

Constitutional and Legislative Affairs Committee

Meeting Venue:
Committee Room 2 – Senedd

Meeting date:
23 April 2012

Meeting time:
14:30

Cynulliad
Cenedlaethol
Cymru

National
Assembly for
Wales



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Agenda

- 1. Introduction, apologies, substitutions and declarations of interest**
- 2. Instruments that raise no reporting issues under Standing Order 21.2 or 21.3**

Negative Resolution Instruments

CLA123 – The National Health Service (Travelling Expenses and Remission of Charges) (Wales) (Amendment) Regulations 2012

Negative Procedure. Date made 9 March 2012. Date laid 14 March 2012. Coming in to force date 9 April 2012

CLA126 – The National Assistance (Sums for Personal Requirements) (Assessment of Resources and Miscellaneous Amendments) (Wales) Regulations 2012

Negative Procedure. Date made 14 March 2012. Date laid 16 March 2012. Coming in to force date 9 April 2012

CLA127 – The Land Compensation Development (Wales) Order 2012

Negative Procedure. Date made 15 March 2012. Date laid 16 March 2012. Coming in to force date 6 April 2012

CLA131 – The Fire and Rescue Services (National Framework) (Wales) Order 2012

Negative Procedure. Date made 24 March 2012. Date laid 27 March 2012. Coming into force date 20 April 2012

CLA133 – The Firefighters' Pension Scheme (Wales) (Contributions) (Amendment) Order 2012

Negative Procedure. Date made 28 March 2012. Date laid 29 March 2012. Coming into force date 1 April 2012

CLA134 – The Firefighters' Pension (Wales) Scheme (Contributions) (Amendment) Order 2012

Negative Procedure. Date made 28 March 2012. Date laid 29 March 2012. Coming into force date 1 April 2012

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

CLA124 – The Controlled Waste (England and Wales) Regulations 2012 (Pages 1 – 46)

Negative Procedure. Date made 12 March 2012. Date laid before Parliament 15th March 2012. Date laid before the National Assembly for Wales 15th March 2012. Coming into force date 6 April 2012

Affirmative Resolution Instruments

None

4. Committee Correspondence

Consultation on a Separate Legal Jurisdiction for Wales (Pages 47 – 75)

Papers:

CLA(4)-08-12(p1) -Letter to the Chair from the Counsel General dated 27 March 2012

CLA(4)-08-12(p2) - Welsh Government's letter of consultation on a Separate Legal Jurisdiction for Wales

5. Date of the next meeting

30 April 2012

Papers to note:

CLA(4)-07-12- Report of the meeting 26 March 2012

Transcript

View the [meeting transcript](#).

Agenda Item 3.1

Constitutional and Legislative Affairs Committee Report

(CLA(4)-08-12)

CLA124

Title: The Controlled Waste (England and Wales) Regulations 2012

Procedure: Negative

This instrument revokes and replaces the Controlled Waste Regulations 1992, and is made on a composite basis with the Department for Environment, Food and Rural Affairs. It classifies waste as household, industrial or commercial waste, and also lists the types of waste for which local authorities may make a charge for collection and disposal. The instrument enables local authorities (as waste collection authorities under the Environmental Protection Act 1990) to charge under section 45 of that Act for the disposal of waste arising from a wider range of non-domestic premises than the 1992 Regulations permitted; it also consolidates previous amendments, and includes some amended and updated definitions and classifications to improve the clarity of the Regulations and bring them into line with other recent legislation. It also provides that certain litter and refuse is to be treated under Part 2 of the Environmental Protection Act 1990 in the same way as waste collected under section 45 of the Act.

Technical Scrutiny

The following points are identified for reporting under Standing Order 21.2 (ix) in respect of this draft instrument – that it is not made in both English and Welsh.

Merits Scrutiny

The following points are identified for reporting under Standing Order 21.3 (ii) in respect of this draft instrument – that it gives rise to issues of public policy likely to be of interest to the Assembly. The Regulations will allow local authorities to charge for the collection and disposal of waste arising from non-domestic properties (except for charity shops selling donated goods and ‘re-use’ organisations to the extent that the waste came from domestic property, and village halls used for public meetings) whereas now they only charge for collection. It also enables litter collected on premises occupied by establishments to be charged in the same way as other non-hazardous waste generated on the site.

Legal Advisers

**Constitutional and Legislative Affairs Committee
March 2012**

2012 No. 811

ENVIRONMENTAL PROTECTION, ENGLAND AND WALES

The Controlled Waste (England and Wales) Regulations 2012

<i>Made</i>	- - - -	<i>12th March 2012</i>
<i>Laid before Parliament</i>		<i>15th March 2012</i>
<i>Laid before the National Assembly for Wales</i>		<i>15th March 2012</i>
<i>Coming into force</i>	- -	<i>6th April 2012</i>

The Secretary of State is designated(a) for the purposes of the European Communities Act 1972(b) in relation to the environment. The Welsh Ministers are designated(c) for the purposes of that Act in relation to the prevention, reduction and management of waste.

The Secretary of State, in relation to England, and the Welsh Ministers, in relation to Wales, in exercise of the powers conferred by section 2(2) of the European Communities Act 1972 and sections 45(3), 75(7)(d) and (8) and 96(2)(b) of the Environmental Protection Act 1990(d), make the following Regulations.

Citation, extent and commencement

- 1.—(1) These Regulations may be cited as the Controlled Waste (England and Wales) Regulations 2012.
- (2) They extend to England and Wales.
- (3) They come into force on 6th April 2012.

Interpretation

2. In these Regulations—

“the Act” means the Environmental Protection Act 1990;

“Directive waste” means anything that—

- (a) is waste within the meaning of Article 3(1) of Directive 2008/98/EC of the European Parliament and of the Council on waste and repealing certain Directives(e); and

(a) S.I. 2008/301.
(b) 1972 c. 68. Section 2(2) was amended by section 27(1)(a) of the Legislative and Regulatory Reform Act 2006 (c. 51) and by section 3(3) of, and Part 1 of the Schedule to, the European Union (Amendment) Act 2008 (c. 7).
(c) S.I. 2010/1552.
(d) 1990 c. 43. Functions of the Secretary of State under sections 45, 75 and 96, so far as exercisable in relation to Wales, were transferred to the National Assembly for Wales by article 2 of, and Schedule 1 to, S.I. 1999/672. 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).
(e) OJ No L 312, 22.11.08, p3.

(b) is not excluded from the scope of that Directive by Article 2(1), (2) or (3);
“septic tank sludge” and “sludge” have the meaning given in regulation 2(1) of the Sludge (Use in Agriculture) Regulations 1989(a).

Waste which is not to be treated as household waste, industrial waste or commercial waste

3.—(1) Waste which is not Directive waste is not to be treated as household waste, industrial waste or commercial waste for the purposes of Part 2 of the Act.

(2) The following waste (where it is Directive waste) is not to be treated as household waste, industrial waste or commercial waste for the purposes of Part 2 of the Act—

- (a) sewage, sludge or septic tank sludge which is treated, kept or disposed of (otherwise than by means of mobile plant) within the curtilage of a sewage treatment works as an integral part of the operation of those works;
- (b) sludge which is supplied or used in accordance with the Sludge (Use in Agriculture) Regulations 1989;
- (c) septic tank sludge which is used on agricultural land within the meaning of those Regulations.

(3) Animal by-products (where they are Directive waste) which are collected and transported in accordance with Article 21(1) to (3) of the Animal By-Products Regulation are not to be treated as household waste, industrial waste or commercial waste for the purposes of section 34 of the Act.

(4) In this regulation—

- (a) “animal by-products” has the meaning given in Article 3(1) of the Animal By-Products Regulation;
- (b) “the Animal By-Products Regulation” means Regulation (EC) No 1069/2009 of the European Parliament and of the Council laying down health rules as regards animal by-products and derived products not intended for human consumption and repealing Regulation (EC) No 1774/2002 (Animal by-products Regulation)(b).

Household, industrial and commercial waste

4. Subject to regulation 3, Schedule 1 (household, industrial and commercial waste) has effect.

Litter and refuse

5. Part 2 of the Act has effect as if references to controlled waste collected under section 45 include references to litter and refuse collected under sections 89(1)(a) and (c), 92(9) and 92C(3) of the Act(c).

Amendments to other legislation

6. Schedule 2 (amendments to other legislation) has effect.

Revocation

7. The following Regulations are revoked in England and Wales—

- (a) the Waste Management Licensing (Amendment etc.) Regulations 1995(d);

(a) S.I. 1989/1263, to which there are amendments not relevant to these instruments.
(b) OJ No L 300, 14.11.09, p1, amended by Directive 2010/63/EU of the European Parliament and of the Council (OJ No L 276, 20.10.10, p33).
(c) A relevant amendment to section 92 was made by the Anti-social Behaviour Act 2003 (c. 38), section 56(1). Section 92C was inserted by the Clean Neighbourhoods and Environment Act 2005 (c. 16), section 20(2).
(d) S.I. 1995/288, amended by S.I. 2007/3538.

(b) the Controlled Waste Regulations 1992(a).

12th March 2012

Taylor of Holbeach
Parliamentary Under Secretary of State
Department for Environment, Food and Rural Affairs

12th March 2012

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

SCHEDULE 1

Regulation 4

Household, industrial and commercial waste

Interpretation

1. In this Schedule—

“camp site” means land on which tents are pitched for the purpose of human habitation and land the use of which is incidental to that purpose;

“charity shop” means a hereditament used wholly or mainly for the sale of goods donated to a charity where the proceeds of sale (after deduction of expenses) are applied for the purposes of a charity;

“clinical waste” means waste from a healthcare activity (including veterinary healthcare) that—

- (a) contains viable micro-organisms or their toxins which are known or reliably believed to cause disease in humans or other living organisms,
- (b) contains or is contaminated with a medicine that contains a biologically active pharmaceutical agent, or
- (c) is a sharp, or a body fluid or other biological material (including human and animal tissue) containing or contaminated with a dangerous substance within the meaning of Council Directive 67/548/EEC on the approximation of laws, regulations and administrative provisions relating to the classification, packaging and labelling of dangerous substances(b),

and waste of a similar nature from a non-healthcare activity;

“composite hereditament” has the same meaning as in section 64(9) of the Local Government Finance Act 1988(c);

“construction” includes improvement, repair or alteration;

“factory” has the meaning given in section 175 of the Factories Act 1961(d);

“general medical practitioner” means a person registered in the General Practitioner Register kept by the General Medical Council under section 34C of the Medical Act 1983(e);

“gypsies and travellers”—

- (a) in relation to England, has the same meaning as in regulation 2 of the Housing (Assessment of Accommodation Needs) (Meaning of Gypsies and Travellers) (England) Regulations 2006(f);

(a) S.I. 1992/588, amended by S.I. 1994/1056, 1995/288, 2005/22, 2900, 2006/937 and 2007/3538.

(b) OJ No 196, 16.8.67, P 1 (OJ/SE: Series I, Chapter 1967, P 234), last amended by Directive 2009/2/EC (OJ No L 11, 16.1.09, p6).

(c) 1988 c. 41.

(d) 1961 c. 34. Section 175(2) was amended by S.I. 1983/978, regulation 3(1) and Schedule 1.

(e) 1983 c. 54. Section 34C was inserted by S.I. 2010/234, article 4 and Schedule 1, paragraph 10.

(f) S.I. 2006/3190.

(b) in relation to Wales, has the same meaning as in regulation 2 of the Housing (Assessment of Accommodation Needs) (Meaning of Gypsies and Travellers) (Wales) Regulations 2007(a);

“hazardous waste”—

(a) in relation to England, has the meaning given in regulation 6 of the Hazardous Waste (England and Wales) Regulations 2005(b);

(b) in relation to Wales, has the meaning given in regulation 6 of the Hazardous Waste (Wales) Regulations 2005(c);

“not for profit body” means a body which, by virtue of its constitution or any enactment—

(a) is required (after payment of outgoings) to apply the whole of its income, and any capital which it expends, for charitable or public purposes; and

(b) is prohibited from directly or indirectly distributing among its members any part of its assets (otherwise than for charitable or public purposes);

“offensive waste” means waste that—

(a) is not clinical waste,

(b) contains body fluids, secretions or excretions, and

(c) falls within code 18 01 04, 18 02 03 or 20 01 99 in Schedule 1 to—

(i) the List of Wastes (England) Regulations 2005(d), in relation to England, or

(ii) the List of Wastes (Wales) Regulations 2005(e), in relation to Wales;

“place of worship” means a hereditament exempt from local non-domestic rating by virtue of paragraph 11 of Schedule 5 to the Local Government Finance Act 1988(f);

“scientific research association” has the meaning given in section 469 of the Corporation Tax Act 2010(g);

“scrap metal” has the meaning given in section 9(2) of the Scrap Metal Dealers Act 1964(h);

“vessel” includes a hovercraft within the meaning of section 4(1) of the Hovercraft Act 1968(i);

“waste oil” means any mineral or synthetic lubrication or industrial oil which is unfit for its original purpose.

Sources of household, industrial and commercial waste

2.—(1) This paragraph describes waste which is to be treated as household waste, industrial waste or commercial waste because of the place where it is produced.

(2) The second column of the table describes the places at which waste is produced.

(3) The waste must be treated for the purposes of Part 2 of the Act as the type of waste mentioned in the third column, subject to any exception in the fourth column.

(4) But in a case where paragraph 3 or 4(3) requires waste to be treated inconsistently with sub-paragraph (3), the requirements of those paragraphs take precedence.

(a) S.I. 2007/3235 (W. 285).

(b) S.I. 2005/894, to which there are amendments not relevant to these Regulations.

(c) S.I. 2005/1806 (W. 138), to which there are amendments not relevant to these Regulations.

(d) S.I. 2005/895, to which there are amendments not relevant to these Regulations.

(e) S.I. 2005/1820 (W. 148), to which there are amendments not relevant to these Regulations.

(f) Paragraph 11 was amended by the Local Government Finance Act 1992 (c. 14), section 104 and paragraph 3 of Schedule 10.

(g) 2010 c. 4.

(h) 1964 c. 69. Section 9(2) was amended by the Local Government Act 1972 (c. 70), section 272(1) and Schedule 30 and by the Statute Law (Repeals) Act 1993 (c. 50).

(i) 1968 c. 59.

