice.

During 2008 the JNCC carried out a public consultation in which it sought views on the addition of species to, or removal of species from, Schedules 5 and 8 of the WCA. It also asked whether existing protections should be adjusted. Once the JNCC had summarised the responses to this consultation and evaluated these, it made recommendations to the Secretary of State in December 2008.

Constitutional and Legislative Affairs Committee

(CLA(4)-05-11)

CLA37

Constitutional and Legislative Affairs Committee Draft Report

Title: The Single Use Carrier Bags Charge (Wales) (Amendment) Regulations 2011

Procedure: Negative

These Regulations amend the Single Use Carrier Bags Charge (Wales) Regulations 2010. They are made under the Climate Change Act 2008 and come into force on 1 October 2011.

The 2010 Regulations require sellers to charge a minimum price for singe use carrier bags. They impose record keeping and reporting requirements on sellers, appoint local authorities to administer the charging scheme and confer civil sanctioning powers on local authorities to enforce the Regulations.

The principal amendments made to the 2010 Regulations by these Regulations are summarised in the Explanatory Note that introduces the Regulations.

Technical Scrutiny

No points are identified for reporting under Standing Order 21.2 in respect of this instrument.

Merits Scrutiny

Background

The 2010 Regulations were considered by the third Assembly's Constitutional Affairs Committee on 17 November 2010. The Committee agreed to report on the Merits of the Regulations and a copy of that report is attached as an Annexe. The Report, which was not unduly critical of the regulations, drew attention to the following points among others:

- that the regulations were the first time in the UK that powers under the Climate Change Act 2008 were being used to require charges for carrier bags and the first time Civil Sanction Powers were being granted to local authorities in Wales;

- that the powers under which the regulations were being made were granted directly to Welsh Ministers and had not previously been scrutinised in the Assembly; and
- that there were a range of detailed concerns about how the regulations would work in practice and how they would impact on, in particular, small retailers.

Procedure

The original Regulations were made under the affirmative procedure and were debated and approved in Plenary on 29 November. This was because the enabling legislation requires the affirmative procedure to be used where the powers:

- are being used for the first time;
- impose new civil sanctions;
- increase or change the basis for determining monetary penalties; or
- amend primary legislation.

None of these factors apply to these amending regulations, which are, therefore, being made under the negative resolution procedure.

Specific Issues

Impact on Small and Medium-sized Enterprises (SMEs)

These regulations address one of the points reported by the Constitutional Affairs Committee in 2010. SMEs were concerned about the impact of the requirement to maintain records and provide them on request to any member of the public. The amending regulations now remove the reporting requirements for businesses with less than 10 full-time equivalent staff.

Costs

The regulations also appear to address another issue reported by the Constitutional Affairs Committee; whether costs incurred in the lead up to the regulations coming into force can be deducted from the income received from charging. The amending regulations now clarify that 'set up' costs count as 'reasonable costs' for the first reporting year and can be deducted.

Timing

These regulations come into effect in 12 days' time on 1 October 2011, which is the date on which charging for carrier bags also comes into effect. However, we understand that the Welsh Government has kept those with an interest in the amending regulations informed of

the possibility of these changes, which should therefore be expected by them.

In the light of the foregoing, the Committee agreed that the amendment regulations raise issues of public policy likely to be of interest to the Assembly. The Committee agreed to draw the draft Order and Regulations to the attention of the Assembly through a report under Standing Order 21.3(ii).

Constitutional and Legislative Affairs Committee

September 2011

ANNEXE

CA499

Constitutional Affairs Committee Report

Title: The Single Use Carrier Bags Charge (Wales) Regulations 2010

Procedure: Affirmative

These Regulations make provision about a minimum amount (5p) which sellers of goods must charge for single use carrier bags. The Regulations are made under sections 77 and 90 of, and Schedule 6 to, the Climate Change Act 2008.

Technical Scrutiny

No points are identified for reporting under Standing Order 15.2 in respect of this instrument.

Merits Scrutiny

Background

These Regulations require sellers of goods to charge for single use plastic and paper carrier bags provided to customers. The Regulations set the charge at a minimum of 5p and require sellers of goods to keep and publish records in relation to the number of bags they sell in Wales and how the proceeds of the charge have been used.

The Regulations also appoint local authorities in Wales as administrators and confer powers on local authorities to use civil sanctions to deal with breaches of the Regulations.

Matters identified by the Government as being of special interest to the Constitutional Affairs Committee

These draft Regulations are the first in the UK to make use of the power to require sellers to charge for single use carrier bags under the Climate Change Act 2008.

They are also the first to confer powers on local authorities in Wales in relation to the use of civil sanctions. The civil sanctioning powers are accompanied by duties to publish guidance on how the powers will be used.

Other Issues

Reduction in proposed charge

Evidence from retailers during the consultation process indicated that a 5p charge would be a sufficient disincentive for people to purchase carrier bags. Previously the Welsh Government had calculated this to be 7p.

The Government now believe a 5p charge would be fairer to low income groups and would prevent a single use carrier bag costing more than a 'bag-for-life' which will be exempt from the charge. In the light of the representations received, they have decided to drop the charge from 7p to 5p, despite acknowledging that the lower charge will not 'internalise' the social and environmental costs of producing and selling carrier bags whereas 7p would have.

Definitional Issues

The consultation responses indicated continued confusion about a number of matters that do not appear to have been fully addressed in the Regulations or the EM. These include:

- whether plastic bags used for promotional goods, e.g. bags given away at conferences, will be subject to a charge;
- where goods are returned by the purchaser, whether the seller would be obliged to refund the carrier bag charge and whether the seller could deduct this from the gross proceeds as a reasonable cost under the regulations;
- whether a bag which breaks can be replaced free of charge.
- interpretation of the provisions which exempt some bags (for instance for health or hygiene reasons) but that would not subsequently be exempt if other items are placed in the bag.

Cost and Record Keeping

Retailers can deduct 'reasonable costs' from the gross proceeds from the charge on carrier bags, including costs of compliance and costs associated with communicating the charge to staff and customers. Larger retailers will be required to keep records and publish these records annually, smaller retailers will be required to keep records but not to publish them.

A degree of concern has been expressed by consultees on some of these issues. These include:

- it not being clear whether costs incurred in the lead up to the regulations coming into force (in October 2011) can be deducted;

- the regulations being implemented in different ways across Wales because local authorities, who will be responsible for administering and enforcing the charge, may not define 'reasonable costs' consistently;
- concern from SMEs about the impact of the requirement to maintain records and provide them on request to any member of the public.

Penalties

The regulations provide for a range of fixed monetary penalties none of which exceed £200. However, there is also provision for variable monetary penalties to be imposed by individual local authorities. These penalties have maximum values of £5,000 and £20,000 depending on the breach concerned. It is not yet clear to what extent local authorities will impose penalties according to different criteria in different parts of Wales.

Paper Carrier Bags

The regulations aim to reduce the number of single use carrier bags used annually in Wales. Of the 445 million bags used, 350 million are plastic and 95 million are paper bags. The charge is to be set at a level which 'internalises' the social cost of using a bag and therefore leads to reductions in consumption.

The charge will apply to both plastic and paper carrier bags. However, the Government has not been able (as it has for plastic bags) to calculate the social cost of a paper bag at this stage. For the purposes of the Regulatory Impact Assessment they assumed that the cost is the same as for a plastic bag. This assumption may not be correct.

<u>Committee Consideration</u>

The Committee noted the above matters and in particular:

- that the regulations are the first use in the UK of powers under the Climate Change Act 2008 to require charges for carrier bags and the first granting of Civil Sanction Powers to local authorities in Wales.
- that the powers under which the regulations are being made were granted directly to Welsh Ministers and have not previously been scrutinised in the Assembly.

- That there are a range of detailed concerns about how the regulations will work in practice and how they will impact on, in particular, small retailers;
- that the regulations apply to both paper carrier bags and plastic carrier bags. Even though the underlying cost factors for the two types of bag may be different they have been assumed to be the same and the RIA calculated on that basis.

The Committee agreed that it would be helpful for the Minister to address all of these points directly during the plenary debate on the draft Order.

In the light of these factors the Committee agreed that the draft Order and Regulations raise issues of public policy likely to be of interest to the Assembly. The Committee agreed to draw the draft Order and Regulations to the attention of the Assembly through a report under Standing Order 15.3(ii).

Janet Ryder AM
Chair, Constitutional Affairs Committee

17 November 2010

WELSH STATUTORY INSTRUMENTS

2011 No. 2184 (W. 236)

ENVIRONMENTAL PROTECTION, WALES

The Single Use Carrier Bags Charge (Wales) (Amendment) Regulations 2011

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Single Use Carrier Bags Charge (Wales) Regulations 2010. They are made under the Climate Change Act 2008, apply in relation to Wales and come into force on 1 October 2011.

The 2010 Regulations require sellers to charge a minimum price for singe use carrier bags. They impose record-keeping and reporting requirements on sellers, appoint local authorities to administer the charging scheme and confer civil sanctioning powers on local authorities to enforce the Regulations.

The principal amendments made to the 2010 Regulations by these Regulations are as follows.

Regulation 4 substitutes a new regulation 6 for the original. The effect of the change is to ensure that when a customer pays 5 pence for a single use carrier bag, the 5 pence includes VAT when paid to a seller who is registered for VAT.

Regulation 5 inserts a new regulation 7A into the 2010 Regulations. The new regulation disapplies the record-keeping and reporting requirements for a reporting year if a seller employs less than 10 full-time equivalent members of staff on the first day of that reporting year.

Regulation 6 substitutes a new regulation 8 for the original. One of the principal effects of the change is to require sellers to discount any amount above 5 pence that customers pay for single use carrier bags when sellers are reporting the net proceeds they have received from the charge.

The other principal effect of the change is to include costs incurred before 1 October 2011 in “reasonable costs”. The effect of this in turn will be that when sellers are reporting on the net proceeds they have received from the charge in the first year, that amount will not include any costs they have reasonably incurred in preparing for the introduction of the charge.

Regulation 7 substitutes a new regulation 13(1) for the original. The effect is to add two further circumstances in which a notice of intent to impose a fixed monetary penalty may not be served. Those circumstances are where the seller has previously made a discharge payment in relation to the same breach under the 2010 Regulations; or if a fixed penalty has previously been imposed in relation to the same act or omission.

Regulation 8 inserts a new paragraph 1(1)(za) into Schedule 1. This new paragraph brings together the original exemptions that were contained in paragraph 1(1)(a) to (d) and (o) of that Schedule and makes an amendment to how those exemptions work. The effect is that a single use carrier bag which is used to contain one or more of the items now listed in the new paragraph 1(1)(za) will be exempt from the charge; there is no longer a need for a bag to be used solely to contain one of those items in order to benefit from the exemption.

Regulation 8 removes the exemption for sealed bags supplied by a seller before the point of sale. Regulation 8 also substitutes a new paragraph 1(1)(i) for the original. The effect is to exempt mail order dispatch and courier bags from the requirement to charge.

The regulatory impact assessment prepared for the 2010 Regulations has been updated to include the impact arising from the disapplication of the reporting requirements to micro businesses. A copy of that impact assessment can be obtained from the Welsh Government, Cathays Park, Cardiff CF10 3NQ.

WELSH STATUTORY INSTRUMENTS

2011 No. 2184 (W. 236)

ENVIRONMENTAL PROTECTION, WALES

The Single Use Carrier Bags Charge (Wales) (Amendment) Regulations 2011

Made *2 September 2011*

Laid before the National Assembly for Wales *7 September 2011*

Coming into force *1 October 2011*

The Welsh Ministers make these Regulations in exercise of the powers conferred by sections 77(2) and 90(3)(a) of, and paragraphs 1, 2, 4, 7, 9 and 10 of Schedule 6 to, the Climate Change Act 2008(**1**).

Title, commencement, application and interpretation

1.—(1) The title of these Regulations is the Single Use Carrier Bags Charge (Wales) (Amendment) Regulations 2011.

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

(3) In these Regulations "the 2010 Regulations" *("Rheoliadau 2010")* means the Single Use Carrier Bags Charge (Wales) Regulations 2010(**2**).

Amendment of the 2010 Regulations

2.—(1) The 2010 Regulations are amended in accordance with regulations 3 to 8.

(**1**) 2008 c.27; *see* section 77(3) of the Climate Change Act 2008 for the definition of "the relevant national authority". There are amendments to section 77 of, and Schedule 6 to, the Act which are not relevant to these Regulations.

(**2**) S.I 2010/2880 (W. 238).

Amendment of regulation 2 (interpretation)

3.—(1) In regulation 2(1)—

(a) for the definition of "the charge" *("y tâl")* substitute—

""the charge" *("y tâl")* means the minimum consideration that must be paid by a customer by virtue of regulation 6(2);";

(b) in the appropriate places insert—

(i) ""consideration" *("cydnabyddiaeth")* includes any chargeable VAT;";

(ii) ""VAT" *("TAW")* has the meaning given in section 96 of the Value Added Tax Act 1994(**1**).".

Amendment of regulation 6 (requirement to charge)

4. For regulation 6 substitute—

"Requirement to charge

6.—(1) A seller must charge for every single use carrier bag supplied new—

(a) at the place in Wales where the goods are sold, for the purpose of enabling the goods to be taken away;

(b) for the purpose of enabling the goods to be delivered to persons in Wales.

This is subject to regulation 7.

(2) The amount that a seller must charge is such amount as ensures that the consideration paid by a customer for each single use carrier bag is not less than 5 pence.".

Addition of regulation 7A (application of Part 3)

5. In Part 3 (records and publication) before regulation 8 (record-keeping) insert—

"**Application of this Part**

7A.—(1) This Part applies to a seller in relation to any reporting year in which the seller meets the condition in paragraph (2).

(2) The condition is that on the first day of the reporting year the seller employs ten or more full time equivalent members of staff .".

(**1**) 1994 c. 23; there are amendments to section 96 which are not relevant to these Regulations.

Substitution of regulation 8 (record-keeping)

6. For regulation 8 substitute—

“Record-keeping

8.—(1) A seller must keep a record of the information specified in paragraph (3) for every reporting year.

(2) Records must be retained by a seller for a period of three years beginning on 31 May in the reporting year following that to which a record relates.

(3) The information is——

(a) the number of single use carrier bags supplied which attract the charge;

(b) the amount received by way of consideration for single use carrier bags which attract the charge;

(c) the amount received by way of the charge;

(d) the net proceeds of the charge(**1**);

(e) a breakdown of how the amount which represents the difference between the amount received by way of the charge and the net proceeds of the charge has been arrived at, including—

(i) the apportionment between any chargeable VAT and reasonable costs;

(ii) the apportionment between different heads of reasonable costs;

(f) the uses to which the net proceeds of the charge have been put.

(4) The following are the amounts specified for the purposes of the definition of “net proceeds of the charge” in paragraph 7(4) of Schedule 6 to the Climate Change Act 2008(**2**)—

(a) any amount in excess of the charge received by way of consideration for single use carrier bags which attract the charge;

(b) any amount of chargeable VAT received by way of the charge;

(c) the amount of any reasonable costs.

(5) In this regulation “reasonable costs” *(“costau rhesymol”)* means—

(a) costs reasonably incurred by a seller to enable the seller to comply with these Regulations;

(b) costs reasonably incurred by a seller to enable the seller to communicate information about the charge to customers.

(**1**) For the meaning of “net proceeds of the charge” *see* paragraph 7(4) of Schedule 6 to the Climate Change Act 2008.

(**2**) 2008 c. 27.

This is subject to paragraph (6).

(6) In relation to the first reporting year, "reasonable costs" includes costs reasonably incurred by a seller before the date on which these Regulations come into force –

(a) to enable the seller to comply with these Regulations;

(b) to enable the seller to communicate information about the charge to customers.".

Amendment of regulation 13 (combination of penalties)

7. For regulation 13(1) substitute—

"(1) An administrator may not serve a notice of intent in relation to a fixed monetary penalty on a seller in any of the following circumstances—

(a) where a discretionary requirement has been imposed on that seller in relation to the same breach;

(b) where the seller has discharged liability to a fixed monetary penalty in respect of the same breach by payment of a specified sum;

(c) where a fixed monetary penalty has previously been imposed in respect of the same act or omission.".

Amendment of Schedule 1 (exemptions)

8.—(1) In paragraph 1(1) of Schedule 1—

(a) before paragraph (a) insert—

"(za) bags used solely to contain one or more items of the following kinds—

(i) unpackaged food for human or animal consumption;

(ii) unpackaged loose seeds, bulbs, corms or rhizomes;

(iii) any unpackaged axe, knife, knife blade or razor blade;

(iv) unpackaged goods contaminated by soil;

(v) items from the categories specified in sub-paragraph (2);"

(b) omit paragraphs (a) to (d) and (f);

(c) for paragraph (i) substitute—

"(i) mail order dispatch and courier bags;";

(d) omit paragraph (o).

(2) In paragraph 1(2)(b) of Schedule 1 omit the words "or supplied".

John Griffiths

Minister for Environment and Sustainable Development, one of the Welsh Ministers

2 September 2011

.

Explanatory Memorandum to the Single Use Carrier Bags Charge (Wales) (Amendment) Regulations 2011.

This Explanatory Memorandum has been prepared by the Department for Environment and Sustainable Development of the Welsh Government and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of Amendments to the Single Use Carrier Bags Charge (Wales) Regulations 2010. I am satisfied that the benefits outweigh any costs.

John Griffiths AM
Minister for Environment and Sustainable Development
2 September 2011

Description

1. The Regulations make a number of minor changes to the Single Use Carrier Bags Charge (Wales) Regulations 2010 to ensure that they give effect to the policy consulted on. They also make two substantive changes.

2. The minor changes relate to:

   - clarification of VAT;
   - clarification of how amounts above the 5 pence minimum charge are to be treated for reporting purposes;
   - removing the exemption for sealed bags;
   - clarification of the exemption for packaging and delivery of mail order goods in polythene mailbags;
   - preventing a notice of intent to impose a fixed monetary penalty from being served if a seller has previously discharged liability to a penalty in relation to the same breach of the Regulations.

3. The two substantive changes to the Single Use Carrier Bags Charge (Wales) Regulations 2010 are based on feedback from businesses and the business sector in Wales:
   - one amendment removes the reporting requirements for sellers who employ less than 10 full-time equivalent members of staff on the first day of a reporting year;
   - the other amendment means that costs incurred by sellers prior to implementation are deductable from the amount they report as their net proceeds of the charge in the first year.

Matters of special interest to the Constitutional and Legislative Affairs Committee

4. The former Constitutional Affairs Committee considered the draft Single Use Carrier Bag Charge (Wales) Regulations 2010 at it's meeting of 17 November 201 and it's report reflected specific "concern from SMEs about the impact of the requirement to maintain records and provide them on request to any member of the public". The amendment referred to at paragraph 3 above addresses that concern.

Legislative background

5. The Regulations are made under sections 77 and 90 of, and Schedule 6 to, the Climate Change Act 2008, and are subject to the negative procedure.

Purpose & intended effect of the legislation

6. The Single Use Carrier Bags Charge (Wales) Regulations 2010 will come into force in Wales on 01 October 2011. The Regulations make provision for sellers to charge a minimum of 5 pence for single use carrier bags supplied with the intention of enabling goods to be taken away or delivered into Wales. The main purpose of introducing a charge is to substantially reduce the

amount of these bags that are taken away from shops each year in Wales, significantly beyond the levels achieved through voluntary action.

7. The Welsh Ministers are making technical amendments to ensure that the Regulations give effect to the intended policy which was developed with the benefit of a rigorous consultation process. The Regulations also give effect to two substantive policy changes which the Government is bringing forward as a result of convincing representations made by the retail sector about the effects of the Regulations in two respects.

8. The Welsh Government proposes to publish non-statutory guidance to accompany the Regulations and consulted on a draft guidance document which reflects the technical amendments being made by these Regulations. The final Guidance document will reflect the substantive policy changes made by the Regulations and will address a number of issues raising during the consultation period. The final guidance document will be published shortly.

VAT: regulation 4

9. We need to amend the Regulations to ensure that VAT-registered sellers are not required to charge VAT on top of the 5 pence charge. We have been clear from the outset that the minimum price to the customer should be uniform across the country so we need to make an amendment to ensure that the Regulations produce that result.

10. As the Regulations are currently drafted we think their effect could be to require VAT-registered sellers to price bags at a minimum of 6 pence each (at the current rate of VAT). This was an unintended effect of articulating a single minimum charge across the board. We are amending the requirement to charge so that the minimum price of 5 pence will be inclusive of VAT when paid to a VAT-registered seller, and exclusive of VAT when paid to a non-VAT-registered seller. This was the policy intention.

Exemption to the Record Keeping Requirements for Small Businesses: regulation 5

11. Following the consultation on the draft Regulations we made some changes to the record-keeping requirements in order to reduce the burden they impose and in response to specific comments and recommendations received. For example we limited the retention period for records to three years and now require that any requests for records should be made in writing.

12. We took the view at the time that to exempt small businesses completely from responsibility to account to the public for how the proceeds of the charge are used, and to prevent members of the public from having access to information about how successful the scheme has been, would be to deny the public access to information in which they have a legitimate interest. We considered that it could also result in difficulties for administrators when seeking to establish on the balance of probabilities, whether breaches of the Regulations have occurred.

13. In the Government Response to the consultation exercise we said that we considered at the time, that the public benefit in having access to the records outweighed the burden imposed on SMEs but that we would keep the reporting requirements in relation to SMEs under review.

14. In theory the burden imposed by the record-keeping requirements is minimal. It requires sellers to count the number of chargeable bags they supply; to multiply that number by the 5 pence they charge for each; to deduct the amount of money it costs to train staff, update systems and inform customers; to deduct the 20% VAT that they pay to HMT and to say what they did with the remainder of the money received (very broadly speaking).

15. In practice, this could be quite a burden for a small seller to do accurately if it sells a variety of goods, primarily because of the way exemptions apply. For example, a seller is not obliged to charge for a bag if it is used solely to contain certain items such as unpackaged food, blades or certain medicines, but the same bag must be charged for if it is used for anything else. This means that unless a seller has a relatively sophisticated IT system, the seller will need to keep a manual note of every exempt bag it supplies. This figure is needed so that it can be deducted from the total number of bags a seller supplies to get to the total number of chargeable bags that must be included in the record.

16. We acknowledge that removing the record-keeping requirements for small sellers may complicate the enforcement position. It may prove difficult for example, for authorities to form a view about a small seller's attitude to compliance in the absence of recorded information about what it has cost the seller to do so. We also acknowledge that removing the record-keeping requirements for small sellers will reduce the evidence base available in future about the effect of the legislation.

17. We believe that it is right to weigh the benefit of public accountability and comprehensive evidence against the burden that the reporting requirements will impose on small sellers. In doing so, we have taken into consideration the fact that although small sellers significantly outnumber large sellers in Wales their contribution to the number of bags supplied in Wales is low. We have also taken into consideration the fact that as a result, the amount of additional money that such businesses are likely to gain from the charge will be correspondingly low.

18. On balance, and taking account of further representations, we think that the burdens that record-keeping requirements would impose on the smallest of businesses outweigh the public benefit in having access to those records. We also think that in light of the relatively low contribution that the smallest sellers make to the total number of bags supplied in Wales, removing the record-keeping requirements will not disproportionately impede our ability to measure the impact of the legislation when we come to review it. We are therefore removing the record keeping requirements for sellers who employ less than 10 (full-time equivalent) staff at the beginning of any reporting year.

Net proceeds

19. The "net proceeds of the charge" is a label used in the Climate Change Act to indicate the amount of additional money that accrues to sellers because of the obligation to charge for bags. That figure is arrived at by deducting certain amounts from the "gross proceeds of the charge". Those amounts are specified in the 2010 Regulations as VAT and reasonable costs. The net proceeds figure is significant because sellers have to record what they do with their net proceeds and make this information available to customers and to the public.

20. We have looked again at how the Act deals with the term "gross proceeds of the charge" and we conclude that there is ambiguity about what that term is intended to mean. The 2010 Regulations were made on the basis that that term meant the total of all 5ps received by a seller for carrier bags. We believe that there is an equally compelling case that that term means *any* money received by sellers from charging for single use carrier bags. If it is the latter, the effect of the 2010 Regulations would be to include any amounts above the minimum 5 pence charge in a seller's "net proceeds of the charge" and this would erroneously inflate the amount of additional money that sellers receive by having to charge 5 pence per bag.

21. In view of this we have looked again at the reporting requirements in the Regulations and we believe that the better approach is to specify an additional amount to be deducted from the "gross proceeds of the charge" to arrive at the net proceeds of the charge. This is the amount of any money over and above 5 pence that a seller chooses to charge for bags.

22. If the term "gross proceeds of the charge" does indeed mean the total of all 5ps received, specifying this additional amount to be deducted will have no negative effect; it will simply be superfluous. On the other hand, if "gross proceeds of the charge" means all money received from charging any amount at all for bags and we do not require this additional amount to be discounted, then a seller's net proceeds of the charge would include any amounts above 5 pence that it chooses to charge its customers. This would produce a false picture of the additional amounts received by sellers as a direct result of having to charge for bags.

Reasonable costs

23. Our intention has always been that the charging scheme should be cost neutral for businesses. This is why the Regulations allow sellers to deduct their compliance costs from the amount they receive from charging 5 pence for bags. We believe that the bulk of these costs will be incurred prior to 01 October as retailers will need to make a number of changes to the way their businesses operate to ensure that they can comply with the requirements of the Regulations when they come into force. These costs will include changes to IT systems, staff training and communication costs.

24. The 2010 Regulations do not currently allow retailers to record these set up costs as 'reasonable costs' because they are not incurred during the actual reporting period (which in the first year covers the period 01 October to 6 April 2012).

25. We are amending the Regulations so that these set up costs count as 'reasonable costs' for the first reporting year and consequently, are to be deducted from the amount sellers receive from charging 5 pence for bags in the first reporting year. This will produce a more accurate picture of the additional money that sellers receive by having to charge 5 pence for bags.

<u>Fixed penalties: notice of intent</u>

26. The 2010 Regulations as currently drafted allow a notice of intent to impose a fixed monetary penalty to be served on a seller even if the seller has previously made a discharge payment in relation to the same breach, or if a fixed penalty has previously been imposed in relation to the same act or omission. This was unintentional and so we are amending the Regulations to prevent this.

<u>Exemptions: bags uses solely to contain certain items</u>

27. The requirement to charge for bags does not apply under the 2010 Regulations if a bag is used "solely to contain" certain items (unpackaged food and knives or blades are examples). At present, the 2010 Regulations are drafted so that to benefit from this exemption, each particular type of item would have to be contained in a separate bag. We are amending the 2010 Regulations so that the exemption applies where a bag contains *one or more* of these items so that the Regulations do not inadvertently require sellers to supply free bags where there is no practical need to do so.

<u>Exemption for sealed bags</u>.

28. This exemption was intended to capture sealed bags used as primary packaging before goods are offered for sale to customers. We wanted to avoid requiring sellers to charge for bags in circumstances where customers could not realistically be expected to exercise a choice about whether the bag is supplied or not.

29. We consider now that this exemption is not required. This is because in these cases the principal purpose of supplying the bag is primary packaging. As the Regulations can only require sellers to charge for bags supplied for the purpose of enabling goods to be taken away or delivered, we do not believe that they can require sellers to charge for bags primarily supplied as primary packaging. This being so, no exemption is necessary. The exemption is therefore being removed.

<u>Exemptions: mail order goods</u>

30. The policy intention behind the original mail order exemption was to capture the sealed polythene mailbags that are often used to deliver goods ordered through distance selling and delivered via the mail or by courier service.

31. The original exemption was not wide enough to cover all of the bags we intended it to cover and we think that the extension of the original exemption to mail packaging went beyond the types of bags we could require sellers to charge for. We are therefore amending the Regulations to more accurately capture the types of bags we had in mind.

5. Regulatory Impact Assessment (RIA)

32. A Regulatory Impact Assessment can be found in Part 2 below.

6. Consultation

33. There have been two public consultations in relation to the Single Use Carrier Bags Charge (Wales) Regulations 2010. The first, in June 2009, Proposals for a charge on single use carrier bags sought views on how the charge should work, including who should charge, how much the charge should be and what types of bags should be included. The second consultation in June 2010 sought views on the draft Regulations.

34. There has also been a formal process of stakeholder engagement in order to ensure that businesses are ready for the coming into force date of 1 October 2011.

Title: through the Draft Single-Use Carrier Bag Charge (Wales) Regulations 2010	Impact Assessment (IA)
Lead department or agency: Welsh Assembly Government	**IA No:** WAG
Other departments or agencies:	**Date: 05/10/2010**
	Stage: Enactment
	Source of intervention: Domestic
	Type of measure: Secondary legislation
	Contact for enquiries: Julie Osmond, 02920 82 5592, Julie.Osmond@wales.gsi.gov.uk

Summary: Intervention and Options

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

What are the policy objectives and the intended effects?

What policy options have been considered? Please justify preferred option (further details in Evidence Base)

When will the policy be reviewed to establish its impact and the extent to which the policy objectives have been achieved?	It will be reviewed by June 2013
Are there arrangements in place that will allow a systematic collection of monitoring information for future policy review?	Yes

Ministerial Sign-off For enactment stage Impact Assessments:

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister: ***Date:***

Summary: Analysis and Evidence

Policy Option 1

Description: No intervention ('Do Nothing')

Price Base Year 2010	PV Base Year 2010	Time Period Years 15	Net Benefit (Present Value (PV)) (£m)		
			Low:	High:	Best Estimate: - 390

COSTS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low		0		
High				
Best Estimate	0		31	390

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

With around 445 million single-use carrier bags consumed annually in Wales, the ongoing cost to the environment is estimated to be around £31 million per annum. This cost to the environment results from production processes, transportation and improper waste disposal.

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

Single-use carrier bags represent a waste of resources since it is assumed they are used only once and then discarded.

BENEFITS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low		0		
High				
Best Estimate	0		0	0

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

It is estimated there are no benefits resulting from the 'do nothing' option. Consumption of single-use carrier bags at the current level will generate an ongoing cost to society, with no benefits.

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

There are no non-monetised benefits from doing nothing.

Key assumptions/sensitivities/risks | 3.5

The 'do nothing' option assumes that consumption of single-use carrier bags in Wales will continue at the current level of around 445 million per annum. The ongoing cost per annum of the current level of consumption is estimated to be £31 million, based on the social cost per bag (estimated at around 7p).

Impact on admin burden (AB) (£m):			Impact on policy cost savings	In scope
New AB:	AB savings:	Net:	Policy cost savings: N/A	No

Summary: Analysis and Evidence

Policy Option 2

Description: Introduction of a charge on all single-use carrier bags

Price Base Year 2010	PV Base Year 2010	Time Period Years 15	Net Benefit (Present Value (PV)) (£m)		
			Low: 130	High: 200	Best Estimate: 130

COSTS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low		1	8	**100**
High			12	**150**
Best Estimate	2		8	**100**

Description and scale of key monetised costs by 'main affected groups'
Estimated cost to Consumers of between £7m and £10m per annum arises from loss of convenience in switching to bags-for-life (BfL) if not willing to pay the charge. Retailers will

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

BENEFITS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low		0	18	**230**
High			28	**350**
Best Estimate	0		18	**230**

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

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

Key assumptions/sensitivities/risks	Discount rate	3.5

Impact on admin burden (AB) (£m):			**Impact on policy cost savings**	**In scope**
New AB:	**AB savings:**	**Net:** 0.8	**Policy cost savings:** N/A	No

Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?	Wales	
From what date will the policy be implemented?	1st October 2011	
Which organisation(s) will enforce the policy?	Welsh Local Authorities	
What is the annual change in enforcement cost (£m)?	£0.5m	
Does enforcement comply with Hampton principles?	Yes	
Does implementation go beyond minimum EU requirements?	Yes	
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?	Yes	

Annual cost (£) per organisation (excl. Transition) (Constant Price)	**Micro** £0	**< 20** £90	**Small** £90	**Medium** £90	**Large** £80
Are any of these organisations exempt?	No	No	No	No	No

Specific Impact Tests: Checklist

Does your policy option/proposal have an impact on…?	**Impact**	**Page ref within IA**
Statutory equality duties	Yes	29
Economic impacts		
Competition Competition Assessment Impact Test guidance	Yes	27
Small firms Small Firms Impact Test guidance	Yes	28
Environmental impacts		
Greenhouse gas assessment	Yes	28
Wider environmental issues Wider Environmental Issues Impact Test guidance	Yes	28
Social impacts		
Health and well-being Health and Well-being Impact Test guidance	Yes	29
Human rights Human Rights Impact Test guidance	No	29
Justice system Justice Impact Test guidance	Yes	28
Rural proofing Rural Proofing Impact Test guidance	No	29
Sustainable development Sustainable Development Impact Test guidance	Yes	28

Summary: Analysis and Evidence

Policy Option 3

Description: Introduction of a ban on all single-use carrier bags

Price Base Year 2010	PV Base Year 2010	Time Period Years 15	Net Benefit (Present Value (PV)) (£m)		
			Low:	High:	Best Estimate: 80

COSTS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low		1		
High				
Best Estimate	1		5	60

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

Consumers are estimated to incur costs of around £4.5 million per annum through loss of convenience in having to remember their own shopping bags. Government is estimated to incur one-off costs through advertising the ban, of around £0.4 million, and through introducing the legislation (£0.18 million). Ongoing management and enforcement costs for Government are estimated at around £0.18 million and £0.5 million per annum, respectively.