Classification by place of production

<i>No.</i>	<i>Description</i>	<i>Classification</i>	<i>Exceptions</i>
1	Private storage premises used wholly or mainly for the storage of articles of domestic use	Household waste	
2	Land belonging to or used wholly or mainly in connection with domestic property or a caravan where waste from that property or caravan is to be treated as household waste	Household waste	
3	A private garage	Household waste	Where the garage has a floor area exceeding 25m ² or is not used wholly or mainly for the accommodation of a private motor vehicle, the waste is to be treated as commercial waste
4	A vehicle or vessel used wholly for the purposes of living accommodation	Household waste	Where the vehicle or vessel is used in the course of a business for the provision of self-catering accommodation, the waste is to be treated as commercial waste
5	A place of worship	Household waste	
6	A residential hostel which provides accommodation only to persons with no other permanent address or who are unable to live at their permanent address	Household waste	
7	A penal institution	Household waste	
8	A charity shop selling donated goods originating from domestic property	Household waste	
9	A caravan or mobile home site for gypsies and travellers	Household waste	
10	Premises used wholly or mainly for public meetings	Household waste	
11	Domestic property used in the course of a business for the provision of self-catering accommodation	Commercial waste	
12	A caravan— (a) used in the course of a business for the provision of self-catering accommodation, or (b) which is not allowed to be used for human habitation throughout the year by virtue	Commercial waste	

<i>No.</i>	<i>Description</i>	<i>Classification</i>	<i>Exceptions</i>
	of a licence or planning permission		
13	Premises occupied by a charity and wholly or mainly used for charitable purposes	Commercial waste	Where the waste is from a place of worship or from premises used wholly or mainly for public meetings, it is to be treated as household waste
14	A camp site or a tent pitched on land other than a camp site	Commercial waste	Where the waste is from domestic premises at a camp site, it is to be treated as household waste
15	A royal palace	Commercial waste	
16	Premises occupied by a club, society or any association of persons in which activities are conducted for the benefit of the members	Commercial waste	
17	Premises occupied by— (a) a court; (b) a government department; (c) a local authority; (d) a person appointed by or under any enactment to discharge public functions; (e) a body incorporated by Royal Charter	Commercial waste	Waste classified as household waste or industrial waste because it is from a place— (a) otherwise described in this table (except for entry 27); or (b) described in section 75(5) or (6) of the Act (household waste or industrial waste)
18	A hotel	Commercial waste	
19	Any part of a composite hereditament used for the purposes of a trade or business	Commercial waste	
20	A market or fair	Commercial waste	
21	The practice of a general medical practitioner	Commercial waste	
22	A workshop or similar premises which is not a factory only because— (a) those working there are not employees; or (b) the work carried on there is not carried on by way of trade or for purposes of gain	Industrial waste	Where the principal activities at the premises are computer operations or the copying of documents by photographic or lithographic means the waste is to be treated as commercial waste
23	Waste from a laboratory	Industrial waste	

<i>No.</i>	<i>Description</i>	<i>Classification</i>	<i>Exceptions</i>
24	Waste from a scientific research association	Industrial waste	
25	Waste from premises used for the breeding, boarding or stabling of animals	Industrial waste	
26	Waste imported into England or Wales	Industrial waste	
27	Directive waste from a place (including any vehicle, vessel or aircraft) not otherwise described in this table or in section 75(5) or (7) of the Act(a) (household waste and commercial waste)	Industrial waste	

Nature of waste and activities producing waste

3.—(1) This paragraph describes waste which is to be treated as household waste, commercial waste or industrial waste because of its nature or the activity which produces it notwithstanding the place where it is produced.

(2) The second column of the table describes the nature of the waste or the activity which produces it.

(3) The waste must be treated for the purposes of Part 2 of the Act as the type of waste mentioned in the third column, subject to any exception in the fourth column.

(4) But in a case where paragraph 4(3) requires waste to be treated inconsistently with subparagraph (3), the requirements of that paragraph take precedence.

Classification by nature of waste or activity producing waste

<i>No.</i>	<i>Description</i>	<i>Classification</i>	<i>Exceptions</i>
1	Waste arising from the discharge of duties under section 89(1)(a), (c) or (f) of the Act (duties to collect litter and refuse)	Household waste	
2	Waste arising from the discharge by a local authority of its duty under section 89(2) of the Act (duty to ensure highways and roads are kept clean)	Household waste	
3	Waste arising from the discharge of duties under sections 89(1)(d), 92(9), 92C(3) and 93 of the Act(b) (duties and powers in relation to the collection of litter and refuse)	Commercial waste	
4	Waste collected under section 22(3) of the Control of Pollution Act 1974(c) (street cleaning)	Commercial waste	
5	Waste arising from the discharge of	Industrial	

(a) Section 75(7) was amended by S.I. 2006/937.

(b) Section 92C was inserted by the Clean Neighbourhoods and Environment Act 2005, section 20(2).

(c) 1974 c. 40.

No.	Description	Classification	Exceptions
	duties under section 89(1)(b) and (e) of the Act (duties to collect litter and refuse)	waste	
6	Waste arising from the discharge by the Secretary of State or the Welsh Ministers of the duty under section 89(2) of the Act ^(a) (duty to ensure highways and roads are kept clean)	Industrial waste	
7	<p>Hazardous waste arising from the following activities carried on at premises used for the purposes of a trade or business—</p> <ul style="list-style-type: none"> (a) mixing or selling paints; (b) sign writing; (c) laundering or dry cleaning; (d) developing photographic film or making photographic prints; (e) selling petrol, diesel fuel, paraffin, kerosene, heating oil or similar substances; (f) selling pesticides, herbicides or fungicides 	Industrial waste	
8	Waste oil, waste solvent or scrap metal	Industrial waste	<p>Where the waste is produced at the following places it is to be treated as household waste—</p> <ul style="list-style-type: none"> (a) a residential home; (b) domestic property, a caravan or land belonging to or used in connection with such a place; (c) a private garage which has a floor area of 25m² or less or is used wholly or mainly for the accommodation of a private motor vehicle; (d) private storage premises used wholly or mainly for the storage of articles of domestic use; (e) a vehicle or vessel used wholly for the purposes of living accommodation, except

(a) Functions of the Secretary of State under section 89(2), so far as exercisable in relation to Wales, were transferred to the National Assembly for Wales by article 2 of, and Schedule 1 to, S.I. 1999/672. 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).

<i>No.</i>	<i>Description</i>	<i>Classification</i>	<i>Exceptions</i>
			where it is used in the course of a business for the provision of self-catering accommodation
9	Waste from construction or demolition works, including preparatory works	Industrial waste	The waste is to be treated as household waste for the purposes of section 34(2) and (2A) of the Act only (disapplication of section 34(1) and duty on the occupier of domestic property to transfer household waste only to an authorised person or for authorised transport purposes)
10	Septic tank sludge	Industrial waste	The waste is to be treated as household waste for the purposes of section 34(2) and (2A) of the Act only
11	Sewage	Industrial waste	
12	Clinical waste and offensive waste	Industrial waste	<p>Clinical waste and offensive waste produced at domestic property, a residential home, a caravan or a vehicle or vessel used wholly for the purposes of living accommodation is to be treated as household waste, except that where such a vehicle or vessel is used in the course of a business for the provision of self-catering accommodation, such waste is to be treated as commercial waste</p> <p>Clinical waste and offensive waste collected under section 22(3) of the Control of Pollution Act 1974 or section 89, 92(9), 92C(3) or 93 of the Act is to be treated as household waste or commercial waste in accordance with entries 1 to 6</p>

Household waste for which collection and disposal charges may be made

4.—(1) The second column of the table in this paragraph describes waste which is household waste (by virtue of section 75(5) of the Act) or waste which is to be treated as household waste (by virtue of paragraph 2 or 3).

(2) The third column indicates which household waste is prescribed for the purposes of section 45(3) of the Act (cases in respect of which a charge for collection may be made).

(3) Subject to sub-paragraphs (5) and (8), the fourth column indicates which waste must be treated as commercial waste for the purposes of the following provisions of the Act—

- (a) section 45(4) to the extent that it concerns liability to pay a reasonable charge for disposal of commercial waste and the recovery of such a charge; and
- (b) section 52(9) (which entitles waste disposal authorities to reimbursement by waste collection authorities in relation to costs incurred in arranging the disposal of commercial and industrial waste).

(4) Sub-paragraphs (5) to (8) apply in England only.

(5) Nothing in sub-paragraph (3) has the effect of making a person liable to pay a charge under section 45(4) of the Act for the disposal of waste if the first and second conditions are satisfied.

(6) The first condition is that no charge would have been payable under section 45(4) of the Act for the disposal of that waste had it been collected under section 45(1) of the Act before the coming into force of these Regulations.

(7) The second condition is that the waste is from a hereditament as regards which the person is subject to a non-domestic rate under section 45(1) of the Local Government Finance Act 1988(a), for which the chargeable amount payable is calculated in accordance with section 45(4A)(a) of that Act(b).

(8) In relation to entry 15 of the table (waste from premises forming part of a university, school or other educational establishment), nothing in sub-paragraph (4) has the effect of making a person liable to pay a charge under section 45(4) of the Act for the disposal of waste from premises forming part of—

- (a) a school maintained by a local authority (within the meaning of section 142(1) of the School Standards and Framework Act 1998(c)),
- (b) an institution within the further education sector (within the meaning of section 91 of the Further and Higher Education Act 1992(d)), or
- (c) an Academy (within the meaning of section 1(10) of the Academies Act 2010(e)),

if, immediately before the coming into force of these Regulations, the collection of waste from those premises was being undertaken pursuant to arrangements made under section 45(1) of the Act.

Collection and disposal charges

<i>No.</i>	<i>Description of household waste</i>	<i>Collection charge</i>	<i>Disposal charge</i>
1	Any article of waste which exceeds 25kg in weight	Yes	No, subject to entries 11 to 17
2	Any article of waste which does not fit or cannot be fitted into— (a) a receptacle for household waste provided in accordance with section 46 of the Act; or	Yes	No, subject to entries 11 to 17

(a) 1988 c. 41. Relevant amendments were made by the Local Government and Housing Act 1989 (c. 42) section 139 and Schedule 5, paragraphs 23(2), 79(3), and by the Rating (Empty Properties) Act 2007 (c. 9), section 1(1).

(b) The chargeable amount is calculated in accordance with section 45(4A)(a) where section 45(4B) applies: see article 2 of the Non-Domestic Rating (Small Business Rate Relief) (England) Order 2012 (S.I. 2012/148) for the conditions prescribed under subsection (4B)(a)(ii).

(c) 1998 c. 31. Section 142(1) was amended by S.I. 2010/1158, article 5(1) and Schedule 2, Part 1, paragraph 10(1) and (2). There are other amendments to that section that are not relevant to this instrument.

(d) 1992 c. 13. Section 91 was amended by the Learning and Skills Act 2000 (c. 21), sections 149 and 153, Schedule 9, paragraphs 1 and 42, and Schedule 11, and the Apprenticeships, Skills, Children and Learning Act 2009 (c. 22), section 125, Schedule 8, paragraphs 1 and 13(1) to (3).

(e) 2010 c. 32. Section 1 has been amended, as from a date to be appointed, by the Education Act 2011 (c. 21), sections 52 and 53. Section 15(4) of the Academies Act 2010 provides that a reference to an Academy is to be read as including a reference to a city technology college and a city college for the technology of the arts.

<i>No.</i>	<i>Description of household waste</i>	<i>Collection charge</i>	<i>Disposal charge</i>
	(b) where no such receptacle is provided, a cylindrical container 750mm in diameter and 1m in length		
3	Garden waste	Yes	No, subject to entries 11 to 17
4	Dead domestic pets	Yes	No, subject to entries 11 to 17
5	Waste oil or grease	Yes	No, subject to entries 11 to 17
6	Asbestos	Yes	No, subject to entries 11 to 17
7	Waste which may not be put into a receptacle provided under section 46 of the Act because of a notice served under that section	Yes	No, subject to entries 11 to 17
8	Waste from premises used wholly or mainly for public meetings	Yes	No
9	Clinical waste and offensive waste produced at a domestic property, a caravan or a vehicle or vessel used wholly for the purposes of living accommodation	Yes	No
10	Waste from a residential hostel which provides accommodation only to persons with no other permanent address or who are unable to live at their permanent address	Yes	No
11	Waste from a charity shop selling donated goods originating from domestic property	Yes	Yes, but only to the extent that the waste originated from non-domestic property
12	Waste from premises occupied by— (a) a community interest company (being a company which is registered as such with the registrar of companies), or (b) a charity or other not for profit body, which collects goods for re-use or waste to prepare for re-use from domestic property	Yes	Yes, but only to the extent that the waste originated from non-domestic property
13	Litter and refuse collected under section 89(1)(f) of the Act	Yes	Yes
14	Waste from a residential home or land belonging to or wholly or mainly used in connection with a residential home	Yes	Yes
15	Waste from premises forming part of a university, school or other educational establishment	Yes	In Wales: yes In England: yes, subject to paragraph

No.	Description of household waste	Collection charge	Disposal charge
			4(8)
16	Waste from premises forming part of a hospital or nursing home except for waste from a residential hostel forming such part which provides accommodation only to persons with no other permanent address	Yes	Yes
17	Waste from a penal institution	Yes	Yes

SCHEDULE 2

Regulation 6

Amendments to other legislation

The Waste (Household Waste Duty of Care) (England and Wales) Regulations 2005

1. Omit regulation 4 of the Waste (Household Waste Duty of Care) (England and Wales) Regulations 2005(a).

The Waste (Household Waste Duty of Care) (Wales) Regulations 2006

2. Omit regulation 2(2) in the Welsh and English texts of the Waste (Household Waste Duty of Care) (Wales) Regulations 2006(b).

The Waste Management (England and Wales) Regulations 2006

3. Omit regulation 5 of the Waste Management (England and Wales) Regulations 2006(c).

The Environmental Permitting (England and Wales) Regulations 2007

4. Omit paragraphs 33 and 36 of Schedule 21 to the Environmental Permitting (England and Wales) Regulations 2007(d).

The Environmental Permitting (England and Wales) Regulations 2010

5. In regulation 2(1) of the Environmental Permitting (England and Wales) Regulations 2010(e), in the definition of “excluded waste operation”, for “regulation 7(1) of the Controlled Waste Regulations 1992, substitute “regulation 3(2) of the Controlled Waste (England and Wales) Regulations 2012”.

The Animal By-Products (Enforcement) (England) Regulations 2011

6. Omit paragraph 2 of Schedule 2 to the Animal By-Products (Enforcement) (England) Regulations 2011(f).

(a) S.I. 2005/2900.

(b) S.I. 2006/123 (W. 16).

(c) S.I. 2006/937, to which there are amendments not relevant to these Regulations.

(d) S.I. 2007/3538, to which there are amendments not relevant to these Regulations.

(e) S.I. 2010/675, to which there are amendments not relevant to these Regulations.

(f) S.I. 2011/881.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations classify waste as household waste, industrial waste or commercial waste for the purposes of Part 2 of the Environmental Protection Act 1990 (“the Act”) and in consequence determine the meaning of “controlled waste” for the purposes of Part 2 of the Act (the definition of “controlled waste” is in section 75(4)).

They also prescribe the types of household waste for which a charge for collection may be made and provide that certain litter and refuse is to be treated under Part 2 in the same way as waste collected under section 45 of the Act.

Regulation 3 provides that certain waste is not to be classified as household, industrial or commercial waste, in particular waste which falls outside the scope of Directive 2008/98/EC on waste (OJ No L 312, 22.11.08, p3).

Regulation 4 gives effect to Schedule 1 which, read with section 75(5), (6) and (7) of the Act, establishes the classification of waste as household, industrial or commercial.

Paragraph 2 of Schedule 1 describes waste which is to be classified according to its place of production. It is subject to any inconsistent classification made by paragraphs 3 or 4.

Paragraph 3 of Schedule 1 describes waste which is to be classified according to its nature or the activity producing it. It is subject to any inconsistent classification made by paragraph 4.

Paragraph 4 of Schedule 1 prescribes household waste for which a collection charge may be made and specifies household waste which is to be treated as commercial waste only for the purposes of charging for disposal.

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 the Waste Programme, Department for Environment, Food and Rural Affairs, Ergon House, Horseferry Road, London SW1P 2AL and is published with the Explanatory Memorandum alongside the instrument on www.legislation.gov.uk.

Explanatory Memorandum to the Controlled Waste (England and Wales) Regulations 2012

This Explanatory Memorandum has been prepared by the Department for Environment and Sustainable Development 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 Controlled Waste (England and Wales) Regulations 2012. I am satisfied that the benefits outweigh any costs.

John Griffiths AM
12 March 2012

1. Description

This instrument revokes and replaces the Controlled Waste Regulations 1992¹, and is made on a composite basis with the Department for Environment, Food and Rural Affairs. It classifies waste as household, industrial or commercial waste, and also lists the types of waste for which local authorities may make a charge for collection and disposal. The instrument enables local authorities (as waste collection authorities under the Environmental Protection Act 1990) to charge under section 45 of that Act for the disposal of waste arising from a wider range of non-domestic premises than the 1992 Regulations permitted; it also consolidates previous amendments, and includes some amended and updated definitions and classifications to improve the clarity of the Regulations and bring them into line with other recent legislation. It also provides that certain litter and refuse is to be treated under Part 2 of the Environmental Protection Act 1990 in the same way as waste collected under section 45 of the Act.

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

Composite regulations are appropriate as the issues facing local authorities in Wales are the same as in England and a common approach where we have similar policy is considered beneficial for consistency of application across England and Wales.

3. Legislative background

- 3.1 Part 2 of the Environmental Protection Act 1990 (“the 1990 Act”) is the principal primary legislation relating to waste.
- 3.2 Section 75 provides for definitions. Subsection (2) defines waste and subsections (5), (6) and (7) classify certain waste as “household waste”, “industrial waste” and “commercial waste”. Subsection (8) gives power to make Regulations providing that waste of a prescribed description is to be treated for the purposes of provisions of Part 2 as being or not being household, industrial or commercial waste.
- 3.3 Classification affects the duties and powers of local authorities under Part 2 of the 1990 Act in relation to waste. In particular, local authority duties and powers in section 45 in relation to collection of waste and charging for collection and subsequent disposal are defined by the classification.
- 3.4 The principal EU measure on waste is Directive 2008/98/EC (OJ No L312, 22.11.08, p3). Some provisions of Part 2 of the 1990 Act implement parts of that Directive (for example section 34 – see the transposition table

¹ SI 1992/588

annexed to the explanatory memorandum for SI 2011/988 for fuller details². These provisions use the term “controlled waste”, which is defined in section 75(4) of the 1990 Act to depend on the terms “household waste”, “industrial waste” and “commercial waste”. The Regulations ensure that the term “controlled waste” has the same effect as the meaning of “waste” in the Directive.

- 3.5 Section 45(1) and (2) of the 1990 Act set out duties and powers of waste collection authorities in relation to the collection of waste. Subsection (3) provides that no charge can be made for the collection of household waste except in cases prescribed in regulations (in which case a reasonable charge may be made). Subsection (4) empowers a reasonable charge to be made for the collection and disposal of waste other than household waste. Regulation 4 of the 1992 Regulations prescribed certain types of waste in relation to which a collection charge could be made under section 45(3). Regulations 5 to 7A provided that certain descriptions of waste were to be treated as industrial and commercial waste for the purposes of Part 2 of the 1990 Act.
- 3.6 The relevant functions of the Secretary of State under the Environmental Protection Act 1990, were transferred, in relation to Wales, to the National Assembly, by the National Assembly for Wales (Transfer of Functions) Order 1999³ and have subsequently been transferred to the Welsh Ministers by virtue of Section 162, and paragraph 30, of Schedule 11 to the Government of Wales Act 2006. The Welsh Ministers are designated for the purposes of the European Communities Act 1972, in relation to the prevention, reduction and management of waste⁴.
- 3.7 This instrument is composite and subject to annulment (the negative procedure).

4 Purpose & intended effect of the legislation in Wales

4.1 The 1992 Regulations predated significant changes in waste legislation and policy, including the landfill tax which is Governments main driver to reduce waste to landfill and encouraging recycling and recovery of waste. By insulating certain premises from the cost of disposing of their waste, the 1992 Regulations undermine efforts to reduce waste and increase recycling. The exemption from disposal charging also extended to private institutions and some businesses, and disposal costs are being paid by the taxpayer. As the cost of disposing of waste continues to rise, the market for waste services is being increasingly distorted by artificially low local authority charges which exclude disposal costs. The types of premises exempted from disposal costs are:

Types of Premises to which Schedule 2 of the 1992 Regulations applies		
NHS Hospitals	Private Schools	Penal Institutions

² <http://www.assemblywales.org/bus-home/bus-third-assembly/bus-guide-docs-pub/bus-business-documents/bus-business-documents-doc-laid.htm?act=dis&id=209538&ds=3/2011>

³ S.I. 1999/672

⁴ S.I. 2010/1552

Private Hospitals	Further Education Colleges	Public Halls
Residential Hostels	Universities	Royal Palaces
Care Homes	Self Catering Accommodation	Charity Shops
Child Care Facilities (pre-school)	Caravan Sites	Charities
LEA Schools	Campsites	

4.2 This instrument describes waste which is to be treated as household waste, industrial waste or commercial waste, and specifies (under section 45(3) of the 1990 Act) the types of household waste for which a collection charge may be made. In addition, it specifies that certain types of household waste are to be treated as commercial waste for the purpose of enabling a charge to be made for the collection of the waste and, in some cases, its disposal under section 45(4) of the 1990 Act.

4.3 This instrument also provides that Part 2 of the Act has effect as if references to controlled waste collected under section 45 include references to litter and refuse collected under sections 89(1)(a) and (c), 92(9) and 92C(3) of the Act. This continues the policy provided for in the 1992 Regulations.

4.4 This means that this instrument will allow local authorities to charge for the collection and disposal of waste arising from non-domestic properties, (except for charity shops selling donated goods and 're-use' organisations to the extent that the waste came from domestic property, and village halls and premises used for public meetings) whereas now they only charge for collection. It also enables litter collected on premises occupied by educational establishments will be charged for in the same way as other non-hazardous waste generated on the site.

5. Consultation

5.1. A formal public consultation was held between November 2010 and January 2011. This received responses from 11 consultees in Wales: 7 local authorities, the Welsh Local Government Association, 1 Water Company, 1 Charity Shop and 1 private individual. The consultation paper and summary of responses are available⁵.

5.2. A list of the consultees is available at:
<http://archive.defra.gov.uk/corporate/consult/controlled-waste-regs/101108-controlled-waste-regs-consultees.pdf>.

5.3. The Welsh Government's response to the consultation addresses the specific questions raised in the consultation, and is available on the same web link. The Welsh Government does not intend to issue further guidance in respect of these Regulations, but will keep this issue under review.

⁵ <http://wales.gov.uk/consultations/environmentandcountryside/schedule2waste/?lang=en&status=closed>

6 Regulatory Impact Assessment

- 6.1 England and Wales have prepared a joint Impact Assessment which examines costs and benefits, which is enclosed at **Annex 1** to this Explanatory Memorandum. The Impact Assessment is based on the best available information.
- 6.2 The impact on business, charities or voluntary bodies is that local authorities can now charge them (with some exemptions), for the disposal of waste from their premises. The majority of businesses already pay for the disposal of their waste, and the impact on small businesses is discussed below. Charity shops are defined in the Regulations as separate premises from those used for charitable purposes, and are exempt from disposal charges, but only to the extent that the waste came from domestic property. Premises used wholly or mainly for public meetings will also be exempt.
- 6.3 The impact on the public sector is slightly positive, as the taxpayer will no longer be required to pay for the disposal of waste arising from private institutions and businesses.

Regulating small business

- 6.4 The legislation affects small business.
- 6.5 The approach taken is that local authorities shall have the discretion on whether to charge for collection and disposal of waste on a case-by-case basis, allowing them to make decisions which best support local needs.
- 6.6 A formal public consultation was carried out, which included seeking views of small businesses. The majority of small businesses already pay for the disposal of their waste. Those likely to be affected by these Regulations are in the self-catering holiday accommodation and childcare (pre-school) categories.

7. Post implementation review

Welsh Government will continue to discuss the management of household waste with local authorities and to monitor the effectiveness of the Statutory Instrument. A post implementation review to assess the Controlled Waste Regulations 2012 will be carried out in 5 years or sooner if monitoring indicates a need for an earlier review.

Annex 1

**Joint England and Wales Impact Assessment:
Review of Schedule 2 of the Controlled Waste
Regulations (1992)**

Title: Review of Schedule 2 of the Controlled Waste Regulations (1992) Lead department or agency: Defra Other departments or agencies: Welsh Government	Impact Assessment (IA)
	IA No: Defra 1035
	Date: 09/03/2012
	Stage: Final
	Source of intervention: Domestic
	Type of measure: Secondary legislation

Summary: Intervention and Options

<p>What is the problem under consideration? Why is government intervention necessary?</p> <p>The disposal of waste from certain non-domestic premises (“Schedule 2 premises”) is paid for by local taxpayers if the premises choose to use Local Authority (LA) waste services. LAs have no powers to charge for disposal of the waste, only for its collection. As LAs have a duty to collect this waste, if requested, this anomaly is distorting the market for waste services, with LA fees undercutting those of private waste contractors. The legislation was introduced when waste collection was the main consideration and disposal costs were nominal. Disposal now accounts for over 50% of total waste management costs, and this continues to rise. Legislation change is required to allow LAs to fully recover the costs of their non-domestic waste service from users, and remove the burden from taxpayers.</p>	
<p>What are the policy objectives and the intended effects?</p> <p>Allow local authorities to recover the full costs of the waste service from non-domestic users, thereby reducing public spending. Remove the market distortion created by the public subsidy of disposal costs, to create a level playing-field for private sector waste management businesses. To ensure that legislation effectively contributes towards Government policy aims of reducing waste, increasing recycling rates and providing waste services funded on the ‘polluter pays’ principle. Promote localism by giving decision-making powers and responsibility for non-domestic waste service fees back to local authorities.</p>	
<p>What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)</p> <p>(1) Issue Guidance on interpretation the legislation.</p> <p>(2) Repeal and replace the Secondary Legislation.</p> <p>The preferred option is (2). While (1) might reduce confusion and variation in the interpretation of the legislation, it will not resolve the issue of the subsidy or meet our policy objectives. Replacing the legislation will meet all of our policy objectives and also allow us to address other issues with the current Regulations such as outdated terminology and interactions with newer legislation.</p>	
<p>Will the policy be reviewed? It will be reviewed. If applicable, set review date: 4/2017</p> <p>What is the basis for this review? Duty to review. If applicable, set sunset clause date: Month/Year</p>	
<p>Are there arrangements in place that will allow a systematic collection of monitoring information for future policy review?</p>	<p>Yes</p>

SELECT SIGNATORY Sign-off For final proposal stage Impact Assessments:

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

Signed by the responsible SELECT SIGNATORY: _____ Date: _____

Summary: Analysis and Evidence Policy Option 1

Description:

Price Base Year 2010	PV Base Year 2010	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate: -0.05

COSTS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low		10		
High				
Best Estimate	0.01			-0.5

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

Defra's and the Welsh Government's admin costs are not substantial as the information will be posted on the internet. The one off admin burdens on business and LA's is £0.05m. The waste management costs to Local Authorities involved with handling the total additional Schedule 2 waste is estimated to be £81m for England and £3m for Wales. As a result Schedule 2 premises benefit from a subsidy of £81m for England and £3m for Wales and thus these are transfer costs with a net effect of 0.

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

There is also a potential cost to commercial waste contractors, who are being priced out of contracts with Schedule 2 organisations by the subsidised fees offered by Local Authorities. This is approximately 1,546kt of waste in England and 0.07kt in Wales. We have not been able to establish the scale of this cost, as the data is commercially sensitive however such distortion prevents viable businesses from continuing to operate and decreases the overall competitive performance of the market.

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

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

The option does not incur any monetised benefits

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

Local authorities and their customers will have a better understanding of their respective rights and duties. Private and public-sector Schedule 2 customers will continue to benefit from subsidised waste disposal. Transparency benefits which should lead to fewer disputes over the interpretation between authorities and their customers and right levels of infrastructure investment as a result of legislation certainty. It is however not possible to quantify these benefits.

Key assumptions/sensitivities/risks	Discount rate (%)	3.5
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The assumptions in the modelling of costs are discussed in detail in relevant sections. There is no information available to evaluate how the Schedule 2 waste is treated by commercial operators in comparison to local authorities.

The main risks are that with increasing costs of waste management more businesses choose to use local authority collection services. One consequence could be from there being insufficient infrastructure, that Local Authorities may be forced to send more waste to landfill which incurs additional environmental costs (including landfill tax) and secondly the switch of Schedule 2 waste from the private sector could have adverse effects for commercial operators due to loss of revenue.

Direct impact on business (Equivalent Annual) £m):			In scope of OIOO?	Measure qualifies as
Costs:	Benefits: 1.80	Net: 1.80	No	NA

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?	06/04/2012				
Which organisation(s) will enforce the policy?	Defra and Welsh Government				
What is the annual change in enforcement cost (£m)?					
Does enforcement comply with Hampton principles?	Yes				
Does implementation go beyond minimum EU requirements?	No				
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)	Traded: -		Non-traded: -		
Does the proposal have an impact on competition?	No				
What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?	Costs: N/A		Benefits: N/A		
Distribution of annual cost (%) by organisation size (excl. Transition) (Constant Price)	Micro	< 20	Small	Medium	Large
Are any of these organisations exempt?	No	No	No	No	No

Specific Impact Tests: Checklist

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

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

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

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

Summary: Analysis and Evidence Policy Option 2

Description:

Replace Secondary Legislation to allow WDA to charge for disposal of waste from non-domestic Schedule 2 premises, (excl charity shops & re-use organisations) and issue supporting guidance.

Price Base Year 2010	PV Base Year 2010	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate: -0.14

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	10		
High			
Best Estimate		0.02	

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

Defra's and the Welsh Government's admin costs are not substantial as the information will be posted on the internet. The one off admin burdens of replacing secondary legislation is £0.14m to business and LAs. If LAs recover full costs of Schedule 2 waste handled in the baseline, this yields savings in present value terms of £251million for England and £14million for Wales. Schedule 2 organisations will now face this additional cost of £251m for England & £14million for Wales. The costs net off and have 0 impact on NPV.

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

The option does not incur any non monetised costs.

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

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

The option does not incur any monetised benefits.

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

Greater economic efficiency as a result of the removal of a subsidy. Schedule 2 premises will no longer have their waste management choices constrained by a distorted marketplace, which may lead them to choose private waste collections more tailored to their business needs. Increased transparency and policy certainty benefits. Promotes the Polluter Pays Principle and Schedule 2 premises will face the full costs of waste disposal which may incentivise them to produce less waste. Please see pg18

Key assumptions/sensitivities/risks	Discount rate (%)	3.5
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The assumptions and sensitivities in the modelling of Schedule 2 waste are discussed in detail in the evidence base. To reiterate, as a result of no data being available on forecasting Schedule 2 waste arisings or how it is managed between LA's and Schedule 2 waste premises, assumptions have been made to illustrate the magnitude of the impacts.