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

As with a charge on SUCBs,

BENEFITS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low		0		
High				
Best Estimate	0		12	140

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

A This assumes the cost of 'free' SUCBs is currently priced into goods by retailers.

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

As with a charge, a ban

Key assumptions/sensitivities/risks — **Discount rate (%)** 3.5

The key sensitivity is that a ban on SUCBs will completely eliminate their production and consumption, and that this will lead to an equivalent increase in BfL demand of approximately 290%. It is also assumed that retailers currently price the private cost of 'free' SUCBs (estimated at 2p per bag) into the goods they sell, such that consumers are essentially paying for the bags they use. It is therefore assumed that retailers will lower their prices accordingly if a ban on SUCBs is introduced.

Impact on admin burden (AB) (£m):			Impact on policy cost savings	In scope
New AB:	AB savings:	Net:	Policy cost savings: N/A	No

Summary: Analysis and Evidence — Policy Option 4

Description: Extension of existing voluntary agreement to encompass more retailers

Price Base Year 2010	PV Base Year 2010	Time Period Years 15	Net Benefit (Present Value (PV)) (£m)		
			Low:	High:	Best Estimate: 20

COSTS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low		1		
High				
Best Estimate	1		1	10

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

Consumers estimated to incur annual costs of around £1 million through loss of convenience where retailers voluntarily place a charge on SUCBs. Participating retailers choosing to impose a charge on all SUCBs are assumed to incur one-off costs in altering till-points to process a charge, and ongoing admin costs of around £0.3m. One-off costs assumed to be £0.3 million, although this is an approximation based on 30% of remaining retailers participating; not all participating retailers will necessarily charge for SUCBs.

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

BENEFITS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low		0		
High				
Best Estimate	0		2	30

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

A

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

Key assumptions/sensitivities/risks — **Discount rate (%)** 3.5

Key sensitivity is that 30% of remaining retailers (not already in the existing voluntary agreement) will participate in the extended voluntary agreement; assumes this 30% is proportional to 30% of the consumer base. Estimates an additional reduction in SUCBs of 18% relative to the 445 million current consumption level. All participating retailers assumed to voluntarily impose a charge of 5p. However, in reality Option 4 might not generate an additional 30% participation, and some retailers may choose other methods to reduce SUCB consumption (or differing levels of charge). Even if these assumptions did change there is unlikely to be a significant effect on the overall NPV of the costs and benefits over time (i.e. the policy would still generate an ongoing cost to society).

Impact on admin burden (AB) (£m):			Impact on policy cost savings	In scope
New AB:	AB savings:	Net:	Policy cost savings: N/A	No

Evidence Base (for summary sheets)

References

No.	Legislation or publication
1	AEA Welsh Assembly Government Single-use Bag Study, 2009. *Welsh Assembly Government*. Available at: http://wales.gov.uk/topics/environmentcountryside/epq/waste_recycling/carrierbags/singleusestudy/?lang=en
2	Plastic Shopping Bags – Analysis of Levies and Environmental Impacts, 2002. *Nolan-ITU / Australian Government*. Available at: http://www.environment.gov.au/settlements/publications/waste/plastic-bags/analysis.html#download
3	The Most Popular Tax in Europe? Lessons from the Irish Plastic Bags Levy, 2007. *Environmental and Resource Economics* [online]. 38 (1) Available at: http://www.springerlink.com/content/92161h65144v2559/
4	Environment Group Research Report: Proposed Plastic Bag Levy – Extended Impact Assessment, 2005. *Scottish Executive*. Available at: http://www.scotland.gov.uk/Publications/2005/08/1993102/31039
5	The Use of LCAs on Plastic Bags in an IPP Context, 2004. *EuroCommerce*. Available at: http://www.repak.ie/files/PDFs/Life%20Cycle%20Analysis%20(LCA)%20on%20Plastic%20Bags.pdf
6	Environment and Rural Development Committee, 2005. *The Scottish Parliament*. Available at: http://www.scottish.parliament.uk/business/committees/environment/papers-05/rap05-28.pdf?page=3
7	Survey of Public Attitudes and Behaviours Towards the Environment, 2009. *Defra*. Available at: http://www.defra.gov.uk/evidence/statistics/environment/pubatt/index.htm
8	Consultation on proposals to introduce a charge on single-use carrier bags in Wales. Consultation dates: 29/06/09 to 21/09/09. Available at: http://wales.gov.uk/consultations/environmentandcountryside/singleusecarrierbags/?lang=en&status=closed
9	A consultation on the draft Single Use Carrier Bag Charge (Wales) Regulations 2010. Consultation dates: 04/06/10 to 02/08/10. Available at: http://wales.gov.uk/consultations/environmentandcountryside/carrierbagsregs/?lang=en&status=closed

Evidence Base (for summary sheets)

Background

1. In June 2009 the Welsh Assembly Government consulted[1] on the policy of introducing a charge on single-use carrier bags (SUCBs), considered in this Impact Assessment (IA) as Policy Option 2. A second consultation was undertaken between June and August 2010, to gather views on the draft Single Use Carrier Bags Charge (Wales) Regulations 2010. **The responses to the second consultation have thus been considered in the main body of this updated enactment-stage IA.**

2. The main objective of introducing a charge is to substantially reduce the number of single-use carrier bags (including paper and plastic bags) produced and consumed annually in Wales, beyond the levels already achieved through voluntary action undertaken by participating retailers. This is consistent with the vision set out in 'One Wales: One Planet' of a sustainable Wales that lives within environmental limits and uses only its fair share of the earth's resources.

3. The voluntary agreement currently in place encompasses seven participating retailers and achieved a reduction in SUCBs given out in Wales of 49% between 2006 and 2009. However, there is still an estimated 445 million SUCBs consumed each year in Wales[2], with an estimated ongoing cost to the environment – through production emissions and improper waste disposal – valued at around £31 million per annum. Policy action is therefore required, and is outlined in this Impact Assessment, since the ongoing cost to the environment of 'doing nothing' is deemed too high to be sustainable over the longer term. The policy thus aims to substantially reduce this ongoing 'social cost'.

Purpose and Intended Effect

4. The objective of the policy is to:

    - encourage consumers to adapt their behaviour towards achieving a more sustainable level of consumption, both in SUCB usage and indirectly through altering attitudes towards waste in other areas of daily life;
    - cut down on the wasteful use of resources in producing single-use bags;
    - improve the quality of the local environment by reducing the highly visible litter created from single-use bags; and
    - encourage waste reduction and prevention.

5. It is proposed that the charge will be introduced through regulations made under the powers provided in schedule 6 of the Climate Change Act 2008, to apply a charge to single-use carrier bags.

---

[1] See Reference 8.
[2] See Reference 1, Table 11. Estimates the number of bags used annually in Wales under the current voluntary agreement, following a 50% reduction in SUCBs from the 2006 baseline of an estimated 660 million.

6. The charge will apply to all those who sell goods in the course of trade or business to customers in Wales, including: supermarkets; high street retailers; small businesses; market stalls; internet grocery deliveries; and those that provide a service and also sell goods (e.g. a hairdressing salon which also sells hair products).

7. A description of bags to be covered by the proposed charge is contained at Annex 2, along with detailed exemptions from and rules for the application of the charge.

Rationale for Government Intervention

8. The rationale for Government intervention is represented by the ongoing 'social cost' of producing single-use carrier bags (SUCBs).

9. The production of SUCBs imposes an external cost on society (estimated at 7p per bag), both through the emissions created during the production process and through the improper disposal of the bags. The cost to society could effectively be higher, since the damage to marine- and wild-life and the aesthetical cost to society of improper disposal could not be quantified.

10. Government intervention is necessary since the cost imposed on society of the production of SUCBs is not captured by the 'private cost' of each bag (estimated at around 2p), i.e. the price at which they are purchased by retailers. For the purpose of this IA it is assumed that the private cost of each SUCB is passed on by retailers to consumers through the price of their shopping.

11. The marginal (additional) cost of purchasing each bag therefore does not reflect the true cost to society of producing each bag. This is said to create a 'negative externality' – essentially an unfavourable side-effect – which Government intervention thus aims to correct through internalising the social cost, i.e. imposing a charge at point of sale to ensure those consumers who choose to purchase SUCBs are paying the full cost to society of their action.

Policy Options

12. Four policy options have been considered in this IA, in order to evaluate whether the introduction of a charge is the best approach to achieving the objective of a lower, more sustainable level of consumption of SUCBs in Wales. The Options are as follows:

    - **Option 1**: No intervention ('do nothing');
    - **Option 2**: Introduction of a charge on all single-use carrier bags (with some exemptions);
    - **Option 3**: Introduction of a ban on all single-use carrier bags (with some exemptions);
    - **Option 4**: Extension of the existing voluntary agreement to encompass more retailers.

13. The net present value (NPV) of each policy option represents the stream of costs and benefits over a 15-year period, and is appraised relative to a 'do-nothing' option (Option 1) which acts as a reference point for comparison. Doing nothing is not preferable since this option generates an ongoing cost to society related to the number of SUCBs still being consumed annually in Wales. The preferred option (Option 2) is the introduction of a charge on all single-use bags, with some exemptions, since this option generates the highest benefit to society in terms of NPV over a 15-year period.

14. The four options are outlined below, with further analysis of each presented in the subsequent section of the evidence base.

Option 1: 'Do Nothing'

15. Option 1 was evaluated as the reference case, and involves a 'do nothing' approach, whereby the current voluntary agreement encompassing 7 major retailers continues with no further intervention from Government. This option has already achieved a 49% reduction in SUCBs in Wales between 2006 and 2009, through a combination of removing bags from view at till-points and charging for SUCBs (1 out of 7 of the retailers imposed a charge).

16. However, this option still generates a consumption level of around 445 million SUCBs per annum in Wales (330 million plastic and 115 million paper), with an ongoing cost to society of an estimated £31 million per annum. It is anticipated that without further intervention this level of consumption is unlikely to fall substantially further.

17. The NPV of Option 1 is estimated to be around **-£390 million** and is the baseline cost to which all other options have been compared. This figure represents an **overall net cost to society**, since each bag has a 'social cost' attached to it (i.e. production and disposal of the bags creates negative environmental effects).

Option 2: Charge

18. Option 2 involves the introduction of a charge on all single-use carrier bags, **both paper and plastic** (with some exemptions – see Annex 2). Paper bags are included in the charge since they have an even higher detrimental impact on the environment than plastic bags. Although sometimes made from recycled materials – as is now the case for many plastic SUCBs – the emissions generated from the production and transportation processes are estimated to be much higher than for plastic bags. Paper bags are also less durable than plastic bags and are therefore more likely to only be suitable for single use.

19. Introducing a charge is intended to create a disincentive for use and therefore aims to reduce the number of SUCBs consumed annually. This would hence create a net benefit to the environment, through the reduction in both production emissions from, and waste disposal of, single-use carrier bags.

20. A charge on SUCBs was put forward in the second consultation as the preferred policy option since it was estimated to generate the highest net benefit to society, relative to the 'do nothing' option; the recommended level of charge was based on the estimated social cost per SUCB, of 7p. Following consultation, and consideration of all the available information , **the charge has been revised to 5p per SUCB.** The cost-benefit analysis in this IA has thus been re-worked since the 'Final' (Consultation) stage IA to incorporate a 5p charge per SUCB being implemented rather than a 7p charge.

21. It should be noted that this policy is highly experimental and there are many uncertainties surrounding the assumptions used in this analysis. Hence, there is scope to raise the charge at a later date should the policy fail to reduce demand for SUCBs to a more sustainable level; or, indeed, to lower the charge should demand fall significantly.

22. The NPV of Option 2 depends upon the level of the charge introduced: under a **7p** charge the NPV is estimated to be **-£180 million** (an additional benefit of £210 million compared with doing nothing) and is based on a reduction in SUCBs of around 70% (or 300 million); under a **5p** charge the NPV is estimated to be around **-£260 million**, which is **a benefit of £130 million in addition to the reference case** (i.e. -£390m + £130m = -£260m) and is based on a reduction in SUCBs of around 59% (or 260 million). The NPV is still negative in both cases, representing an overall net cost to society; this reflects the fact that a charge of either 5p or 7p is lower than the estimated optimal level required to completely eliminate the cost to society of producing SUCBs. It is estimated that a charge set somewhere between 10p and 15p could potentially eliminate this cost.

23. The Welsh Assembly Government does not currently have the powers to determine where the net proceeds of a charge are directed. The Assembly Government has proposed the development of a voluntary agreement with retailers regarding the use to which the net receipts from a charge will be put. Under such a voluntary agreement, retailers will manage the collection of the charge and its distribution, having accounted for reasonable costs. The net receipts would then be passed from retailers directly to charities, environmental or other projects. The definition of 'reasonable' costs was a key issue in the consultation responses and is discussed later in this IA.

Option 3: Ban

24. Option 3 involves a ban on all single-use carrier bags (applying the same exemptions as set out for Option 2, outlined at Annex 2), such that it would be an offence to either produce or sell such bags under this option. Option 3 could therefore eliminate the estimated 445 million SUCBs currently consumed per annum in Wales, thereby removing the ongoing social cost associated with single-use carrier bags.

25. This option would result in a net environmental benefit through the reduced production of SUCBs. The NPV of Option 3 is estimated to be around **-£310 million**, which is **a benefit of £80 million relative to the reference case**. This is based on the total elimination of the estimated 445 million SUCBs currently

consumed per annum. Although a substantial environmental benefit would arise from eliminating single-use carrier bags, it is anticipated that an outright ban on SUCBs would result in a considerable increase in the number of bags-for-life consumed annually. Hence, this increase would generate a cost to the environment which is estimated to offset much of the environmental benefit gained from the reduction in SUCBs.

26. There was some support for a ban on SUCBs in the consultation responses, with the potential environmental benefit highlighted as a fundamental factor. Several responses considered that the figure quoted in the previous 'Final' (Consultation) stage IA did not fully reflect the true potential value of the environmental benefit arising from a ban. However, our best estimate was based on analysis of the social cost per SUCB which included an assessment of the environmental impact per bag. Whilst there exists a degree of uncertainty relating to the valuation of environmental effects, we feel the analysis gives a good representation of the social impacts per bag. Furthermore, it should be noted that the net environmental benefit arising from a ban also takes into consideration the increased environmental cost arising from the relative increase in bags-for-life following a ban on SUCBs.

27. A further key benefit highlighted by the consultation was the elimination of administration costs for retailers which would arise under a charge. However, for the purpose of analysis this would not be an additional monetary benefit relative to doing nothing, since retailers are not currently required to record the number of SUCBs given out to customers. Additional responses to the consultation indicated a ban would be clearer and simpler to understand, since there would be no need for a list of exemptions that could be open to interpretation.

Option 4: Extended Voluntary Agreement

28. Option 4 involves extending the current voluntary agreement through Government intervention, to encompass a greater number of retailers. The objective of Option 4 is thus to encourage a further reduction from the reference case in the number of SUCBs consumed annually. For the purpose of analysis, this additional reduction is estimated to be around 18% relative to the reference case (i.e. 445 million reduced by 18%); this is based on a similar achievement in Australia through an extended voluntary agreement to reduce the number of single-use bags consumed, although the precise extent to which retailers participated is not known.

29. Given that under the existing voluntary agreement the seven participating retailers hold around 75% of the market share[3] of food retailers in the UK, it is thus assumed that around a third (or 30%) of the remaining retailers would participate in an extended voluntary agreement. However, since there is no data available on potential participation rates this figure could ultimately be higher or, indeed, lower. For the purpose of this analysis it is also assumed that all participating retailers would voluntarily charge 5p per bag; although, in reality

[3] IGD Retail Analysis [online]. Data for 12 weeks to 21st February 2010. Available at: http://www.igd.com/analysis/news/index.asp?nid=6634

retailers might choose to reduce SUCB consumption using means other than a charge (e.g. removing SUCBs from view at till-points).

30. This option could also generate a net environmental benefit, albeit the lowest net nominal benefit of all the policy options. The NPV of Option 4 is thus estimated to be around **-£370 million**, which is **a benefit of £20 million relative to the reference case** and is based on a reduction in SUCBs of around 80 million.

31. Responses to the second consultation indicated that this option would be preferable to a charge since a majority of retailers feel that an extended voluntary agreement could achieve an additional reduction in SUCBs far greater to that outlined in this analysis. However, further evidence would be needed in order to quantify any additional benefit arising from this option, since the only robust evidence available is that of the 49% reduction already achieved by 2009 under the existing voluntary agreement. Although there is some evidence available from specific retailers regarding reductions achieved through their own voluntary agreements, broader evidence of such schemes is needed in order to undertake analysis which is fully representative of the consumer base in Wales.

32. For illustrative purposes, if Option 4 were able to reduce SUCB demand by a further 50% relative to the baseline (i.e. 445 million reduced by 50%, to 223 million) it is estimated that, provided 50% of remaining retailers took part and all voluntarily charged 5p per bag, this could create an additional benefit of around £50 million relative to the original estimated NPV, giving a new overall NPV of -£320 million. If participating retailers only charged 1p per SUCB on this voluntary basis the additional benefit relative to the original NPV would be smaller at around £10 million, generating an overall NPV of an estimated -£360 million. These adjusted NPV figures also account for the anticipated relative increase in bags-for-life that would arise under this option.

33. A description of the assumptions used in the calculation of the costs and benefits for each policy option is included at Annex 3.

Calculation of Costs and Benefits

34. The four policy options are evaluated in terms of the net present value of the stream of costs and benefits resulting from each, over a 15-year period. There are four main categories estimated to be affected by the introduction of each policy option:

    - Consumers
    - Retailers
    - Environment
    - Government

    For each policy option, both consumers and the environment incur annual costs and receive annual benefits, resulting in an overall annual net benefit (relative to doing nothing) in each case. One-off costs arise for both retailers and the

Government under Option 2, as do annual costs. The Government is estimated to incur one-off and annual costs under Option 3, whereas retailers are likely to incur zero or minimal costs under this option. Assuming all participating retailers impose a charge under Option 4, retailers are estimated to incur both one-off costs and annual costs under this option, whereas the Government does not incur any costs under Option 4.

Cost to Consumers

35. The aim of a charge is to bring about a change in consumer behaviour and to encourage people to use re-usable alternatives wherever possible; hence, this policy should not be seen as intentionally or unjustifiably impacting on lower- or fixed-income groups. Some consultation responses suggested that it is unfair to imply that this policy will affect lower-income groups more than others. Indeed, those people who are still willing to pay the charge in order to receive SUCBs are more likely to be those who can afford to do so.

36. The annual cost to the consumer of introducing a charge (Option 2) results from the inconvenience caused by switching to bags-for-life[4] (BfL), i.e. in having to bring the bags on each shopping trip. This inconvenience arises for those consumers not willing to pay the charge. Assuming consumers are perfectly rational, those not willing to pay the charge will use alternative bag types such as BfL – thereby incurring this inconvenience.

37. The total cost to consumers under Option 2 can therefore be estimated by the fall in demand for SUCBs following a charge (i.e. the convenience lost from the reduction in SUCB usage), multiplied by the price of a SUCB following a charge. For a charge of 5p per SUCB it is estimated there would be a fall of around 260 million SUCBs. This sum is then divided by two, since this is estimated to be approximately equal to the area under the demand curve for SUCBs. The total cost of this inconvenience to all consumers in Wales is estimated to equate to around £6.5 million per annum ([£0.05 x 260m] / 2).

38. The same method is used in calculating the cost to the consumer of both a ban on SUCBs (around £4.5 million per annum with a fall in SUCBs of 445m) and an extended voluntary agreement (around £0.5 million per annum with a fall in SUCBs of 80m). Whereas for Options 2 and 4 the price of a SUCB would equate to the level of charge per bag[5], under the ban the 'price' of a SUCB would equate to the 'private cost' of each bag (estimated at 2p).

39. **The private cost per bag is assumed to be a 'hidden' cost charged by retailers and included in the price of shopping**. This is assumed to be a cost already incurred by the consumer under the 'do nothing' option. For the purpose

[4] For the purpose of this IA, all reusable carrier bags used to carry shopping (food or otherwise) are termed 'bags-for-life'. In this case, this simply means they are intended for re-use. However, the term 'bag-for-life', coined by retailers, generally assumes that once this bag has been purchased (usually at a cost of around 10p) the retailer will replace it free of charge once it has reached the end of its life, and will continue to do so without limit.

[5] Under the extended voluntary agreement, it is assumed all participating retailers would charge 5p per SUCB (see Annex 3 for more detail).

of this IA it is assumed that retailers would lower their general prices under a **ban** on SUCBs, since they would no longer incur the cost of purchasing the bags. However, in reality this is not likely to be the case and consumers would therefore carry on paying for a good they are no longer able to receive.

40. The wholesale cost of a SUCB is not included under the definition of 'reasonable costs' which can be deducted from the gross proceeds of a charge. It is assumed that the wholesale cost of SUCBs is, and will continue to be, a cost which retailers pass on to consumers through the price of their shopping. Responses to the second consultation indicated that several retailers consider SUCBs to be a 'free' reward to customers in return for using their services. However, retailers are profit-making businesses and it is therefore deemed appropriate to assume for the purpose of this IA that the cost of SUCBs is somehow passed on to the consumer.

Benefit to Consumers

41. The annual benefit to the consumer of introducing a charge arises from the transfer of consumption, from 14 SUCBs towards one BfL. This transfer is based on the assumption used in a report by the Environment Agency[6] on the life-cycle of supermarket carrier bags. The report indicates that in order to carry one month's shopping (483 items) from the supermarket to the home (UK level, 2006/07), 82 SUCBs are required; hence, around 985 SUCBs are used per household, per annum (the same assumption has thus been applied to Wales, for simplicity). This compares with an average requirement of around 70 bags-for-life – consisting of LDPE bags, non-woven PP bags, and cotton bags – such that one BfL equates to 14 SUCBs, i.e. 985/70 = 14). The benefit to the consumer of this transfer is the difference between the price they would have paid for 14 SUCBs following the introduction of a 5p charge (i.e. £0.70), minus the price they actually pay for one BfL (£0.16 – see paragraph 163) if they are not willing to pay the charge. The total benefit to consumers is therefore the individual gain multiplied by the increase in the number of BfL demanded (around 24 million) under a charge; this is estimated to equate to around £14 million in total, per annum.

42. Under Option 3 (ban), the same method is used for calculating the benefit to consumers, i.e. the difference between willingness to pay for 14 SUCBs and willingness to pay for one BfL; this is estimated to amount to around £5 million in total, per annum. Consumers' willingness to pay for a SUCB under a ban is assumed to equate to the private cost per bag (estimated at 2p) which would have been priced into their shopping in the reference case (see paragraph 39).

Benefit to the Environment

43. The net environmental benefit is calculated by taking the social cost of producing 445 million SUCBs and 14 million BfL in the reference case, and comparing this

---

[6] Life Cycle Assessment of Supermarket Carrier Bags, Environment Agency (draft report – as yet unpublished).

with the social cost of production of both following the introduction of each policy option.

44. The net environmental benefit is estimated to be highest under Option 3 (a ban). Although the social cost of producing BfL is highest under this option – since the increase in BfL demand is estimated to be substantially higher than under Options 2 or 4 – there is a relatively large environmental benefit from eliminating the social cost of production of SUCBs, thereby increasing the net benefit.

45. There are also aesthetical benefits to the environment from reduced plastic bag litter, which could not be quantified at this stage. A description of the calculation of the social cost of production of both SUCBs and BfL can be found at Annex 3.

Cost to Retailers

46. One-off costs to retailers arise with the introduction of a charge under both Options 2 and 4 (assuming that Option 4 involves voluntarily imposing a charge on SUCBs). These set-up costs involve altering till-points to process the charge (estimated at around £1 million in total for the retail sector) and to ensure the number of bags sold with each purchase is itemised on receipts. Annual costs arise from having to administer the charge (estimated at around £0.9 million for the retail sector); i.e. to record and publish the number of SUCBs sold per annum (further detail of administration costs is provided at Annex 2). However, reasonable administration costs associated with processing the charge can be deducted from the gross proceeds, with the intention of making the charge cost-neutral to retailers.

47. The cost to retailers is assumed to be lower under Option 4 than Option 2, since fewer retailers are assumed to participate under Option 4. Option 3 may involve minimal one-off costs to some retailers in terms of amending till-points to account for offering an alternative to SUCBs. However, since many retailers already offer alternatives, the cost to retailers is estimated to be far lower than for Options 2 and 4 (i.e. is estimated to round down to zero).

48. Responses to the second consultation indicated that a charge might impose additional costs on small businesses and on Quick Service Restaurants (QSRs). Since many items in QSRs or in greetings card shops, for instance, are priced at £0.99 or £1.99 a charge on SUCBs could take the price of a purchase over the next one-pound mark, substantially increasing the amount of change a customer would require if paying in cash. This could generate additional costs to business in terms of handling cash, staff time taken to process transactions and an increase in bank transactions. However, payments by credit or debit card are becoming more prevalent and it is anticipated that this could therefore minimise such impacts on businesses.

49. Additional security costs might also arise to retailers from the increased risk of theft that could be associated with the policy. For example, a purchase is usually verified by ensuring that the good is placed in a store carrier-bag; if a bag is not used it could create uncertainty as to whether goods have actually been purchased. There was some concern that this would place disproportionately

high costs upon smaller retailers who cannot necessarily afford to improve their security. On the other hand, it is anticipated that larger firms are likely to incur a higher incidence of theft overall, since they have higher volumes of both consumers and produce. It has not been possible to quantify such impacts at this stage since further information or evidence is required from retailers in order to do so. This could be obtained, for instance, when undertaking the Post Implementation Review following the introduction of a charge.

50. The second consultation indicated there is some concern that the policy could impact upon impulse purchases if consumers are not willing to pay the charge and do not have an alternative carrier bag with them. However, the policy is designed to encourage a fundamental change in consumer behaviour, with the intention of making people more aware of the need to re-use carrier bags and to carry them whenever possible. It is not anticipated that an additional 5p on the total cost of a purchase would substantially affect impulse buying, even in the case of low-cost goods. However, more evidence and research on impulse purchasing is needed in order to quantify this potential impact.

51. Since the total potential costs to retailers of a charge could not be fully quantified at this stage, the costs outlined in the IA could underestimate the true value to retailers on a per annum basis. However, although the impact of additional costs will vary between firms, it is not anticipated that the non-quantified costs outlined above will be substantial as to have a significant impact on the overall annual cost to retailers.

Cost to Government

52. The Government is estimated to incur both one-off and annual costs under Options 2 and 3 (i.e. the introduction of a charge or a ban), with costs assumed to be the same or similar under each policy. It is assumed Option 4 does not involve any costs to Government.
53. One-off costs of an estimated £0.4m arise from communicating / advertising the introduction of a charge, and £0.18m for introducing the legislation. Preparatory work on enforcement is estimated to cost up to £0.33m, with ongoing (annual) costs of around £0.45m assumed to arise from enforcing a charge thereafter (based on a complaint-led enforcement regime). Ongoing management within WAG is estimated to cost £0.18m per annum.

Costs and Benefits by Policy Option

54. Table 1.0 sets out the estimated total costs and benefits arising under each policy option for each of the categories listed previously (Consumers, Environment, Retailers and Government), and using four different levels of charge under Option 2 for comparison. Options 1, 3 and 4 would produce the same outcomes regardless of the level of charge introduced under Option 2.

55. The lowest level of charge considered under Option 2 was 5p and the highest 15p; this range was based on responses to the first consultation[7] process, which

[7] See Reference 8.

indicated that a majority would find it appropriate to apply a charge of between 5p and 15p per SUCB. Further consideration of the recommended level of charge to be introduced under Option 2 is outlined in the subsequent section.

Table 1.0 Estimated Costs and Benefits by Policy Option

Costs and Benefits (£ million)	CONSUMERS		ENVIRON-MENT	RETAILERS		GOVERNMENT		NPV £ million
	Benefit	Cost	Net Benefit	One-off costs	Annual Costs	One-off costs	Annual Costs	
Option 1: ***'Do Nothing'***	0.0	0.0	-31.0	0.0	0.0	0.0	0.0	**-390.0**
Option 2: ***5p Charge***	14.0	7.0	4.0	1.0	1.0	1.0	1.0	**-260.0**
Option 3: ***Ban SUCBs***	5.0	4.0	6.0	0.0	0.0	1.0	1.0	**-310.0**
Option 4: ***Voluntary Agreement***	1.0	1.0	1.0	1.0	1.0	0.0	0.0	**-370.0**
Alternative Charge Levels Under Option 2								
7p	24.0	11.0	4.0	1.0	1.0	1.0	1.0	**-180.0**
10p	44.0	19.0	5.0	1.0	1.0	1.0	1.0	**-20.0**
15p	75.0	31.0	6.0	1.0	1.0	1.0	1.0	**230.0**

Note: All figures are rounded to the nearest £1 million; costs to Retailers under Option 4 are rounded up to £1 million for indicative purposes (i.e. would round down to zero). NPVs are rounded to the nearest £10 million.

56. The assumptions used in the calculations in Table 1.0 are outlined at Annex 3. Overall a net benefit arises for both Consumers and the Environment under each of the policy options 2, 3 and 4. Therefore, **undertaking *any* policy action is estimated to make both Consumers and the Environment better off, relative to the 'do nothing' option.**

57. However, the NPV represents the present value of the stream of costs and benefits over a 15-year period, for each policy option; hence, the higher the NPV, the better the expected outcome of the policy option. Each NPV is calculated relative to the reference case, i.e. Option 2 creates an additional benefit of £130 million, relative to the -£390 million baseline NPV under Option 1, resulting in a negative NPV for Option 2 of £260 million. Option 3, for example, would create a benefit to society of £80 million, but would result overall in an ongoing cost to society of approximately £310 million (-£390 + £80 = -£310).

58. It should thus be noted that Options 3 and 4 are estimated to result in an ongoing cost to society. Table 1.0 indicates that Option 2 might also result in an ongoing cost to society should the level of charge per bag amount to 10p or below; however, a level of charge in the range of 10p to 15p per bag is estimated to produce an overall benefit to society.

59. Regardless of the level of charge introduced under Option 2, Table 1.0 indicates that Options 3 and 4 generate the lowest relative NPVs. **Option 2 is thus preferable since it is estimated to produce the highest additional benefit relative to the reference case.**

60. The recommended level of charge to be introduced under Option 2 is outlined in detail in the following section.

Recommended Level of Charge on Single-Use Bags

Responses to the Consultation Process

61. The first consultation process (see Reference 8) highlighted the incidence of two retailers having achieved around an 85% reduction in SUCB usage through applying a 5p charge to each single-use bag; others had also achieved reductions through similar charges.

62. However, on balance this data should not be seen as representative for Wales as a whole, since the retailers in question do not represent the average consumer base. For instance, one of the retailers tends to have a clientele from higher income groups who may be more environmentally conscious so as to reduce their consumption of SUCBs, but at the same time could afford to purchase more bags for life which could potentially offset this reduction. If there is a substantial increase in the level of production of BfL (i.e. above that which is used in the calculations for this IA) and this is sustained over the longer term, it could have a detrimental effect on the environment since the social cost of producing a BfL is estimated to be much higher than that of a SUCB.