Direct impact on business (Equivalent Annual) £m):			In scope of OIOO?	Measure qualifies as
Costs: 4.99	Benefits:	Net: -4.99	No	NA

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?	06/04/2012				
Which organisation(s) will enforce the policy?	Defra and Welsh Government				
What is the annual change in enforcement cost (£m)?					
Does enforcement comply with Hampton principles?	Yes				
Does implementation go beyond minimum EU requirements?	N/A				
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				
What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?	Costs: N/A		Benefits: N/A		
Distribution of annual cost (%) by organisation size (excl. Transition) (Constant Price)	Micro	< 20	Small	Medium	Large
Are any of these organisations exempt?	No	No	No	No	No

Specific Impact Tests: Checklist

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

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

Does your policy option/proposal have an impact on...?	Impact	Page ref within IA
Statutory equality duties¹ Statutory Equality Duties Impact Test guidance	No	20
Economic impacts		
Competition Competition Assessment Impact Test guidance	Yes	20
Small firms Small Firms Impact Test guidance	Yes	20
Environmental impacts		
Greenhouse gas assessment Greenhouse Gas Assessment Impact Test guidance	No	20
Wider environmental issues Wider Environmental Issues Impact Test guidance	No	20
Social impacts		
Health and well-being Health and Well-being Impact Test guidance	No	20
Human rights Human Rights Impact Test guidance	No	
Justice system Justice Impact Test guidance	Yes	20
Rural proofing Rural Proofing Impact Test guidance	No	21
Sustainable development Sustainable Development Impact Test guidance	Yes	21

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

Evidence Base (for summary sheets) – Notes

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

References

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

No.	Legislation or publication
1	Enviros Consulting Ltd 2009 <i>Understanding current management arrangements for Schedule 2 of the Controlled Waste Regulations 1992 waste (WR0308)</i> Defra http://randd.defra.gov.uk/Document.aspx?Document=WR0308_8699_FRP.pdf
2	Defra 2010 'Stakeholder feedback on Stakeholder Feedback on Controlled Waste Regulations' http://www.defra.gov.uk/environment/waste/localauth/documents/stakeholder-feedback.pdf
3	Defra 2010 'Review of Schedule 2 of the Controlled Waste Regulations (1992), Consultation Stage Impact Assessment' http://www.defra.gov.uk/corporate/consult/controlled-waste-regs/101108-controlled-waste-regs-ia.pdf
4	Defra and WAG 2010 'Review of Schedule 2 of the Controlled Waste Regulations (1992): Proposals for amending and updating the legislation.' http://www.defra.gov.uk/corporate/consult/controlled-waste-regs/101108-controlled-waste-regs-condoc.pdf

+ 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										
Annual recurring cost										
Total annual costs										
Transition benefits										
Annual recurring benefits										
Total annual benefits										

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

Evidence Base (for summary sheets)

There is discretion for departments and regulators as to how to set out the evidence base. However, it is desirable that the following points are covered:

- Problem under consideration;
- Rationale for intervention;
- Policy objective;
- Description of options considered (including do nothing);
- Costs and benefits of each option (including administrative burden);
- Risks and assumptions;
- Direct costs and benefits to business calculations (following OIOO methodology);
- Wider impacts;
- Summary and preferred option with description of implementation plan.

Problem under consideration

At present, Local Authorities are required to collect waste, if asked, from organisations listed in Schedule 2 of the Controlled Waste Regulations (1992) (CWR). This list includes among others, schools, hospitals, prisons and various types of self-catering holiday provision; it does not distinguish between private and public sector organisations. The CWR allow Local Authorities to make a charge for the collection of this waste, but not for its disposal. This legislation was passed at a time when disposal costs were minimal, before statutory EU targets to reduce waste going to landfill and the introduction of the landfill tax.

Defra commissioned Enviro in 2009 to produce a report on the current management of Schedule 2 waste in order to inform the review of the legislation.

They found that the current split of public to private Schedule 2 premises is 32% and 57% respectively (with an additional 10% being categorised as either public or private), however some 75% of the waste, by weight, arises in the public sector.

At present, around 50% of this Schedule 2 waste is collected by private waste contractors even though they charge for both collection and disposal. This situation seems to have arisen as a result of a combination of factors, including variable interpretation of the legislation, but for larger premises in particular, by the more flexible and tailored waste services available from the private sector. However, the escalating costs of disposal including pre-treatment requirements and Landfill Tax means that many of these contracts are becoming a more expensive option than Local Authority collection. Some organisations have already switched to Local Authority (LA) services to take advantage of the cheaper fees, and there is a significant risk that large amounts of waste, which Local Authorities have not budgeted for, will come into the public sector for disposal.

The **Enviro report** calculated in 2007/08 this would amount to an additional 600,000 tonnes of waste transferring into the public sector. They assumed that if recycling rates of 30% could be achieved for this waste, then around 400,000 tonnes would be landfilled, placing an additional cost of £24-£32 million pounds, based on charges of £60-£80 per tonne of waste and also assuming that the recycling services cover their own costs. This represented an increase of between 2.2% and 2.9% in disposal costs for local authorities; these costs are offset by a reduction in disposal costs for Schedule 2 premises currently paying private waste contractors for the full cost of disposal.

Rationale for intervention

Unfortunately, due to the age of the Regulations, it has not been possible to locate any record of the considerations leading to its introduction so it is not clear why the legislation did not allow the recovery of disposal costs for Schedule 2 waste, so we can only speculate on the reasoning.

The policy landscape was fundamentally different in 1992 – the ‘polluter pays’ principle was not embedded in public policy for example, and there was no Landfill Tax. There have been substantial changes in the legislative framework, including the introduction in 1999 of the Landfill Directive, which requires pre-treatment of waste and restricts the types of waste which can be disposed of in landfill, and the Waste Framework Directive, which has been revised and implemented in domestic legislation this year. Amongst a range of measures it enshrines the principle of the waste hierarchy as a priority in law, and introduces requirements for the separate collection of paper, metal, plastic and glass.

In 1992, the vast majority of waste would have been disposed of in landfill at minimal cost, so it is important to note that disposal costs would have been negligible when compared to the cost of collection when these regulations were first introduced, unlike today when they make up over 50% of the cost of handling waste, and so the ‘polluter pays’ principle would

not have been a material consideration in disposal charging. It is, therefore, more appropriate to consider the merits of the legislation against current public policy.

Currently, at a time of tightening public spending, it is more important than ever for the taxpayer to no longer subsidise the waste disposal costs of private businesses. Again the position here has moved on from when the legislation was first introduced, with far more private businesses operating premises that would have mainly been in the public sector at the time of the original legislation (for example private hospitals and care homes.)

In the public sector, the split of responsibility for meeting the cost of waste services creates confusion and opacity within public budgets, and public funding is not aligned to expenditure where Schedule 2 premises switch between Local Authority and private sector waste services.

As the cost of disposal continues to rise, Schedule 2 premises have increasingly been moving from private-sector contracts to Local Authority waste services, creating a shortfall in Local Authority funding that has been met by the taxpayer. Central Government funding for waste services is not ring-fenced. The most recent spending review and local Government settlement did not include any element of funding for management of waste from Schedule 2 premises. Local Authorities are, therefore, currently funding Schedule 2 waste disposal costs from council tax and other parts of their non-ringfenced budgets.

Local Authorities are concerned about the effect of large amounts of Schedule 2 waste coming back into the public sector because the disposal costs would be a significant drain on their resources and this material has not been included in their strategies for meeting their landfill diversion targets as required under the EU Landfill Directive. In addition, the existing Regulations insulate organisations listed in Schedule 2 from the full costs of the environmental impact the waste they produce causes, reducing the financial incentive for these premises to reduce waste or to recycle.

The Regulations pre-date, and consequently do not reflect the polluter pays principle (PPP) that underpins all EU and UK waste legislation of the past fifteen years. They include some out of date terminology and are generally agreed by users to be difficult to interpret in places.

Policy Objectives

To remove public funding of private business costs. Allowing local authorities to recover the full costs of the waste service from non-domestic users will benefit the taxpayer. In addition, both public and private sector Schedule 2 premises will be incentivised to reduce their waste disposal costs.

To remove the market distortion. By removing the public funding of Schedule 2 premises' disposal costs, we aim to create a level-playing field for private sector waste management businesses. This will also increase the ability of Schedule 2 organisations to choose the most appropriate waste management services for their circumstances.

To promote waste reduction and recycling. Amending the legislation to ensure that it effectively contributes towards Government policy aims of reducing waste, increasing recycling rates and providing non-domestic waste services based on the 'polluter pays' principle.

To promote localism. By giving decision-making powers and responsibility for non-domestic waste service fees back to local authorities, they can make decisions on how best to support local organisations and be fully accountable to their local electorate for their decisions.

To have legislation which is clear and easy to use, and subject to regular review. This will help local authorities and service users to understand their respective rights and responsibilities.

Description of Options considered

1) Issue Guidance

The original guidance, issued in 1992, does little more than restate the legislation, a factor that has contributed to significant variations in how the Regulations are interpreted and applied. Although there are frequent disagreements on interpretation between Local Authorities and Schedule 2 customers, there is no case law to clarify the issues.

We could seek to issue more detailed guidance, to set out our interpretation of the legislation, and to encourage stakeholders who disagree with our interpretation to seek judicial review to clarify the legislation in the Court.

If all parties agree with our interpretation, then guidance could improve consistency of fee charging across the country and reduce disputes. This guidance would have no statutory basis, and would not resolve the fundamental problems with the Regulations; the subsidised fees and lack of incentive to manage waste sustainably.

There are no significant costs associated with the production of guidance but, by publicising the availability of the subsidy, it is likely to accelerate the rate at which Schedule 2 organisations seek waste services from Local

Authorities. We assume that, as waste disposal becomes progressively more expensive, almost all Schedule 2 waste that is currently handled by the private sector would come into the public sector to avoid waste disposal charges. We have assumed that around 10% of Schedule 2 premises will continue to use the private sector in order to benefit from services tailored to their specific needs, despite the greater cost.

We have assumed that the switch to Local Authority waste services will take place gradually to reflect, though to a lesser extent as a result of the guidance, imperfect information on LA charging and Schedule 2 premises holding long term contracts with commercial operators.

2) Repeal and replace the Controlled Waste Regulations 1992

This is the preferred option. We propose to replace the Regulations to allow waste disposal authorities to charge for disposal of all waste arising from non-domestic properties.

We would exempt charity shops and re-use organisations from disposal charging on the grounds that their activities contribute to waste prevention by encouraging and facilitating the reuse rather than disposal of goods, thereby benefitting taxpayers by reducing tonnages going to landfill. The Regulations will be amended to explicitly define waste from these sources as being household waste, and ensure that they are entitled to free disposal.

The proposed powers would continue to be permissive, allowing local authorities the ability to make decisions on charging that best reflect the needs and priorities of local people.

Baseline - Do Nothing

In order to assess the implications of both options being adopted, the table below shows the amount of Schedule 2 waste Local Authorities would handle if no further intervention took place.

Headline Assumptions

The methodology involved uses the 2007/08 Schedule 2 waste figures from the Enviro report and projects these forward based on the following assumptions.

Annex 2 is taken from the 2007/08 Enviro report and provides a breakdown of the total schedule 2 waste per premise and by the amount within and outside the municipal solid waste (MSW) stream for both England and Wales. As can be observed from the tables, the public/private split per schedule 2 premise differs for each region. For example, the public private sector split for "care homes for England is 81% and 19% whereas for Wales this is 94% and 6%. Therefore to ensure regional disparities are accounted for, the below assumptions are applied separately to England and Wales rather than to the sum of the total waste.

The proportion of total Schedule 2 waste in the municipal solid waste (MSW) stream, 4% is assumed to be constant

The rate of MSW waste growth (and therefore the level of Schedule 2 waste arisings) is based on our in-house econometric modelling applied to both England and Wales. The analysis models different growth rates for Schedule 2 waste under the "Sensitivities" section.

The composition of the Schedule 2 waste is assumed to remain constant based on the 2007/08 split.

The proportion of Schedule 2 waste managed within the MSW stream progressively increases at **5%** per annum as disposal costs become more expensive. The report by Enviro is a static assessment providing information on the amount of Schedule 2 waste for England and Wales only for 2007/08. There is no other information available to assess the profile of schedule 2 waste for prior years and thus to forecast the baseline the analysis primarily links the 5% increase per annum to changes in the landfill tax and tightening of budgets. As figure 1 indicates, a significant proportion of Local Authorities charge for collection only and thus there is scope for more Schedule 2 premises to consider this a viable option as the savings in disposal costs become even more substantial. The 5% is applied to the percentage currently in the municipal waste stream for each Schedule 2 premise category separately for England and Wales.

Prior to 2019/20, the analysis has modelled Schedule 2 premises gradually using LAs for their waste collection and disposal to reflect mainly imperfect information on LA charging as is reflected in the report and Schedule 2 premises holding long term contracts with commercial operators.

Table1: Schedule 2 waste arisings within MSW stream in England and Wales for the years 2010 to 2020

Schedule 2 Premises for England & Wales – tonnes within MSW Stream	2010/11	2011/12	2012/13	2013/14	2014/15
NHS Hospitals	6,066	6,352	6,686	7,063	7,478
Private Hospitals	1,006	1,054	1,109	1,171	1,240
Residential Hostels	1,029	1,078	1,134	1,198	1,269
Care Homes	19,161	20,065	21,120	22,310	23,619
Child care facilities (pre-school)	13,106	13,724	14,446	15,259	16,155
LEA Schools	170,321	178,354	187,740	198,309	209,953
Private Schools	3,486	3,650	3,843	4,059	4,297
Further Education Colleges	83,905	87,863	92,486	97,693	103,430
Universities	132,753	139,015	146,330	154,569	163,644
Self Catering Accommodation	31,107	31,023	31,100	31,287	31,546
Caravan Sites	20,887	21,873	23,024	24,320	25,748
Campsites	8,255	8,644	9,099	9,611	10,175
Penal Institutions	11,259	11,790	12,411	13,109	13,879
Charity Shops	6,501	6,808	7,166	7,569	8,014
Schedule 2 Waste within MSW stream	508,842	531,291	550,902	587,529	620,448
% Within MSW stream	48%	50%	53%	55%	58%
Schedule 2 waste Outside MSW stream	548,909	521,118	491,090	473,842	449,732
% Outside MSW stream	52%	50%	47%	45%	42%
TOTAL SCHEDULE 2 WASTE	1,057,751	1,052,409	1,041,992	1,061,370	1,070,180

Schedule 2 Premises for England & Wales – tonnes within MSW Stream	2015/16	2016/17	2017/18	2018/19	2019/20
NHS Hospitals	7,929	8,356	8,942	9,503	10,103
Private Hospitals	1,315	1,394	1,483	1,576	1,676
Residential Hostels	1,345	1,423	1,517	1,612	1,714
Care Homes	25,046	26,558	28,244	30,017	31,912
Child care facilities (pre-school)	17,131	18,147	19,318	20,532	21,828
LEA Schools	222,633	235,472	251,057	266,149	274,802
Private Schools	4,557	4,832	5,139	5,461	5,806
Further Education Colleges	109,676	115,884	123,104	130,362	138,110
Universities	173,528	183,572	195,682	207,972	221,101
Self Catering Accommodation	31,859	32,202	32,586	32,984	33,396
Caravan Sites	27,303	28,904	30,789	32,722	34,788
Campsites	10,790	11,424	12,168	12,932	13,748
Penal Institutions	14,717	15,600	16,596	17,639	18,752
Charity Shops	8,498	8,994	9,583	10,185	10,827
Schedule 2 Waste within MSW stream	656,327	692,760	736,205	779,646	818,563
% Within MSW stream	61%	64%	67%	70%	72%
Schedule 2 waste Outside MSW stream	424,447	397,649	369,242	339,288	314,357
% Outside MSW stream	39%	36%	33%	30%	28%
TOTAL SCHEDULE 2 WASTE	1,080,774	1,090,409	1,105,447	1,118,934	1,132,920

To summarise for both England and Wales the total Schedule 2 waste dealt by local authorities between 2010/11 to 2019/20 is estimated to be 6.11mt and 0.38mt and for commercial operators 4.11mt and 0.23mt respectively. Please note these figures aggregate England and Wales therefore the “% with MSW stream” and “% outside the MSW stream” will be different when considering the two regions separately. Please see tables 4 and 5 for the percentage split by region.

Redefinition of Municipal Solid Waste Arisings

The term “municipal waste” is used in relation to the EU Landfill Directive targets to reduce biodegradable municipal waste to landfill, and in the related Landfill Allowance Trading Scheme for England and the Landfill Allowances Scheme¹ in Wales. The definition of municipal waste is household waste, and waste that is similar in nature and composition. Until relatively recently, it was interpreted quite narrowly to refer to waste collected by local authorities. This would have included all household waste (whether from domestic properties or from the non-domestic premises listed in Schedule 2) and any commercial or industrial waste collected by the authority.

Following discussions with the European Commission in 2010, the UK’s interpretation of the definition of municipal waste was revised. As a result we now use the following terms in relation to waste managed by local authorities:

Local Authority Collected Municipal Waste (LACMW)

LACMW refers to the previous ‘municipal’ element of the waste collected by local authorities. That is household waste, and any commercial or industrial waste which is collected by the local authority and which is similar in nature and composition to household waste. It excludes construction and demolition waste

Local Authority Collected Waste (LACW)

All waste collected by the local authority. This is a slightly broader concept than LACMW as it would include all LACMW plus any construction and demolition waste which is collected by the authority. LACW is the definition that is now used in statistical publications, which previously referred to municipal waste.

Municipal waste is now interpreted as a much broader subset of waste. This is based on the European Waste Catalogue classifications of waste and covers household waste and around half of all commercial and industrial waste.

It should be noted that the Controlled Waste Regulations (1992) do not contain any reference to “municipal waste”, as the classification of controlled waste is not dependent on the body that collects it.

Current financing of Schedule 2 municipal solid waste (MSW) arisings

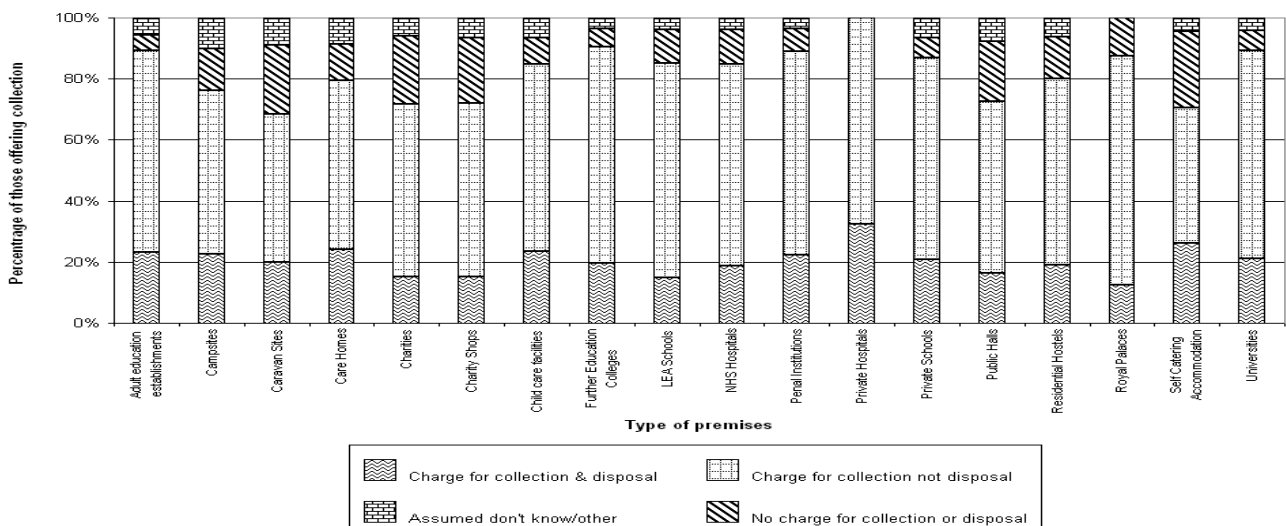
Local Authorities in England currently do not have funding for Schedule 2 disposal costs. The money to support Schedule 2 premises’ waste services is not included in the Revenue Support Grant and therefore the impact of the policy options on Local Authority budgets will not be double counted. The disposal costs of waste from Schedule 2 premises will not form part of LA bids for central funding in the future.

Charging policies of local authorities that provide a collection to different types of premises

Taken from the Enviro report, the charging policies for waste disposal authorities varies considerably reflecting both the misinterpretation of the current legislation and contractual obligations in providing the service.

The full cost Local Authorities will incur within the baseline and over the appraised period assumes that the current charging options and their proportions stay the same up until 2020. Thus of the Schedule 2 waste which enters the MSW stream, local authorities incur disposal costs for the proportion which “charge for collection not disposal”, both collection and disposal costs for the proportion where this is “no charge for collection or disposal” and no costs for “charge for collection and disposal”. For “assumed don’t know/other” the modelling has not applied any costing and held it constant.

Figure 1: 2007/08 charging policies for Local Authorities to Schedule 2 premises



¹ <http://wales.gov.uk/topics/environmentcountryside/epw/waste/recycling/disposal/landfill/allowances/?lang=en>

Waste Management Costs

Though the analysis will calculate the estimated disposal costs LA’s will face as a result of both options, that is issuing guidance and amending the legislation, this will not be included in the final NPV. *This is because waste collection and disposal costs merely transfer from the commercial sector to the public sector for both options and therefore do not incur new additional costs.*

Both within the baseline and for the following options we have assumed that the management of Schedule 2 waste is the same as that of municipal waste arisings.

For future projections of waste management, figures taken from the LAWRRD model in Defra provide MSW recycling rates for England and applying this to the Schedule 2 waste within the MSW waste stream can provide estimates on the tonnages of recycling and remaining residual waste.

For Wales, the “Towards Zero Waste” 2009 strategy provides targets on the amount recycled and composted for years up to 2019/20 and these percentages again were used to estimate the recycled and residual waste figures.

For the proportional split on how the residual waste is disposed of (energy from waste or landfill) and of which is recycled (MRF or composted) the analysis takes the most recent breakdown from WasteDataFlow for England and StatsWales for Wales and assumes constant thereafter. In the risk and sensitivities section the analysis models a scenario where all waste is sent to landfill to reflect the extreme case.

Figures for the gate fees for the various treatments are taken from WRAP Gate Fees Report 2009 to calculate the disposal costs. Similarly for collection costs the analysis used WRAP’s “Kerbside Recycling: Indicative Costs and Performance” report.

Landfill Allowance Scheme

Local Authorities may face additional costs from the Landfill Allowance Trading Scheme/Landfill Allowances Scheme when dealing with the additional Schedule 2 waste managed previously by commercial operators. Note that the future of LATS is being considered as part of the Government’s Review of Waste Policy. Currently, waste statistics show that Local Authorities are making good progress towards meeting the 2010 target and are in fact sending less biodegradable waste to landfill than the total allowances allocated to them. This situation however may change for future targets as the diversion will be more difficult to achieve.

It is possible to estimate the additional waste both the English and Welsh LA’s will send to landfill from Schedule 2 waste premises. If we are to assume that the composition of Schedule 2 waste is the same as that from households, the amount of biodegradable waste in MSW is assumed to be 68% for England and 61% for Wales.

The additional amount sent to landfill for the target year is as follows.

Table 2: Additional biodegradable tonnage of waste in MSW assumed to be landfilled in England

Year	Schedule 2 Waste within the MSW stream	Additional tonnage sent to landfill	% to landfill	Biodegradable (68%)	England Target
2012/13	524,895	38,479	39%	26,166	7,459,998

For Wales the figures for landfill were obtained by using the “Towards Zero Waste” strategy which includes targets for the maximum level of landfill for years 2019/20 of 10%. The percentage sent to landfill was interpolated from the 2009/10 actual figures.

Table 3: Additional biodegradable tonnage of waste in MSW assumed to be landfilled in Wales

Year	Schedule 2 Waste within MSW stream	Sent to landfill	% to landfill	Biodegradable (61%)	Wales Target
2012/13	32,800	15,114	46%	9,220	470,000

The consequence of this will be dependent upon how well LA’s are meeting their target. If all allowances are close to if not all used, the impact of the additional waste coming into the LA waste stream could potentially drive up allowance prices resulting in additional costs to taxpayers.

Costs and Benefits of Each Option

The following sections describe the costs and benefits associated with each policy for both England and Wales. Please see page 16 for the summary table of the policies.

Please note there is no data available on the growth of Schedule 2 waste or how it is currently being managed between commercial operators and local authorities for future years. In the absence of data, the analysis is based on the assumptions highlighted on page 9 which reflect the most appropriate models, statistics and reports currently available along with policy judgement.

The analysis calculates the full private costs of each policy option and reports the figures in present value terms.

Option 1 – Issue Guidance

Option 1 assumes that with better information on the current legislation, more businesses will become aware of the free disposal costs made available by Local Authorities and hence two effects are modelled.

1) *More waste from Schedule 2 premises will be diverted from the commercial sector at a faster rate.*

Similar to the baseline, with the landfill tax escalator increasing disposal costs, businesses will be more motivated to consider different options in managing their waste and therefore the analysis assumes a greater amount of Schedule 2 waste will be redirected to the MSW stream. An annual 15% increase is now applied to the percentage currently in the municipal waste stream for each type of Schedule 2 premise for England and Wales. As figure 1 highlights, in 2007/08 a significant proportion of Local Authorities were either charging incorrectly or unaware of the legislation requirements. Therefore such information failures account for the different rate of transition to the public sector for the Do Nothing baseline and Option 1.

It is assumed that by 2019/20 only those Schedule 2 premises which require specialised services that only commercial operators can provide will remain within the private sector. This is estimated to be around 10% -14% of the total Schedule 2 waste depending on the region. Examples of such tailor –made services which would induce this proportion to remain with private carriers relates primarily to collections. For instance, many Schedule 2 premises require daily collections or find it is more cost effective to have one waste provider collect all the types of waste from a site which is producing both household and industrial waste rather than opt for a LA which is not obligated to do so.

A summary of the results is indicated as follows:

Table 4: Schedule 2 waste arisings in England with issue guidance (tonnes)

Year	2010/11	2011/12	2012/13	2013/14	2014/15	2015/16	2016/17	2017/18	2018/19	2019/20
Schedule 2 Waste	996,168	993,479	995,963	1,001,938	1,010,254	1,020,256	1,031,479	1,043,547	1,056,278	1,069,482
Within MSW stream	479,025	544,835	623,560	714,823	787,618	839,367	870,372	899,491	932,506	967,299
% Within MSW stream	48%	55%	63%	71%	78%	82%	84%	86%	88%	90%
Outside MSW stream	517,144	448,644	372,403	287,115	222,637	180,889	161,106	144,056	123,772	102,183
% Outside MSW stream	52%	45%	37%	29%	22%	18%	16%	14%	12%	10%

Table 5: Total Schedule 2 waste arisings in Wales with issue guidance (tonnes)

Year	2010/11	2011/12	2012/13	2013/14	2014/15	2015/16	2016/17	2017/18	2018/19	2019/20
Schedule 2 Waste	59,089	58,930	59,077	59,432	59,925	60,518	61,184	61,900	62,655	63,438
Within MSW stream	29,818	34,100	39,215	42,835	45,889	49,178	50,419	51,716	52,987	54,394
% Within MSW stream	50%	58%	66%	72%	77%	81%	82%	84%	85%	86%
Outside MSW stream	29,271	24,830	19,862	16,597	14,036	11,341	10,765	10,184	9,668	9,044
% Outside MSW stream	50%	42%	34%	28%	23%	19%	18%	16%	15%	14%

The incremental difference in comparison to the baseline is as follows. By 2015/16 most of the schedule 2 premises where possible have shifted their waste to the Local authorities.

Table 6: Additional Schedule 2 waste entering the MSW stream due to issuing guidance for England (tonnes)

Schedule 2 Premises	2010/11	2011/12	2012/13	2013/14	2014/15	2015/16	2016/17	2017/18	2018/19	2019/20
Addition to MSW stream	0	44,736	98,665	161,908	203,783	221,831	216,404	206,385	197,481	194,839

Table 7: Additional Schedule 2 waste entering the MSW stream due to issuing guidance for Wales (tonnes)

Schedule 2 Premises	2010/11	2011/12	2012/13	2013/14	2014/15	2015/16	2016/17	2017/18	2018/19	2019/20
Addition to MSW stream	0	2,909	6,415	8,220	9,276	10,387	9,374	8,617	8,366	8,290

2) With clear guidance, the proportion of LA's charging different to the legislation requirement decreases so that by 2019/20 all LA's are only charging for collection only.

The following table shows the proportional split in different charging offered to each Schedule 2 premise for both England and Wales in 2010/11 and the subsequent effects after issuing further guidance by 2019/20. The modelling assumes by 2019/20 all local authorities will "charge for collection not disposal". Furthermore the divergence is gradual to reflect contractual obligations and (though to a lesser extent) imperfect information continuing to persist in the market.

Table 8: Charging policies for Local Authorities to Schedule with proportions for England and Wales

	2011/12				2019/20			
	Charge for collection & disposal	Charge for collection not disposal	No charge for collection or disposal	Assumed don't know/ either	Charge for collection & disposal	Charge for collection not disposal	No charge for collection or disposal	Assumed don't know/ either
NHS Hospitals	20%	64%	12%	4%	0%	100%	0%	0%
Private Hospitals	21%	79%	0%	0%	0%	100%	0%	0%
Residential Hostels	20%	60%	15%	5%	0%	100%	0%	0%
Care Homes	25%	55%	15%	5%	0%	100%	0%	0%
Child care facilities	25%	60%	10%	5%	0%	100%	0%	0%
LEA Schools	15%	70%	10%	5%	0%	100%	0%	0%
Private Schools	20%	70%	5%	5%	0%	100%	0%	0%
Further Education Colleges	20%	70%	8%	2%	0%	100%	0%	0%
Universities	20%	65%	10%	5%	0%	100%	0%	0%
Self Catering Accommodation	25%	40%	30%	5%	0%	100%	0%	0%
Caravan Sites	20%	50%	20%	10%	0%	100%	0%	0%
Campsites	22%	50%	15%	13%	0%	100%	0%	0%
Penal Institutions	22%	78%	0%	0%	0%	100%	0%	0%
Charity Shops	15%	50%	23%	12%	0%	100%	0%	0%

Costs of Option 1:

The issuing of guidance therefore has implications on both local authorities and Schedule 2 private businesses. For reporting purposes the analysis will assess the additional costs Local Authorities face from the additional Schedule 2 waste coming into the MSW stream and implications based on different charging policies.