63. The responses to the first consultation also indicated that a majority would find a charge per bag of between 5p and 15p preferable, with the lower end of the range proving the most popular. However, in attempting to achieve a reduction in the level of SUCBs consumed annually in Wales, **a charge is intended to challenge consumers' willingness to pay for each SUCB**. The preferable response to a 5p charge suggests, therefore, that this would be too low to prevent consumers from purchasing SUCBs. It was therefore originally proposed that the minimum level of charge should be 7p per SUCB, based on the estimated social cost per bag. This level of charge formed the basis for the second consultation, in 2010.

64. However, responses to the second consultation indicated that the majority of retailers would recommend a charge per bag of **5p or lower**, based on a desire to secure a positive response from consumers to the charge and existing evidence of charging. A level of charge of 7p – based on the estimated social cost per SUCB – was seen to be impracticable and 'odd', with either 5p or 10p being preferable.

65. According to the consultation responses, there is a general view that a level of charge which is too high could generate a negative reaction to the policy

altogether, and that gentle encouragement to adapt towards more sustainable behaviour is more likely to be effective in the first instance. A lower charge of 5p was therefore suggested, since this level is seen to be less of a ‘punishment’ to consumers (than a 7p charge) for needing a bag.

66. There was also some concern that several bags-for-life are offered for sale in Wales at 5p per bag; if the price of a SUCB were set higher than the price of a BfL this could simply encourage consumers to use BfL as a substitute for SUCBs and to throw them away after only one use. As outlined at Annex 3 the social cost of a BfL is estimated to be much higher than that of a SUCB; hence, if bags-for-life were simply to be substituted for SUCBs this could generate a greater environmental cost and would therefore reduce the net environmental benefit arising under Option 2. This would place downward pressure on the overall NPV of Option 2 and could make it a less desirable option overall.

67. There is, however, a difficult balance to strike in setting a level of charge, with the need to both fulfil the objectives of the policy whilst at the same time attempting to ‘nudge’ people towards re-usable alternatives to SUCBs. While economic theory suggests that in order to correct for an externality the ‘external’ costs of a good should be ‘internalised’ – i.e. in this case, the consumer should pay the full ‘cost’ to society should they choose to consume a SUCB – many uncertainties still persist at this stage; other important factors have thus been considered in setting the minimum level of charge.

Internalising the Social Cost per Bag

68. The social cost of producing a single-use bag should be evaluated in assessing the level of charge required. The policy aims to reduce the ongoing cost to society of producing the 445 million SUCBs currently consumed annually in Wales. Therefore, the charge should be set at a level which ‘internalises’ the social cost of consuming a single-use bag.

69. The estimated social cost of producing each single-use bag is 7p: this consists of the emissions created in the production of each bag, and the disposal costs associated with the consumption of each bag. Further explanation of the calculation of the social cost can be found at Annex 3 (it was not possible to calculate the social cost of a paper bag at this stage; hence, for the purpose of this analysis it was assumed that the social cost is the same as for a single-use plastic bag).

70. Setting the charge at 7p or above could ‘internalise’ the negative externality created in the consumption of SUCBs, by ensuring consumers pay the ‘full price’ (i.e. the total external cost, consisting of private cost plus cost to society) of their action. The private cost to retailers (estimated at 2p per bag) is assumed to be already included in the price of shopping.

Generating a Net Benefit to Society

71. It is estimated, however, that any of the policy options outlined above would create an additional benefit to society relative to the reference case, such that any of the charge levels detailed in Table 1.0, including 5p, would be preferable to 'doing nothing'. Nonetheless, a higher level of charge is estimated to result in a greater net benefit to both Consumers and the Environment.

72. However, in terms of generating an *overall net benefit to society* (i.e. wholly eliminating the ongoing social cost), Table 1.0 indicates that a level of charge somewhere between 10p and 15p would be the minimum required out of the four charges evaluated; i.e. to create an additional net benefit to society, relative to the reference case, which takes the overall net present value of policy action to greater than zero.

73. The aim of the policy, however, is to achieve a more sustainable level of consumption and to cut down on the wasteful use of resources: although an overall net benefit to society would be preferable in terms of improving welfare, reducing the overall social cost would also contribute to achieving these objectives.

74. Furthermore, since it is estimated that the majority of bags-for-life are the heavy gauge 'LDPE'[8] type which tend to have an average price of 10p, setting the charge above this level could potentially cause a 'shift' in consumption patterns. Consumers could simply replace consumption of the now more-expensive SUCBs with that of BfL, effectively using bags-for-life as single-use bags. Since the estimated social cost of a BfL is higher than that of a SUCB, an increase in BfL demand could ultimately have a detrimental effect on the environment if a higher level of consumption was sustained over the longer term. However, any shift in consumption patterns will depend upon a number of factors, including personal preference, and will also depend upon the average price of an LDPE bag-for-life.

75. A level of charge of between 7p and 15p was therefore recommended in the previous IA, based on the objectives of the policy and the estimated social cost of producing the bags. However, other key factors such as public acceptability also need to be considered in setting the level of charge. Although willingness to pay would need to be challenged in order to reduce consumption of SUCBs to a desirable level, the responses to the second consultation indicated that the majority of larger retailers are confident that a minimum charge of 5p per SUCB would be sufficient to achieve a desirable reduction in demand for SUCBs.

Sensitivity Analysis

76. The estimates for the Costs and Benefits by Policy Option in Table 1.0 are based on a range of assumptions taken from varying sources, including data from

[8] Low-density polyethylene. Single-use carrier bags are generally HDPE (high-density polyethylene).

studies of the Irish levy on SUCBs (the 'PlasTax'[9]); the Scottish Executive[10]; and findings from the Environment Agency[11] on the life-cycle analysis of carrier bags.

77. Since the Irish 'PlasTax' is one of only a few real-world examples of a charge on SUCBs, and is the only known example which has produced robust findings, there exists some uncertainty surrounding the assumptions used in the calculations for this IA. It was therefore deemed necessary to undertake sensitivity analysis to determine whether varying the baseline assumptions would alter the outcome of each policy option.

78. The detailed assumptions used in the calculation of costs and benefits for each option are outlined at Annex 3. The main baseline variables used are as follows:

- Percentage change in quantity demanded of SUCBs
- Percentage change in quantity demanded of BfL
- Composition of BfL demand
- Average price of a BfL
- Social cost of a BfL

Using sensitivity analysis, these assumptions were varied under each policy option and evaluated against the four levels of charge shown in Table 1.0, in order to assess their relative impact on the costs and benefits and overall NPV for each option. The assumptions used under Option 4 were also amended for the purpose of sensitivity testing, in response to suggestions resulting from the second consultation (see paragraph 190 for results).

79. The only indicator which had any real effect on the overall ranking of the policy options (in terms of the overall NPV per option) was the composition of bag-for-life (BfL) demand, which altered both the average cost and, subsequently, the social cost of a BfL. The ranking of the policy options in each case also depended upon the level of charge under consideration. The outcome of the analysis is detailed in the following sections.

Percentage Change in Quantity Demanded of SUCBs

80. Using results from the experience in Ireland following the introduction of the 'PlasTax', regression analysis was undertaken in order to evaluate the percentage reduction in SUCBs associated with differing levels of charge. For instance, the Irish levy was €0.15 when it was first introduced in 2002, which corresponded to around a 94% reduction in quantity of SUCBs demanded, relative to the 2001 level, in the first year following implementation (averaging 91% overall by 2008). Using the 2008 exchange rate, which corresponds to the latest available Irish data, the results of the regression analysis showed that the following average percentage reductions in SUCBs demanded were associated with the relative levels of charge:

[9] See Reference 3 and Reference 5.
[10] http://www.scotland.gov.uk/Publications/2005/08/1993102/31039See Reference 4.
[11] Life Cycle Assessment of Supermarket Carrier Bags (2011), Environment Agency, Bristol..

- 5p (€0.06) = 59% reduction in SUCBs demanded
- 7p (€0.08) = 68% reduction in SUCBs demanded
- 10p (€0.13) = 83% reduction in SUCBs demanded
- 15p (€0.17) = 92% reduction in SUCBs demanded

81. The original recommended level of charge to be introduced under Policy Option 2 was between 7p and 15p. The calculations for Policy Option 2 in the 'Final' (Consultation) stage IA therefore used an associated reduction in SUCBs demanded of 68%, based on the central recommendation of a minimum 7p charge. However, the minimum level of charge has now been proposed at 5p per SUCB, based on the responses to the second consultation. The Costs and Benefits outlined in the 'Summary: Analysis and Evidence' page for Option 2 are therefore now based on a charge per SUCB of 5p, rather than the 7p originally recommended in the previous IA. [Note that the differing levels of charge in Table 1.0 use the associated percentage reductions in SUCB demand].

82. The range of values given on the 'Summary: Analysis and Evidence' page for Option 2 was found by altering the relative percentage change in quantity demanded of SUCBs following the introduction of a charge, holding all other assumptions constant. Table 2.0 shows the percentage reductions used in the calculation of the ranges for Costs and Benefits on the 'Summary' page, based on a 5p charge.

Table 2.0 Effect of altering Percentage Reduction in Quantity of SUCBs demanded

£ million					
Reduction in, and New Quantity Demanded of, SUCBs	**Total Cost to Consumers**	**Total Benefit to Consumers**	**Average Annual Cost**	**Average Annual Benefit**	**Overall NPV**
59% (185m)	7	14	8	18	-260
68% (145m)	8	16	9	21	-240
83% (75m)	9	19	11	25	-210
92% (40m)	10	21	12	28	-190
100% (0m)	11	23	13	30	-170

Note: Figures are rounded to the nearest £1 million; overall NPV figures are rounded to the nearest £10 million. New quantities demanded of SUCBs are rounded to the nearest five million.

83. Table 2.0 indicates that altering the percentage reduction in quantity of SUCBs demanded affects both the net benefit to consumers and the overall NPV of the policy option. Hence, the outcome of Option 2 is estimated to be largely dependent upon the percentage reduction in demand for SUCBs achieved following the introduction of a charge.

84. For all four levels of charge evaluated in Table 1.0, altering the percentage reduction in quantity of SUCBs demanded had an effect on the overall NPV for Option 2. However, the relative ranking of each policy option was unaffected by

this change, i.e. the introduction of a charge had the highest NPV, followed by a ban, with the extended voluntary agreement having the lowest NPV.

Percentage Change in Quantity Demanded of BfL

85. Based on an estimate used in the AEA WAG Single-Use Bag Study, the quantity demanded of BfL was assumed to increase by around 170% following the introduction of a 5p charge. This relative increase corresponded to the percentage reduction in quantity demanded of SUCBs; hence, altering the reduction in SUCBs demanded simultaneously changed the percentage increase in BfL demand.

86. For each level of charge, altering the percentage increase in BfL demand in isolation affected the ranking of Options 3 and 4 after a point, but did not affect the ranking of Option 2 as having the highest overall NPV in each case.

Composition of BfL Demand

87. Based on discussions with retailers, it was estimated that the composition of demand for bags-for-life consists of around 90% heavy gauge LDPE (costing the consumer an average of 10p per bag) and around 10% of the stronger, more durable bags such as jute, cotton or hessian (costing the consumer an average of around 65p per bag). Based on data from the Environment Agency study the 10p (LDPE) bags were assumed to be re-used 5 times, whilst the 65p bags were assumed to be re-used an average of 94 times (i.e. 14 uses for a non-woven PP bag and 173 uses for a cotton bag). Altering this composition of demand for each level of charge had the largest effect on the overall NPVs of each policy option, and had the only real impact on the ranking of the policy options out of all the indicators which were varied in the analysis.

88. Assuming that the composition of demand is as described above (90% LDPE, 10% durable), the weighted average price of a BfL was estimated to be 16p. When the composition of demand was altered (e.g. to 50% of each, and then to 100% of the more expensive 65p bags), however, the weighted average price therefore also changed. In addition, the weighted average social cost increased as the composition of demand tended toward a greater proportion of the more expensive (65p) bags.

89. As a result of increasing both weighted average price and social cost, in most cases the NPVs for each option became increasingly negative, or worsened (i.e. indicating an even higher ongoing social cost of undertaking policy action). However, in the majority of cases, when composition of demand was altered to 50% of each type of BfL, Option 2 was still ranked highest (i.e. it was estimated to be the 'best' policy option in terms of the overall NPV).

Compliance with Hampton Principles

90. The Hampton Review[12] sets out the key principles that should be consistently applied throughout the regulatory system. The Climate Change Act 2008 requires that before any powers in relation to civil sanctions are conferred on local authorities in Wales, the Welsh Assembly Government (WAG) must be satisfied that they will act in accordance with the Hampton principles. The Local Better Regulation Office(LBRO) has been commissioned to establish this and will be reporting back to the Welsh Ministers during the consultation period.

91. For instance, WAG must ensure that enforcement activities are carried out in a fair and transparent manner and that actions taken are appropriate and proportional to the problem. It is anticipated that the enforcement regime relating to the proposed charge on single-use bags will be complaint driven, as has been the experience with the Irish PlasTax. Local Authorities will be required to investigate breaches of regulation related to:

    - Not charging for bags;
    - Not keeping records;
    - Not publicising records.

92. Hampton principles state that businesses should not have to give unnecessary information, nor give the same piece of information twice. Hence, in the case of reporting in relation to a charge on single-use bags, businesses (apart from those exempt from publishing requirements) will be required to produce the necessary information once a year.

EU Requirements

93. There is currently no specific EU requirement to limit the number of single-use bags in circulation. The current legislation of 'Directive 2006/12/EC of the European Parliament and of the Council' on waste states that member states should take measures to restrict the production of waste; in particular by promoting clean technologies and products which can be recycled and reused. However, single-use carrier bags are currently not mentioned in the list of recognised waste types under Decision 2000/532/EC.

94. The proposed charge on single-use carrier bags will therefore go beyond minimum EU requirements relating to waste.

Value of Offsetting Measures

95. When introducing new regulation the need for compensatory simplification measures should be considered, creating a balance between introducing new measures and simplifying or removing existing requirements.

---

[12] Hampton Review: http://www.hm-treasury.gov.uk/bud_bud05_hampton.htm

96. No offsetting measures have been introduced in this case since the proposed regulation relating to a charge on single-use bags does not overlap with any existing requirements.

Change in Greenhouse Gas Emissions

97. Production of single-use carrier bags creates carbon emissions of approximately 3p per bag. A proposed charge of 5p per bag on all single-use bags is expected to reduce their demand by an estimated 59%, leading to a corresponding reduction in production of SUCBs. This will lead to an anticipated reduction in carbon emissions of an estimated £8 million (i.e. a fall in SUCB demand of around 260 million, multiplied by carbon emissions from production of around 3p per bag).

Impact on Admin Burdens Baseline

98. In respect of the charge on single-use bags, it is proposed that all those who sell goods in the course of trade or business to customers in Wales will be required to keep records and provide returns relating to the number of bags sold annually. This requirement will impose an administrative burden on businesses which would otherwise not necessarily have existed in the absence of the charge; although, it is likely that retailers already keep a record of the number of bags given out, for stock-take purposes. Small businesses operating below a certain threshold and selling fewer than 1000 bags per annum are to be exempt from the requirement to publish records, so could be less affected by this additional administrative burden.

99. It is estimated that the total annual administrative cost of recording and reporting the number of bags sold each year in Wales will amount to around £1.0 million for all businesses combined. In 2005 prices, the additional administrative burden on retailers is estimated to amount to around £0.8 million (although this figure could be lower, since a portion of this admin burden will be accounted for by those businesses already recording the number of SUCBs given out as part of their normal stock control).

Specific Impact Tests

Competition Assessment

100. The policy might have an adverse impact on single-use bag manufacturers, although this is likely to be minimal since there are relatively few of these producers situated in Wales. Positive competition effects may result from the increased demand for reusable bags (BfL) such that manufacturers of these bags would benefit from producing a greater volume of bags-for-life. Positive competition effects may also result from the development of other sustainable alternatives to single-use carrier bags.

Small Firms Impact Test

101. The policy might have a disproportionate effect on SMEs, since a charge may lead to a reduction in impulse purchases from these retailers. However, this might also affect larger retailers, although such effects are not quantifiable at this stage.

102. Larger retailers might also have an unfair advantage with regard to non-compliance and possible court proceedings, and might find it logistically easier to implement new charging and administration systems. However, concessions are being made for small firms operating below a certain threshold and selling fewer than 100 bags per year, in order to reduce the administrative burden on these businesses.

Legal Aid

103. The policy would have a legal impact on firms in cases of non-compliance. The estimated resulting impact on Government of providing legal assistance is accounted for in the calculation of costs and benefits by policy option, in the evidence base; further detail regarding the derivation of the figures is outlined at Annex 3.

Sustainable Development

104. The policy contributes to the principles of sustainable development through both strengthening the emphasis on waste prevention and resource efficiency. The policy would create positive impacts in terms of: litter reduction; reuse of resources; increased awareness of packaging and its impact on waste disposal and climate change; and increased awareness of reuse and recycling. Concerns have been raised with regard to the impacts arising from the possible transfer of consumption, from single-use carrier bags to heavy-gauge LDPE reusable bags (i.e. the 10p bags-for-life). However, it is estimated that BfL consumption will fall, following an initial surge with the introduction of a charge on SUCBs, as consumers become more waste-aware and more likely to reuse carrier bags.

Carbon Assessment

105. The estimated greenhouse gas impacts are accounted for in the calculation of the social cost per bag and are included in the main evidence base.

Other Environment

106. Anticipated environmental impacts resulting from a charge on SUCBs are outlined in the evidence base. The main impacts on the environment will be the reduction in emissions from the production and disposal processes, along with the reduction in SUCB litter. However, wider environmental impacts could result if the policy encourages people to change their behaviour and to become more aware of other environmental issues, for example the need to recycle or to use ‘greener’ modes of transport.

Health Impact Assessment

107. The policy is expected to result in less single-use plastic bag litter, potentially reducing the number of accidents involving slippages on single-use plastic bags.

108. Responses to the second consultation indicated that a charge on SUCBs could add further complication to the relationship between pharmacists and patients. However, as indicated at Annex 2, to uphold patient confidentiality and safety an exemption has been placed on SUCBs which are used: solely to contain products sold or supplied in accordance with a prescription; provided free as part of other NHS services; or solely for Pharmacy medicines (i.e. restricted over the counter medicines from a qualified pharmacist or 'P medicines'). It is anticipated that a charge could impact upon patient-pharmacist relationships in certain circumstances, although this exemption seeks to minimise that impact.

Race Equality

109. We do not consider that the policy is relevant to the Government's responsibilities under the race equality duty.

Disability Equality

110. Around 30% of disabled respondents to the Office for Disability Issues' survey, 'Experiences and Expectations of Disabled People'[13], reported that they received assistance with shopping. In implementing the policy it would therefore be necessary to ensure that their support and carers were aware of the charge and considered reusing bags.

Gender Equality

111. According to Defra's (2009) Survey of Public Attitudes and Behaviours towards the Environment[14], there was a higher incidence of females (78%) than males (71%) claiming to have previously reused shopping bags and with the intention of doing so again. The policy might therefore have a slightly larger impact on males than females, since with a lower incidence of bag reuse males are more likely to have to purchase single-use bags following the introduction of a charge.

Human Rights

112. We consider that the policy is compatible with the European Convention on Human Rights.

Rural Proofing

113. We do not consider that the policy will have a significantly different impact in rural areas.

---

[13] http://www.officefordisability.gov.uk/research/research-reports.php
[14] http://www.defra.gov.uk/evidence/statistics/environment/pubatt/index.htm

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. 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: It is intended that a review of the policy will take place within three years of implementation. This policy review may, in turn, lead to a review of the statutory requirements.
Review objective: The review is intended to assess the effectiveness of the policy in achieving its objectives of reducing wasteful use of resources and adapting consumer behaviour. It should seek to evaluate the achievement of the policy objectives in terms of reduction in demand for single-use carrier bags against the 2008 level of consumption.
Review approach and rationale: The main approach for the review will be the monitoring of the number of single-use carrier bags being sold, since the overarching aim of the policy is to significantly reduce the number of SUCBs in circulation in Wales.
Baseline: The review should measure the reduction in the number of single-use carrier bags consumed in Wales, against the 2008 baseline figure of 445 million SUCBs.
Success criteria: Any reduction in the number of SUCBs consumed will be evaluated against the expected percentage reduction associated with the relevant level of charge, to assess the effectiveness of the policy in terms of reducing SUCBs. Should the number of SUCBs consumed begin to rise after an initial fall (as with the Irish 'PlasTax') the policy would need to be reconsidered; for instance, increasing the level of the charge.
Monitoring information arrangements: Retailers will be required to publish records on the number of bags sold. This will provide an evidence base for the review.
Reasons for not planning a PIR: Not applicable.

Annex 2: Details of the Charge

Contents:

- **Description of Bags to be Covered by the Charge**
- **Exemptions from the Charge**
- **Impact on Retailers**

Description of Bags to be Covered by the Charge

114. The draft regulations defines the term 'single-use carrier bag' (SUCB) as meaning a bag:

- which is made wholly or partly of any type of plastic, paper, plant based material or natural starch; and
- which is not specifically manufactured or intended for multiple reuse.

Therefore 'Bags for Life' and other reusable bags such as cotton, jute and hessian are not covered by the charge.

Exemptions from the Charge

115. It is proposed that the following types of bags will be exempt from the charge:

- bags used solely to contain unpackaged food intended for human or animal consumption. This includes unpackaged meat or fish, unpackaged bread and loose items such as fruit and vegetables, bird seed or dog biscuits etc;

- bags used solely to contain loose, unpackaged seeds, bulbs, corms, or rhizomes;

- bags used solely to contain any unpackaged axe, knife, knife blade or razor blade;

- bags used solely to contain packaged uncooked fish or fish products, uncooked meat or meat products or uncooked poultry or poultry products and the maximum dimensions of which are 205mm (width) x 125mm (gusset width) x 458mm (height including handles);

- sealed bags supplied by a seller before the point of sale;

- bags used to contain purchases made on board ships, trains, aircraft, coaches or buses;

- bags used to contain purchases made in an area designated by the Secretary of State as a restricted zone under section 11A of the Aviation Security Act 1982 (i.e. the area of an airport once you pass through the security search point);

- bags for packaging and delivery of mail or mail order goods;
- bags which are made wholly of paper and the maximum dimensions of which are 175mm (width) x 260mm (height) or less
- bags which are made wholly or partly of plastic and the maximum dimension of which are 125mm (width) x 125mm (height) and which do not have a handle;
- bags which are made wholly of paper and the maximum dimensions of which are 80mm (width) x 50mm (gusset width) x 155mm (height) and which do not have a handle;
- gusseted liners used either to line or cover boxes or other items;
- bags used solely to contain live aquatic creatures in water;
- bags used solely to contain products sold or supplied in accordance with a prescription, provided free as part of other NHS services or Pharmacy medicines (i.e. restricted over the counter medicines from a qualified pharmacist or 'P medicines').

Impact on Retailers

116. The charge will apply to all those who sell goods in the course of trade or business to customers in Wales. This includes: supermarkets; high street retailers; small businesses; market stalls; internet grocery deliveries; and those that provide a service and also sell goods (e.g. a hairdressing salon which also sells hair products).

117. All retailers will be required to keep a record of:

- The number of bags sold in each year;
- The gross proceeds of the charge in each year;
- The net proceeds of the charge in each year;
- The breakdown of the reduction from gross to net proceeds in each year (e.g. amount spent on administration and communications etc.);
- The purposes to which the net proceeds have been put in that year.

118. Concerns have been raised about the administrative burden on small businesses. Particular concern was expressed with regard to the administrative burdens the charge will place on small businesses which give out very few bags in a year relative to the total number of free bags handed out.

119. It is therefore proposed that only retailers which operate above a certain threshold and sell over 1000 SUCBs a year should be required to publish information relating to bag sales.

120. It is intended that local authorities in Wales will be responsible for enforcement of the charge. Enforcement action will take the form of civil sanctions and we propose a range of penalties for breaches of the regulations dependant on size of business and turnover.

Annex 3: Assumptions used in the Calculation of Costs and Benefits

<u>Contents:</u>

- **Calculating the Social Cost of Single-Use Bags**
- **Calculating the Social Cost of Bags-for-Life**
- **Assumptions used in the Calculation of Costs and Benefits**

Calculating the Social Cost of Single-use Bags (SUCBs)

Negative Externalities from Production and Consumption

121. Single-use carrier bags impose costs on the taxpayer for several reasons: firstly, due to improper disposal they are a source of littering to the environment and, thus, generate costs for local authorities through having to clean up streets, countryside and beaches. Secondly, they fill up land-fill sites due to the fact they can take hundreds of years to decompose. Thirdly they are a hazard to wild- and marine- life when not disposed of in an appropriate manner. Besides the more visible impacts, there are also social costs which arise from the production process, in the form of damage to health and the environment as a result of carbon dioxide emissions as well as air and water pollution.

122. Economists refer to these unfavourable by-products of consumption and production as ‘negative externalities’ - a source of market failure. For Governments there is a rationale to address the market failure, since the market will not produce the socially desirable quantity of the good or service in question.

123. In the case of single-use carrier bags, the market is deemed to be over-producing the bags, leading to an ongoing cost to society. Although single-use carrier bags are provided ‘free’, the private cost is essentially ‘hidden’ by being priced into the retailers’ products and is thus not visible to the consumer. Hence, no direct cost is attached to the bag and consumers will therefore demand a larger quantity than if faced with the ‘true’ cost.

124. Furthermore, even if the consumer were to be charged the cost of a single-use bag as incurred by the retailer (i.e. the ‘private’ cost), this would not be optimal since the price should be equal to the marginal social cost, reflecting the true cost to society of producing and consuming each additional bag.

125. A market-based approach can therefore be used to ‘internalise’ the externalities; i.e. to ensure that the full social cost of each bag is passed on to those consumers who choose to purchase them.

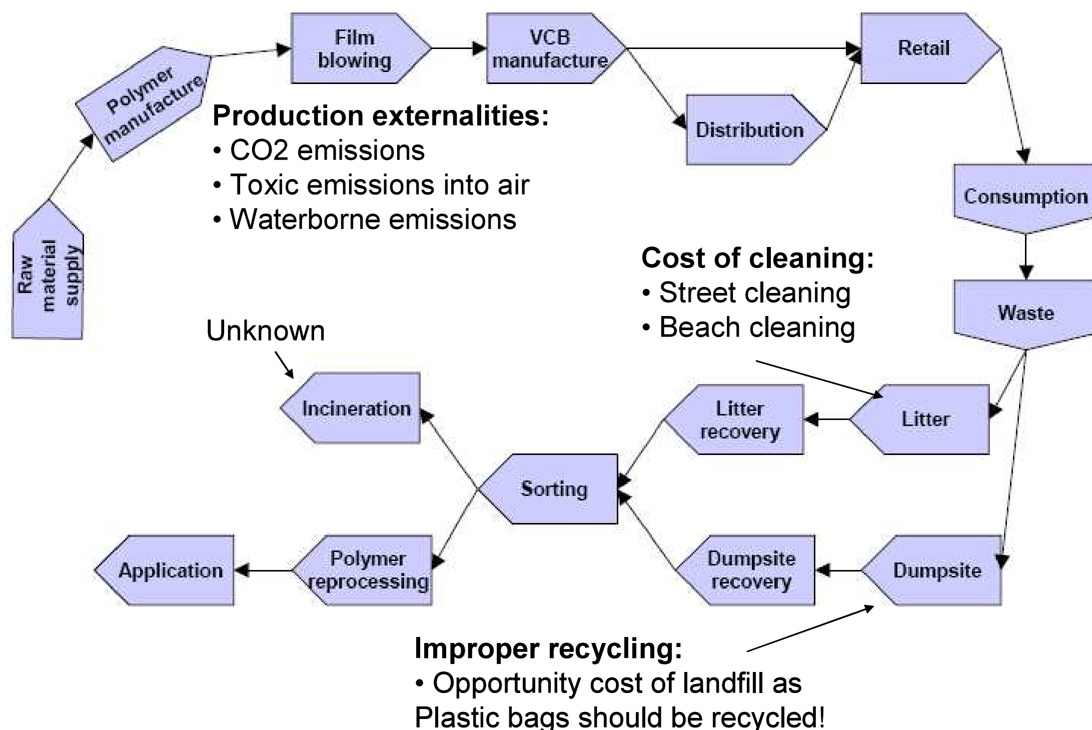
Calculating the Social Cost using Life-Cycle Analysis

126. The typical life-cycle of a single-use carrier bag can be considered using the following broad stages:

- Production processes (including extraction and production of raw materials);
- Transportation; and
- Consumption and disposal.

127. Diagram A outlines the life-cycle of a single-use plastic bag, which is the dominant form of carrier bag.

Diagram A – Life cycle of single-use carrier bag and possible sources of externalities



128. Academic literature was reviewed for each of the broad life-cycle stages in order to assess the externalities arising, and to evaluate the subsequent cost to society in order to provide a recommended minimum level of charge per bag.

129. For the purpose of this analysis it was necessary to evaluate the global warming potential of a SUCB in terms of carbon dioxide equivalence emitted throughout the life-cycle of a bag (i.e. during the 'production stage'). For simplicity the 'production stage' has been deemed to cover not only the production processes but also the extraction and production of raw materials; transportation; end-of-life; and avoided products and recycling. The consumption and disposal stage is evaluated separately and assesses the opportunity cost of improper disposal.

Production stage

130. At the 'production' stage the producer of single-use carrier bags would usually pay simply for the cost of inputs to production, such as raw materials and energy. What is omitted during the production process is the wider damage to the environment; this includes the carbon dioxide emissions from production, and pollutants emitted into the air and into water from chemicals used.[15]

131. The valuation of carbon emissions per bag is based on findings from a study by the Environment Agency (2010)[16], which concluded that the global warming potential of a single-use carrier bag is around 2.08kg carbon dioxide equivalent (CO_2e). This is based on the potential carbon emissions from each of the production processes listed in paragraph 126. The valuation of global warming potential (GWP) is based on a SUCB being used only once as a carrier bag (having only a 'primary' use) and does not account for any 'secondary' re-use (e.g. re-using a SUCB as a bin-liner in the home). However, if secondary re-use were to be accounted for in the GWP then the CO_2e could be lower, at around 1.58kg per bag (based on 40% secondary re-use); this is discussed in more detail in paragraph 144.

132. The Nolan-ITU Australian study (see Reference 2) estimates the level of global warming potential per bag to be higher than the 2.08kg CO_2e given by the Environment Agency, at 6.08kg carbon dioxide equivalent. This difference could partly be accounted for by differing assumptions having been made regarding the materials used in the production processes, along with the number of SUCBs consumed per household, per annum. Furthermore, production processes may have become more efficient over time (i.e. since the 2002 publication of the Nolan-ITU study).

133. There are difficulties in valuing 'embodied' emissions from the production processes of a product, compared with 'direct' emissions (for example, CO_2 emitted from a car) which can potentially be valued using the traded or non-traded prices of carbon. For the purpose of this analysis it was therefore necessary to use a proxy for the price of embodied carbon emissions. The cost per tonne of CO_2 used in the analysis (approximately £13 per tonne) is based upon the spot price of carbon dioxide given by the European Climate Exchange - a market place for trading carbon dioxide emissions. Based on the carbon dioxide equivalence per SUCB of around 2.08kg, the cost of the CO_2e emitted throughout the 'production' process is estimated to equate to around 3p per bag (see Table A).

134. Based on the global warming potential from the CO_2e emissions, along with the water and air pollutants released throughout the production stage, the proportion of the total external cost per bag owing to this stage is estimated to be around 5 pence (see Table A). The remaining proportion of the total external cost per bag arises from the consumption and disposal stage and is outlined in the following section.

---

[15] Information on the level of emissions by type was obtained from a range of different sources, including: the Environment Agency; the World Bank; and the European Commission.

[16] Life Cycle Assessment of Supermarket Carrier Bags (2011), Environment Agency, Bristol.