Higher waste management costs to Local Authorities

The following analysis calculates the aggregate change in costs Local Authorities face depending on the specific type of charging policy they offer.

- As expected, the number of Local Authorities which offer "no charge for collection or disposal" reduces given that more Local Authorities transfer to "charge for collection not disposal". Therefore the aggregate cost to the reduced number of local authorities who remain under this charging policy will decrease (as in total there are now fewer of them).

- The total cost for those local authorities operating a “charge and collection” policy is zero in both the baseline and from issuing guidance as costs are fully recovered. However, as above, the number of Local Authorities offering this type of charging policy decreases.
- More of the Local Authorities highlighted above are progressively moving towards “charge for collection not disposal” to comply with the regulation, and so the overall total costs under this category increases substantially (they can no longer charge for disposal).

No charge for collection or disposal

A proportion of Local Authorities in the baseline and as evident in the report charge for neither collection nor disposal and therefore with the guidance will have the opportunity to save on collection costs as more diverge towards collection charge only. The savings to Local Authorities are as follows:

Table 9: Change in Local authority costs from proportion offering no charge for collection or disposal (£m)

Increase in costs to LA's	2010/11	2011/12	2012/13	2013/14	2014/15	2015/16	2016/17	2017/18	2018/19	2019/20	Total
England	£0.00	-£0.27	-£0.62	-£1.11	-£1.97	-£3.04	-£4.28	-£5.55	-£6.82	-£8.03	-£31.67
Wales	£0.00	-£0.01	-£0.03	-£0.07	-£0.13	-£0.18	-£0.25	-£0.32	-£0.38	-£0.43	-£1.80
Total	£0.00	-£0.28	-£0.65	-£1.18	-£2.09	-£3.22	-£4.53	-£5.87	-£7.19	-£8.46	-£33.48

* please note negative numbers represent savings to Local Authorities

The total savings to private-sector Schedule 2 premises is £8.91m for England and £0.29m for Wales.

Charge for collection not disposal

With clearer guidance Local Authorities will face higher costs based firstly on more Schedule 2 waste coming into the MSW stream and secondly additional disposal costs for those that previously incorrectly charged for collection and disposal from Schedule 2 businesses.

Table 10: Change in Local authority costs from proportion offering charge for collection but not disposal (£m)

Increase in costs to LA's	2010/11	2011/12	2012/13	2013/14	2014/15	2015/16	2016/17	2017/18	2018/19	2019/20	Total
England	£0.00	£2.46	£5.52	£9.30	£12.52	£14.44	£15.53	£16.45	£17.51	£18.85	£112.59
Wales	£0.00	£0.15	£0.33	£0.47	£0.59	£0.68	£0.70	£0.73	£0.76	£0.80	£5.22
Total	£0.00	£2.61	£5.85	£9.77	£13.11	£15.13	£16.23	£17.18	£18.28	£19.65	£117.81

The net additional cost to Local Authorities from issuing guidance is £81million and £3million for England and Wales respectively over the 10 year period in present value terms. From private Schedule 2 premises this equates to additional costs of £15m for England and £0.41m for Wales. As stated previously, though these costs have been analysed and assessed, they are not included in the final NPV of the IA as they represent redistribution costs from commercial waste management operators to Local authorities.

Charge for collection and disposal

No impacts as local authorities recover the full costs of waste management.

Landfill Allowance Scheme

As option 1 would result in waste from the commercial sector entering the MSW stream at a faster rate, the additional biodegradable waste going to landfill is 21,811 tonnes for England and 1803 tonnes for Wales.

Table 11: Additional biodegradable tonnage of waste in MSW assumed to be landfilled in England

Year	Additional Schedule 2 Waste within the MSW stream	Sent to landfill	% to landfill	Biodegradable (68%)	England Target
2012/13	106,916	32,074	30%	21,811	7,459,998

Table 12: Additional biodegradable tonnage of waste in MSW assumed to be landfilled in Wales

Year	Additional Schedule 2 Waste outside MSW stream	Sent to landfill	% to landfill	Biodegradable (61%)	Wales Target
2012/13	6,415	2,956	46%	1,803	470,000

Local Authorities who have insufficient capacity to divert waste to alternative treatments then landfill would either have to buy additional allowances or face fines of £150/tonne in England and £200/tonne in Wales.

GHG disbenefits from earlier shift to LAs

We have assumed that the treatment of Schedule 2 waste remains the same under either commercial operators or LA's. There is no quantitative evidence available which shows how Schedule 2 waste is treated by commercial operators however with sufficient infrastructure and revenue, a higher proportion of the waste could be diverted from landfill to treatments higher up in the waste hierarchy in comparison. There are substantial environmental benefits from avoided landfill. Every tonne of residual waste diverted from landfill saves approximately 420kg of carbon at an environmental benefit of £45 (Landfill Bans model).

Admin Costs

The guidance will be published on the website and therefore does not incur any substantial additional costs. The one off administrative burdens are defined as "administrative activities that businesses are required to conduct in order to comply with the information obligations that are being imposed".

For Option 1 the time it would take to read the guidance would be 1 hour and the hourly cost of the member of staff in business completing this is £19.20. The price is therefore 1x£19.20.

The main admin burden will fall on all 378 Local Authorities in England and Wales resulting in admin costs of £7,258. Although most of the customers will rely on their local authority for information, many of the small customers like caravan parks and self-caterers will get advice from their trade bodies and the big premises (prisons, universities, hospitals and colleges) may also read the guidance fully. Such trade bodies and Schedule 2 premises account for approximately 2000 businesses and additional admin costs of £38,400.

The total admin costs for Option 1 is £45,658.

Loss to private waste contractors

Private sector waste contractors will be increasingly disadvantaged in the marketplace for handling Schedule 2 waste, as they are undercut by local authorities who are unable to charge for disposal of the waste. Without being able to establish the scale of this cost, as the data is commercially sensitive, this equates to approximately 1,546kt for England and 0.07kt for Wales. Such distortion prevents viable businesses from continuing to operate and decreases the overall competitive performance of the market.

Table 13: Additional amount of waste outside of municipal waste stream from issuing guidance for England and Wales (000t)

Year	2010/11	2011/12	2012/13	2013/14	2014/15	2015/16	2016/17	2017/18	2018/19	2019/20	Total
Schedule 2 Waste	0	-48	-105	-170	-213	-232	-226	-215	-206	-203	-1,618

Benefits of Option 1

Transparency Benefits

Issuing guidance would reduce the number and range of interpretations currently in use. Many local authorities are only looking for clarity and are not that concerned about the finer legal points. However, those that have devised strategies and invested heavily around alternative interpretations would not be so open to change and may persist with their interpretation unless and until a court rules otherwise.

Infrastructure certainty

The key factor to consider is whether, as the Enviro report states, the facilities currently used by local authorities have the capacity to accept the tonnage which is currently managed by commercial operators. The analysis calculates an additional 25% of Schedule 2 waste overall entering the MSW stream. Policy certainty can help LA's forecast future waste arisings and subsequent disposal treatment demands, however a level of long-term uncertainty will remain as Schedule 2 customers can opt in and out of local authority services.

Subsidy to Schedule 2 businesses

Businesses of a type listed in Schedule 2 will continue to benefit from having their waste disposal costs paid by the taxpayer if they have their waste collected by their local authority, and more businesses may take up this option as the guidance makes them aware of their rights. The modelling calculates cumulative savings of £81million and £3million for England and Wales respectively. For private-sector Schedule 2 premises this equates to savings of £15m for England and £0.41m for Wales. Please see Annex 3 for further detail.

Of which to small firms

The Schedule 2 premises which tend to compose of small firms are self catering accommodation, caravan sites and camp sites. Although at consultation stage, the Government requested data from businesses to allow the

analysis to improve its assessment of the impact on small firms, none of the responses provided any figures. Without therefore information on the business size for each category, we have assumed the proportion attributing to small businesses is in the region of 80% - 90%. Applying 85% to each schedule 2 waste category estimates the following decrease in costs to small firms.

Table 14: Change in waste management costs to Small Firms for England and Wales

Increase in costs to small firms (£m)	2010/11	2011/12	2012/13	2013/14	2014/15	2015/16	2016/17	2017/18	2018/19	2019/20	Total
England	-£0.00	-£0.10	-£0.23	-£0.39	-£0.60	-£0.81	-£0.91	-£0.82	-£0.74	-£0.66	-£5.25
Wales	-£0.00	-£0.01	-£0.01	-£0.02	-£0.03	-£0.04	-£0.03	-£0.03	-£0.02	-£0.02	-£0.19
Total	-£0.00	-£0.10	-£0.24	-£0.41	-£0.63	-£0.85	-£0.94	-£0.84	-£0.76	-£0.67	-£5.44

* please note negative numbers represent an increase in cost to Local Authorities

Option 2 – Amend the Secondary Legislation

Costs of Option 2:

Admin Costs

The admin costs for Option 2 relate to businesses reading and understanding the new legislation. The explanatory notes will be published on the website and therefore does not incur any substantial additional costs. The one off admin burdens for this option are greater as this guidance would take longer to read; 3 hours therefore the total cost of activity for 378 local authorities and 2000 large Schedule 2 premises and trade bodies is £136,973.

Taxpayer no longer pays for the disposal of waste from Schedule 2 businesses

Given that Local Authorities will be able to charge for services similar to those offered by private waste management companies; Schedule 2 premises would now cover the disposal costs for the amount of waste they generate. The total costs are estimated to be in the region of £251m for England and £14m for Wales. For private-sector Schedule 2 premises, this equates to £41.51m for England and £0.69m for Wales. Please see Annex 3 for the methodology and full breakdown.

Of which to small firms

As stated previously the Schedule 2 premises which tend to compose of small firms are self catering accommodation, caravan sites and camp sites. It should be noted that the majority of the small businesses who responded to the public consultation agreed that they should pay for their own waste disposal. Applying the same proportions as previously, the change in costs to small firms is as follows.

Table 15: Change in waste management costs to Small Firms for England and Wales

Increase in costs to small firms (£m)	2010/11	2011/12	2012/13	2013/14	2014/15	2015/16	2016/17	2017/18	2018/19	2019/20	Total
England	£2.47	£2.53	£2.57	£2.64	£2.70	£2.69	£2.69	£2.69	£2.70	£2.71	£26.4
Wales	£0.08	£0.08	£0.08	£0.09	£0.09	£0.09	£0.09	£0.09	£0.09	£0.09	£0.88
Total	£2.56	£2.61	£2.66	£2.73	£2.79	£2.78	£2.78	£2.78	£2.78	£2.80	£27.3

Benefits of Option 2:

Full Cost Recovery

As stated previously, the amendment of the Secondary legislation will enable Local Authorities to charge for both collection and disposal costs for all non-domestic premises but excluding charity shops and reuse organisations. The British Heart Foundation stated in the consultation responses they would face an additional cost of £200k per annum if this were to be extended to their charity shops as well.

Ultimately the choice of service provider will rest, as previously, with the creator of the waste based on who can provide the most appropriate service, however, this time without the distortion of the taxpayer picking up over half the cost of the Local Authority service. Should Local Authorities handle this waste, they too would be able to recover all costs.

Local authorities could now recover the full costs of handling the waste they previously dealt with in the baseline. The savings are £251m for England and £14m for Wales in present value terms. From private-sector Schedule 2 premises, this equates to £41.51m for England and £0.69m for Wales.

Table 16: Additional disposal and collection costs for Schedule 2 waste in England relative to the baseline (£m)

Year	2010/11	2011/12	2012/13	2013/14	2014/15	2015/16	2016/17	2017/18	2018/19	2019/20	Total
Landfill Gate Fee	-£3.3	-£3.2	-£3.1	-£3.1	-£3.1	-£3.1	-£3.2	-£3.3	-£3.3	-£3.4	-£32.1
Landfill Tax	-£7.1	-£8.2	-£9.1	-£10.2	-£11.3	-£11.4	-£11.7	-£11.8	-£12.1	-£12.3	-£105.3
Efw	-£4.1	-£4.0	-£3.9	-£3.9	-£3.9	-£4.0	-£4.0	-£4.1	-£4.2	-£4.3	-£40.4
Recycling*	-£2.7	-£2.8	-£3.0	-£3.1	-£3.2	-£3.3	-£3.4	-£3.5	-£3.6	-£3.7	-£32.4
Total Disposal Costs	-£17.2	-£18.2	-£19.2	-£20.3	-£21.5	-£21.9	-£22.3	-£22.7	-£23.3	-£23.6	-£210.2
Total Collection Costs	-£3.7	-£3.8	-£3.8	-£3.9	-£4.0	-£4.1	-£4.2	-£4.3	-£4.4	-£4.4	-£40.6
TOTAL	-£20.9	-£22.0	-£23.0	-£24.3	-£25.5	-£26.0	-£26.5	-£27.0	-£27.6	-£28.1	-£250.8

* of which is MRF and composting

Table 17: Additional disposal and collection costs for Schedule 2 waste in Wales relative to the baseline (£m)

Year	2010/11	2011/12	2012/13	2013/14	2014/15	2015/16	2016/17	2017/18	2018/19	2019/20	Total
Landfill Gate Fee	-£0.3	-£0.3	-£0.2	-£0.2	-£0.2	-£0.2	-£0.2	-£0.2	-£0.2	-£0.2	-£2.3
Landfill Tax	-£0.6	-£0.6	-£0.7	-£0.8	-£0.8	-£0.8	-£0.8	-£0.8	-£0.7	-£0.7	-£7.3
Efw	-£0.0	-£0.0	-£0.0	-£0.0	-£0.0	-£0.0	-£0.0	-£0.0	-£0.0	-£0.0	-£0.4
Recycling*	-£0.1	-£0.2	-£0.2	-£0.2	-£0.2	-£0.2	-£0.2	-£0.2	-£0.2	-£0.2	-£2.0
Total Disposal Costs	-£1.1	-£1.1	-£1.1	-£1.2	-£1.3	-£1.3	-£1.3	-£1.3	-£1.2	-£1.2	-£12.0
Total Collection Costs	-£0.2	-£0.2	-£0.2	-£0.2	-£0.2	-£0.2	-£0.3	-£0.3	-£0.3	-£0.3	-£2.4
TOTAL	-£1.3	-£1.3	-£1.4	-£1.4	-£1.5	-£1.5	-£1.5	-£1.5	-£1.5	-£1.4	-£14.4

Polluter Pays Principle

Legislation covering this area will reflect the polluter pays principle. Schedule 2 waste producers will have greater responsibility for waste production and greater choice to use sustainable waste management options. This will yield GHG benefits in the form of waste prevention or increasing rates in recycling.

Please note some of the waste prevention benefits could possibly be slightly reduced should there be perverse consequences, such as Schedule 2 premises requiring users to take their rubbish home and thus increasing the amount of waste in the domestic waste stream. However, this scenario is considered highly unlikely.

In our analysis we have not factored in waste prevention given the uncertainty around its impact. To illustrate the environmental benefits of incentivising better behaviour please see box below.

Polluter Pays Principle

Effect 1: Waste prevention – Assuming a 1% reduction per annum in Schedule 2 waste arisings which Local Authorities charge for collection not disposal under the baseline.