Table A - Estimated social costs arising from the production stage of Single-use carrier bags (pence)

Social cost of CO_2 emissions from production per bag	
Cost per tonne of CO_2 (£)	12.87
CO_2 per bag (kg)	2.08
Subtotal	**3**
Social cost of air pollution	
Toxic gases released (kg)	0.01
Abatement cost per tonne (£)	234.27
Subtotal	**1**
Social cost of water pollution	
Waterborne waste per plastic bag (g)	0.1
Abatement cost per tonne (£)	30.98
Subtotal	**1**
Total	**5**

Consumption and Disposal Stage

135. Single-use carrier bags made from HDPE are usually intended for recycling; yet, according to a study from 'Resource Futures'[17], single-use carrier bags made from plastic alone make up approximately 3 per cent of landfill in terms of weight. To approximate the proportion of the external cost per bag owing to improper recycling, the proportion of SUCBs contained in municipal waste intended for landfill in Wales (approximately 1 million tonnes per annum) was multiplied by the current level of landfill tax[18] (£48 per tonne plus VAT). This 'opportunity cost' (i.e. the value of the next best option given up – in this case the opportunity to recycle a bag) equates to approximately 1p per bag (see Table B).

136. According to 'Keep Wales Tidy'[19] single-use carrier bags make up approximately 2.7 per cent of the total volume of littering in Wales. This results in additional costs to local authorities through having to clean up plastic bag litter from recreational areas such as sea- and country-side. According to the AEA WAG Single-Use Bag Study (see Reference 1) the proportion of the total annual cost of street cleaning in Wales (£37 million) associated with SUCB litter is around £1 million per annum.

137. To estimate the associated cost of dealing with plastic bag littering to beaches in Wales, the cost of cleaning UK beaches of such litter (around £290,000 per annum) was proportionately applied to Wales by equating for length of coastline in miles. Given that the UK coastline is approximately 19,500 miles and the Welsh coastline is approximately 1,300 miles, the proportionate cost to Wales of cleaning beaches is estimated to be £20,000 per annum (i.e. approximately 7% of the UK figure). Taking both the cost of street cleaning and the cost of beach cleaning, the cost to society of littering is estimated to amount to around 1p per bag.

[17] "Resource Futures - Report on kerbside household waste analysis", South Gloucestershire District Council
[18] http://www.defra.gov.uk/environment/waste/topics/
[19] Keep Wales Tidy; http://www.keepwalestidy.org/english/images/plasticbags.pdf

138. In total, the externalities arising from improper disposal (through littering and improper recycling) are estimated to be around 2p per bag (see Table B).

Table B - Estimated social costs arising from disposal in pence per bag

Social cost of disposal	
Cost of cleaning (£)	
Street cleaning (£)	1,000,000
Beach cleaning (£)	20,000
Subtotal	**1**
Social cost of improper recycling	
Landfill Cost (£)	1,575,347
Subtotal	**1**
Total	**2**

Total Social Cost

139. Table C (below) sets out the estimated total social cost of a single-use carrier bag (approximately 7p per bag), based on the life-cycle stages outlined above. The average 'private' cost (i.e. the wholesale price which retailers pay to purchase the bags from producers) is estimated to be 2p per bag. Based on the sum of both the social and private costs (i.e. total external cost per bag), the recommended minimum level of charge would thus amount to around 9p per bag, excluding VAT.

140. However, it is assumed that retailers already include the private cost (2p) in the price of shopping; the 9p would thus account for retailers lowering the price of shopping accordingly, following the introduction of a charge, and passing the 2p per bag on to consumers. In reality, however, this is deemed unlikely. **The recommended level of charge based on the social cost per bag alone is therefore a minimum of 7p per bag.**

Table C - Estimated total social costs arising from each production and consumption stage of Single-use carrier bags (pence)

Social cost of externalities by life cycle stage in pence per bag	
Production	
Greenhouse gas emissions	3
Pollution (Air)	1
Pollution (Water)	1
Disposal	
Littering	1
Improper Recycling	1
Total private cost per bag	2
Total social cost per bag	7
Total external cost per bag	9

Sensitivities

Inclusion of VAT

141. The minimum level of charge is now proposed at 5p per SUCB. Allowing for the addition of VAT at 20% the minimum level of charge per single-use bag could be recommended at around 6p. This level of charge would also hold for VAT levels of 15.0% and 17.5%.

Paper Bags

142. It has not been possible to calculate the social cost of a paper bag at this stage due to lack of available data, relating to both the life-cycle of such a bag and to current usage of such bags in Wales[20]. For the purpose of this analysis it was assumed that the social cost of a single-use paper bag is the same as that of a single-use plastic bag.

143. However, in reality the social cost of a single-use paper bag is likely to be much higher than that of a single-use plastic bag, due to higher resource intensity in the production process along with the additional cost of transporting and disposing of a typically much larger and heavier bag. This could ultimately lead to the social cost of a single-use carrier bag amounting to more than 7p, although the extent of such an increase is uncertain at this stage.

Global Warming Potential (GWP)

144. The Environment Agency's life-cycle analysis of a single-use carrier bag indicates that the global warming potential per bag amounts to 2.08kg CO_2e; this is based on the assumption that all SUCBs have only one primary use, and does not account for secondary re-use (i.e. re-use in a different function, for instance as a bin-liner in the home). However, SUCBs are often re-used in the home and so have more than one use. The Environment Agency's report suggested that with a 40% secondary re-use rate the GWP per bag amounts to around 1.58kg CO_2e.

145. However, even when this lower GWP figure is accounted for in the analysis, the social cost of a single-use carrier bag remains unchanged, suggesting that SUCBs would need to have a substantially higher re-use rate in order to lower the social cost per bag.

Findings from Australia

146. The Australian Nolan-ITU analysis of plastic bags suggests that a SUCB has a global warming potential of 6.08kg CO_2e, compared with the 2.08kg suggested in the Environment Agency's report. As indicated in paragraph 132, this could be due to differing assumptions between the reports, coupled with the fact that the

[20] It is estimated that of the approximately 445 million single-use carrier bags consumed annually in Wales, 115 million of those are paper. However, there is considerable uncertainty surrounding the consumption of paper bags, for example what sizes of bags this consumption consists of or how many of those would be included in the charge on SUCBs (since smaller bags will be exempt).

studies were undertaken almost a decade apart (allowing for developments in production processes, for example).

147. Using the 6.08kg figure from the Australian report – instead of the 2.08kg from the Environment Agency report – in the analysis has an effect on the social cost of a single-use carrier bag. Allowing for this higher CO_2e per bag, the social cost could increase to around 12p per bag. This would lead to a 7p charge per bag generating a greater net benefit to society, although the overall NPV would in fact be worse than if the original CO_2e figure was used since the reference case itself would also consist of a higher ongoing cost to society and a greater negative NPV (based on a higher social cost per bag). In this instance, the minimum level of charge needed to generate an overall net benefit to society (i.e. to ensure the overall NPV is greater than zero) is estimated to be just over 15p per bag.

Calculating the Social Cost of Bags-for-Life (BfL)

Life-Cycle Analysis of Carrier Bags

148. Calculating the social cost of a bag-for-life involved a similar process to that undertaken for single-use bags. However, in this case the reference flow of each type of bag-for-life was used, in order to compare the social cost of a BfL relative to that of a SUCB.

149. The reference flow can be described as 'the number of carrier bags required to fulfil the functional unit'[21]. In the Environment Agency's life-cycle analysis, the 'functional unit' is carrying one month's shopping, or 483 items, from the supermarket to the home. The reference flows of each bag type are shown in Table D.

Table D Reference Flow of Alternative Bag Types

Alternative Bag Types	Volume per bag (litres)	Weight per bag (g)	Items per bag	Reference Flow
Single-use HDPE	19.10	8.12	5.88	82.14
Reusable LDPE	21.52	34.94	7.96	60.68
Cotton bag	28.65	183.11	10.59	45.59
Non-woven PP bag	19.75	115.83	7.30	66.13

Source: Environment Agency

Note: A Single-use HDPE represents the average single-use plastic bag; a reusable LDPE represents the average 10p bag-for-life

150. The reference flows in Table D allow comparisons to be made between single-use carrier bags and alternative types of reusable 'bags-for-life' (i.e.

[21] Life Cycle Assessment of Supermarket Carrier Bags, Environment Agency (draft report - as yet unpublished).

around 82 SUCBs are required to carry 483 items per month, compared with around 61 reusable LDPE bags). Since the social cost of a single-use bag was calculated previously, each of the reference flow figures for the alternative bag types were hence given an index relative to the baseline (i.e. a single-use bag), for comparison.

151. For example, if the reference flow of a single-use bag (82.14) was given an index of 100, for a reusable LDPE the index would be 73.87 ([60.68 / 82.14] x 100). This essentially means that where 100 single-use bags are needed, only 73.87 LDPE bags would be required if used as an alternative bag type.

152. Using indices, it was thus possible to calculate the average social cost of a BfL by applying the average relative index to the social cost of a single-use bag. For instance, the index for a reusable LDPE was 73.87; based on a life of 5 uses, the social cost of this bag relative to that of a single-use HDPE (7p) equates to around 25p. Hence, a value of 25p was used in the analysis to represent the social cost of a 10p bag-for-life, which was assumed to make up 90% of the composition of BfL demand.

153. The social cost of the stronger, more durable bags-for-life with an estimated average price of 65p was calculated using the same formula; these bags were assumed to make up the remaining 10% of the composition of BfL demand. The individual indices for the remaining bag types (cotton and non-woven PP) were calculated using the same formula as for an LDPE bag. Based on an average life of 173 uses for a cotton bag and 14 uses for a non-woven PP bag, the average social cost of the two bag types (representing the average 65p bag) is around £3.70 per bag.

Average Social Cost based on Composition of BfL Demand

154. It was assumed in the overall analysis that the composition of demand for bags-for-life consisted of 90% reusable HDPE bags (i.e. the heavy-gauge plastic bags which have an average price of 10p) and 10% of the stronger, more durable bags which have an average price of 65p (for example calico, woven and swag bags).

155. Based on this estimated composition of demand, a weighted average was applied to the individual social cost calculations in order to find the average social cost of a bag-for-life. For instance, assuming a 90:10 composition of 10p and 65p bags respectively, the average social cost was estimated to be around 60p ([0.90 x 25p] + [0.10 x £3.70]).

156. The impact on the NPV of altering this composition of demand (and, hence, the weighted average social cost of a BfL) was examined in the sensitivity analysis, results of which were outlined in the Evidence Base.

Assumptions used in the Calculation of Costs and Benefits

Forecast Period and the use of Discounting

157. The analysis of the costs and benefits for each policy option was based on a 15-year forecast period (from year 0 to year 15, based on mid-year projections) and it was assumed that year zero was the year of implementation of the policy (i.e. the year in which the 'set-up' or one-off costs would arise).

158. Given that there is a general public preference to receive goods and services now rather than in the future (known as 'time preference'), individuals and firms require a return in order to encourage them to invest their money now and defer their present consumption until later. The real rate (i.e. taking account of inflation) of return required can thus be used as the 'discount rate', in order to convert future costs and benefits to present values so that comparisons can be made between them.

159. The net present value of each policy option therefore represents the present value of the stream of costs and benefits over the 15-year period, and is used to determine whether or not Government intervention can be justified. In general, the higher the NPV the better the expected outcome of the policy.

160. In line with the 'Green Book'[22] recommendation, the discount rate used in the analysis was 3.5%.

Baseline Assumptions used for all Policy Options

161. Table E outlines the baseline assumptions used in the calculation of costs and benefits for each policy option; these are the baseline indicators from which each policy option varied according to the assumptions used.

162. Table E shows there are an estimated 445 million single-use bags consumed annually in Wales, consisting of 330 million plastic and 115 million paper bags. This assumption was taken from the Welsh Assembly Government-commissioned AEA study on single-use bags (see Reference 1). The single-use figure is based on a 50% reduction, from the 2006 baseline figure of 660 million, following the introduction of the existing voluntary agreement. The same report also estimated that under the current voluntary agreement bag-for-life usage had doubled, from the 2006 baseline figure of 7 million to the current figure of 14 million.

[22] http://www.hm-treasury.gov.uk/data_greenbook_index.htm

Table E Baseline Assumptions used in the Calculation of Costs and Benefits

Indicator	Value
• Baseline number of SUCBs consumed annually in Wales	445 million (330m plastic; 115m paper)
• Baseline number of BfL consumed annually in Wales	14 million
• Composition of Bag-for-Life demand	• 90% LDPE heavy gauge (10p reusable bags); • 10% Stronger, more durable bags (average 65p reusable bags, e.g. woven, jute, hessian).
• Average life of 10p BfL	5 shopping trips
• Average life of 65p BfL	94 shopping trips
• Weighted Average BfL Price	16p
• Weighted Average Social Cost of BfL	60p
• Price charged per SUCB under the Extended Voluntary Agreement (assumes 30% of retailers impose a charge under Option 4)	5p

Bags for Life

163. The estimate of the composition of bag-for-life demand was based on discussions with retailers, who approximated that around 90% of bag-for-life sales consisted of the heavy-gauge reusable LDPE bags which have an average price of 10p. Based on this approximation, it was assumed the remaining 10% of demand consisted of the more expensive, more durable bags. The AEA Technology report, produced for the Scottish Executive on the proposed plastic bag levy in Scotland, suggested that the average price of a more durable bag-for-life is around 65p.

164. Based on the composition of BfL demand, a weighted-average price was calculated at 16p ([0.9 x 10p] + [0.1 x 65p]).

165. The Environment Agency report indicated that a reusable LDPE bag (e.g. with an average price of 10p) had a life of 5 uses. The stronger and more durable bags were assumed to have an average life of 94 uses. The average social cost of a BfL was determined using the life-cycle analysis findings from the Environment Agency report and the weighted-average was based on the composition of BfL demand. Based on the calculations outlined in the previous section the weighted average social cost was estimated to be around 60p.

Voluntary Charge

166. It was assumed that under Option 4 all retailers involved would impose a 5p charge on each single-use bag in order to discourage consumption of the bags. This assumption was based partly on the existing voluntary agreement – which saw one retailer out of seven imposing a 5p charge on SUCBs – and also on results from the consultation process, which found that several retailers are now voluntarily imposing a charge on SUCBs (in the region of 1p to 5p).

Costs to Retailers

167. For Option 2 it was assumed that retailers would incur annual costs through having to report on the number of single-use bags being sold per annum. The estimated costs to retailers are based on figures from the Scottish Executive's Regulatory Impact Assessment (RIA) of an Environmental Levy on plastic bags[23].

168. Table F shows the estimated average cost to each Scottish retail sector of keeping and publishing annual records, and is based on 52,690 retail outlets in Scotland in 2005 (92% of which were SMEs). For example, the average total cost to *all* 48,000-plus SME food and non-food retailers per annum is around £4.4 million (i.e. the average of the £5.6m for SME food retailers and the £3.2m for SME non-food retailers respectively); this equates to around £90 per individual retailer unit, per annum (i.e. £4.4 million / 48,500 SMEs). For the 4,000-plus large retailers in Scotland the average annual total cost is around £0.3 million, equating to around £80 per individual retailer unit, per annum. Based upon these estimates, the corresponding average annual total cost for the 9,614 food- and non-food retailers[24] in Wales is thus estimated at just under £0.9 million.

Table F Average Annual (Total) Costs to each Scottish Retail Sector of Keeping Records & Submitting Returns

Type of Retailer by Sector	Range of Annual Costs by Sector (£)	Average Annual Total Cost to each Sector (£)
Large Food	151,750 – 315,000	233,375
Large Non-Food	303,500 – 630,000	466,750
SME Food	3,858,000 – 7,366,000	5,612,000
SME Non-Food	2,170,000 – 4,144,000	3,157,000
Average Annual Cost to Large Retailers	**227,625 – 472,500**	**350,063**
Average Annual Cost to SMEs	**3,014,000 – 5,755,000**	**4,384,500**

[23] http://www.scottish.parliament.uk/business/committees/environment/papers-05/rap05-28.pdf?page=3

[24] Inter-Departmental Business Register (IDBR). Five-year average from 2005 to 2009 of total food and non-food enterprises in Wales.

169. Taking a five-year average from 2005 to 2009 of all businesses in Wales (from the IDBR), 97% (around 9,300) have fewer than 250 employees. Using this as a measure of SMEs in Wales, based on the costs to Scottish retailers around 9,300 businesses in Wales would therefore face annual costs of an estimated £90 for publishing requirements. For large retailers in Wales (around 300) the average cost is estimated to be around £80 per annum (again based on the Scottish figures).

170. Several responses to the second consultation indicated that the initial Impact Assessment had substantially underestimated the ongoing costs to retailers of administering and processing a charge on SUCBs. The evidence used in the 'Final' stage IA was based on analysis undertaken by the Scottish Executive and is therefore deemed appropriate for the purpose of this IA.

171. There were a few estimates of average costs provided in the consultation responses. These indicated that the total cost to retailers could amount to an average of around £1 million per annum, based on a consumption level of 180 million SUCBs following the introduction of a 5p charge. This figure is based on a suggestion of ongoing admin and operational costs of between $^{1}/_{4}$p and 1p per SUCB, depending on the retailer, giving an indicative range of costs between £0.46m and £1.8m. Given that the majority of retailers in Wales are SMEs, the total annual cost could be towards the higher end of the scale since SMEs are likely to incur higher costs than larger retailers. The average annual figure of £1m, nonetheless, is similar to that outlined in the 'Final' (Consultation) stage IA, suggesting that the estimated cost to retailers is not substantially different to that expected by a majority of retailers. These indicative figures generated by the consultation will need to be verified by retailers, however, in order to form an accurate picture of the actual costs incurred by retailers under Option 2.

172. The smallest businesses may not be affected by the requirement to submit annual returns, since those businesses selling fewer than 1000 bags and operating below a threshold of £68,000 are to be exempt from the publishing requirements.

Additional Assumptions made under Option 2 (Introduction of a Charge)

173. Table G outlines the additional key assumptions which were used in order to evaluate the effect of a charge on the overall NPV. The main indicator was the percentage reduction in consumption of single-use bags following the introduction of a charge; the derivation of the relative reductions for each level of charge are outlined in the 'Sensitivity Analysis' section of the Evidence Base.

Table G Assumptions under Option 2: Introduction of a Charge

Indicator	Value
• Level of charge for SUCB	5p
• Percentage reduction in SUCB consumption	59%
• Percentage increase in BfL consumption	172%

174. The minimum level of charge recommended under option 2 was originally based on the estimated social cost of a single-use carrier bag (7p). However, taking into account the level of uncertainty and the responses to the second consultation this has now been amended to 5p per SUCB. The corresponding percentage reduction is based on data from the Irish 'PlasTax' and was adjusted according to the level of charge under consideration. The range of values for Costs and Benefits and NPVs given in the 'Summary: Analysis and Evidence' page is based on differing percentage reductions in SUCB consumption following the introduction of a 5p charge (see Table 2.0 in the Evidence Base for more detail).

175. The percentage increase in BfL consumption following the introduction of a charge on SUCBs is based on an assumption used in the AEA WAG Single-Use Bag Study (see Reference 1). The AEA study estimated that demand for reusable LDPE bags would increase by 263% following the introduction of a charge on all single-use paper and plastic carrier bags. This percentage increase, however, corresponded to a 90% reduction in demand for single-use bags, which was based on the reduction in SUCBs experienced by Ireland following their introduction of the 'PlasTax'. The regression analysis outlined in the Evidence Base shows that a 5p charge on SUCBs is estimated to reduce consumption of SUCBs by approximately 59%; therefore, the corresponding percentage increase in BfL consumption was estimated to equate to around 172% ([263 / 90] x 59).

176. However, the analysis assumes that the level of BfL demand following the percentage increase will be sustained throughout the 15-year forecast period; in reality, this will not necessarily be the case. It is estimated that there is likely to be an initial surge in BfL demand following the introduction of a charge on SUCBs, provided consumers adapt their behaviour in response and switch consumption to the reusable bags-for-life. But given that many of the more expensive BfL will last for up to a year, or perhaps even longer, this level of demand might fall once consumers have purchased their required volume of BfL.

177. Furthermore, many of the 'bags-for-life' which are sold for 10p are indeed intended to be 'for life': many retailers which sell the 10p BfL offer a promise to replace the bag free of charge once it reaches the end of its life. However, it is not known whether this policy would continue following the introduction of a charge on SUCBs, or whether this will also be extended to the more expensive reusable bags (which we have also termed 'bags-for-life' for the purpose of this analysis), which would reduce the cost to the consumer over time of purchasing BfL.

Additional Assumptions made under Option 3 (a Ban on SUCBs)

178. Table H outlines the additional key assumptions used in the evaluation of the effect of a ban on the overall NPV. As considered under Option 2, the main key indicator was the percentage reduction in consumption of single-use bags following the introduction of the policy and the subsequent percentage increase in BfL.

Table H Assumptions under Option 3: Introduction of a Ban

Indicator	Value
• Percentage reduction in SUCB consumption	100%
• Percentage increase in BfL consumption	292%

179. It was assumed that a ban on SUCBs would result in a 100% reduction in the number of SUCBs consumed. This would ultimately depend upon there being a 100% rate of compliance with the ban.

180. The derivation of the percentage increase in BfL demand following a ban on SUCBs is the same as that described under Option 2; i.e. the increase corresponds to the percentage reduction in SUCBs, based on the assumptions used in the AEA Technology WAG study ([263 / 90] x 100).

Additional Assumptions made under Option 4 (Extended Voluntary Agreement)

181. Table I shows the additional assumptions used under Option 4, the extended voluntary agreement. As with Options 2 and 3, the main key indicators are the percentage changes in consumption of both SUCBs and BfL.

Table I Assumptions under Option 4: Extended Voluntary Agreement

Indicator	Value
• Percentage reduction in SUCB consumption	18%
• Percentage increase in BfL consumption	51%
• Charge imposed under Voluntary Agreement	5p

182. The percentage increase in BfL consumption (51%) was calculated using the same method as for Options 2 and 3, i.e. relative to the percentage reduction in SUCB consumption and based on the AEA estimate ([263 / 90] x 18).

183. The estimate of the percentage reduction in SUCB consumption under Option 4 was based on data from a report by Nolan-ITU[25], on plastic bag consumption in Australia between 2002 and 2004. The report indicated that, with a voluntary code of practice encompassing targets for bag usage set by the Environment Protection and Heritage Council, SUCB usage had fallen by between 10% and 25% between 2002 and 2004. Based on the average of this range, it was estimated that with an extended voluntary agreement in Wales which achieved an additional participation rate of 30% of the remaining retailers, a reduction in SUCB usage of 18% could potentially be achieved.

[25] http://www.environment.gov.au/settlements/publications/waste/plastic-bags/consumption/pubs/plasticbag-use0304.pdf

184. It was assumed for the purpose of this analysis that all retailers involved in the agreement would impose a charge of 5p on each single-use bag. This assumption was based on responses to the consultation process, which indicated that several retailers already impose a charge on SUCBs outside of the voluntary agreement which is currently in place.

185. The percentage reduction in SUCBs demanded under Option 4 was not based on the Irish data, since it was assumed that not all retailers would be involved in the extended voluntary agreement. Furthermore, some may choose to reduce SUCB consumption via means other than the imposition of a charge. It should be noted, thus, that the costs and benefits estimated to arise under Option 4 could potentially be over- or under-estimates (for instance, if the percentage reduction in SUCB demand was lower or higher, respectively) and should therefore be considered accordingly.

186. Responses to the second consultation indicated that there was a high level of support for an extended voluntary agreement. However, there was no further evidence provided to support the case for Option 4.

187. For illustrative purposes, sensitivity analysis was undertaken to give an indication of the impact of Option 4 under revised assumptions. For example, if Option 4 were able to reduce SUCB demand by a further 50% relative to the baseline (i.e. 445 million reduced by 50%, to 223 million) it is estimated that, provided 50% of remaining retailers took part (rather than the 30% assumed in the original model) and all voluntarily charged 5p per bag, this could create an additional benefit of around £50 million relative to the original estimated NPV. This would give a new overall NPV of -£320 million. If participating retailers only charged 1p per SUCB on this voluntary basis the additional benefit relative to the original NPV is likely to be smaller at around £10 million, generating an overall NPV of an estimated -£360 million. These adjusted NPV figures also account for the anticipated relative increase in bags-for-life that would arise under this option. These illustrative figures indicate, therefore, that Option 4 is not likely to rank any differently among the policy options even if the modeling assumptions were amended.

Annex 4: Amendments to the Single Use Carrier Bags Charge (Wales) Regulations 2010

188. The Amendment Regulations make a number of minor changes to the Single Use Carrier Bags Charge (Wales) Regulations 2010 to ensure that they give effect to the policy consulted on. They also make two substantive changes.

189. The minor changes relate to:

- clarification of VAT;
- clarification of how amounts above the 5 pence minimum charge are to be treated for reporting purposes;
- removing the exemption for sealed bags;
- clarification of the exemption for packaging and delivery of mail order goods in polythene mailbags;
- preventing a notice of intent to impose a fixed monetary penalty from being served if a seller has previously discharged liability to a penalty in relation to the same breach of the Regulations.

190. This annex is concerned with the two substantive changes to the Single Use Carrier Bags Charge (Wales) Regulations 2010, which are based on feedback from businesses and the business sector in Wales and relate to:

- removing the reporting requirements for sellers who employ fewer than 10 full-time equivalent (FTE) members of staff on the first day of a reporting year;
- costs incurred by sellers prior to implementation being deductable from the amount they report as their net proceeds of the charge in the first year.

191. Following the consultation process and feedback from businesses, it is apparent that the requirement to keep records is likely to introduce a level of practical complexity for micro businesses that is disproportionate to the contribution they make to the number of SUCBs supplied in Wales. On balance it is therefore considered that the regulatory burden on the smallest of businesses outweighs the public benefit of having access to those records. Hence, the record-keeping requirements for retailers employing fewer than 10 full-time equivalent (FTE) staff at the beginning of any particular reporting year are being removed (though these businesses will not be exempt from the requirement to charge for SUCBs).

192. The 2010 Regulations do not currently allow set-up costs incurred by retailers to be included in the definition of 'reasonable costs', since they are not incurred during the actual reporting period (which in the first year covers the period 01 October 2011 to 06 April 2012). The Regulations are thus being amended so that these set-up costs count as 'reasonable costs' for the first reporting year and consequently, can be deducted from the amount sellers receive from charging 5 pence each for SUCBs in the first reporting year. This will produce a more accurate picture of the additional money that sellers receive by having to charge 5 pence per single-use carrier bag.

Exemptions from Reporting Requirements

193. The exemption from reporting requirements for micro businesses aims to release the smallest retailers in Wales from the record-keeping duty. The threshold upon which the exemption is set is a headcount of fewer than 10 FTE staff. Data from the UK department for Business Innovation and Skills (BIS) indicates that 95% of businesses in Wales fall within the threshold of fewer than 10 FTE staff, suggesting that the majority of businesses in Wales would be exempt from the reporting requirements (but not from the charge itself).

194. The IDBR[26] suggests that in total there are around 9,600 food and non-food retailers in Wales, all of which will be affected by the single-use carrier bag (SUCB) Regulations. Applying the BIS assumption to the number of retailers in Wales, the exemption could mean there would be around 500 retailers (the majority of which will have multiple outlets throughout Wales) having to comply with the reporting requirements (with the remaining 9,100, or 95%, being exempt). Table J shows the reduction in the overall costs to retailers as a result of this amendment to the 2010 Regulations.

Table J Average Annual (Total) Costs to Retailers of Keeping Records and Submitting Returns

	Number of Retailers in Wales	Average Annual Cost of Record-Keeping Requirements, with no exemption (£)	Average Annual Cost of Record-Keeping Requirements, with exemption (£)
Fewer than 10 FTE*	9,100	830,000	0
10 or more FTE	500	40,000	40,000
Total	**9,600**	**870,000**	**40,000**

*Number of retailers with fewer than 10 FTE is estimated to be 95% of all retailers in Wales.

195. As indicated in Table J, the average annual cost to retailers would fall from around £870k to around £40k per annum if 95% of retailers were exempt from the reporting requirements. However, since the charge is intended to be cost-neutral to retailers, the annual cost of the reporting requirements can be recouped from the proceeds of the charge; hence, these amendments will not have any effect on the overall NPV of the policy option (since any reduction in annual costs to retailers will be accompanied by an equivalent reduction in annual benefits).

Non-Quantified Impacts

196. Since there will only be around 500 retailers having to report the number of SUCBs being sold each year, it could be difficult to monitor the impact of the policy according to the original objectives: namely, a reduction in the number of SUCBs being consumed annually. The Post-Implementation Review should seek to identify gaps in information and to assess whether or not the record-keeping requirements are contributing to the overall evaluation process.

[26] Inter-Departmental Business Register (IDBR). A five-year average (2005-2009) of total food and non-food enterprises in Wales was used for the purpose of the RIA.

Agenda Item 4.1

Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol

Constitutional and Legislative Affairs Committee

Cynulliad Cenedlaethol Cymru
National Assembly for Wales

Bae Caerdydd / Cardiff Bay
Caerdydd / Cardiff
CF99 1NA

Leighton Andrews AM
Minister for Education and Skills
Welsh Government
5th Floor
Tŷ Hywel
Cardiff Bay
CF99 1NA

4 July 2011

Dear Minister

CLA5 - The Right of a Child to Make a Disability Discrimination Claim (Schools) (Wales) Order 2011

The Constitutional and Legislative Affairs Committee considered the above Statutory Instrument at its meeting on 29 June 2011 and agreed that I should bring to your attention the Committee's report made under Standing Order 21.3 on the merits of the Instrument.

The Committee agreed to invite the Assembly to pay special attention to this Instrument on the grounds "that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Assembly" (Standing Order 21.3(ii)).

The Committee's report was laid in the Table Office on 4 July 2011 and is attached for information. I would be grateful if you could consider the report and let the Committee have your response in due course.

I am copying this report to the First Minister for information and have also arranged for the report and this letter to be drawn to the attention of Assembly Members.

Yours sincerely

David Melding AM
Chair, Constitutional and Legislative Affairs Committee

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 for the following reasons –

This Order is made under unique circumstances. When the Measure was considered by the Assembly, 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

Draft Order laid before the National Assembly for Wales on 14 June 2011 under section 24(4) of the Education (Wales) Measure 2009, for approval by resolution of the National Assembly for Wales.

DRAFT WELSH STATUTORY INSTRUMENTS

2011 No. (W.)

EDUCATION, EQUALITY, WALES

The Right of a Child to Make a Disability Discrimination Claim (Schools) (Wales) Order 2011

EXPLANATORY NOTE

(This note is not part of the Order)

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 Tribunal"). The Equality Act 2010 repealed 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.

Article 3 of the Order inserts a new section 9 into the Measure which amends the Equality Act 2010 in order to give a child the right to make a claim to the Tribunal.

Article 4 of the Order inserts a new section 10 into the Measure which inserts provisions into the Equality Act 2010 about time limits for bringing proceedings.

Article 5 of the Order inserts a new section 11 into the Measure which inserts provisions into the Equality Act 2010 about Tribunal procedure.

Article 6 of the Order inserts a new section 12 into the Measure, inserting provisions into the Equality Act 2010 allowing a child to have a person (known as a

"case friend") to make representations on behalf of the child to avoid or resolve disputes with the responsible body of a school or to exercise a child's right to make a claim to the Tribunal on behalf of the child.

Article 7 of the Order inserts a new section 13 into the Measure, inserting provisions into the Equality Act 2010 about arrangements for a child to be provided with advice and information.

Article 8 of the Order inserts a new section 14 into the Measure, inserting provisions into the Equality Act 2010 about resolution of disputes.

Article 9 of the Order inserts a new section 15 into the Measure, inserting provisions into the Equality Act 2010 about the provision of independent advocacy services.

Article 10 of the Order inserts a new section 16 into the Measure, inserting provisions into the Equality Act 2010 about the Welsh Ministers' power of direction when a local authority acts or proposes to act unreasonably in the discharge of a duty or has failed to discharge a duty.

Article 11 of the Order amends section 17 of the Measure to ensure that regulations about piloting can operate by reference to the provisions inserted into the Equality Act 2010 by the Measure provisions amended by this Order.

Article 12 of the Order amends section 18 of the Measure to allow the Welsh Ministers to make provision by order under that section about the right of a person to make a claim to the Tribunal in respect of matters for which a parent of that person has a right to make a claim under paragraph 3 of Schedule 17 to the Equality Act 2010. This includes power to amend or repeal provisions of Chapter 1 of Part 6 of, and Schedule 17 to, the Equality Act 2010.

Article 13 of the Order makes minor and consequential amendments to the Measure to substitute references to the Equality Act 2010 for references to the Disability Discrimination Act 1995 and to make it clear that the Welsh Ministers' power under section 26(3) of the Measure to commence provisions extends, in the case of provisions amended by this Order, to those provisions as amended.

Draft Order laid before the National Assembly for Wales on 14 June 2011 under section 24(4) of the Education (Wales) Measure 2009, for approval by resolution of the National Assembly for Wales.

DRAFT WELSH STATUTORY INSTRUMENTS

2011 No. (W.)

EDUCATION, EQUALITY, WALES

The Right of a Child to Make a Disability Discrimination Claim (Schools) (Wales) Order 2011

Made	*2011*
Coming into force	*6 July 2011*

The Welsh Ministers make the following Order in exercise of the powers conferred upon them by section 20(3) of the Education (Wales) Measure 2009(**1**).

A draft of this Order has been laid before, and approved by resolution of, the National Assembly for Wales before being made, in accordance with section 24(4) of the Education (Wales) Measure 2009.

Title and commencement

1.—(1) The title of this Order is the Right of a Child to Make a Disability Discrimination Claim (Schools) (Wales) Order 2011.

(2) This Order comes into force on 6 July 2011.

Amendments to the Education (Wales) Measure 2009

2. The Education (Wales) Measure 2009 ("the Measure") is amended in accordance with articles 3 to 13 of this Order.

(**1**) 2009 nawm 5.

Right of a child to make a disability claim

3. For section 9 of the Measure (right of a child to make a disability discrimination claim), substitute—

“**9 Right of a child to make a disability discrimination claim**

(1) Schedule 17 to the Equality Act 2010(**1**) is amended in accordance with this section.

(2) In the heading to paragraph 3 (jurisdiction), after “*Jurisdiction*” insert “-*England and Wales*”.

(3) After paragraph 3 insert—

“*3A Jurisdiction - Wales*

(1) A claim that a responsible body for a school in Wales has contravened Chapter 1 of Part 6 in relation to a person because of disability may be made to the Tribunal by that person (“the relevant person”).

(2) But this paragraph does not apply to a claim to which paragraph 13 or 14 applies.

(3) The relevant person’s right to claim is exercisable concurrently with the right of the relevant person’s parent under paragraph 3.

(4) The exercise of rights under this paragraph is subject to provision made by regulations under paragraphs 6 and 6A.”.”.

Time for bringing proceedings

4. For section 10 of the Measure (case friends), substitute—

“**10 Time for bringing proceedings**

(1) Schedule 17 to the Equality Act 2010 is amended in accordance with this section.

(2) In paragraph 4 (time for bringing proceedings), after sub-paragraph (2), insert—

“(2A) If, in relation to proceedings or prospective proceedings on a claim under

---

(**1**) c. 15.

paragraph 3 or 3A, the dispute is referred for resolution in pursuance of arrangements under paragraph 6C or for conciliation in pursuance of arrangements under section 27 of the Equality Act 2006(**1**) before the end of the period of 6 months mentioned in sub-paragraph (1), that period is extended by 3 months.".".

Tribunal procedure

5. For section 11 of the Measure (advice and information), substitute—

"**11 Tribunal procedure**

(1) Schedule 17 to the Equality Act 2010 is amended in accordance with this section.

(2) In paragraph 6 (procedure)—

(a) in sub-paragraph (2)(a), after "paragraph 3" insert "or 3A";

(b) after sub-paragraph (3)(c), insert "(ca) for adding and substituting parties;"."

Case friends

6. For section 12 of the Measure (resolution of disputes), substitute—

"**12 Case friends**

(1) Schedule 17 to the Equality Act 2010 is amended in accordance with this section.

(2) After paragraph 6 (procedure) insert—

"*6A Case friends - Wales*

(1) The Welsh Ministers may by regulations provide for—

(a) a disabled child in a local authority area in Wales to have a person to make representations on behalf of the disabled child with a view to avoiding or resolving disagreements about contraventions of Chapter 1 of Part 6; and

(**1**) Section 27(1) of the Equality Act 2006 was amended by article 7 of the Equality Act 2010 (Public Authorities and Consequential and Supplementary Amendments) Order 2011 (S.I. 2011/1060).

(b) a relevant person (within the meaning of paragraph 3A) to have another person to exercise the relevant person's rights under that paragraph on the relevant person's behalf.

(2) A person exercising rights or making representations on behalf of a disabled child or a relevant person under sub-paragraph (1) is referred to in this Schedule as a "case friend".

(3) A case friend must—

(a) make representations and exercise rights fairly and competently;

(b) have no interest adverse to that of the disabled child or relevant person;

(c) ensure that all steps and decisions taken by the case friend are for the benefit of the disabled child or relevant person and take account of the disabled child or relevant person's views.

(4) Regulations made under this paragraph may (among other things)—

(a) confer functions on the Welsh Tribunal;

(b) make provision about procedures in relation to case friends;

(c) make provision about the appointment and removal of case friends;

(d) specify the circumstances in which a person may or may not act as a case friend;

(e) specify the circumstances in which a relevant person (within the meaning of paragraph 3A) must have a case friend;

(f) specify further requirements in respect of the conduct of case friends.

(5) In this paragraph and in paragraphs 6B, 6C, 6D and 6E, “local authority” has the meaning given in section 89(10).

(6) In this paragraph and in paragraphs 6B, 6C and 6D—

“disabled child” means any disabled person who is a pupil (or a prospective pupil) of—

(a) a maintained school or maintained nursery school,

(b) a pupil referral unit,

(c) an independent school, or

(d) a special school not maintained by a local authority;

“proprietor” has the meaning given in section 89(4);

“school” has the meanings given in section 89(5).

(7) In sub-paragraph (6)—

“independent school” has the meaning given in section 89(8);

“maintained school” has the meaning given in section 20(7) of the School

Standards and Framework Act 1998;

“maintained nursery school” has the meaning given in section 22(9) of the

School Standards and Framework Act 1998

“pupil” has the meanings given in section 89(3);

“pupil referral unit” has the meaning given in section 19 of the Education Act 1996; and

“special school” has the meaning given in section 89(9).” .”.

Advice and information

7. For section 13 of the Measure (independent advocacy services), substitute—

“**13 Advice and information**

(1) Schedule 17 to the Equality Act 2010 is amended in accordance with this section.

(2) After paragraph 6A (case friends – Wales) insert—

“*6B Advice and information - Wales*

(1) A local authority in Wales must arrange for any disabled child in its area and for the case friend of any such child to be provided with advice and information about matters relating to disability discrimination in schools.

(2) In making the arrangements, the local authority must have regard to any guidance given by the Welsh Ministers.

(3) The arrangements must comply with any provisions made in regulations by the Welsh Ministers that relate to the arrangements.

(4) The local authority must take such steps as it considers appropriate for making the services provided under sub-paragraph (1) known to—

(a) disabled children in its area,

(b) parents of disabled children in its area,

(c) head teachers and proprietors of schools in its area, and

(d) such other persons as it considers appropriate.”.”.

Resolution of disputes

8. For section 14 of the Measure (Tribunal procedure), substitute—

“14 Resolution of disputes

(1) Schedule 17 to the Equality Act 2010 is amended in accordance with this section.

(2) After paragraph 6B (advice and information – Wales) insert—

“*6C Resolution of disputes - Wales*

(1) A local authority in Wales must make arrangements with a view to avoiding or resolving disagreements between responsible bodies and disabled children in its area about contraventions of Chapter 1 of Part 6.

(2) The arrangements must provide for the appointment of independent persons with the functions of facilitating the avoidance or resolution of such disagreements.

(3) In making the arrangements, the local authority must have regard to any guidance given by the Welsh Ministers.

(4) The arrangements must comply with any provisions made in regulations by the Welsh Ministers that relate to the arrangements.

(5) The local authority must take such steps as it considers appropriate for making the arrangements under sub-paragraph (1) known to—

- (a) disabled children in its area,
- (b) parents of disabled children in its area,
- (c) head teachers and proprietors of schools in its area, and
- (d) such other persons as it considers appropriate.

(6) The arrangements cannot affect the entitlement of any person to make a claim to the Tribunal, and the local authority must take such steps as it considers appropriate to make that fact known to disabled children, to parents of disabled children and to case friends for disabled children in its area.”.”.

Independent advocacy services

9. For section 15 of the Measure (role of the Welsh Ministers), substitute—

“15 Independent advocacy services

(1) Schedule 17 to the Equality Act 2010 is amended in accordance with this section.

(2) After paragraph 6C (resolution of disputes – Wales) insert—

“6D Independent advocacy services - Wales

(1) Every local authority in Wales must—

(a) make arrangements for the provision of independent advocacy services in its area;

(b) refer any disabled child in its area who requests independent advocacy services to a service provider;

(c) refer any person who is a case friend for a disabled child in its area and who requests independent advocacy services to a service provider.

(2) In this paragraph “independent advocacy services” are services providing advice and assistance (by way of representation or otherwise) to a disabled child who is—

(a) making, or intending to make a claim that a responsible body has contravened Chapter 1 of Part 6 because of the child’s disability; or

(b) considering whether to make such a claim; or

(c) taking part in or intending to take part in dispute resolution arrangements made under paragraph 6C.

(3) In making arrangements under this paragraph, every local authority must have regard to the principle that any services provided under the arrangements must be independent of any person who is—

(a) the subject of a claim to the Tribunal, or

(b) involved in investigating or adjudicating on such a claim.

(4) The arrangements must comply with any provisions made in regulations by the Welsh Ministers that relate to the arrangements.

(5) Every local authority in Wales must take such steps as it considers appropriate for making the arrangements under this paragraph known to—

(a) disabled children in its area,

(b) parents of disabled children in its area,

(c) head teachers and proprietors of schools in its area, and

(d) such other persons as it considers appropriate.

(6) The arrangements may include provision for payments to be made to, or in relation to, any person carrying out functions in accordance with the arrangements.

(7) A local authority must have regard to any guidance given from time to time by the Welsh Ministers.”.”.

Role of the Welsh Ministers

10. For section 16 of the Measure (procedure for making regulations), substitute—

“16 Role of Welsh Ministers

(1) Schedule 17 to the Equality Act 2010 is amended in accordance with this section.

(2) After paragraph 6D (independent advocacy services – Wales) insert—

“6E Power of direction - Wales

(1) If the Welsh Ministers are satisfied (whether on a complaint or otherwise) that a local authority—

(a) has acted, or is proposing to act, unreasonably in the discharge of a duty imposed by or under paragraph 6B, 6C or 6D, or

(b) has failed to discharge a duty imposed by or under any of those paragraphs,

they may give that local authority such directions as to the discharge of the duty as appear to them to be expedient.

(2) A direction may be given under sub-paragraph (1) even if the performance of the duty is contingent on the opinion of the local authority.

(3) A direction—

(a) may be varied or revoked by the Welsh Ministers;

(b) may be enforced, on the application of the Welsh Ministers, by a mandatory order obtained in accordance with section 31 of the Senior Courts Act 1981.”.”.

Piloting the rights of a child to appeal or make a claim

11. In section 17 of the Measure—

(a) in subsection (1), for “Disability Discrimination Act 1995 (c 50)” substitute “Equality Act 2010 (c 15)”;

(b) in subsection (2)—

(i) in paragraph (c), for “Disability Discrimination Act 1995” substitute “Equality Act 2010”;

(ii) in paragraph (d), for “Disability Discrimination Act 1995” substitute “Equality Act 2010”.

Power to make provision about appeals and claims by a child

12. In section 18 of the Measure—

(a) in subsection (1), in paragraph (b), for “section 28I of the Disability Discrimination Act 1995” substitute “paragraph 3 of Schedule 17 to the Equality Act 2010”;

(b) in subsection (2), in paragraph (c), for “Part 4 of the Disability Discrimination Act 1995” substitute “Chapter 1 of Part 6 of, and Schedule 17 to, the Equality Act 2010”.

Minor and consequential amendments

13.—(1) In section 19 of the Measure—

(a) in subsection (1), in the definition of "disabled child", for "section 28IB of the Disability Discrimination Act 1995" substitute "paragraph 6A of Schedule 17 to the Equality Act 2010";

(b) in subsection (2), for "paragraph 1 of Schedule 4A to the Disability Discrimination Act 1995" substitute "section 85(9) of the Equality Act 2010".

(2) In section 26 of the Measure, in subsection (3), after "the remaining provisions of this Measure" insert "(including, in the case of provisions amended by the Right of a Child to Make a Disability Discrimination Claim (Schools) (Wales) Order 2011, those provisions as amended)".

(3) In the Schedule to the Measure, omit paragraphs 6 to 9.

Name

Minister for Education and Skills, one of the Welsh Ministers

Date

Leighton Andrews AC / AM
Y Gweinidog Addysg a Sgiliau
Minister for Education and Skills

Llywodraeth Cymru
Welsh Government

Eich cyf/Your ref
Ein cyf/Our ref (CLA(4)-02-11)

David Melding AM
Chair, Constitutional and Legislative Affairs Committee
National Assembly for Wales
Cardiff Bay
Cardiff
CF99 1NA

15 July 2011

Dear David

Constitutional and Legislative Affairs Committee's report on The Right of a Child to Make a Disability Discrimination Claims (Schools) (Wales) Order 2011

Thank you for your report on the above Statutory Instrument to clarify to Members the unique circumstances for which this Order was made.

Yours sincerely

Leighton Andrews AC / AM

Y Gweinidog Addysg a Sgiliau
Minister for Education and Skills

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1NA

English Enquiry Line 0845 010 3300
Llinell Ymholiadau Cymraeg 0845 010 4400
Correspondence.Leighton.Andrews@wales.gsi.gov.uk

Wedi'i argraffu ar bapur wedi'i ailgylchu (100%)
Printed on 100% recycled paper

Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol

Constitutional and Legislative Affairs Committee

Cynulliad Cenedlaethol Cymru
National Assembly for Wales

Bae Caerdydd / Cardiff Bay
Caerdydd / Cardiff
CF99 1NA

Rt Hon Carwyn Jones AM
First Minister
Welsh Government
Tŷ Hywel
Cardiff Bay
CF99 1NA

4 July 2011

Dear First Minister

CA581 - The Waste (Miscellaneous Provisions) (Wales) Regulations 2011

The Committee on Statutory Instruments considered the above regulations at its meeting on 22 June 2011.

The Committee agreed to report to the Assembly under Standing Order 21.3 (ii) that the regulations raised issues of political or legal importance. However, the Committee also asked me to write to you to draw to your attention to one particular aspect of our report.

In her letter of 28 March 2011 to the Presiding Officer, the then Minister for Business and Budget explained that the Welsh Ministers had discretion over whether the Regulations should be made by the negative or the affirmative procedure. The Minister offered the following explanation for the use of the negative procedure in this case:

> *"…The Wales Regulations do not substantially affect the provisions of an Act of Parliament or Assembly Measure, they do not amend any provision of an Act or Measure, and provide only for consequential updatings of subordinate legislation to reflect changes in Directive terminology and objectives. It was concluded, therefore, that it would not be appropriate to make the Wales Regulations under the affirmative procedure."*

The Committee commends this as an important and useful statement of criteria for deciding whether future legislation, under these or similar powers, should be made by the affirmative or negative procedure. It also builds on other statements by the Government on criteria for deciding which scrutiny procedure is appropriate for subordinate legislation including when Ministers are seeking new or amended powers through legislation made by the National Assembly.

The Committee would be grateful if explanatory memorandums, relating to the use of these or similar powers in future, could set out briefly, as a matter of special interest to the Committee, how the criteria have been used in judging whether the negative or affirmative procedures should be used. I would be grateful for your confirmation of this.

I am copying this to the Counsel General for information.

Yours sincerely

David Melding AM
Chair
Constitutional and Legislative Affairs Committee

Constitutional Affairs Committee Draft Report

CA581

Title: The Waste (Miscellaneous Provisions) (Wales) Regulations 2011

Procedure: **Negative**

These Regulations are supplementary to the Waste (England and Wales) Regulations 2011 ("the England and Wales Regulations"). They make amendments to several Welsh statutory instruments for the purposes of transposing, in relation to Wales, Directive 2008/98/EC of the European Parliament and of the Council on waste (OJ No. L 312, 22.11.2008, p3). They also revoke, for the same purpose, one Welsh statutory instrument.

Technical Scrutiny

No points are identified for reporting under Standing Order 21.2 in respect of this instrument at this stage.

Merits Scrutiny

Under Standing Orders 21.3 the Assembly is invited to pay special attention to the following instrument:-

1. These Regulations have failed to be implemented in Wales within the time frame set by the revised Waste Framework Directive ("the RWFD"). The UK (including the devolved administrations) was required to transpose the RWFD by 12th December 2010. The UK Government has not met that deadline. The Minister for Business and Budget has written to the Presiding Officer notifying him of the reasons pertinent to the breach. The primary reason was that it was necessary to wait for the England and Wales Regulations to be made in the first instance because it was those Regulations that principally transposed the RWFD. The Waste (Miscellaneous Provisions) (Wales) Regulations 2011("the Welsh Regulations") make a number of consequential amendments to Welsh Statutory Instruments which had been made by the Welsh Ministers previously. The need for separate legislation was because the Welsh instrument must be made bilingually, and the UK Government, for administrative reasons in the context of the transposition timetable, were unwilling to include such amendments in the England and Wales Regulations.

(Standing Order 21.3 (iv) – that it inappropriately implements European Union legislation.)

2. Regulations made under section 2(2) of the European Communities Act 1972 can be made using either the negative or affirmative procedure. The choice of procedure is at the discretion of the maker of the regulations (in

this case the Welsh Ministers) and no criteria are laid down in law for doing so.

These particular regulations were made in breach of the 21-day rule. The reasons for the breach were set out in the then Minister for Business and Budget's letter of 28 March 2011 to the Presiding Officer. Her letter also offered the following explanation for the use of the negative procedure in this case:

> *"...the choice of procedure has depended on the nature of the provision being made rather than procedural considerations. The Wales Regulations do not substantially affect the provisions of an Act of Parliament or Assembly Measure, they do not amend any provision of an Act or Measure, and provide only for consequential updatings of subordinate legislation to reflect changes in Directive terminology and objectives. It was concluded, therefore, that it would not be appropriate to make the Wales Regulations under the affirmative procedure."*

The Committee is wholly content with this explanation. Moreover, the Committee believes that it also provides important and useful criteria for judging whether any future legislation made under these powers (or legislation where Ministers have similar discretion over the procedure to be used) should be made by the affirmative or negative procedure.

The Committee believes that it would be helpful if explanatory memorandums relating to any future use of such powers could set out briefly, as a matter of special interest to the Committee, how the criteria set out in the Minister's letter have been used to judge whether to use the negative or affirmative procedures.

(Standing Order 21.3 (ii) – that it is of political or legal importance.)

Legal Advisers
Constitutional Affairs Committee

April 2011

The Government has responded as follows:

The Waste (Miscellaneous Provisions) (Wales) Regulations 2011

The Government has explained, through the Minister for Business and Budget's letter to the Presiding Officer, why it was necessary for the Welsh Regulations to contain provisions which refer to and depend on provisions in the England and Wales Regulations. It followed from this that the Welsh Regulations could not be made earlier than the England and Wales Regulations. As to those Regulations, the Government would point out that the revised Waste Framework Directive introduces several new provisions, in

addition to consolidating earlier Waste Directives, and places emphasis on engagement with stakeholders. The Government therefore considered it necessary to engage effectively with stakeholders through extensive public consultation before introducing the necessary legislation. However, the issues arising from the consultations had an impact on the timetable for the transposition of the Directive. The Government regrets this, but considers that its consultation and consideration of the issues arising has helped to ensure a more effective implementation of the Directive in Wales.

WELSH STATUTORY INSTRUMENTS

2011 No. 971 (W. 141)

ENVIRONMENTAL PROTECTION, WALES

The Waste (Miscellaneous Provisions) (Wales) Regulations 2011

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are supplementary to the Waste (England and Wales) Regulations 2011 ("the England and Wales Regulations"). They make amendments to several Welsh statutory instruments for the purposes of transposing, in relation to Wales, Directive 2008/98/EC of the European Parliament and of the Council on waste (OJ No. L 312, 22.11.2008, p3). They also revoke, for the same purpose, one Welsh statutory instrument.

A full impact assessment of the effect that the provisions of the England and Wales Regulations and these Regulations will have on business, the voluntary sector and the public sector is available from the Waste Programme, Department for Environment, Food and Rural Affairs, Ergon House, Horseferry Road, London SW1P 2AL.

2011 No. 971 (W. 141)

ENVIRONMENTAL PROTECTION, WALES

The Waste (Miscellaneous Provisions) (Wales) Regulations 2011

Made	*28 March 2011*
Laid before the National Assembly for Wales	*28 March 2011*
Coming into force	*29 March 2011*

The Welsh Ministers are designated(**1**) for the purposes of section 2(2) of the European Communities Act 1972 in relation to the prevention, reduction and management of waste.

The Welsh Ministers make these Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972.(**2**)

Title, commencement and extent

1.—(1) The title of these Regulations is the Waste (Miscellaneous Provisions) (Wales) Regulations 2011.

(2) These Regulations—

(a) come into force on 29 March 2011; and

(b) apply in relation to Wales.

Amendment of the Hazardous Waste (Wales) Regulations 2005

2. The Schedule, which provides for amendment of the Hazardous Waste (Wales) Regulations 2005(**1**), has effect.

(**1**) S.I. 2010/1552.

(**2**) 1972 c.68. Where the Welsh Ministers have been designated in relation to a matter or purpose, they may then exercise the powers conferred by section 2(2) in relation to that matter or purpose; see section 59(2) of the Government of Wales Act 2006 (c.32).

Amendment of the Landfill Allowances Scheme (Wales) Regulations 2004

3. In regulation 2(1) of the Landfill Allowances Scheme (Wales) Regulations 2004(**2**), in the definition of "waste facility" ("*cyfleuster gwastraff*"), for "Article 1(e) and (f) of Council Directive 75/442/EEC on waste", substitute "Article 3(19) and (15) of Directive 2008/98/EC of the European Parliament and of the Council on waste".

Amendment of the List of Wastes (Wales) Regulations) 2005

4.—(1) The List of Wastes (Wales) Regulations 2005(**3**) are amended as follows.

(2) In regulation 2—

(a) for sub-paragraph (a) of paragraph (1), substitute—

""the Waste Directive" ("*y Gyfarwyddeb Wastraff*") means Directive 2008/98/EC of the European Parliament and of the Council on waste";

(b) for sub-paragraph (c) of paragraph (1), substitute—

"(c) a reference to hazardous properties is a reference to the properties set out in Annex III to the Waste Directive.";

(c) for sub-paragraph (b) of paragraph (2), substitute—

"(b) "the List of Wastes" ("*y Rhestr Wastraffoedd*") means the list of wastes set out in the Annex to the List of Wastes Decision and a reference to the List of Wastes includes a reference to its introduction ("the Introduction to the List").".

(3) In regulation 4—

(a) before "properties", insert "hazardous";

(b) omit "of Annex III".

(4) Omit paragraphs 1 and 2 of Schedule 2.

Amendment of the Town and Country Planning (Local Development Plan) (Wales) Regulations 2005

5. In regulation 2(1) of the Town and Country Planning (Local Development Plan) (Wales)

(**1**) S.I. 2005/1806 (W.138) amended by S.I. 2006/937, 2007/3538, 2009/2861 and, 2010/675.

(**2**) S.I. 2004/1490, to which there are amendments not relevant to these Regulations.

(**3**) S.I. 2005/1820 (W. 148).

Regulations 2005(1), for the definition of "Waste Strategy for Wales" ("*Strategaeth Wastraff Cymru*") substitute—

> ""Waste Strategy for Wales" ("*Strategaeth Wastraff Cymru*") means the national waste management plan within the meaning of the Waste (England and Wales) Regulations 2011, known by that name and prepared by the Welsh Ministers;".

Amendment of the Environmental Damage (Prevention and Remediation) (Wales) Regulations 2009

6. In Schedule 2 to the Environmental Damage (Prevention and Remediation) (Wales) Regulations 2009(2), in paragraph 3(1), for the words from "Directive 2006/12/EC" to the end, substitute "Directive 2008/98/EC of the European Parliament and of the Council on waste".

Revocation of the Environmental Protection (Duty of Care) (Amendment) (Wales) Regulations 2003

7. The Environmental Protection (Duty of Care) (Amendment) (Wales) Regulations 2003(3) are revoked.

Jane Davidson

Minister for Environment, Sustainability and Housing, one of the Welsh Ministers

28 March 2011

---

(1) S.I. 2005/2839 (W.203).
(2) S.I. 2009/995 (W. 81).
(3) S.I. 2003/1720 (W.187)

SCHEDULE

Regulation 2

Amendments to the Hazardous Waste (Wales) Regulations 2005

PART 1

Amendments

1. The Hazardous Waste (Wales) Regulations 2005(**1**) are amended as follows.

2. For regulation 2, substitute—

"The Waste Directive and the meaning of waste

2.—(1) For the purposes of these Regulations—

(a) "the Waste Directive" ("*y Gyfarwyddeb Wastraff*") means Directive 2008/98/EC of the European Parliament and of the Council on waste;

(b) "waste" ("*gwastraff*") means anything that—

(i) is waste within the meaning of Article 3(1) of the Waste Directive; and

(ii) subject to regulation 15, is not excluded from the scope of that Directive by Article 2(1), (2) or (3).

(2) In these Regulations, a reference to the Waste Directive conditions is a reference to the conditions set out in Article 13 of that Directive, that is to say, to ensure that waste management is carried out without endangering human health, without harming the environment and, in particular—

(a) without risk to water, air, soil, plants or animals;

(b) without causing a nuisance through noise or odours; and

(c) without adversely affecting the countryside or places of special interest.".

3. For regulation 3, substitute—

(**1**) S.I. 2005/1806 (W.138) amended by S.I. 2006/937, 2007/3538, 2009/2861, 2010/675.

"Annex III to the Waste Directive

3. A reference in these Regulations to—

(a) Annex III is a reference to Annex III (properties of waste which render it hazardous) to the Waste Directive, as that Annex is set out in Schedule 3;

(b) hazardous properties is a reference to the properties in Annex III.".

4. In regulation 4(1), in the definition of "the List of Wastes" ("*y Rhestr Wastraffoedd*"), omit from ", being the list" to the end.

5. In regulation 5—

(a) in paragraph (1)—

(i) for the definition of "consignment note" ("*nodyn traddodi*"), substitute—

""consignment note" ("*nodyn traddodi*"), in relation to a consignment of hazardous waste, means the identification document which is required to accompany the hazardous waste when it is transferred pursuant to Article 19(2) of the Waste Directive.",

(ii) in the appropriate place, insert—

""domestic waste" ("gwastraff domestig") means waste produced by a household;",

(iii) for the definition of "multiple collection" ("*amlgasgliad"*), substitute—

""multiple collection" ("*amlgasgliad*") means a journey made by a single carrier which meets the following conditions—

(a) the carrier collects more than one consignment of hazardous waste in the course of the journey;

(b) each consignment is collected from different premises;

(c) all the premises from which a collection is made are in Wales; and

(d) all consignments collected are transported by that carrier in the course of a journey to the same consignee;",

(iv) omit the definition of "multiple collection consignment note" ("*nodyn traddodi amlgasgliad*");

(b) for paragraph (2), substitute—

"(2) In these Regulations—

"broker" ("*brocer]")* means an undertaking arranging the recovery or disposal of waste on behalf of others, including such brokers who do not take physical possession of the waste;

"collection" ("*casglu*") means the gathering of waste, including the preliminary sorting and preliminary storage of waste for the purposes of transport to a waste treatment facility;

"dealer" ("*deliwr*") means any undertaking which acts in the role of principal to purchase and subsequently sell waste, including such dealers who do not take physical possession of the waste;

"disposal" ("*gwaredu*") means any operation which is not recovery even where the operation has as a secondary consequence the reclamation of substances or energy (Annex I of the Waste Directive sets out a non-exhaustive list of disposal operations)

"holder" ("*deiliad*") means the producer of the waste or the person who is in possession of it ;

"management" ("*rheoli*") means the collection, transport, recovery and disposal of waste, including the supervision of such operations and the after-care of disposal sites, and including actions taken as dealer or broker;

"producer" ("*cynhyrchydd*") means anyone whose activities produce waste ("original waste producer") or anyone who carries out pre-processing, mixing or other operations resulting in a change in the nature or composition of the waste;

"recovery" ("*adfer*") means any operation the principal result of which is waste serving a useful purpose by replacing other materials which would otherwise have been used to fulfil a particular function, or waste being prepared to fulfil that function, in the plant or in the wider economy (Annex II of the Waste Directive sets out a non-exhaustive list of recovery operations);

"waste oil" ("*olew gwastraff*") means any mineral or synthetic lubrication or industrial oil which has become unfit for the use for which it was originally intended, such as used combustion engine oils and gearbox oils, lubricating oils, oils for turbines and hydraulic oils,

and cognate expressions must be construed accordingly.";

(c) in paragraph (3)(c), for ", schedule of carriers or multiple collection consignment note", substitute "or schedule of carriers".

6. In regulation 8(1), for “Annexes I, II and III”, substitute “Annex III”.

7. In regulation 9—

(a) in paragraph (1)—

(i) for “Annexes I, II and III”, substitute “Annex III”;

(ii) omit “to the Hazardous Waste Directive”;

(b) after paragraph (1), insert—

“(1A) The power at paragraph (1) to decide that waste be treated as non-hazardous does not apply to waste which has been diluted or mixed with the aim of lowering the initial concentrations of hazardous substances to a level below the thresholds for defining waste as hazardous.”.

8. In regulation 18—

(a) after the words “it has been”, insert “diluted or has been”;

(b) after paragraph (a), insert—

“(aa) in the case of hazardous waste comprising waste oil, waste oil of different characteristics;”.

9. In regulation 19—

(a) in paragraph (1), for “(2) and (3)”, substitute “(2), (3) and (4)”;

(b) in paragraph (3), omit “or a registered exemption”;

(c) after paragraph (3), insert—

“(4) Paragraph (1) applies to the mixing of waste oil—

(a) only to the extent that the prohibition in that paragraph is technically feasible and economically viable; and

(b) only where such mixing would impede the treatment of the waste oil.”.

10. In regulation 20(1)(a), omit “or a registered exemption”.

11. In regulation 35—

(a) in paragraph (1)(a) for “(3)” substitute “(2)”;

(b) omit paragraphs (1)(c) and (4):

(c) in paragraph (5)—

(i) for “consignment note, schedule of carriers or multiple collection consignment note”, substitute “consignment note or schedule of carriers”,

(ii) for "Schedule 4, 5 or 6", substitute "Schedule 4 or 5";

(d) after paragraph (5), insert—

"(6) Until the end of the period of 6 months beginning with the day on which the Waste (Miscellaneous Provisions) (Wales) Regulations 2011 are made—

(a) a carrier may elect to use the multiple collection procedure which applied immediately before the coming into force of those Regulations; and

(b) the forms set out in these Regulations as originally enacted, or forms requiring the same information is substantially the same format, may be used instead of those substituted by the Waste (Miscellaneous Provisions) (Wales) Regulations 2011.".

12. In regulation 36(1), for "38" substitute "39".

13. Omit regulation 38.

14. In regulation 42(2)—

(a) in paragraph (1), for "regulations 43 and 44" substitute "regulation 43";

(b) in paragraph (2), omit "38(6)(b) and (c),".

15. In regulation 43(1), omit "other than a case to which regulation 44 applies".

16. Omit regulation 44.

17. In regulation 47—

(a) after paragraph (5)(b), omit "and";

(b) in paragraph (5)(c), at the beginning, insert "subject to paragraph (5A),";

(c) after paragraph (5), insert—

"(5A) If the person required to make or retain a register has a waste permit pursuant to which the site is operated, the period for retention of a consignment note required to be kept by regulation 51(2)(a) is—

(a) for 5 years after the deposit of the waste; or

(b) if the permit authorises disposal of waste in a landfill, until the permit is surrendered or revoked.

(5B) In paragraph (5A), "landfill" has the meaning given in Article 2(g) of Council Directive 1999/31/EC on the landfill of waste, but does not include any operation excluded from the scope of that Directive by Article 3(2).
".