Environmental Benefits: The maximum environmental benefits are the savings from landfill disposal and the embedded emissions. The maximum GHG benefits in for the 10 year period come to £3.98m in present value terms.

Financial Savings: This relates to savings in collection and disposal costs from no longer having to manage the waste that is being prevented. The savings this would yield range from £0 (if the firm has to invest in certain technology in order to achieve such reductions in waste) to £74 plus landfill tax, the most expensive form of collection and disposal per tonne of waste. For a 1% reduction in Schedule 2 waste per annum under the baseline, the cumulative financial savings are between £0-£8.3m for England and Wales.

Effect 2: Assuming an additional 1% of the total Schedule 2 waste per annum is recycled

Environmental Benefits: The saving in embedded emissions from recycling and landfill disposal yield benefits of approximately £1.24m in present value terms.

Financial Savings: The net financial savings from sending more waste for recycling between 2010/11 to 2019/20 is £1.95m in present value terms. Again, this is the difference in collection and disposal costs for recycling relative to landfill.

Transparency Benefits

Similar to Option 1 there are greater transparency benefits from amending the legislation. More clearly worded and easily understood legislation would lead to fewer disputes over interpretation between authorities and their customers.

Local accountability

Local authorities will be able to choose whether or not to charge for collection and/or disposal, giving them the flexibility to support local social and private enterprise, and ensure best use of local budgets in a way that reflects the priorities of local people. Local taxpayers would have a say in whether their money should be used to support non-domestic waste disposal, which they do not currently have.

Infrastructure certainty

There would also be greater transparency of budgets for the local authorities and publicly funded Schedule 2 organisations. Local Authorities would have a better understanding of their longer-term liabilities, improving their ability to estimate current and future waste arisings and therefore be more likely to invest in the correct levels of infrastructure.

Other Benefits

Market distortions caused by local authorities being unable to charge for disposal would be removed. Hidden subsidies in the form of free waste disposal encourage waste creation as the benefits to business for every tonne of waste becomes greater than the cost of disposal. This also leads to the crowding out effect as private sector waste operators are adversely affected by the taxpayer picking up the cost of disposal when premises choose Local Authority waste services.

Finally the option also increases the potential for greater economic efficiency for both local authorities and publicly funded Schedule 2 organisations. Increasing competition should generate lower prices and encourage more environmentally efficient treatment of waste.

Risks and Assumptions

The main risk is whether Local Authorities will have sufficient infrastructure to deal with the additional Schedule 2 waste. Such incapacity could drive more of the additional waste to landfill and therefore result in higher disposal costs than estimated in this analysis. However, option 2 will remove the main incentive for large premises to choose Local Authority waste services.

The main key assumptions regarding the analysis were our in-house projections for waste growth and the proportion that is assumed to be landfilled for Schedule 2 waste. If we were to change these assumptions the range in the waste management costs to Local Authorities over the full 10 year period is as follows.

Table 18: Sensitivity analysis results

	England (£m)			Wales (£m)		
	Standard	0% Waste Growth	100% to landfill	Standard	0% Waste Growth	100% to landfill
Total waste management Costs (£m)						
Option 1	80.92	79.04	165.82	3.42	3.93	9.46
Option 2	-250.8	-246.6	-398.6	-14.56	-14.35	-£24.8

Direct costs and benefits to business calculations (following OIOO methodology)

One-In, One-Out

Fees and charges will be out of scope, except where they are being increased because of additional regulatory activity. Where the scope of fees and charges are unchanged but the levels are moving from subsidised to full cost recovery they should not be affected by One-in, One-Out. Conversely, where more efficient regulatory activity leads to lower fees and charges these can count as “Outs”.

Local authorities are not funded by central government for the disposal of Schedule 2 waste, and so these costs are borne by local taxpayers. Therefore, as confirmed by the Better Regulation Executive, this is not applicable to the Controlled Waste Regulations as the power given to local authorities is to charge a fee for a service and the policy option is moving from a subsidised fee structure to a full cost recovery one. Businesses are under no obligation to get their waste disposal service from the council.

Summary and preferred option with description of implementation plan

Table19: Distribution of costs

Option	Who is collecting S2 waste?	Who is paying for the disposal of the S2 waste?	Who is paying for the collection of the S2 waste?
1) Issue Guidance	Increasingly LA's as situation made more explicit through guidance	Taxpayers	S2 Premises
2) Secondary Legislation	LAs or Commercial Operators, depending on who offers more cost-effective service in individual situations	S2 Premises	S2 Premises

Table 20: Summary of Costs and Benefits

Option	Costs	Benefits
1) Issue guidance	<p>LAs incur additional maximum waste management costs of £81million and £3million for England and Wales respectively. These are transfer costs and therefore are not included in the final NPV.</p> <p>Costs of issuing guidance - £0.05m</p>	<p>Transparency Benefits</p> <p>Infrastructure investment due to policy certainty.</p>
2) Secondary Legislation	<p>Recovery of cost in present value terms of £251m for England and £14m for Wales in present value terms. These are transfer costs and therefore are not included in the final NPV.</p> <p>Cost of amending secondary legislation - £0.14m</p>	<p>Transparency Benefits- Clearer guidance, leading to fewer disputes and less confusion</p> <p>Infrastructure certainty</p> <p>Imposing PPP correctly</p> <p>Removal of market distortions, creating greater economic efficiency</p>

Specific Impact Tests for preferred policy choice: Option 2 - Amend Secondary Legislation

Equality Impact Assessment

The impact on Equalities of the proposed changes to the Regulations have been considered and found not to be relevant. The changes concern the power of authorities to charge institutions for waste disposal and therefore have no impact on individuals.

Competition Assessment

Removing the subsidy local authorities are required to provide by Law on waste disposal to ensure a level playing field for commercial operators.

Small Firms Impact Tests

The majority of 'small firms' likely to be affected by the proposed change of the Regulations are in the self-catering holiday accommodation and childcare (pre-school) categories. We believe that the majority of these are currently recipients of local authority waste services so potentially could see the greatest impact on their budgets, if local authorities choose to charge them for waste disposal. We have no data on the additional costs potentially incurred by these sectors, although we sought further information as part of the public consultation. Small firms who responded to the consultation generally agreed that a public subsidy of their operating costs was not sustainable. Please note that for indicative purposes, the analysis does provide an estimation of the overall costs to small firms. To repeat, businesses are required by law to pay for their waste services but those that fall under Schedule 2 and use Local Authority waste services are currently receiving free waste disposal, paid for by the taxpayer, which they would lose under this proposal.

Greenhouse Gas Impact Assessment

Landfill tax incentivises both sectors to increase recycling and recovery operations and reduce landfill. Public and private sector waste managers will be subject to the same requirements to collect key recyclables separately from the residual waste stream under the revised Waste Framework Directive. Therefore we consider that any transfer of waste between the public and private sectors will have minimal impact on GHG emissions.

However, by allowing local authorities to recoup the full costs of handling Schedule 2 waste, we expect that many will be able to offer an improved recycling service to their current Schedule 2 customers. Removing the distorting effect of the current subsidy will also encourage Schedule 2 customers to seek out cost-effective recycling services from the private sector where their Local Authority is unable to meet their requirements. Overall, therefore, there may be a small positive impact on GHG emissions.

Wider Environmental Issues Impact Assessment

There are no wider environmental issues arising from the proposed change to the Regulations. The changes may cause a movement from one service provider to another but the laws governing waste management apply equally to private contractors and local authorities.

Health and Well-being Impact Test

Local authorities will retain the duty to collect from Schedule 2 premises, if requested, so public health will not be compromised. The proposed changes to the Regulations have no impact on the Health and well-being of service recipients or providers. The laws governing Health and Safety and the management of waste apply to whoever is providing the service.

Human Right Impact Assessment

The proposed changes have no direct impact on Human Rights.

Justice Impact Test

The proposed changes will make the Regulations more complete, remove the opportunity for variation in interpretation, reduce the need for legal challenge and ensure potential customers have a clear understanding of the services they can expect from their local authority at no additional cost.

Rural Proofing Impact Test

The duty on a local authority to make arrangements to collect waste falling under Schedule 2, if asked, has been retained in the proposed new Regulations to ensure that those in remote rural areas can be sure their waste will be collected even if private waste contactors refuse to collect from remote areas.

Sustainable Development Impact Test

The proposed changes are expected to foster the principles of sustainable development, by requiring Schedule 2 Institutions that use local authority services to pay for disposal of their waste they will be, for the first time, incentivised to reduce the amount of waste they produce (the highest aspiration of the waste hierarchy).



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Annex 1: Post Implementation Review (PIR) Plan

<p>Basis of the review:</p> <p>Statutory duty to review forms part of the legislation. This is set for 2017, five years after the regulations come into force.</p>
<p>Review objective:</p> <p>A proportionate check that the regulation is operating as expected.</p>
<p>Review approach and rationale:</p> <p>Scan of stakeholder views, including local authorities and "Schedule 2" customers, to establish whether they have any concerns over the interpretation or application of any aspect of the regulations. We consider that this will be sufficient to allow us identify any perverse outcomes and to 'fine-tune' the regulations, given that it will only be 5 years since the extensive consultation process on introducing the regulations.</p>
<p>Baseline:</p> <p>The baseline is set out in the main body of the impact assessment.</p>
<p>Success criteria</p> <p>We will consider the regulations to be successful if they have created a level-playing field for local authorities and commercial waste contractors to compete for business. We will revisit the rationale for exempting charity shops, reuse organisations, and premises used for public meetings from waste disposal costs to ensure that they are still producing negligible amounts of waste and that there is no widespread abuse of the exemption.</p>
<p>Monitoring information arrangements:</p> <p>We plan to survey local authorities in 2016 to determine how the waste is being managed, followed by informal stakeholder engagement to get their views on how the new legislation is working and whether any further changes are needed.</p>
<p>Reasons for not planning a review</p> <p>N/A</p>

Annex 2: 2007/08 Schedule 2 waste breakdown for England and Wales

Table A2-1: 2007/08 Schedule 2 waste arisings split for England per premise

Schedule 2 Premises	Split	Total Within MSW stream	Amount estimated to be currently in municipal waste stream (tonnes)	Amount estimated to be currently outside of municipal waste stream (tonnes)	Amount estimated to be currently in municipal waste stream (tonnes)	Amount estimated to be currently outside of municipal waste stream (tonnes)
NHS Hospitals	7%	81,079	5,766	75,313	7%	93%
Private Hospitals	0%	5,173	1,066	4,107	21%	79%
Residential Hostels	0%	2,238	1,047	1,191	47%	53%
Care Homes	10%	106,686	20,412	86,274	19%	81%
Child care facilities (pre-school)	4%	46,035	13,722	32,314	30%	70%
LEA Schools	24%	261,508	173,351	88,157	66%	34%
Private Schools	2%	19,355	3,711	15,643	19%	81%
Further Education Colleges	14%	154,542	83,818	70,725	54%	46%
Universities	23%	251,088	135,624	115,464	54%	46%
Self Catering Accommodation	3%	33,084	33,084	0	100%	0%
Caravan Sites	4%	46,980	21,616	25,364	46%	54%
Campsites	2%	18,636	8,559	10,077	46%	54%
Penal Institutions	4%	41,609	11,919	29,689	29%	71%
Charity Shops	1%	14,178	6,695	7,483	47%	53%
		1,082,191	520,390	561,801	48%	52%

Source: Enviro Consulting Ltd 2009 Understanding current management arrangements for Schedule 2 of the Controlled Waste Regulations 1992 waste (WR0308) Defra

Table A2-2: 2007/08 Schedule 2 waste arisings split for Wales per premise

Schedule 2 Premises	Split	Total Within MSW stream	Amount estimated to be currently in municipal waste stream (tonnes)	Amount estimated to be currently outside of municipal waste stream (tonnes)	Amount estimated to be currently in municipal waste stream (tonnes)	Amount estimated to be currently outside of municipal waste stream (tonnes)
NHS Hospitals	10%	6,633	823	5,810	12%	88%
Private Hospitals	0%	134	27	107	20%	80%
Residential Hostels	0%	142	71	71	50%	50%
Care Homes	10%	6,709	403	6,306	6%	94%
Child care facilities (pre-school)	2%	1,354	515	839	38%	62%
LEA Schools	26%	16,542	11,665	4,877	71%	29%
Private Schools	0%	320	76	244	24%	76%
Further Education Colleges	15%	9,712	7,325	2,386	75%	25%
Universities	26%	16,965	8,584	8,381	51%	49%
Self Catering Accommodation	1%	708	708	0	100%	0%
Caravan Sites	3%	2,148	1,074	1,074	50%	50%
Campsites	1%	816	408	408	50%	50%
Penal Institutions	2%	1,119	312	807	28%	72%
Charity Shops	1%	822	367	455	45%	55%
		64,124	32,358	31,765	50%	50%

Source: Enviro Consulting Ltd 2009 Understanding current management arrangements for Schedule 2 of the Controlled Waste Regulations 1992 waste (WR0308) Defra

Annex 3: Impact on Private Schedule 2 Premises

To calculate the impact to private schedule 2 premises, to begin with assumptions on the public and private proportions for some Schedule 2 premises needed to be made. As per table 19, for the small proportion of Schedule 2 premises where there is no information available on the split even after requests at consultation stage, a standard 50:50 estimate has been used.

Table A3-1: Public private split for Schedule 2 Premise

Public/Private	Year
Public	NHS Hospitals
Private	Private Hospitals
50% Private	Residential Hostels
50% Private	Care Homes
50% Private	Child care facilities (pre-school)
Public	LEA Schools
Private	Private Schools
Public	Further Education Colleges
Public	Universities
Private	Self Catering Accommodation
Private	Caravan Sites
Private	Campsites
Public	Penal Institutions

The proportion of Schedule 2 waste in the baseline for England and Wales which is private is 0.65mt and 0.02mt respectively.

Table A3-2 Amount of private sector Schedule 2 waste for England and Wales within MSW stream (tonnes)

Year	2010/11	2011/12	2012/13	2013/14	2014/15	2015/16	2016/17	2017/18	2018/19	2019/20
Private Hospitals	795	832	876	925	980	1039	1103	1172	1245	1324
Residential Hostels	386	404	425	449	476	504	536	569	605	643
Care Homes	6706	7023	7392	7808	8267	8766	9306	9885	10506	11169
Child care facilities	4587	4803	5056	5341	5654	5996	6365	6761	7186	7640
Private Schools	2615	2738	2882	3044	3223	3418	3628	3854	4096	4355
Self Catering Accommodation	21775	21716	21770	21901	22083	22301	22546	22810	23089	23377
Caravan Sites	14621	15311	16117	17024	18023	19112	20288	21552	22906	24352
Campsites	5366	5619	5914	6247	6614	7013	7445	7909	8406	8936
Schedule 2 Waste	56,850	58,446	60,433	62,740	65,320	68,150	71,217	74,512	78,038	81,795

Private Costs to business from Option 1

The total saving to private Schedule 2 premises from Option is £15m for England and £0.41m for Wales. Please see below for breakdown.

No charge for collection and disposal

Fewer local authorities will offer a free service and thus those Schedule 2 premises previously benefiting from this will now face collection costs.