18. In regulation 48—

(a) in paragraph (3)(c), for "Annex IIA or IIB of the Waste Directive", substitute "Annex I or II of the Waste Directive (as the case may be)";

(b) in paragraph (6)(a), omit "and";

(c) in paragraph (6)(b), at the beginning, insert "subject to paragraph (6A),";

(d) after paragraph (6), insert—

"(6A) If the person required to make or retain a register has a waste permit pursuant to which the site is operated, the period for retention of a consignment note required to be kept by regulation 51(2)(a) is—

(a) for 5 years after the disposal or recovery of the waste; or

(b) if the permit authorises disposal of waste in a landfill (in addition to other treatment), until the permit is surrendered or revoked.

(6B) In paragraph (6A), "landfill" has the meaning given in Article 2(g) of Council Directive 1999/31/EC on the landfill of waste, but does not include any waste excluded from the scope of that Directive by Article 3(2).".

19. In regulation 49—

(a) in paragraph (1), for "consignor of hazardous waste", substitute "consignor or broker of, or dealer in, hazardous waste";

(b) for paragraph (3), substitute—

"(3) Any person required to keep a record by paragraph (1) must preserve it—

(a) while the person is a holder of the waste or (if not a holder) has control of the waste; and

(b) for 3 years after the date on which the waste is transferred to another person." ;

(c) in paragraph (4)—

(i) after "holder", insert ", dealer, broker";

(ii) after "recorded", insert "chronologically";

(d) in paragraph (5)—

(i) after the first occurrence of "holder", insert ", dealer, broker",

(ii) in sub-paragraph (b), before "consignor", insert "dealer, broker or".

20. In regulation 50(3), after "entered", insert "chronologically".

21. In regulation 51(2)(a)—

(a) omit “multiple consignment notes and”;

(b) omit “or 44”; and

(c) after the second occurrence of “pursuant” insert “to”.

22. In regulations 52(1) and 55(3), for “Annex IIA or Annex IIB”, substitute “Annex I or Annex II”.

23. Omit regulation 57.

24. In regulation 60—

(a) in paragraph (1), for “Article 5”, substitute “Article 16”;

(b) omit paragraph (2).

25. In regulation 65(c), for “44” substitute “43”.

26. In the table in regulation 65A(1), omit the row commencing “regulation 44”.

27. In regulation 69(1)(e), for “44” substitute “43”.

28. Omit Schedules 1, 2 and 6.

29. For Schedule 3, substitute the Schedule set out in Part 2.

30. For Schedule 4, substitute the Schedule set out in Part 3.

31. In paragraph 4(3)(a) of Schedule 7, for “43 or 44” substitute “36 or 43”.

32. In paragraph 1 of Schedule 7, for “paragraph 7” substitute “paragraph 6”.

33. In paragraph 6 of Schedule 7—

(a) in paragraph (1), for “regulation 38(1)”, substitute “the definition of “multiple collection” (“*amlgasgliad*”) in regulation 5(1)”;

(b) in paragraph (2), omit all the words after “these Regulations”;

(c) omit paragraph (3).

34. In Schedule 11, omit paragraphs 5 to 8 and 11 to 25.

PART 2

The new Schedule 3

“SCHEDULE 3 Regulation 3

Annex III to the Waste Directive

Properties of waste which render it hazardous

H1 “Explosive”: substances and preparations which may explode under the effect of flame or which are more sensitive to shocks or friction than dinitrobenzene.

H2 “Oxidizing”: substances and preparations which exhibit highly exothermic reactions when in contact with other substances, particularly flammable substances.

H3-A “Highly flammable”

- liquid substances and preparations having a flash point below 21°C (including extremely flammable liquids), or

- substances and preparations which may become hot and finally catch fire in contact with air at ambient temperature without any application of energy, or

- solid substances and preparations which may readily catch fire after brief contact with a source of ignition and which continue to burn or be consumed after removal of the source of ignition, or

- gaseous substances and preparations which are flammable in air at normal pressure, or

- substances and preparations which, in contact with water or damp air, evolve highly flammable gases in dangerous quantities.

H3-B “Flammable”: liquid substances and preparations having a flash point equal to or greater than 21°C and less than or equal to 55°C.

H4 “Irritant”: non-corrosive substances and preparations which, through immediate, prolonged or repeated

contact with the skin or mucous membrane, can cause inflammation.

H5	"Harmful": substances and preparations which, if they are inhaled or ingested or if they penetrate the skin, may involve limited health risks.
H6	"Toxic": substances and preparations (including very toxic substances and preparations) which, if they are inhaled or ingested or if they penetrate the skin, may involve serious, acute or chronic health risks and even death.
H7	"Carcinogenic": substances and preparations which, if they are inhaled or ingested or if they penetrate the skin, may induce cancer or increase its incidence.
H8	"Corrosive": substances and preparations which may destroy living tissue on contact.
H9	"Infectious": substances and preparations containing viable micro-organisms or their toxins which are known or reliably believed to cause disease in man or other living organisms.
H10	"Toxic for reproduction": substances and preparations which, if they are inhaled or ingested or if they penetrate the skin, may induce non-hereditary congenital malformations or increase their incidence.
H11	"Mutagenic": substances and preparations which, if they are inhaled or ingested or if they penetrate the skin, may induce hereditary genetic defects or increase their incidence.
H12	Waste which releases toxic or very toxic gases in contact with water, air or an acid.
H13(*)	"Sensitizing": substances and preparations which, if they are inhaled or if they penetrate the skin, are capable of eliciting a reaction of hypersensitization such that on further exposure to the substance or preparation, characteristic adverse effects are produced.

(*) As far as testing methods are available.

H14 "Ecotoxic": waste which presents or may present immediate or delayed risks for one or more sectors of the environment.

H15 Waste capable by any means, after disposal, of yielding another substance, e.g. a leachate, which possesses any of the characteristics above.

Notes

1. Attribution of the hazardous properties "toxic" (and "very toxic"), "harmful", "corrosive", "irritant", "carcinogenic", "toxic to reproduction", "mutagenic" and "ecotoxic" is made on the basis of the criteria laid down by Annex VI, to Council Directive 67/548/EEC of 27 June 1967 on the approximation of laws, regulations and administrative provisions relating to the classification, packaging and labelling of dangerous substances.

2. Where relevant the limit values listed in Annex II and III to Directive 1999/45/EC of the European Parliament and of the Council of 31 May 1999 concerning the approximation of laws, regulations and administrative provisions of the Member States relating to the classification, packaging and labelling of dangerous preparations shall apply.

Test methods

The methods to be used are described in Annex V to Directive 67/548/EEC and in other relevant CEN-notes."

PART 3

The new Schedule 4

"SCHEDULE 4 Regulation 35(2)

HAZARDOUS WASTE (WALES) REGULATIONS 2005
RHEOLIADAU GWASTRAFF PERYGLUS (CYMRU) 2005

Part A NOTIFICATION DETAILS
Rhan A MANYLION HYSBYSU

1. Consignment Note Code: *Cod Nodyn Traddodi:* | | | | | | | / | | | | | |

2. The waste described below is to be removed from (name, address, postcode, telephone, e-mail, facsimile):
Mae'r gwastraff a ddisgrifir isod i'w gludo o (enw, cyfeiriad, cod post, ffôn, e-bost, ffacs):

3. Premises Code (where applicable): *Cod y Fangre (os yw'n gymwys):* | | | | | | |

4. The waste will be taken to (name, address & postcode):
Cludir y gwastraff i (enw, cyfeiriad a chod post):

5. The waste producer was (if different from 2.) (name, address, postcode, telephone, e-mail, facsimile):
Cynhyrchydd y gwastraff oedd (os yw'n wahanol i 2) (enw, cyfeiriad, cod post, ffôn, e-bost, ffacs);

Part B DESCRIPTION OF THE WASTE
Rhan B DISGRIFIAD O'R GWASTRAFF

1. The process giving rise to the waste(s) was:
Y broses a roes fod i'r gwastraff(oedd) oedd:

2. SIC for the process giving rise to the waste:
SIC am y broses a roes fod i'r gwastraff:

WASTE DETAILS (where more than one waste type is collected all of the information given below must be completed for each EWC identified)
MANYLION Y GWASTRAFF (os cesglir mwy nag un math o wastraff rhaid cwblhau'r holl wybodaeth a roddir isod ar gyfer pob EWC a ddynodwyd)

The waste(s) is:
Dyma'r gwastraff(oedd):

Description of waste *Disgrifiad o'r gwastraff*	List of Wastes (EWC) code (6 digits): *Cod Rhestr y Gwastraffoedd (EWC) (6 digid)*						Quantity (kg): *Cyfaint (kg):*	The chemical/biological components in the waste and their concentrations are: *Dyma gyfansoddion cemegol/ biolegol y gwatraff a'u crynodiadau:*		Physical Form (Gas, Liquid, Solid, Powder, Sludge or Mixed): *Ffurf Ffisegol (Nwy, Hylif, Solid, Powdwr, Llaca neu Gymysgfa):*	Hazard code(s): *Cod(au) perygl:*	Container type, number & size: *Math, rhif a maint y cynhwysydd*
								Component	Concentration (% or mg/kg)			

The information given below is to be completed for each EWC identified
Mae'r wybodaeth a roddir isod i'w chwblhau ar gyfer pob EWC a ddynodwyd

EWC Code *Cod EWC*						UN identification number(s) *Rhif(au) dynodi UN*	Proper shipping name(s) *Enw(au) priodol y llwyth*	UN Class(es) *Dosbarth(au) UN*	Packing Group(s) *Grŵp neu Grwpiau Pecynnu*	Special handling requirements *Gofynion trafod arbennig*

Part C CARRIER'S CERTIFICATE
Rhan C TYSTYSGRIF Y CLUDWR

(If more than one carrier is used, please attach Schedule for subsequent carriers. If schedule of carriers is attached tick here). ☐
(Os defnyddir mwy nag un cludwr, amgaewch Atodlen ar gyfer cludwyr dilynol. Os amgaeir atodlen o gludwyr, ticiwch fan hyn).

I certify that I today collected the consignment and that the details in A2, A4 and B3 are correct and I have been advised of any specific handling requirements.
Yr wyf yn ardystio fy mod heddiw wedi casglu'r llwyth a bod y manylion yn A2, A4 a B3 yn gywir a fy mod wedi cael fy hysbysu o unrhyw ofynion trafod arbennig.

Where this consignment forms part of a multiple collection, the round number and collection number are: *Pan fo'r llwyth hwn yn ffurfio rhan o amlgasgliad, rhif y cylch casglu a rhif y casgliad yw:*	/

1. Carrier Name:
   Enw'r Cludwr:

   On behalf of (name, address, postcode, telephone, e-mail, facsimile):
   Ar ran (enw, cyfeiriad, cod post, ffôn, e-bost, ffacs):

2. Carrier registration no./ reason for exemption:
   Rhif cofrestru'r cludwr / rheswm dros esemptiad:

3. Vehicle registration no.(or mode of transport, if not road):
   Rhif cofrestru'r cerbyd (neu'r cyfrwng cludo os nad ar ffordd)

Signature/ *Llofnod*

Date/ *Dyddiad* at/ *am* hrs/ *o'r gloch*

Part D CONSIGNOR'S CERTIFICATE
Rhan D TYSTYSGRIF Y TRADDODWR

I certify that the information in A, B and C above has been completed and is correct, that the carrier is registered or exempt and was advised of the appropriate precautionary measures. All of the waste is packaged and labelled correctly and the carrier has been advised of any special handling requirements. I confirm that I have fulfilled my duty to apply the waste hierarchy as required by regulation 12 of the Waste (England and Wales) Regulations 2011.

Yr wyf yn ardystio bod yr wybodaeth yn A, B ac C uchod wedi ei chwblhau ac yn gywir, bod y cludwr wedi ei gofrestru neu'n esempt a'i fod wedi cael ei hysbysu o'r mesurau rhagofalu priodol. Cafodd yr holl wastraff ei becynnu a'i labelu yn gywir a chafodd y cludwr ei hysbysu o unrhyw ofynion trafod arbennig. Yr wyf yn cadarnhau fy mod wedi cyflawni fy nyletswydd i ddefnyddio'r hierachaeth wastraff fel y mae'n ofynnol gan reoliad 12 o Reoliadau Gwastraff (Cymru a Lloegr) 2011.

1. Consignor Name:
   Enw'r Traddodwr:

On behalf of (name, address, postcode, telephone, e-mail, facsimile):
Ar ran (enw, cyfeiriad, cod post, ffôn, e-bost, ffacs):

Signature/ *Llofnod*

Date/ *Dyddiad* at/ *am* hrs/ *o'r gloch*

Part E CONSIGNEE'S CERTIFICATE (where more than one waste type is collected all of the information given below must be completed for each EWC)
Rhan E TYSTYSGRIF Y TRADDODAI (os cesglir mwy nag un math o wastraff rhaid cwblhau'r holl wybodaeth a roddir isod ar gyfer pob EWC)

Individual EWC code(s) received *Cod(au) EWC unigol a dderbyniwyd*						Quantity of each EWC code received (kg) *Cyfaint pob cod EWC a dderbyniwyd (kg)*	EWC Accepted/Rejected *Cod EWC a dderbyniwyd/ a wrthodwyd*	Waste Management operation (R or D code) *Gweithrediad Rheoli Gwastraff (cod R neu D)*

1. I received this waste at the address given in A4 on (date) at hrs
   Daeth y gwastraff hwn i law yn y cyfeiriad ar roddir yn A4 ar am o'r gloch

2. Vehicle registration no. (or mode of transport, if not road):
   Rhif cofrestru'r cerbyd (neu'r cyfrwng cludo os nad ar ffordd)

3. Where waste is rejected please provide details:
   Os gwrthodir y gwastraff, rhowch y manylion isod:

I certify that environmental permit/registered exemption no(s). authorises the management of the waste described in B at the address given in A4..

Where the consignment forms part of a multiple collection, as identified in Part C, I certify that the total number of consignments forming the collection are: ☐

Yr wyf yn ardystio bod y drwydded amgylcheddol/ caniatâd/ esemptiad cofrestredig ....rhif(au) yn awdurdodi rheoli'r gwastraff a ddisgrifir yn B yn y cyfeiriad a roddir yn A4.

Pan fo'r llwyth yn ffurfio rhan o amlgasgliad, fel a ddynodir yn Rhan C, yr wyf yn ardystio mai cyfanswm y llwythi sy'n ffurfio'r casgliad yw:

Name/ *Enw*
On behalf of (name, address, postcode, telephone, e-mail, facsimile):
Ar ran (enw, cyfeiriad, cod post, ffôn, e-bost, ffacs):

Signature/ *Llofnod*

Date/ *Dyddiad* at/ *am* hrs/ *o'r gloch*

"

Y Gwir Anrh/Rt Hon Carwyn Jones AC/AM
Prif Weinidog Cymru/First Minister of Wales

Llywodraeth Cymru
Welsh Government

Eich cyf/Your ref: CA581
Ein cyf/Our ref: FM/05339/11

David Melding AM
Chair - Constitutional & Legislative Affairs Committee
Ty Hywel
Cardiff Bay
Cardiff
CF99 1NA
committeebusiness@Wales.gsi.gov.uk

25 July 2011

Dear David,

CA581 – The Waste (Miscellaneous Provisions) (Wales) Order 2011

I am writing in response to your letter of 4 July drawing my attention to the report of the Committee on Statutory Instruments which considered the Waste (Miscellaneous Provisions) (Wales) Regulations 2011 on 22 June 2011. Your letter also requested that, in circumstances where the Welsh Ministers are able to exercise discretion over the choice of procedure which applies to a piece of subordinate legislation, we should include an explanation in the Explanatory Memorandum.

I note that the Committee has reported under Standing Order 21.3 (ii) on the grounds that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Assembly, and have nothing further to add to the Government response provided in the Committee's report.

In relation to your request regarding the content of future Explanatory Memoranda I am happy to agree that, where the enabling legislation allows Welsh Ministers discretion over the procedure to be applied, the Explanatory Memorandum will include an explanation of how that discretion has been exercised. Indeed you will have noted that the Explanatory Memorandum provided for the Waste (Miscellaneous Provisions) (Wales) Order provided just such an explanation under 'legislative background'. I will ensure that guidance to officials is amended so that any such explanation in future is moved to the section entitled 'Matters of special interest to the Constitutional and Legislative Affairs Committee'.

Yours sincerely,

CARWYN JONES

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1NA

English Enquiry Line 0845 010 3300
Llinell Ymholiadau Cymraeg 0845 010 4400
Ffacs * Fax 029 2089 8198
ps.firstminister@wales.gsi.gov.uk

Pwyllgor Offerynnau Statudol

Committee on Statutory Instruments

Cynulliad Cenedlaethol Cymru
National Assembly for Wales
Bae Caerdydd / Cardiff Bay
Caerdydd / Cardiff
CF99 1NA

John Griffiths AM
Minister for Environment and Sustainable Development
Welsh Government
5th Floor
Tŷ Hywel
Cardiff Bay
CF99 1NA

27 June 2011

Dear Minister

CSI1 - The Water Industry (Schemes for Adoption of Private Sewers) Regulations 2011

The Committee on Statutory Instruments considered the above Statutory Instrument at its meeting on 22 June 2011 and agreed that I should bring to your attention the Committee's report made under Standing Order 21.3 on the merits of the Instrument.

The Committee agreed to invite the Assembly to pay special attention to this Instrument on the grounds "that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Assembly" (Standing Order 21.3(ii)).

The Committee's report was laid in the Table Office on 23 June 2011 and is attached for information. I would be grateful if you could consider the report and let the Committee have your response in due course.

I am copying this report to the First Minister for information and have also arranged for the report and this letter to be drawn to the attention of Assembly Members.

Yours sincerely

David Melding AM
Chair, Committee on Statutory Instruments

Committee on Statutory Instruments Report

CSI1

Title: The Water Industry (Schemes for Adoption of Private Sewers) Regulations 2011

Procedure: **Affirmative**

These Regulations provide for the Secretary of State and the Welsh Ministers to make schemes for the adoption by sewerage undertakers in England and Wales of private sewers and private lateral drains under section 102 of the Water Industry Act 1991 ("the Act").

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 Orders 21.3 the Assembly is invited to pay special attention to the following instrument:-

1. These Regulations will directly affect a large proportion of people living in Wales. The Water Industry Act 1991 places statutory sewerage undertakers under a duty to provide, maintain and extend a system of public sewers as to ensure that the area is and continues to be effectively drained. Whilst the 1991 Act provides for the voluntary adoption as part of the public sewerage system of sewers and lateral drains that connect to it, it is not a requirement and as a result an extensive system of private sewers has developed since 1937. It has been estimated that 50% of properties in England and Wales are connected to a private sewer in one form or another and as a result responsibility for those sewers are shared by the owners of the properties that those sewers serve. These Regulations will transfer responsibility for the maintenance of all sewers and lateral drains that drain to the public sewerage system to the Water and Sewerage Companies. This will include sewers and lateral drains draining both residential and commercial premises.

2. These Regulations contain a sunset clause. A sunset clause provides that the law shall cease to have effect after a specific date. Regulation 1(2) states that these Regulations will "cease to have effect at the end of 30th June 2018." The explanatory memorandum explains why a sunset clause is necessary in this instance. It states that "the regulations that implement the transfer of private sewers will affect

the transfer by requiring water and sewerage companies to use their existing powers under the Water Industry Act 1991 to declare sewerage assets to be vested in them as "public" sewerage assets. They will be required to make declarations in respect of private sewers, laterals and associated pumping stations which are connected to the public sewerage system on a date specified in the regulations. This exercise is a single operation such that, once over the transitional period specified in the regulations they will have no on-going effect." The explanatory memorandum then confusingly says that "no sunset clause is therefore proposed for these regulations." This is incorrect and this error has been brought to the attention of the Government lawyers.

[21.3(ii) that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Assembly].

David Melding AM
Chair, Committee on Statutory Instruments

22 June 2011

The Government has responded as follows:

Technical points:

The Water Industry (Schemes for Adoption of Private Sewers) Regulations 2011

These composite regulations apply to England and Wales and are subject to approval by the National Assembly for Wales and by Parliament in accordance with statutory requirements. It is therefore not considered reasonably practicable for these regulations to be laid in draft, or made, bilingually.

Merits points:

The Water Industry (Schemes for Adoption of Private Sewers) Regulations 2011

I am grateful for the Committee's draft report. As the draft report indicates, the RIA mistakenly states that the Regulations contain no sunset clause. However, the Explanatory Memorandum correctly states that the Regulations do contain a sunset clause. While this error is regrettable, I do not believe any corrective action would be appropriate in relation to these Regulations.

Draft Regulations laid before Parliament and the National Assembly for Wales under section 105A of the Water Industry Act 1991, for approval by resolution of each House of Parliament and by the National Assembly for Wales.

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

WATER INDUSTRY, ENGLAND AND WALES

The Water Industry (Schemes for Adoption of Private Sewers) Regulations 2011

Made - - - -	*****
Coming into force - -	*1st July 2011*

These Regulations are made in exercise of the powers conferred by sections 102(4) (as modified by section 105A(6)(a) of the Water Industry Act 1991), 105A and 213(2)(f) of the Water Industry Act 1991(**a**).

The Secretary of State and the Welsh Ministers(**b**) have consulted in accordance with the requirements set out in section 105C(2)(**c**) of that Act.

A draft of these Regulations has been approved by a resolution of each House of Parliament and by the National Assembly for Wales(**d**) in accordance with section 105A(8) of that Act.

Accordingly, the Secretary of State, in relation to any sewerage undertaker whose area is wholly or mainly in England, and the Welsh Ministers, in relation to any sewerage undertaker whose area is wholly or mainly in Wales, make the following Regulations.

(**a**) 1991 c. 56. Section 102(4) was amended by the Water Act 2003 (c. 37), section 96(1)(c), and modified by section 105A(6)(a) of the Water Industry Act 1991; see section 219(1) of that Act for the definition of "prescribed". Section 105A was inserted by the Water Act 2003, section 98. The functions of the Secretary of State under section 105A of the Water Industry Act 1991 were transferred to the National Assembly for Wales by article 2 of, and Schedule 1 to, the National Assembly for Wales (Transfer of Functions) Order 1999, S.I. 1999/672 ("the Order") (as amended by section 100(2)(b)(vii) of the Water Act 2003), in relation to any water or sewerage undertaker whose area is wholly or mainly in Wales. The functions of the Secretary of State under section 213(2)(f) of the Water Industry Act 1991 were made exercisable by the National Assembly for Wales to the same extent as the powers, duties and other provisions to which that section applies were exercisable by that Assembly by virtue of article 2 of, and Schedule 1 to, the Order. The functions conferred on the National Assembly for Wales were subsequently 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**) Functions of the Secretary of State under section 105C of the Water Industry Act 1991 were transferred to the National Assembly for Wales by article 2 of, and Schedule 1 to, the Order (as amended by section 100(2)(b)(vii) of the Water Act 2003). The functions conferred on the National Assembly for Wales were subsequently transferred to the Welsh Ministers by section 162 of, and paragraph 30 of Schedule 11 to, the Government of Wales Act 2006. Consultation undertaken by the National Assembly for Wales has effect as if carried out by the Welsh Ministers, by virtue of section 162 of, and paragraph 39(3) of Schedule 11 to, the Government of Wales Act 2006.

(**c**) Section 105C was inserted by the Water Act 2003, section 98.

(**d**) The reference in section 105A(8) to each House of Parliament has effect in relation to the exercise of functions by the Welsh Ministers as if it included a reference to the National Assembly for Wales, by virtue of section 162 of, and paragraph 33 of Schedule 11 to, the Government of Wales Act 2006.

Citation, commencement and expiry

1.—(1) These Regulations may be cited as the Water Industry (Schemes for Adoption of Private Sewers) Regulations 2011 and come into force on 1st July 2011.

(2) They cease to have effect at the end of 30th June 2018.

Interpretation

2. In these Regulations—

"the Act" means the Water Industry Act 1991;

"adoptable", in relation to a private sewer or private lateral drain, means a sewer or lateral drain in relation to which a sewerage undertaker must perform the relevant duty;

"declaration" means a declaration of vesting under subsection (1) of section 102(**a**) of the Act (adoption of sewers and disposal works);

"exempt", in relation to a private sewer or private lateral drain, means a sewer or lateral drain which is exempt under regulation 5;

"main scheme" means a scheme under regulation 3;

"private lateral drain" means the whole or part of a lateral drain(**b**) which is not vested in a sewerage undertaker in its capacity as such;

"private sewer" means the whole or part of a foul, combined or surface water private sewer(**c**), but does not include a highway drain or sewer;

"pumping station" means that part of a sewer or lateral drain which is a pumping station used or intended to be used in connection with that sewer or lateral drain, and includes the rising main (the pressurised pipe that connects the pumping station with the rest of the sewer or lateral drain);

"the relevant date" means the date of commencement (in full) of section 42(1) of the Flood and Water Management Act 2010(**d**);

"the relevant duty" means the duty under section 105A(4) of the Act (duty on sewerage undertakers to exercise their powers under section 102 of the Act with a view to making a declaration pursuant to a scheme);

"scheme" means a scheme described in section 105A of the Act (schemes for the adoption of sewers, lateral drains and sewage disposal works);

"the supplementary adoption date" means the date which is the day after the end of the period of 6 months beginning with the relevant date; and

"supplementary scheme" means a scheme under regulation 4.

Main schemes

3.—(1) The Secretary of State must make a scheme (a "main scheme") for the adoption of private sewers and private lateral drains by every sewerage undertaker whose area is wholly or mainly in England.

(2) The Welsh Ministers must make a scheme (a "main scheme") for the adoption of private sewers and private lateral drains by every sewerage undertaker whose area is wholly or mainly in Wales.

(3) The making of a main scheme is the circumstance giving rise to the relevant duty pursuant to that scheme.

(**a**) Section 102 was amended by the Water Act 2003, section 96(1) and Part 3 of Schedule 9.
(**b**) See section 219(1) of the Water Industry Act 1991 for the definition of "lateral drain", and see also section 219(2)(a) of that Act.
(**c**) See, in section 219(1) of the Water Industry Act 1991, the definitions of "public sewer" and "sewer", and see also section 219(2)(a) of that Act.
(**d**) 2010 c. 29. Section 42(1) inserts section 106B into the Water Industry Act 1991.

(4) Paragraphs (5) to (7) specify criteria relevant to the performance of that duty.

(5) Each sewerage undertaker must perform the relevant duty pursuant to a main scheme in relation to any private sewer—

(a) which is situated within the area of that undertaker; and

(b) which, immediately before 1st July 2011, communicates with a public sewer(**a**).

(6) Each sewerage undertaker must perform the relevant duty pursuant to a main scheme in relation to any private lateral drain which, immediately before 1st July 2011, communicates with a public sewer which is vested in that undertaker.

(7) The relevant duty pursuant to a main scheme is not owed in relation to any private sewer or private lateral drain—

(a) which is exempt; or

(b) which is, immediately before 1st July 2011, the subject of a declaration.

(8) Each main scheme must provide that any declaration which is made pursuant to that scheme in relation to a private sewer or private lateral drain—

(a) must specify 1st October 2011 as the date of vesting of that sewer or lateral drain (except any part of that sewer or lateral drain which is a pumping station), and

(b) must specify a date no later than 1st October 2016 as the date of vesting of any pumping station which forms part of that sewer or lateral drain,

except where it is not possible, in respect of a particular sewer or lateral drain, to make a declaration specifying such a date because a proposal to make a declaration in respect of that sewer or lateral drain is subject to an outstanding appeal under section 105B(**b**) of the Act (adoption schemes: appeals).

(9) Any number of declarations may be made pursuant to a main scheme.

Supplementary schemes

4.—(1) On or as soon as reasonably practicable after the relevant date, the Secretary of State must make a scheme (a "supplementary scheme") for the adoption of private sewers and private lateral drains by every sewerage undertaker whose area is wholly or mainly in England.

(2) On or as soon as reasonably practicable after the relevant date, the Welsh Ministers must make a scheme (a "supplementary scheme") for the adoption of private sewers and private lateral drains by every sewerage undertaker whose area is wholly or mainly in Wales.

(3) The making of a supplementary scheme is the circumstance giving rise to the relevant duty pursuant to that scheme.

(4) Paragraphs (5) to (7) specify criteria relevant to the performance of that duty.

(5) Each sewerage undertaker must perform the relevant duty pursuant to a supplementary scheme in relation to any private sewer—

(a) which is situated within the area of that undertaker;

(b) which, immediately before the relevant date, communicates with a public sewer; and

(c) in relation to which the relevant duty is not owed pursuant to a main scheme.

(6) Each sewerage undertaker must perform the relevant duty pursuant to a supplementary scheme in relation to any private lateral drain—

(a) which, immediately before the relevant date, communicates with a public sewer which is vested in that undertaker; and

(b) in relation to which the relevant duty is not owed pursuant to a main scheme.

(**a**) See section 219(1) of the Water Industry Act 1991 for the definition of "public sewer".
(**b**) Section 105B was inserted by the Water Act 2003, section 98.

(7) The relevant duty pursuant to a supplementary scheme is not owed in relation to any private sewer or private lateral drain—

(a) which is exempt; or

(b) which is, immediately before the relevant date, the subject of a declaration.

(8) Each supplementary scheme must provide that any declaration which is made pursuant to that scheme in relation to a private sewer or private lateral drain—

(a) must specify the supplementary adoption date as the date of vesting of that sewer or lateral drain (except any part of that sewer or lateral drain which is a pumping station), and

(b) must specify a date no later than 1st October 2016 as the date of vesting of any pumping station which forms part of that sewer or lateral drain,

except where it is not possible, in respect of a particular sewer or lateral drain, to make a declaration specifying such a date because a proposal to make a declaration in respect of that sewer or lateral drain is subject to an outstanding appeal under section 105B of the Act.

(9) Any number of declarations may be made pursuant to a supplementary scheme.

Exempt private sewers and exempt private lateral drains

5.—(1) A private sewer or private lateral drain is exempt for the purposes of a main scheme or a supplementary scheme if that sewer or lateral drain is owned by a railway undertaker(**a**).

(2) A private sewer or private lateral drain is exempt for the purposes of a main scheme if—

(a) that sewer or lateral drain is situated on or under Crown land; and

(b) the sewerage undertaker within whose area that sewer or lateral drain is situated has received notice in writing before 1st July 2011 from the appropriate authority in relation to that land that that sewer or lateral drain should be exempt.

(3) A private sewer or private lateral drain is exempt for the purposes of a supplementary scheme if—

(a) that sewer or lateral drain is situated on or under Crown land; and

(b) the sewerage undertaker within whose area that sewer or lateral drain is situated has received notice in writing before the relevant date from the appropriate authority in relation to that land that that sewer or lateral drain should be exempt.

(4) In this regulation "Crown land" means land an interest in which—

(a) belongs to Her Majesty in right of the Crown; or

(b) belongs to a government department or is held in trust for Her Majesty for the purposes of a government department.

(5) In this regulation "the appropriate authority" means—

(a) in the case of land which belongs to Her Majesty in right of the Crown, the Crown Estate Commissioners or other government department having management of the land in question;

(b) in the case of land which belongs to a government department or is held in trust for Her Majesty for the purposes of a government department, that department.

Publication of proposal to make a declaration

6. In exercising its powers under subsection (4) of section 102 of the Act (as modified by section 105A(6)(a) of the Act) pursuant to the relevant duty, a sewerage undertaker must publish notice of its proposal to make a declaration—

(a) in the London Gazette; and

(**a**) See section 219(1) of the Water Industry Act 1991 for the definition of "railway undertakers".

(b) in as many local or regional newspapers circulating in that undertaker's area as may be required to cover the whole of that area.

Existing proposals to make declarations, and existing declarations

7.—(1) Paragraph (2) applies where—

(a) a private sewer or private lateral drain which would be adoptable pursuant to a main scheme is, immediately before 1st July 2011, the subject of a proposal (under section 102(4) of the Act) to make a declaration; or

(b) a private sewer or private lateral drain which would be adoptable pursuant to a supplementary scheme is, immediately before the relevant date, the subject of such a proposal.

(2) Where this paragraph applies—

(a) that proposal, in so far as it relates to that sewer or lateral drain, is treated as having been withdrawn; and

(b) any appeal under subsection (1)(a) of section 105(**a**) of the Act (appeals with respect to adoption) in relation to that sewer or lateral drain which is outstanding immediately before—

(i) 1st July 2011, in relation to a sewer or lateral drain to which this paragraph applies by virtue of paragraph (1)(a), or

(ii) the relevant date, in relation to a sewer or lateral drain to which this paragraph applies by virtue of paragraph (1)(b),

is to be discontinued.

(3) Where—

(a) (if it were not for regulation 3(7)(b)) a private sewer or private lateral drain would be adoptable pursuant to a main scheme, and

(b) that sewer or lateral drain is, immediately before 1st July 2011, the subject of a declaration which specifies 2nd October 2011 or a later date as the date of vesting of that sewer or lateral drain,

the date of vesting of that sewer or lateral drain pursuant to that declaration is treated as being 1st October 2011.

(4) Where—

(a) (if it were not for regulation 4(7)(b)) a private sewer or private lateral drain would be adoptable pursuant to a supplementary scheme, and

(b) that sewer or lateral drain is, immediately before the relevant date, the subject of a declaration which specifies a date later than the supplementary adoption date as the date of vesting of that sewer or lateral drain,

the date of vesting of that sewer or lateral drain pursuant to that declaration is treated as being the supplementary adoption date.

Outstanding appeals under section 105(1)(b) of the Act

8. Where an appeal under section 105(1)(b) of the Act—

(a) is outstanding, immediately before 1st July 2011, in relation to a private sewer or private lateral drain which would be adoptable pursuant to a main scheme, or

(b) is outstanding, immediately before the relevant date, in relation to a private sewer or private lateral drain which would be adoptable pursuant to a supplementary scheme,

---

(**a**) Section 105 was amended by the Water Act 2003, sections 36(2) and 96(5), and is prospectively amended by the Flood and Water Management Act 2010 (c. 29), section 42(2).

that appeal is to be discontinued.

Existing applications for agreements, and existing agreements, under section 104 of the Act

9.—(1) Paragraph (2) applies where—

(a) a private sewer or private lateral drain which would be adoptable pursuant to a main scheme is, immediately before 1st July 2011, the subject of an application, under subsection (2) of section 104(**a**) of the Act (agreements to adopt sewer, drain or sewage disposal works at future date), for an agreement; or

(b) a private sewer or private lateral drain which would be adoptable pursuant to a supplementary scheme is, immediately before the relevant date, the subject of such an application.

(2) Where this paragraph applies—

(a) that application, in so far as it relates to that sewer or lateral drain, is treated as having been withdrawn; and

(b) any appeal under section 105(2)(**b**) of the Act in relation to that sewer or lateral drain which is outstanding immediately before—

(i) 1st July 2011, in relation to a sewer or lateral drain to which this paragraph applies by virtue of paragraph (1)(a), or

(ii) the relevant date, in relation to a sewer or lateral drain to which this paragraph applies by virtue of paragraph (1)(b),

is to be discontinued.

(3) Paragraph (4) applies where—

(a) a private sewer or private lateral drain which would be adoptable pursuant to a main scheme is, immediately before 1st July 2011, the subject of an agreement; or

(b) a private sewer or private lateral drain which would be adoptable pursuant to a supplementary scheme is, immediately before the relevant date, the subject of an agreement.

(4) Where this paragraph applies—

(a) that sewer or lateral drain vests in the relevant sewerage undertaker on the earlier of—

(i) the date specified as the date of vesting of that sewer or lateral drain in a declaration made pursuant to a main scheme or a supplementary scheme (as the case may be), or

(ii) the date of vesting under the agreement in question;

(b) that agreement, in so far as it relates to that sewer or lateral drain, is treated as terminating on the vesting date; and

(c) the relevant sewerage undertaker may continue to benefit from any term of that agreement relating to the provision by any other party to the agreement of security for the discharge of obligations in connection with that sewer or lateral drain, in recompense for expenditure incurred prior to the vesting date by that undertaker in relation to—

(i) any works carried out on that sewer or lateral drain by that undertaker prior to the vesting date, or

(ii) any contract entered into by that undertaker with another party for the carrying out of such works.

(5) In this regulation—

(a) "agreement" means an agreement under section 104 of the Act;

(**a**) Section 104 was amended by the Water Act 2003, section 96(4) and Part 3 of Schedule 9, and is prospectively amended by the Flood and Water Management Act 2010, section 42(3).

(**b**) Section 105(2) is prospectively substituted by the Flood and Water Management Act 2010, section 42(2).

(b) “the relevant sewerage undertaker” means the sewerage undertaker which is a party to the agreement in question; and

(c) “the vesting date”, in relation to a sewer or lateral drain, means the date on which that sewer or lateral drain vests in the relevant sewerage undertaker, as determined by paragraph (4)(a).

Name
Minister of State
Date — Department for Environment, Food and Rural Affairs

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

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations provide for the Secretary of State and the Welsh Ministers to make schemes for the adoption by sewerage undertakers in England and Wales of private sewers and private lateral drains under section 102 of the Water Industry Act 1991 (“the Act”).

Regulation 3 makes provision in relation to main schemes (which relate to the adoption of private sewers and lateral drains which communicate with a public sewer immediately before 1st July 2011). Regulation 4 makes provision in relation to supplementary schemes (which relate to the adoption of private sewers and lateral drains which communicate with a public sewer immediately before the date of commencement of section 42(1) of the Flood and Water Management Act 2010). Regulation 5 describes sewers and lateral drains which are exempt from adoption under a scheme.

A declaration under section 102 of the Act must specify that adoptable private sewers and lateral drains will vest in an undertaker on 1st October 2011 (pursuant to a main scheme) or 6 months after the date of commencement of section 42(1) of the Flood and Water Management Act 2010 (pursuant to a supplementary scheme), or, in the case of a pumping station which forms part of a private sewer or lateral drain, no later than 1st October 2016 (regulations 3 and 4).

Regulations 7, 8 and 9 make provision in relation to private sewers and lateral drains which are the subject of existing adoption declarations or agreements under section 102 or 104 of the Act (or proposals for such declarations or agreements).

These Regulations cease to have effect on 30th June 2018.

A full impact assessment of the effect that this instrument will have on the costs of business, the voluntary sector and the public sector has been produced and placed in the library of each House of Parliament. It is available from the Private Sewers Transfer Team, Area 2C, Ergon House, Horseferry Road, London SW1P 2AL or on the Defra website at www.defra.gov.uk. It is also published with the Explanatory Memorandum alongside the instrument on www.legislation.gov.uk.

John Griffiths AC /AM
Gweinidog yr Amgylchedd a Datblygu Cynaliadwy
Minister for Environment and Sustainable Development

Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref JG/05638/11

David Melding AM
Chair – Constitutional and
Legislative Affairs Committee
National Assembly for Wales
Cardiff Bay
Cardiff
CF99 1NA
David.melding@wales.gov.uk

21 July 2011

Dear David,

CS11 – The Water Industry (Schemes for the Adoption of Private Sewers) Regulations 2011

Thank you for your letter of 27 June drawing my attention to the report of the Committee on Statutory Instruments which considered the Water Industry (Schemes for Adoption of Private Sewers Regulations 2011 ('the Regulations') on 22 June 2011.

I note that the Committee has reported under Standing Order 21.3 on the grounds that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Assembly. The attached report goes on to include reports on both 'technical' and 'merits' matters.

Taking the technical report first, the Committee noted that the Regulations have not been made bilingually. The Government response indicated that, as the Regulations are subject to approval in Parliament, it was not considered reasonable or practicable for them to be made bilingually. This accords with long standing practice. While there may be instances where Parliament has considered Instruments made which have included elements in the Welsh language, for instance in relation to the prescription of forms, I am not aware of any instances in which general Statutory Instruments which apply to both England and Wales have been made bilingually.

In this instance, it is of relevance that even if these Regulations had been made by the Welsh Ministers acting alone, they would have made cross-border provision because of the way ministerial powers are devolved in relation to the water industry, meaning that the

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1NA
English Enquiry Line 0845 010 3300
Llinell Ymholiadau Cymraeg 0845 010 4400
Correspondence.John.Griffiths@wales.gsi.gov.uk
Wedi'i argraffu ar bapur wedi'i ailgylchu (100%)
Printed on 100% recycled paper

approval of Parliament would still have been required in accordance with the Government of Wales Act 2006..

I should emphasise that where Welsh Ministers have the power to make legislation for Wales the assumption will always be that, unless there are good reasons to do otherwise, that power will be exercised via a Wales-only Statutory Instrument. It is, however, considered an efficient use of resources for Welsh Ministers to retain the option to make composite orders where the subject matter makes it appropriate to do so. This might be the case, for example, in circumstances where a common enforcement regime is necessary, or where consistency of approach is needed.

Turning to the merits point, I am grateful that the Committee has highlighted the significance of these Regulations, and have acknowledged the error in the Explanatory Memorandum. I have nothing further to add to the Government response which was noted in your report.

Yours,

John Griffiths AC / AM
Gweinidog yr Amgylchedd a Datblygu Cynaliadwy
Minister for Environment and Sustainable Development

Agenda Item 4.4

Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol

Constitutional and Legislative Affairs Committee

Cynulliad Cenedlaethol Cymru
National Assembly for Wales

Bae Caerdydd / Cardiff Bay
Caerdydd / Cardiff
CF99 1NA

Rt Hon Carwyn Jones AM
First Minister
Welsh Government
Tŷ Hywel
Cardiff Bay
CF99 1NA

7 July 2011

Dear First Minister

Statutory Instruments laid before or during the dissolution of the Third Assembly

When it met on 22 June 2011, the Committee on Statutory Instruments considered a number of Statutory Instruments that the then Constitutional Affairs Committee was unable to scrutinise because they were laid late during the Third Assembly.

The Committee accepted that there might be good reasons why these particular instruments were laid so late in the day. The Committee also accepts that there are always likely to be some situations where legislation needs to be made at relatively short notice. However, it is of considerable concern that legislation implementing very significant changes, such as arrangements for Social Care Charges and for the regulation of Care Homes, should not be subject to Committee scrutiny.

The Committee also had drawn to its attention an e-mail from Mr Ian Medlicott of the Wales Branch of the Association of Council Secretaries and Solicitors, which also expressed concern about the matter. I enclose a copy of the text of his e-mail for your information. The Committee shares Mr Medlicott's concerns and would be grateful for your assurance that in future subordinate legislation, particularly legislation that implements significant policy changes, is laid in good time to be scrutinised by the Constitutional and Legislative Affairs Committee.

I am copying this to the Counsel General for information.

Yours sincerely

David Melding AM
Chair
Constitutional and Legislative Affairs Committee

Dear Mr. George,

You will recall that you and I had a hurried exchange of correspondence during the last few days of the last Assembly, about the volume of statutory instruments made and published in that period, most of which came into effect shortly thereafter. I notice that the new Committee on Statutory Instruments will be considering this issue tomorrow, and I would be grateful if you would arrange for the committee members to see this email, and take it into account when considering this item.

I am writing on behalf of the Association of Council Secretaries and Solicitors, Wales Branch ("ACSeS"). ACSeS represents Heads of Legal Services and Monitoring Officers of Unitary, Fire and Rescue, National Park and Police authorities in Wales. Many of the pieces of secondary legislation made by the Assembly are relevant to these authorities, and ACSeS members will be responsible for making relevant staff in their authorities aware of the new regulations, and for advising on their implementation in their authority.

The rush of SIs issued during the last week of the Third Assembly's life caused considerable concern, partly because of the short notice, and the early commencement dates thereafter, but also because they took effect after the dissolution of the Third Assembly, and so could not be subject to effective scrutiny by Assembly members before the SIs came into effect, or in the periods specified in the Assembly's Standing Orders.

The report from the Committee's officials details the legislation involved, and ACSeS welcomes the review by this Committee in the early life of the new Assembly. While the precise situation (publication before the dissolution of the Assembly) will not happen for another five years, this is not an academic situation as there is the potential for it to re-occur where the Assembly is in recess for a longer period – for example, the summer break.

ACSeS invites the Committee to make strong recommendations to Welsh Ministers to ensure that this situation cannot be repeated, and then to monitor its effectiveness.

Would you please acknowledge safe receipt of this email?

Sincerely,
Ian Medlicott

Y Gwir Anrh/Rt Hon Carwyn Jones AC/AM
Prif Weinidog Cymru/First Minister of Wales

Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref: FM/05340/11

David Melding AM
Chair - Constitutional & Legislative Affairs Committee
Ty Hywel
Cardiff Bay
Cardiff
CF99 1NA
committeebusiness@Wales.gsi.gov.uk

28 July 2011

Dear David,

Statutory Instruments laid before or during the dissolution of the Third Assembly

I am writing in response to your letter of 7 July following the meeting of the Committee on Statutory Instruments which took place on 22 June.

You expressed the Committee's concern that a number of items of subordinate legislation were laid too late in the Assembly term for them to be considered by the then Constitutional Affairs Committee. In particular, you refer to Social Care Charges and the Regulation of Care Homes

I am grateful that the Committee was able to consider the Social Care Charges (Review of Charging Decisions) (Wales) Regulations 2011 at its final meeting on 30th June.

Those regulations, along with the Social Care Charges (Direct Payments) (Means Assessment and Determination of Reimbursement or Contribution) (Wales) Regulations 2011, and the Social Care Charges (Means Assessment and Determination of Charges) (Wales) Regulations 2011, were the subject of a letter to the Presiding Officer, dated 29 March explaining why it was necessary that they did not to comply with the '21-day rule' (copy attached for convenience).

In respect of the Care Homes (Wales) (Miscellaneous Amendments) Regulations 2011, the Committee acknowledged the significance of these regulations, given public concern about the management and operation of care homes providing services for adults. The Welsh Government, mindful that Standing Orders would allow for the new Assembly to consider and, if they so wished, annul the regulations, determined that the balance of public interest lay in making and laying the regulations prior to dissolution

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1NA

English Enquiry Line 0845 010 3300
Llinell Ymholiadau Cymraeg 0845 010 4400
Ffacs * Fax 029 2089 8198
ps.firstminister@wales.gsi.gov.uk

It is perhaps inevitable that, towards the end of an Assembly term, any Government will be in the position of seeking to ensure that it's legislative priorities have been delivered, and that the lacuna created by the pre-election period does not disadvantage the people of Wales. It is, of course, not possible to lay any documents while the Assembly is dissolved. This may mean bringing subordinate legislation forward which, in other circumstances, would have been laid during that period.

The Assembly's Standing Orders do, of course, explicitly provide for a period of 20 days for the committee to produce a report, and 40 days within which the Assembly may resolve to annul an instrument, to straddle a period of dissolution. I acknowledge that, at the time of laying some of these items there existed the possibility that the 40 day period would expire before the new Assembly's Committee structure was established. However, this did not prejudice the ability of the new Assembly to establish interim arrangements for the scrutiny of those SIs, should that prove necessary. Furthermore, a paper was considered by Business Committee on 29 March which indicated that consideration should be given to suspending Standing Orders to enable the 20 day requirement to be set aside where necessary, should there be a delay in establishing the relevant committee under the 4th Assembly (that paper is attached for ease of reference).

I trust this is helpful

Yours sincerely,

CARWYN JONES

Agenda Item 4.5

Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol

Constitutional and Legislative Affairs Committee

Cynulliad Cenedlaethol **Cymru**
National Assembly for **Wales**

Bae Caerdydd / Cardiff Bay
Caerdydd / Cardiff
CF99 1NA

John Griffiths AM
Minister for Environment and Sustainable Development
Welsh Government
5th Floor
Tŷ Hywel
Cardiff Bay
CF99 1NA

11 July 2011

Dear Minister

CLA10 - The Environmental Permitting (England and Wales) (Amendment) Regulations 2011

Constitutional and Legislative Affairs Committee considered the above Statutory Instrument at its meeting on 7 July 2011 and agreed that I should bring to your attention the Committee's report made under Standing Order 21.3 on the merits of the Instrument.

The Committee agreed to invite the Assembly to pay special attention to this Instrument on the grounds "that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Assembly" (Standing Order 21.3(ii)).

The Committee's report was laid in the Table Office on 8 July 2011 and is attached for information. I would be grateful if you could consider the report and let the Committee have your response in due course.

I am copying this report to the First Minister for information and have also arranged for the report and this letter to be drawn to the attention of Assembly Members.

Yours sincerely

David Melding AM
Chair, Constitutional and Legislative Affairs Committee

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.

David Melding AM
Chair, Constitutional and Legislative Affairs Committee

7 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.

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)

CONTENTS

PART 1
General

1. Citation and commencement 3
2. Interpretation 3

PART 2
Amendments to the 2010 Regulations

3. Amendment of the Environmental Permitting (England and Wales) Regulations 2010 3
4. Amendment of regulation 2 (interpretation: general) 3
5. Amendment of regulation 5 (interpretation: exempt facilities) 4
6. Amendment of regulation 12 (requirement for an environmental permit) 4
7. Amendment of regulation 14 (content and form of an environmental permit) 4
8. Amendment of regulation 17 (Single site permits etc.) 4
9. Amendment of regulation 67 (Interpretation of Part 7) 4
10. Revocation of regulation 72 (Radioactive substances exemption orders) 5
11. Insertion of regulations 72A, 72B, 72C and 72D 5
12. Amendment to Schedule 1 (activities, installations and mobile plant) 7
13. Amendment to Schedule 5 (environmental permits) 7
14. Schedule 22 (groundwater activities) 7
15. Substitution of Schedule 23 (radioactive substances activities) 7

PART 3
Consequential amendments, repeals, savings and revocation

16. Consequential amendments 7
17. Repeals 7
18. Savings 8
19. Revocation 8

SCHEDULE 1 — New Schedule 23 to the 2010 Regulations 8
SCHEDULE 2 — Consequential amendments 66
PART 1 — Public General Acts 66
PART 2 — Subordinate legislation 66
SCHEDULE 3 — Exemption orders 68

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

---

(**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

1. Application

PART 2
Interpretation

1. Interpretation
2. Interpretation: NORM industrial activity
3. Interpretation: "radioactive material", "radioactive waste" and "waste"
4. NORM industrial activities
5. Processed radionuclides of natural terrestrial or cosmic origin
6. Radionuclides not of natural terrestrial or cosmic origin
7. Radionuclides with a short half-life
8. Radionuclides not of natural terrestrial or cosmic origin in background radioactivity
9. Contaminated substances or articles
10. Substances or articles after disposal

11.–13. Interpretation: radioactive substances activity

PART 3
Tables of radionuclides and summation rules

1.–2. Table 1

3.–4. Table 2

5. References in Table 1 and Table 2 to + and sec
6. Table 3

PART 4
The Basic Safety Standards Directive

SECTION 1
Exposures and doses

1. Optimisation and dose limits
2. Specific dose limits and calculation

SECTION 2
Interventions
3. Radioactive waste: power of the Secretary of State to provide facilities for disposal or accumulation
4. Radioactive waste: power of disposal by the regulator

PART 5
The HASS Directive
SECTION 1
Security of sources
1. Interpretation
2. Site security: inspection
3. Site security: security measures and advice

SECTION 2
Advice and assistance in relation to orphan sources
4. Advice and assistance in respect of orphan sources

SECTION 3
Exercise of relevant functions and matters in relation to orphan sources
5. General
6. Records and inspections
7. Training and information
8. Orphan sources

PART 6
Conditions in environmental permits
1. Posting on premises of environmental permits

PART 7
Radioactive substances activity exemptions
SECTION 1
General
1. Interpretation
2. Interpretation: NORM

SECTION 2
Exemption for keeping and using radioactive material and accumulating radioactive waste
3. Exemption for keeping and using radioactive material
4. Exemption for accumulating radioactive waste
5. Radioactive substances exempted under paragraphs 3 and 4
6. Conditions in respect of the total quantity or concentration of radioactive substances on any premises
7. Exemption for accumulating NORM waste

SECTION 3
Exemption for keeping or using mobile radioactive apparatus
8. Exemption for keeping or using mobile radioactive apparatus

SECTION 4
Relevant standard conditions
9. Interpretation of this section
10. Relevant standard conditions
11. General conditions
12. Loss or theft conditions
13. Loss or theft conditions: mobile radioactive apparatus
14. Condition to dispose of accumulated waste

SECTION 5
Exemption for disposing of solid radioactive waste
15. Exemption for receiving and disposing of solid radioactive waste
16. Solid radioactive waste
17. Conditions in respect of solid radioactive waste

SECTION 6
Exemption for disposing of NORM waste
18. Exemption for receiving and disposing of NORM waste
19. Conditions in respect of NORM waste

SECTION 7
Exemption for disposing of aqueous radioactive waste
20. Exemption for disposing of aqueous radioactive waste in Table 6
21. Exemption for disposing of other aqueous radioactive waste
22. Conditions in respect of aqueous radioactive waste in paragraph 21

SECTION 8
Exemption for disposal of gaseous radioactive waste
23. Exemption for disposal of gaseous radioactive waste
24. Conditions in respect of gaseous radioactive waste

SECTION 9
Tables and summation rules in this Part
25. Table 4
26.–28. Table 5
29. Table 6
30.–33. Table 7
34. Interpretation of this section
35. Table 8

PART 8
Radioactivity to be disregarded
SECTION 1
Provisions
1.–2. Interpretation
3. Provisions of enactments

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 2×10^{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 x 10^{10} Bq of tritium; and

(b) of the device does not exceed 1 x 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 $1m^3s^{-1}$;

"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 $100m^3$ 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 x 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 x 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.	1×10^9 Bq Tc-99m and in respect of the total for all other radionuclides— (i) 1×10^8 Bq if the substance or article is radioactive material; or (ii) 2×10^8 Bq if the substance or article is radioactive waste.	1×10^9 Bq Tc-99m and 2×10^8 Bq of all other radionuclides, (no more than 1×10^8 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 $0.1 m^3$.	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 $0.1 m^3$.	2×10^9 Bq/year.
Individual sealed sources.	2×10^5 Bq for the sum of all radionuclides per $0.1 m^3$.	1×10^7 Bq/year.
Individual sealed sources which are solely radioactive waste because they contain tritium.	2×10^{10} Bq of tritium per $0.1 m^3$.	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 $0.1 m^3$ of Pm-147 or 4×10^9 Bq per $0.1 m^3$ 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.

John Griffiths AC /AM
Gweinidog yr Amgylchedd a Datblygu Cynaliadwy
Minister for Environment and Sustainable Development

Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref JG/05765/11

David Melding AM
Chair - Constitutional & Legislative Affairs Committee
Ty Hywel
Cardiff Bay
CF99 1NA
committeebusiness@Wales.gsi.gov.uk

28 July 2011

Dear David,

CLA 10 –The Environmental Permitting (England and Wales) (Amendment) Regulations 2011

Thank you for your letter of 11 July drawing my attention to the report of the Constitutional and Legislative Affairs Committee which considered the Environmental Permitting (England and Wales) (Amendment) Regulations 2011 ('the regulations') on 7 July.

I note that the Committee has reported under Standing Order 21.3(ii) on the grounds that the instrument is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Assembly.

Best wishes,

John

John Griffiths AC / AM
Gweinidog yr Amgylchedd a Datblygu Cynaliadwy
Minister for Environment and Sustainable Development

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1NA

English Enquiry Line 0845 010 3300
Llinell Ymholiadau Cymraeg 0845 010 4400
Correspondence.John.Griffiths@wales.gsi.gov.uk

Wedi'i argraffu ar bapur wedi'i ailgylchu (100%)
Printed on 100% recycled paper

Agenda Item 4.6

Cynulliad
Cenedlaethol
Cymru

National
Assembly for
Wales

David Melding AM
Constitutional and Legislative Affairs Committee
National Assembly for Wales
Cardiff Bay
CF99 1NA

Business Committee Correspondence

Date: July 2011

Dear David,

Committee Portfolios and Responsibilities in the 4th Assembly

I would like to draw your attention to the Report laid by the Business Committee on 14 July 2011, setting out the committee portfolios and responsibilities, the role of committees and your role as committee Chair (CR-LD8605: Committee Portfolios and Responsibilities in the 4th Assembly, Business Committee, 12 July 2011).

The new Committee system agreed by the Assembly on 22 June introduces a new approach to scrutiny within the Assembly. It simplifies the system, but also brings about challenges to ensure that committees prioritise and manage their activity so as to deliver a balanced, comprehensive and effective programme of legislative, policy and financial scrutiny within the time slots allocated to them in the Assembly timetable.

The Business Committee agreed to review the operation of the new committee system within 12 months. We will pay particular attention to the scope of the remit of each committee as part of the 12 month review, to ensure that broadly all areas are being addressed. We will also consider how the scrutiny of European matters is addressed within the committee system.

Bae Caerdydd
Caerdydd
CF99 1NA

Cardiff Bay
Cardiff
CF99 1NA

Ffôn/Tel: 029 2089 8911
Ebost/Email: rosemary.butler@wales.gov.uk

Croesewir gohebiaeth yn y Gymraeg a'r Saesneg/We welcome correspondence in both English and Welsh

Given that we are embarking on this new approach for committee scrutiny, I would like to hold termly meetings with committee chairs to discuss how the system is evolving and any issues arising. I intend to hold the first in the autumn term and will contact your office to arrange this in due course.

In the meantime, please do not hesitate to contact me if you wish to discuss further any matters relating to your role as Chair.

Yours sincerely,

Rosemary Butler AC, Llywydd
Rosemary Butler AM, Presiding Officer

Cynulliad
Cenedlaethol
Cymru
National
Assembly for
Wales

David Melding AC
Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol
Cynulliad Cenedlaethol Cymru
Bae Caerdydd
CF99 1NA

Gohebiaeth gan y Pwyllgor Busnes

Dyddiad: Gorffennaf 2011

Annwyl David,

Portffolios a Chyfrifoldebau'r Pwyllgorau yn y Pedwerydd Cynulliad

Hoffwn ddwyn i'ch sylw yr adroddiad a osodwyd gan y Pwyllgor Busnes ar 14 Gorffennaf 2011 sy'n amlinellu portffolios a chyfrifoldebau'r pwyllgorau, rôl y pwyllgorau a'ch rôl chi fel Cadeirydd pwyllgor (CR-LD8605: Portffolios a Chyfrifoldebau'r Pwyllgorau yn y Pedwerydd Cynulliad, y Pwyllgor Busnes, 12 Gorffennaf 2011).

Mae system newydd y pwyllgorau a gytunwyd gan y Cynulliad ar 22 Mehefin yn cyflwyno agwedd newydd tuag at graffu gan y Cynulliad. Mae'n symleiddio'r system, gan hefyd gyflwyno her i sicrhau bod pwyllgorau'n blaenoriaethu ac yn rheoli eu gweithgareddau er mwyn darparu rhaglen gytbwys, gynhwysfawr ac effeithiol o graffu ar ddeddfwriaeth a pholisi, a gwaith craffu ariannol, yn yr amser sy'n cael ei neilltuo ar eu cyfer o fewn amserlen y Cynulliad.

Cytunodd y Pwyllgor Busnes i adolygu hynt y system newydd o fewn 12 mis. Byddwn yn rhoi sylw arbennig i gylch gwaith pob pwyllgor fel rhan o'r adolygiad hwnnw, er mwyn sicrhau bod pob maes pwnc yn cael ei drafod i ryw raddau. Byddwn hefyd yn ystyried i ba raddau mae'r system newydd yn cynnwys gwaith craffu ar faterion Ewropeaidd.

Bae Caerdydd
Caerdydd
CF99 1NA

Cardiff Bay
Cardiff
CF99 1NA

Ffôn/Tel: 029 2089 8911
Ebost/Email: rosemary.butler@wales.gov.uk

Croesewir gohebiaeth yn y Gymraeg a'r Saesneg/We welcome correspondence in both English and Welsh

Gan ein bod yn rhoi dull newydd o graffu ar y pwyllgorau ar waith, hoffwn gyfarfod â chadeiryddion y pwyllgorau bob tymor i drafod sut mae'r system yn esblygu ac unrhyw faterion sy'n codi. Rwyf yn bwriadu cynnal y cyntaf o'r cyfarfodydd hyn yn nhymor yr hydref, a byddaf yn cysylltu â'ch swyddfa i drefnu cyfarfod yn y man.

Yn y cyfamser, cysylltwch â mi os hoffech drafod unrhyw faterion mewn perthynas â'ch rôl fel Cadeirydd.

Yn gywir

Rosemary Butler AC, Llywydd
Rosemary Butler AM, Presiding Officer

COMMISSION ON A **BILL OF RIGHTS**

Sir Leigh Lewis KCB
Commission on a Bill of Rights
Post point 9.55
102 Petty France
London
SW1H 9AJ

T: 020 3334 2486
E:enquiries@commissiononabillofrights.gsi.gov.uk

www.justice.gov.uk/about/cbr/index.htm

Mr David Melding AM
Chair
Constitutional and Legislative Affairs Committee
National Assembly for Wales
Cardiff Bay
Cardiff
CF99 1NA

5 August 2011

Our ref: DP 46

Dear Mr Melding

COMMISSION ON A BILL OF RIGHTS: DISCUSSION PAPER

As you know, in March of this year the UK Government established a Commission on a Bill of Rights to investigate the creation of a UK Bill of Rights. I was appointed as the Commission's Chair.

The Commission is today launching a discussion paper, *Do we need a UK Bill of Rights?*, to begin to gather the views of the public in the UK and of organisations which would like to contribute to the Commission's work. This paper is the first part of a wide-ranging work programme that will include public engagement and consultation. We have also posted the paper on the Commission's website (see http://www.justice.gov.uk/about/cbr/index.htm), and have requested responses to it by Friday 11 November. I should note that while the discussion paper is endorsed by all members of the Commission, one member, Dr Michael Pinto-Duschinsky, is intending to publish a note setting out his comments on the paper. A link to Dr Pinto-Duschinsky's note, once it is available, will be provided on the Commission's website at the address noted above.

I am writing both to provide you with a copy of the paper and to invite any input which your committee members might wish to provide. I have also written to the First Minister of Wales, Counsel General for the Welsh Government, and to the Chair of the Communities, Equality and Local Government Committee.

As I and other members of the Commission stated in our evidence to the House of Commons Political and Constitutional Reform Committee on 9 and 16 June, and as the minutes of the Commission's first meeting reflect (copy attached), the Commission is very conscious of the particular position of Wales with regard to a possible UK Bill of Rights.

As you will see from my evidence to the Political and Constitutional Reform Committee, and as is reflected in the minutes of our first meeting, the Commission also intends to visit Cardiff later this year. We would very much welcome meetings with you representatives of the Welsh Government and Welsh Assembly at that point, including with your Committee. If you agree that this would be useful, perhaps I could ask the Commission's Secretariat to contact your office directly to discuss the possibility of arranging such meetings.

I should note that I recently wrote to the Welsh Government's nominees to the advisory panel to the Commission, Clive Lewis QC and Reverend Aled Edwards, to congratulate them on their appointment and to propose an initial meeting. I and other members of the Commission are very much looking forward to working with Mr Lewis and Reverend Edwards and the other members of the advisory panel.

I should also note that I have written to the leaders or constitutional spokespeople of every party represented in the parliaments and assemblies of the United Kingdom in order to seek responses to our paper from across the political spectrum and the countries of the UK. I have also asked the Commission's Secretariat to send a copy of the paper to all members of the devolved legislatures and the Westminster Parliament.

I look forward to receiving your views.

Yours sincerely,

Sir Leigh Lewis KCB
Chair

COMMISSION ON A
BILL OF RIGHTS

Discussion Paper

Do we need a UK Bill of Rights?

August 2011

© Members of the Commission on a Bill of Rights 2011

You may re-use this information (not including logos) free of charge in any format or medium, under the terms of the Open Government Licence. To view this licence, visit http://www.nationalarchives.gov.uk/doc/open-government-licence/

Any enquiries regarding this publication and copyright should be sent to us at enquiries@commissiononabillofrights.gsi.gov.uk

This publication is available for download on the Commission's website at www.justice.gov.uk/about/cbr/index.htm

Contents

Introduction 3

Questions for Public Consultation 4

Background 5

The UK Constitution 5

Parliamentary sovereignty 5

The Rule of Law 5

International Human Rights Conventions 5

The Origins of the European Convention on Human Rights 5

Convention rights and freedoms 7

Giving effect to the Convention 7

How the Convention rights are given effect in UK law 8

The Human Rights Act 1998 8

The Joint Parliamentary Human Rights Committee 9

The Equality and Human Rights Commission 9

Scotland 10

Northern Ireland 10

Wales 11

European Union rights 11

We hope to hear from you soon. 11

Alternative formats 12

Confidentiality 12

Endnotes 13

Introduction

1. The Commission on a Bill of Rights is an independent Commission set up by the Government[1] and required by our Terms of Reference[2]

   "To investigate the creation of a UK Bill of Rights that incorporates and builds on all our obligations under the European Convention on Human Rights, ensures that these rights continue to be enshrined in UK law, and protects and extends our liberties.

   "To examine the operation and implementation of these obligations, and consider ways to promote a better understanding of the true scope of these obligations and liberties.

   "To provide advice to the Government on the ongoing Interlaken process to reform the Strasbourg court ahead of and following the UK's Chairmanship of the Council of Europe.

   "To consult, including with the public, judiciary and devolved administrations and legislatures, and aim to report no later than by the end of 2012."

2. The Commission has decided to begin to consult by seeking views from the public on the four questions set out in paragraph 5.
3. As regards the need to reform the European Court of Human Rights, on which we are also asked to give advice to the Government, we are not asking detailed questions at this stage. The Government has asked for our preliminary views on this within a limited timeframe, and our further views will be given at a later stage, when we may consult further. Any views on this aspect of our work which you would like to give us at this stage would, however, be welcome. As background we include the text of the Interlaken Declaration and a subsequent Declaration agreed by the forty seven Member States of the Council of Europe at Izmir.
4. The purpose of this Discussion Paper is to begin the process of public consultation.

Questions for Public Consultation

5. The four questions on which we seek your views are:

   (1) do you think we need a UK Bill of Rights?

   If so,

   (2) what do you think a UK Bill of Rights should contain?

   (3) how do you think it should apply to the UK as a whole, including its four component countries of England, Northern Ireland, Scotland and Wales?

   (4) having regard to our terms of reference, are there any other views which you would like to put forward at this stage?

6. The remainder of this paper sets out background to these questions, and is put forward as an aid to understanding. It aims to describe the current position in purely factual terms.

Background

The UK Constitution

7. The United Kingdom is unlike most other democratic countries in Europe and the Commonwealth (apart from New Zealand) in having neither a comprehensive written constitution nor a constitutional charter of fundamental rights which is supreme over ordinary law and able to be amended only by a special prescribed procedure. We have no comprehensive constitutional charter which establishes and gives limited powers to the institutions of government, or which confers and protects the civil and political rights of citizens, or which restricts Parliamentary sovereignty.

8. There are thus no British rights that are 'fundamental' in the sense that they enjoy special constitutional protection against Parliament. The liberties of the subject are implications derived from two principles. The first principle is that we may say or do as we please, provided that we do not transgress the substantive law or the legal rights of others. The second principle is that the Crown and public authorities may only act if they have the power to do so. These powers can derive from legislation, common law and – as far as the Crown is concerned – the royal prerogative. Our laws are a combination of statute law and the principles of the common law and equity developed by our courts. Our system is based upon the constitutional principles of Parliamentary sovereignty and the Rule of Law.

Parliamentary sovereignty

9. The principle of Parliamentary sovereignty means that the power to legislate may be exercised only by Parliament. The principle of Parliamentary sovereignty also means that Parliament cannot limit the power of a future Parliament to amend or repeal legislation.

The Rule of Law

10. The Rule of Law means, among other things, that it is the responsibility of the independent judiciary to interpret and apply the law impartially and fairly, free from government influence or interference.

11. Our constitutional system is also different from that of some other countries in that international treaties do not automatically become part of our law. Parliamentary legislation, such as the European Communities Act 1972, is passed to bring international obligations into domestic law.

International Human Rights Conventions

12. In December 1948, the UN General Assembly adopted the Universal Declaration of Human Rights, recognising the universality of human rights. In 1976, two UN International Covenants – a Covenant on Civil and Political Rights, and a Covenant on Economic, Social and Cultural Rights – came into force. They are reinforced by several UN human rights conventions, for example, against torture, race and sex discrimination, and protecting the rights of the child and of the disabled.

13. These international treaties are binding in international law on the UK, but they have not been directly incorporated by legislation into UK law. However, their reporting mechanisms and comments influence UK policy and practice and are taken into account by our courts and lawmakers where relevant. Our courts operate a presumption that where a treaty has been accepted by the Government on behalf of the UK and its citizens, Parliament is presumed to legislate to give effect to the terms of the treaty when introducing legislation in that area.

The Origins of the European Convention on Human Rights

14. The Convention was created in the aftermath of the Second World War which convinced many European politicians and jurists of the need to guard against the rise of dictatorships and to reduce the risk of relapse into another European war. This led to the creation, in 1949, of the Council of Europe. Members of the Council are obliged to accept the principles of the rule of law and the enjoyment by all peoples within their jurisdiction of human rights and fundamental freedoms.

15. One of the Council of Europe's first acts was to draft a human rights Convention for Europe, conferring enforceable rights upon individuals against sovereign states, intended to provide a European mechanism for the enforcement of certain rights.

16. On 23 January 1951,[3] in accordance with standard UK practice for the ratification of treaties, the text of the Convention was laid before both Houses of Parliament for 21 sitting days in accordance with the 'Ponsonby Rule'.[4] No member of either House of Parliament prayed against it, thus there was no Parliamentary debate. However, the Convention was discussed during a House of Commons debate on the Council of Europe on 13 November 1950, one week after the UK's signature of the Convention.[5] The UK was the first state to ratify the Convention, on 8 March 1951.

17. The Convention came into force on 23 September 1953. The Convention has now been ratified by the forty-seven Member States of the Council of Europe, with a population of over 800 million people, including Russia and the majority of former countries of the Soviet bloc.

18. Subsequent to its introduction, the Convention has been amended or supplemented by several Protocols. Additional rights to protection of property, education and free elections were added by Protocol No.1 to the Convention, ratified by the UK on 3 November 1952. The UK has since ratified Protocol No. 6 on abolishing the death penalty[6] and Protocols Nos. 11 and 14 which have amended the Convention enforcement machinery.[7] It has not ratified Protocols Nos. 4, 7 nor 12 which contain further rights.[8]

19. At its inception, only countries, and not individuals, could bring complaints under the Convention. However, the right of individual complaint or petition to the European Commission of Human Rights (as it then was) was accepted by the UK in January 1966 without Parliamentary debate.

Convention rights and freedoms

20. The Convention identifies the following human rights and freedoms:
    - Right to life (Article 2);
    - Prohibition of torture or inhuman or degrading treatment or punishment (Article 3);
    - Prohibition of slavery or servitude, or forced or compulsory labour (Article 4);
    - Right to liberty and security(Article 5);
    - Right to a fair trial (Article 6);
    - No punishment without law (Article 7);
    - Right to respect for private and family life, home and correspondence (Article 8);
    - Freedom of thought, conscience and religion (Article 9);
    - Freedom of expression (Article 10);
    - Freedom of peaceful assembly and association (Article 11);
    - Right to marry (Article 12);
    - Right to an effective remedy (Article 13);
    - Prohibition of discrimination (Article 14).

21. Protocol No. 1 includes the following:
    - Protection of property (Article 1);
    - Right to education (Article 2);
    - Right to free elections (Article 3).

Giving effect to the Convention

22. Article 1 of the Convention provides that contracting states must "secure to everyone within their jurisdiction" the Convention rights. States and their public authorities – legislative, executive, and judicial – are required to respect these Convention rights and freedoms and have positive obligations to secure them within their national legal systems. Article 13 of the Convention obliges States and their public authorities to provide effective remedies for violations of the Convention rights.

23. At the same time, Article 35(1) of the Convention provides that (unless they are ineffective) domestic remedies must have been exhausted before an application may be made to the Strasbourg Court. This is to provide the State with the opportunity to remedy the matter itself. The Strasbourg Court is thus intended mainly to be a supervisory Court of last resort, and the main responsibility for enforcing human rights is meant to be that of the domestic authorities, who are in the best position to do so.

24. Article 46 of the Convention also imposes a duty on contracting states to abide by final judgments of the European Court of Human Rights where the Court decides that there has been a violation of the Convention. The supervision of the execution of final judgments of the Strasbourg Court is carried out by the Committee of Ministers of the Council of Europe, which decides whether the State has adopted sufficient individual and general measures to enable the case to be closed.[9] If a state were unwilling or unable to abide by a final judgment, it would have the option of withdrawing from the Convention system. Article 58 of the Convention provides that a state has to give six months' notice in order to denounce the Convention.

How the Convention rights are given effect in UK law[10]

25. The obligation to provide effective remedies under Article 13 of the Convention is met in the UK by a combination of common law and statute law.

26. Statutes and other documents such as Magna Carta in 1215 and the Declaration of Arbroath in 1320, the later Bill of Rights and Scottish Claim of Right in 1689, and the Reform Acts of the 19th and early 20th centuries, hand in hand with developments of the common law reflect the traditions of liberty on which our current framework of rights and responsibilities is built. The Convention sought to reflect that tradition. Our courts have recognised constitutional rights inherent in the common law as matching some Convention rights, including a right of access to justice, a right to freedom of expression, a right to respect for private life, and a right to equal treatment without discrimination.

27. Apart from specific legislation giving direct or indirect effect to particular Convention rights, the main legislative ways in which the Convention rights have been given effect is by means of the Human Rights Act 1998 and the devolution legislation for Northern Ireland, Scotland and Wales.

The Human Rights Act 1998

28. The Human Rights Act provides legal remedies for violations of Convention rights while adhering to the doctrine of Parliamentary sovereignty by withholding from our courts the power to strike down Acts of Parliament that are held to be incompatible with Convention rights.

29. The Act requires our courts and tribunals to take into account judgments of the European Court of Human Rights where they are relevant. So far as possible, it also requires legislation to be read and given effect in a way which is compatible with the Convention rights. Where a specified higher court considers that a provision in an Act of Parliament is not compatible with a Convention right, the Human Rights Act empowers the court to make a declaration of incompatibility.

30. A declaration of incompatibility does not affect the validity, continuing operation or enforcement of the provision in respect of which it is given. So the relevant legislative provision continues to have force and effect, despite its incompatibility with Convention rights, until such time as it is amended. It is for the Government to decide whether to seek to amend the law. If it decides not to do so, the alleged victim of a violation may have recourse to the European Court of Human Rights, but has no further remedy under UK law.

31. The Human Rights Act also makes it unlawful for any public authority (which includes courts and tribunals but excludes Parliament) to act in a way which is incompatible with a Convention right (apart from where they are required by primary legislation to act in that way).

32. A person who claims that a public authority has acted or proposes to act in a manner made unlawful by the Act may bring proceedings provided that the claimant is a victim within the meaning of the Convention. The Act empowers a court or tribunal to grant appropriate remedies when it finds that a public authority has acted or proposes to act in a way which is incompatible with Convention rights and has therefore acted unlawfully. However, no award of damages may be made unless it is necessary, having regard to any other remedy, to afford 'just satisfaction' to the claimant. When deciding whether to award damages, or the amount of an award, the court or tribunal must take into account the principles applied by the Strasbourg Court in awarding compensation under Article 41 of the Convention.

33. The Act provides that a person's reliance on a Convention right does not restrict any other right or freedom conferred on him by or under any law having effect in any part of the UK. The purpose of this is to safeguard more generous rights which may be enjoyed apart from the Human Rights Act, whether at common law or under other legislation.

34. Section 19 of the Act requires a Minister in charge of a Bill to make a statement before the second reading of the Bill that in his or her view its provisions are compatible with Convention rights, or, if unable to make such a statement of compatibility, that the Government nevertheless wishes the House to proceed with the Bill. The purpose is to ensure that in the preparation of a Bill and its passage through Parliament, consideration is given to any implications the Bill may have in relation to Convention rights, and to ensure that any relevant issues are identified at an early stage so that they can be the subject of informed debate in Parliament.

The Joint Parliamentary Human Rights Committee

35. So far as the work of Parliament is concerned, an independent cross-party Joint Parliamentary Committee of both Houses of Parliament (the JCHR) enables systematic Parliamentary scrutiny of government measures for their compatibility with the Convention rights and the other human rights conventions to which the UK is party.[11] The JCHR scrutinises proposed legislation for compatibility with the UK's obligations under the Convention and other human rights treaties by which the UK is bound. Where necessary it questions Ministers. The JCHR also monitors the Government's response to judgments on human rights from the European and UK courts, and conducts thematic inquiries into particular human rights issues (for example, deaths in custody, care for the elderly, business and human rights, human trafficking, extradition and deportation procedures, the operation of anti-terrorist legislation, and the right of disabled people to independent living).

The Equality and Human Rights Commission

36. The Equality and Human Rights Commission (EHRC) was set up by the Equality Act 2006 with duties not only as regards equality and diversity, but also as regards Convention and other human rights.[12] It has monitoring and advisory powers. The EHRC may institute or intervene in legal proceedings, and may rely in judicial review on alleged breaches of the Convention rights, even though it is not a victim or potential victim.[13]

Scotland

37. Scotland is a separate jurisdiction from England and Wales and from Northern Ireland, with its own distinctive legal history and traditions, its own body of common law and statute law, its own system of courts and its own legal profession. However, the Human Rights Act applies to Scottish public authorities in the same way as it applies to public authorities elsewhere in the UK.

38. The Convention has been given further effect in Scotland by virtue of the devolution settlement. Under the Scotland Act 1998, actions by members of the Scottish Government[14] and legislation enacted by the Scottish Parliament[15] must be compatible with the Convention. Legislation or actions which are found to be incompatible by the courts are liable to be declared to be beyond the powers conferred and to be held invalid.

39. A Scottish Commission for Human Rights was set up by Act of the Scottish Parliament in 2006[16] with a general duty to promote human rights and to encourage best practice in relation to human rights, including not only the Convention rights but those in other human rights treaties ratified by the UK.[17]

Northern Ireland

40. Under the terms of the Northern Ireland Act 1998, Ministers and Northern Ireland departments are not permitted to act in a way which is incompatible with the Convention.[18] Similarly the Northern Ireland Assembly does not have competence to legislate in a manner incompatible with the Convention.[19]

41. The Northern Ireland Human Rights Commission (NIHRC) is an independent statutory body set up in 1999 with wide functions, including giving assistance to individuals in court proceedings, and bringing proceedings itself. It is required by statute to advise the Secretary of State for Northern Ireland on the scope for defining, in a Bill of Rights for Northern Ireland to be enacted by the Westminster Parliament, rights supplementary to those in the Convention. The Belfast (Good Friday) Agreement of 1998 states that the Bill should reflect the particular circumstances of Northern Ireland, drawing as appropriate on international law and experience.

42. On 10 December 2008, the NIHRC presented its Advice on a Bill of Rights for Northern Ireland to the Government. It made a number of recommendations for inclusion in a Bill of Rights.[20]

43. The Government published its paper "A Bill of Rights for Northern Ireland: Next Steps" for consultation, and the NIHRC made a written response to that paper on 17 February 2010.[21]

Wales

44. The Laws in Wales Act 1535 provided that England and Wales were united and the Welsh and the English were to be subject to the same laws and have the same privileges. Since that time, there has been one legal system for England and Wales. However, the Government of Wales Act 1998, which has since been modified by the Government of Wales Act 2006, provides an additional route for the application of the Convention to Wales.
45. The devolution arrangements set out in the Government of Wales Act 2006 place a requirement upon the Welsh Assembly[22] and the Welsh Ministers[23] to act compatibly with the Convention.

European Union rights

46. In 2007 the institutions of the European Union proclaimed the EU Charter of Fundamental Rights.[24] This includes a number of social, economic and political rights and principles that do not appear in the Convention. The Charter applies to the institutions of the European Union, and to the Member States "only when they are implementing Union law".[25] The Charter, where it applies, has the same legal force as the Treaties.[26] Under Protocol 30 to the Lisbon Treaty, the Charter does not contain any new justiciable rights applicable to the United Kingdom or Poland. The Treaties also provide that fundamental rights guaranteed by the Convention and the common constitutional traditions of the Member States are general principles of EU law.[27]

We hope to hear from you soon.

47. We hope to begin hearing your views on a Bill of Rights for the UK and the related issues raised by our Terms of Reference. We would like to receive your views by 11 November 2011. Unless you specifically request otherwise, all responses will be made public.
48. All responses should be sent to the inbox or address below:

responses@commissiononabillofrights.gsi.gov.uk

Commission on a Bill of Rights
Postpoint 9.55
102 Petty France
London
SW1H 9AJ

Alternative formats

If you require this information in an alternative language, format or have general enquiries about the Commission on a Bill of Rights, please contact us by email at enquiries@commissiononabillofrights.gsi.gov.uk, telephone us at 020 3334 2486 or write to us at:

Commission on a Bill of Rights
Postpoint 9.55
102 Petty France
London
SW1H 9AJ

Confidentiality

All written representations and evidence provided to the Commission will, unless publication is unlawful, be made public unless specifically requested otherwise. If you would like any of the information provided in your response to be treated confidentially, please indicate this clearly in a covering note or e-mail (confidentiality language included in the body of any submitted documents, or in standard form language on e-mails, is not sufficient), identifying the relevant information and explaining why you regard the information you have provided as confidential. Note that even where such requests are made, the Commission cannot guarantee that confidentiality will be maintained in all circumstances, in particular if disclosure should be required by law. If you have any particular concerns about confidentiality that you would like to discuss, please contact the Commission at: enquiries@commissiononabillofrights.gsi.gov.uk

The Commission is not subject to the requirements of the Freedom of Information Act 2000. However once the Commission has completed its work its papers are likely to be passed to the Government. In these circumstances information formerly held by the Commission may then be subject to the requirements of that legislation.

The Commission is a data controller within the meaning of the Data Protection Act 1998. Any personal data provided will be held and processed by the Commission and its Secretariat only for the purposes of the Commission's work, and in accordance with the Data Protection Act 1998. Once the Commission has completed its work then any personal data held is likely to be passed to the Government for the purpose of public record-keeping.

Endnotes

[1] The Commission's creation was announced by Mr Mark Harper MP (Parliamentary Secretary, Cabinet Office) on 18 March 2011 in a written Ministerial Statement (HC Deb 18 March 2011 c 32WS) as follows:

"The Government have established an independent Commission to investigate the creation of a UK Bill of Rights, fulfilling a commitment we made in our Programme for Government. The Commission will explore a range of issues surrounding human rights law in the UK and will also play an advisory role in our continuing work to press for reform of the European Court of Human Rights in Strasbourg.

"The UK will be pressing for significant reform of the European Court of Human Rights, building on the reform process underway in the lead up to our Chairmanship of the Council of Europe later this year. We will be pressing in particular to reinforce the principle that states rather than the European Court of Human Rights have the primary responsibility for protecting Convention rights.

"The Commission will be chaired by Sir Leigh Lewis KCB, a former permanent secretary at the Department for Work and Pensions with a long career in public service. He will be joined on the Commission by Jonathan Fisher QC, Martin Howe QC, Baroness Kennedy of The Shaws QC, Lord Lester of Herne Hill QC, Philippe Sands QC, Anthony Speaight QC, Professor Sir David Edward QC and Dr Michael Pinto-Duschinsky.

"The Commission members have, between them, extensive legal expertise and experience, and we expect the Commission to take into account a broad range of views as it fulfils its remit. In addition, an advisory panel will be established to provide advice and expertise to the Commission on issues arising in relation to Scotland, Wales and Northern Ireland. The Commission will report jointly to the Deputy Prime Minister and the Secretary of State for Justice. The Commission will be supported by a small secretariat of civil servants."

[2] The Coalition's Programme for Government said: "We will establish a Commission to investigate the creation of a British Bill of Rights that incorporates and builds on all our obligations under the European Convention on Human Rights, ensures that these rights continue to be enshrined in British law, and protects and extends British liberties. We will seek to promote a better understanding of the true scope of these rights and obligations." See Cabinet Office: http://www.cabinetoffice.gov.uk/sites/default/files/resources/coalition-_programme_for_government.pdf

[3] See HC Deb 5 February 1951 vol 483 cc 159-60W.

[4] The power to make treaties is a Prerogative power vested in the Crown, but under the Ponsonby Rule, the Government lays all treaties subject to ratification (with limited exceptions) before both Houses of Parliament for 21 sitting days before ratification (or its equivalent) is effected: Foreign Office, "Ponsonby Rule", http://www.fco.gov.uk/resources/en/pdf/pdf4/fco_pdf_ponsonbyrule. See also Gardiner, Richard K., *International Law* (Edinburgh: Pearson Education Limited, 2003), pp. 148-9.

[5] See HC Deb 13 November 1950 vol 480 cc 1392-504.

[6] The UK signed Protocol No. 4 on 16 June 1963 but has yet to ratify. Protocol No. 4 entered into force for the other signatories from 2 May 1968. The UK signed Protocol No. 6 on 27 January 1999 and ratified it on 20 May 1999. Protocol No. 6 entered into force for the UK on 1 June 1999.

[7] The UK signed Protocol No. 11 on 11 May 1994 and ratified it on 9 December 1994. Protocol No. 11 entered into force on 1 November 1998. The UK signed Protocol No. 14 on 13 July 2004 and ratified it on 28 January 2005. Protocol No. 14 entered into force on 1 June 2010.

[8] The full text of the Convention and its Protocols can be found at: http://www.echr.coe.int/NR/rdonlyres/D5CC24A7-DC13-4318-B457-5C9014916D7A/0/EnglishAnglais.pdf

[9] See generally, Supervision of the execution of judgments of the European Court of Human Rights, 4th Annual Report (2010), Council of Europe, Committee of Ministers, April 2011.

[10] We refer to "UK law" for convenience, while recognising that there are different laws and courts of England, Northern Ireland, Scotland and Wales.

[11] See http://www.parliament.uk/commons/selcom/hrhome.htm

[12] Sections 8 and 9.

[13] Section 30.

[14] Section 57(2).

[15] Section 29.

[16] The Scottish Commission for Human Rights Act 2006 (2006 asp 16).

[17] See http://www.scottishhumanrights.com

[18] Section 24(1)(a).

[19] Section 6.

[20] These included:

- right to equality and prohibition of discrimination;
- right to health;
- education rights;
- freedom from violence, exploitation and harassment;
- right to identity and culture;
- right to civil and administrative justice;
- rights to liberty and fair trial;
- language rights;
- rights of victims;

- democratic rights;
- right to an adequate standard of living;
- right to accommodation;
- right to work;
- environmental rights;
- children's rights.

[21] See http://www.nihrc.org/bor

[22] Section 94.

[23] Section 81(1).

[24] The text of the Charter can be found at http://eur-lex.europa.eu/JOHtml.do?uri=OJ:C:2007:303:SOM:en:HTML

[25] Article 51.1.

[26] Treaty on European Union, article 6(1), 2010/C 83/01.

[27] Treaty on European Union, article 6(3), 2010/C 83/01.

MINUTES OF THE MEETING OF THE COMMISSION ON A BILL OF RIGHTS
6 May 2011 – Committee Room 4, House of Lords

Members:

Sir Leigh Lewis KCB (Chair)
Professor Sir David Edward QC
Jonathan Fisher QC
Martin Howe QC
Baroness Kennedy of The Shaws QC
Lord Lester of Herne Hill QC
Dr Michael Pinto-Duschinsky
Professor Philippe Sands QC
Anthony Speaight QC

Additional attendees: See Annex A

1 Introduction by the Chair

1.1 Sir Leigh Lewis welcomed members of the Commission to the first meeting of the Commission on a Bill of Rights. He thanked members for their early individual discussions with him as Chair and welcomed the sentiment shared by all members to participate in collegiate and productive discussion and debate.

1.2 Sir Leigh Lewis noted that he saw his primary role as Chair as being to facilitate the work of the Commission. The role of the Secretariat to the Commission would be to support members in carrying out the work of the Commission.

2 Round-table discussion

2.1 Sir Leigh Lewis invited members to outline their ambitions for the Commission. Points raised in the discussion included:

(a) there was a desire, as far as possible, to produce a report that forged consensus among members and which would contribute to a well-informed public discussion;

(b) there was a need to be, and to be seen to be, independent from Government;

(c) there was a need to ensure public engagement with the work of the Commission, and therefore a need to conduct a wide-ranging consultation with the public that took account of the diversity of the UK;

(d) there was a need to secure greater public ownership of human rights in the United Kingdom;

(e) the Commission would need to consider fully the implications of the devolution settlements in its work, and consult with the devolved administrations and others in Northern Ireland, Scotland and Wales;

(f) the Commission should consider whether and how a Bill of Rights could address concerns about the Human Rights Act 1998, including the concerns of some that its incorporation of ECHR rights had resulted in it being viewed as a foreign import;

(g) the Commission should consider both the historical provenance of human rights protection and its common law heritage; in particular the Commission should consider the role of the common law in domestic human rights judgments in addition to the requirement to take account of the jurisprudence of the European Court of Human Rights;

(h) the Commission should consider the relationship between Parliament, the executive and the judiciary in terms of the respective roles of each in any system of human rights protection;

(i) the Commission should consider the margin of appreciation and what impact a UK Bill of Rights might or should have on the approach of the European Court of Human Rights in this respect;

(j) the Commission should consider:

- whether existing rights could or should be rebalanced, for example as regards the relationship between Articles 8 and 10;
- whether existing rights could or should be modernised to take account of technological advances;
- whether any additional rights could or should be included in any UK Bill of Rights such as the right to jury trial, habeas corpus (although mindful of the need to reflect the position under Scots law), a right to equal protection of the law, and a right to administrative justice;
- whether rights should be accompanied by responsibilities;
- the remedies provided for in the Human Rights Act 1998 and the balance struck by that Act between Parliament (including the JCHR), the executive branch and the legislature;

(k) the Commission should prioritise the work on its interim advice on the reform of the European Court of Human Rights, given that its Terms of Reference requested such advice ahead of the UK's forthcoming Chairmanship of the Council of Europe;

(l) the Commission's advice on reform of the European Court of Human Rights should try to look at the big picture and the future possibility of fundamental reforms, rather than at changes that simply tinkered with the existing system.

2.2 Summing up the discussion, Sir Leigh Lewis thanked members for their initial contributions. He said that he was encouraged by the degree to which

members appeared willing to look for agreement on the issues facing the Commission.

3 Ways of working

3.1 Introducing the item, Sir Leigh Lewis noted that certain members had already touched in their contributions on ways in which the Commission should approach its work. The main points raised in discussion were:

(a) members agreed that all discussion in meetings of the Commission should remain confidential;

(b) members agreed that for reasons of practicality, the Commission would need at times to operate without all its members being present, with those members who were present conducting certain meetings or consultations or other work on behalf of the Commission as a whole;

(c) members agreed that teleconference facilities should be used in its work where this was necessary;

(d) members agreed that the Commission should have its own public website. Members also agreed that they would benefit from access to a private intranet forum where confidential discussion threads could be conducted and where documents could be made available confidentially to members. Sir Leigh noted the distinction between a public website hosted by the existing Ministry of Justice domain and a website created outside the existing Ministry of Justice infrastructure, in particular the fact that the latter would cost more and take longer to launch. Members agreed that a public website within the existing Ministry of Justice domain would be acceptable on that basis, provided the independence of the Commission was made clear and explicit;

Action: **the Secretariat to continue work on the development of a public website for the Commission and to investigate the options for creating a secure intranet forum**

(e) a number of members noted that they had been invited to appear before the House of Commons Political and Constitutional Reform Committee on 9 and 16 June 2011. Members agreed that Sir Leigh Lewis would contact the Chair of the Committee to discuss the appearances and would report back to members;

Action: **the Secretariat to arrange a discussion between Sir Leigh Lewis and the Chair of the Political and Constitutional Reform Committee**

(f) members agreed to issue a short press statement following the first meeting of the Commission. This statement should report the fact that the Commission had met for the first time and highlight its intention to engage in substantial public consultation and outreach;

Action: **the Secretariat to circulate a draft press statement to members on Monday 9 May 2011**

(g) members agreed that future meetings of the Commission should, where possible, be held in the House of Lords.

Action: **the Secretariat to proceed accordingly and to liaise with Baroness Kennedy and Lord Lester to facilitate access to the House of Lords for future meetings**

4 Draft work programme and public consultation

4.1 Introducing the item, Sir Leigh Lewis invited members to note papers 1 and 2.

Proposed dates of future meetings

4.2 Members agreed that the next meeting would take place on Tuesday 28 (commencing 3.30pm) and Wednesday 29 June 2011 (ending 4pm) at a location within commuting distance of central London.

4.3 Members agreed to reschedule the July meeting in the light of the revised meeting dates for June. The July meeting will now take place from 10am until 2pm on Monday 11 July 2011. The meeting will be followed by an optional lunch in the House of Lords.

Action: **the Secretariat to confirm members' availability for the optional lunch on 11 July 2011, and for further meeting dates for 2011**

Issues paper

4.4 It was suggested that one method of setting out the many issues facing the Commission and engaging early with the public would be to produce an issues paper. This approach had been useful and effective in previous similar work undertaken by some members.

4.5 Members agreed that the paper should be a neutral and brief exposition of the issues before the Commission, and should pose open questions. The paper should not purport to be an exhaustive survey of all of the issues but would invite input and views.

Action: **the Secretariat to prepare a draft issues paper for consideration at the next meeting of the Commission. Lord Lester and Professor Sir David Edward to provide the Secretariat with examples of previous papers by way of background**

Consultation and 'outreach strategy'

4.6 Members agreed that comprehensive public consultation would be important in order to ensure that the Commission's work was fully informed by a diverse range of views from across the United Kingdom. The main points raised in discussion were:

(a) the current devolution settlements had particular implications for the creation of any UK Bill of Rights. It was essential that the Commission visit Belfast, Cardiff and Edinburgh, and that it consulted fully with the devolved administrations and with other stakeholders in those jurisdictions;

(b) more generally it would be important to seek the views of a diverse range of individuals and organisations representative of a wide range of interests and backgrounds;

(c) previous similar Commissions had used various strategies for public consultation that would be useful to consider;

(d) the Commission should consider whether and how to engage with the academic community;

(e) the Commission would need to consult with the judiciary.

4.7 Summing up the discussion, Sir Leigh Lewis noted that members were agreed that the Commission needed to develop a robust strategy for consultation and outreach.

Action: **the Secretariat to prepare a draft 'outreach strategy' for consideration at the next meeting of the Commission. The Secretariat to liaise with Professor Sir David Edward and Baroness Kennedy who have experience in conducting similar exercises.**

5 Factual update on Interlaken

Commission's mandate to provide advice on reform of the European Court of Human Rights

5.1 Introducing the item, Sir Leigh Lewis invited members to note paper 3. Members had already referred to the issue of court reform as part of the discussions on the terms of reference under item 2. The main points raised in that discussion had been that:

(a) the Commission should examine fundamental questions such as the role of the Strasbourg court, as opposed to the minutiae of proposed reform;

(b) it would be important for the Commission to consider the implications of any recommendations for reform in terms of available resources and practical impact;

(c) the timing of the United Kingdom's Chairmanship of the Council of Europe meant that the Commission would need to provide advice quickly on this issue.

5.2 Summing up the discussion, Sir Leigh Lewis invited members to work with the Secretariat to prepare a draft paper on court reform.

Action: the Secretariat to prepare a draft paper on court reform for consideration at the next meeting

Visit to the European Court of Human Rights

5.3 Members agreed that an early visit to Strasbourg would be important in informing the Commission's work in this area. Members discussed possible individuals with whom to meet in Strasbourg. It was noted that the Joint Committee on Human Rights was due to visit Strasbourg on 22-23 June 2011.

5.4 Summing up the discussion, Sir Leigh Lewis asked the Secretariat to propose a schedule for the visit and to liaise with the British Ambassador to the Council of Europe with a view to arranging a visit by the Commission to the European Court of Human Rights.

Action: the Secretariat to proceed accordingly

6. AOB and date of next meeting

6.1 Dr Michael Pinto-Duschinsky invited any members who would like to do so to attend a seminar which he has been involved in organising to be held on 20 May 2011 in Oxford. The seminar would deal with issues of relevance to the Commission's work.

Action: the Secretariat to circulate further information on the seminar to members

6.2 The next meeting would be held on 28-29 June 2011 at a venue to be agreed by the Chair with the Secretariat.

Commission on a Bill of Rights Secretariat
13 May 2011

Annex A

Additional attendees:

Andrea Wright	Secretary
Alison Presly	Legal Advisor
Robin Seaton	Policy Officer
Marie Colton	Policy Officer