Table A3-3: Amount of private sector schedule 2 waste entering the MSW stream for England and Wales (tonnes)

Increase in costs to S2 Premises	2010/11	2011/12	2012/13	2013/14	2014/15	2015/16	2016/17	2017/18	2018/19	2019/20	Total
England	£0.00	£0.11	£0.27	£0.45	£0.65	£0.87	£1.15	£1.47	£1.80	£2.14	£8.91
Wales	£0.00	£0.00	£0.01	£0.01	£0.02	£0.03	£0.04	£0.05	£0.06	£0.07	£0.29
Total	£0.00	£0.11	£0.28	£0.46	£0.67	£0.90	£1.19	£1.52	£1.86	£2.21	£9.20

Charge for collection not disposal

With the clarification more schedule 2 businesses where possible will transfer their business to local authorities and thus the additional disposal costs local authorities now face would have previously been paid by schedule 2 premises in the baseline.

Table A3-4: Amount of private sector schedule 2 waste entering the MSW stream for England and Wales (tonnes)

Increase in costs to S2 Premises	2010/11	2011/12	2012/13	2013/14	2014/15	2015/16	2016/17	2017/18	2018/19	2019/20	Total
England	£0.00	-£0.38	-£0.83	-£1.38	-£2.05	-£2.74	-£3.37	-£3.84	-£4.37	-£4.92	-£23.88
Wales	£0.00	-£0.00	-£0.03	-£0.05	-£0.07	-£0.09	-£0.10	-£0.11	-£0.12	-£0.13	-£0.70
Total	£0.00	-£0.39	-£0.86	-£1.39	-£2.12	-£2.83	-£3.42	-£3.95	-£4.49	-£5.05	-£24.49

Charge for collection and disposal

No impact on business for the proportion of Local Authorities which continue to charge for disposal or collection as would be the case in the commercial sector.

Costs to business from Option 2

By amending the legislation, local authorities will be able to compete with private waste operators on a level playing field having the choice to charge for both collection and disposal if not previously done so. For those Local Authorities previously offering a specific charging service, the additional costs to private Schedule 2 premises only is £41.51m for England and £0.69m for Wales.

No charge for collection and disposal

Table A3-5: Additional costs to private Schedule 2 premises (£m) for England and Wales

Increase in costs to S2 Premises	2010/11	2011/12	2012/13	2013/14	2014/15	2015/16	2016/17	2017/18	2018/19	2019/20	Total
England	£1.94	£1.96	£1.98	£2.01	£2.05	£2.05	£2.05	£2.05	£2.06	£2.07	£20.22
Wales	£0.06	£0.06	£0.06	£0.06	£0.06	£0.06	£0.06	£0.06	£0.07	£0.07	£0.63
Total	£2.00	£2.02	£2.04	£2.07	£2.11	£2.11	£2.11	£2.11	£2.13	£2.14	£20.85

Charge for collection not disposal

Table A3-6: Additional costs to private Schedule 2 premises (£m) for England and Wales

Increase in costs to S2 Premises	2010/11	2011/12	2012/13	2013/14	2014/15	2015/16	2016/17	2017/18	2018/19	2019/20	Total
England	£1.83	£1.92	£2.00	£2.10	£2.19	£2.20	£2.22	£2.24	£2.27	£2.31	£21.29
Wales	£0.06	£0.06	£0.06	£0.07	£0.07	£0.07	£0.07	£0.07	£0.07	£0.07	£0.06
Total	£1.89	£1.98	£2.06	£2.17	£2.26	£2.27	£2.29	£2.31	£2.34	£2.38	£21.35

Charge for collection and disposal

No impact on business for the proportion of Local Authorities which continue to charge for disposal or collection as would be the case in the commercial sector.



Llywodraeth Cymru
Welsh Government

Theodore Huckle QC/CF
Y Cwnsler Cyffredinol
Counsel General

Eich cyf/Your ref
Ein cyf/Our ref

David Melding AM

Chair of the Constitutional and
Legislative Affairs Committee

clacommittee@wales.gov.uk

27 March 2012

Dear David

Consultation on a Separate Legal Jurisdiction for Wales

As you know, the Welsh Government has committed to holding a public consultation on a Separate Legal Jurisdiction for Wales. The consultation is intended to inform the Welsh Government's evidence to Part II of the Silk Commission, which will look at the present constitutional settlement in relation to the National Assembly for Wales.

On 27 March, I announced the launch of the consultation in a statement to the Assembly. Attached to this letter is a copy of the consultation for your consideration. The consultation will be open for a 12-week period; your response to this would be very much welcomed. Should you require any further information, please contact the Welsh Government's Constitutional Policy team, at ConstitutionalPolicy@Wales.GSI.gov.uk.

Yours Sincerely,

Theodore Huckle QC
Y Cwnsler Cyffredinol
Counsel General

Number: WG-15109



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Welsh Government

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Welsh Government

Consultation Document

A Separate Legal Jurisdiction for Wales

Date of issue: 27 March 2012

Action required: Responses by 19 June 2012



Overview

The purpose of this consultation is to seek views on:

- what is meant by the term “separate legal jurisdiction”;
- whether there are any essential features for the existence of a separate legal Jurisdiction and, if so, what they might be;
- what the consequences of having a separate Welsh legal jurisdiction might be; and
- what the potential advantages and disadvantages of a separate Welsh legal jurisdiction would be.

How to respond

Please respond to this consultation by answering all or any of the questions highlighted in bold throughout the document and listed at the end of the document. You are also welcome to submit a general view or opinion on the question of a separate legal jurisdiction for Wales.

When answering the questions in this consultation paper, please provide reasons for your answers, with particular reference to what you think might be the consequences, advantages and disadvantages of a separate Welsh legal jurisdiction.

Further information and related documents

Large print, Braille and alternate language versions of this document are available on request.

Contact Details

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Data Protection

How the views and information you give us will be used.

Any response you send us will be seen in full by Welsh Government staff dealing with the issues which this consultation is about. It may also be seen by other Welsh Government staff to help them plan future consultations.

The Welsh Government intends to publish a summary of the responses to this document. We may also publish responses in full. Normally, the name and address (or part of the address) of the person or organisation who sent the response are published with the response.

This helps to show that the consultation was carried out properly. If you do not want your name or address published, please tell us this in writing when you send your response. We will then blank them out.

Names or addresses we blank out might still get published later, though we do not think this would happen very often. The Freedom of Information Act 2000 and the Environmental Information Regulations 2004 allow the public to ask to see information held by many public bodies, including the Welsh Government. This includes information which has not been published. However, the law also allows us to withhold information in some circumstances. If anyone asks to see information we have withheld, we will have to decide whether to release it or not. If someone has asked for their name and address not to be published, that is an important fact we would take into account. However, there might sometimes be important reasons why we would have to reveal someone's name and address, even though they have asked for them not to be published. We would get in touch with the person and ask their views before we finally decided to reveal the information.

Foreword from the First Minister and Counsel General

The constitutional landscape in the United Kingdom has changed significantly since devolution of powers to Wales, Scotland and Northern Ireland happened in 1999.

In Wales, the major changes have happened in clear stages: devolution of executive powers to the National Assembly for Wales in 1999, legal separation of the Welsh Government from the Assembly together with powers to pass Measures in 2007, and powers for the Assembly to pass primary legislation in all devolved areas following the Yes vote in the referendum in 2011.

These changes gave our new democratic institutions – our Welsh Government and Assembly – the powers they needed to develop, implement and scrutinise policy in devolved areas. But there is, inevitably, a wider potential impact – on civil society in Wales, on those lobbying for social or economic change, on members of the public, and, most importantly in the present context,, on the laws and legal system in Wales.

The UK Government has now appointed a Commission on Devolution in Wales, chaired by Paul Silk, a former Clerk to the National Assembly. As part of its work, the Commission will consider the powers of the devolved institutions, in particular issues relating to the boundaries of the devolution settlement in Wales. The Welsh Government will submit written evidence to the Commission in due course. That evidence will in part be informed by the outcome of this consultation.

Currently, all law passed for Wales, whether by the Assembly, Welsh Ministers, Westminster Parliament or UK Government Ministers, becomes part of the law of England and Wales. This is because England and Wales share a single legal jurisdiction; and a single system of courts, judges and legal professions has grown up as a distinctive feature of that jurisdiction.

The devolution of powers to the Welsh Government and Assembly will inevitably mean more distinct Welsh law applying in Wales in future – and the opportunities are now even greater following the Yes vote in last year's referendum. In this context, the time is now right to consider whether or not there should be a separate legal jurisdiction for Wales.

This is a genuine consultation, and the arguments by no means lead to only one possible conclusion. We want all the arguments for and against to be aired and subject to thorough scrutiny, so that the potential benefits and disadvantages are clearly understood. We are clear that separate jurisdictions can exist within a United Kingdom – Scotland and Northern Ireland have their own jurisdictions separate from that of England and Wales. Beyond that, while we have a lot of information about the characteristics of legal jurisdictions, we are open-minded as to whether a move towards a separate jurisdiction for Wales would be the right way forward. .

It is for that reason, therefore, that we are launching this consultation. We are aware that the debate on a possible separate jurisdiction for Wales is already under way in legal circles, and also that the Assembly's Constitutional and Legislative Affairs Committee is already part way through its inquiry into the issue. We welcome the

work that is already being done, and we now want to build upon it through this consultation.

We look forward to receiving your views on the issues raised in the consultation paper. If necessary, we will undertake a further consultation exercise later to explore particular issues arising from the responses in more detail.

A handwritten signature in black ink, appearing to read 'Carwyn Jones', written in a cursive style.

RT HON CARWYN JONES AM
First Minister of Wales

A handwritten signature in black ink, appearing to read 'Theodore Huckle', written in a cursive style.

THEODORE HUCKLE QC
Counsel General

Purpose

The people of Wales voted “yes” in the referendum on the powers of the National Assembly for Wales held in March 2011.

As a consequence of that, in May of last year, the provisions of the Government of Wales Act 2006 that enable the Assembly to pass primary legislation (called Assembly Acts) in relation to all devolved subjects were brought into effect.

Amongst other things this means that it is no longer necessary for the consent of the UK Parliament to first be obtained before the Assembly can legislate in relation to those devolved subjects.

The Assembly now has the power to pass Assembly Acts which become law upon Her Majesty giving Royal Assent. Within its powers the Assembly may, by Act, do anything that an Act of the UK Parliament could do.

The UK Parliament is sovereign and retains power to legislate on any matter in Wales. There is, however, a convention that the UK Parliament will not normally legislate in relation to a devolved matter in Wales without the consent of the Assembly¹.

Because England and Wales is a single legal jurisdiction the laws made by the Assembly or by the UK Parliament still form part of the law of England and Wales, even if they are only intended to apply in Wales. The position, in this respect, is different in Scotland and Northern Ireland because each of them is a *separate* legal jurisdiction. Therefore, for example, Acts of the Scottish Parliament only extend to Scotland and do not form part of the law of any other territory within the UK.

Since devolution in 1997, and particularly as a consequence of the referendum in Wales on the Assembly’s law-making powers, there has been much discussion about whether or not Wales should also be a separate legal jurisdiction.

On 7 October 2011 the First Minister for Wales made a written statement to the Assembly setting out the Welsh Government’s intention to launch a public debate on this issue.

The purpose of this consultation is to seek views on:

- what is meant by the term “separate legal jurisdiction”;
- whether there are any essential features for the existence of a separate legal jurisdiction and, if so, what they might be;
- what the consequences of having a separate Welsh legal jurisdiction might be; and

¹ Memorandum of Understanding and Supplementary Agreements Between the United Kingdom Government, the Scottish Ministers, the Welsh Ministers, and the Northern Ireland Executive Committee – June 2011.

- what the potential advantages and disadvantages of a separate Welsh legal jurisdiction would be.

When answering the questions in this consultation paper, please provide reasons for your answers, with particular reference to what you think might be the consequences, advantages and disadvantages of a separate Welsh legal jurisdiction.

History

Prior to the conquest of Wales by Edward I of England in 1282-3, Wales and England were separate countries with different laws and legal traditions. In 1284 the Statute of Rhuddlan introduced the English common law system to Wales, although some differences remained in civil law, including the Welsh practice of settling debts by arbitration, and the rules on inheritance whereby a man's land would be divided equally amongst his sons after his death, rather than passing to the eldest.

The legal jurisdictions of England and Wales were merged by the Laws in Wales Acts 1536 and 1542, which created a common legal jurisdiction across Wales that applied English law exclusively. The surviving Welsh laws were abolished. The Acts provided for Welsh representation in Parliament, and established a new system of courts in Wales, known as the Courts of Great Sessions.

The Great Sessions were administratively distinct from the English courts, and dealt with both criminal and civil cases. They sat twice a year in every Welsh county (except Monmouthshire, which was part of the English system). However the Courts of Great Sessions applied English law and proceedings were conducted solely in English (although interpreters were often used). Few of the judges were Welsh, and all the lawyers and judges also practised in England.

Today

The Courts of Great Sessions were abolished by the Law Terms Act 1830, and Wales was incorporated into the English system as the Wales and Chester circuit. Wales became a separate administrative area of Her Majesty's Courts Service (now Her Majesty's Courts and Tribunals Service (HMCTS)) in its own right in 2007, with Chester joining the North West region.

Wales today forms part of the legal jurisdiction of England and Wales, one of the three jurisdictions that make up the UK. Scotland retained a separate jurisdiction under the terms of the treaty that unified it with England and Wales and created the new state of Great Britain. Northern Ireland has also had a separate jurisdiction since its formation as a distinctive division of the UK in 1921.

There has been a trend towards decentralisation in the courts system over recent years to the point where nearly all the courts, up to and including the Court of Appeal, sit in Wales at least some of the time.

Responsibility for the courts, like the majority of administration of justice functions, is not devolved in Wales. However, there are some devolved functions in the field of

the administration of justice. The Assembly has power to create new tribunals², and the Welsh Ministers exercise functions (e.g. to appoint judges and other members) in relation to certain tribunals that sit in Wales³. The Welsh Ministers also have responsibility for the Children and Family Court Advisory and Support Service in Wales (CAFCASS Cymru).

² For example the Welsh Language Tribunal under the Welsh Language (Wales) Measure 2011

³ See the report of the Welsh Committee of the Administrative Justice and Tribunals Council: "Review of Tribunals Operating in Wales"

What is meant by the term “legal jurisdiction”?

Jurisdiction is a term that can mean different things in different contexts. The term can be used to describe authority, particularly legal authority, over an area, subject-matter or person. In the context of courts, for example, it can be used to describe the types of cases that a court has power to decide or whether the court has power to hear appeals (appellate jurisdiction).

In this consultation paper, however, the term ‘legal jurisdiction’ is used to refer to the concept of a national legal jurisdiction in the sense that, currently, Scotland and Northern Ireland are legal jurisdictions separate from each other and separate from the legal jurisdiction of England and Wales.

In this paper we seek views on what a legal jurisdiction (in this sense) means, whether there are essential features that must exist before a separate legal jurisdiction can be recognised and what the consequences of having such a jurisdiction might be.

Key features of a Separate Legal Jurisdiction

It may be helpful to consider whether a separate legal jurisdiction tends to exhibit certain key features.

Where attempts have been made to outline the essential features of a separate legal jurisdiction, three key components are commonly cited⁴:

- a. a defined territory; with
- b. a distinct body of law; and
- c. a separate legal system - such things as a legislature, courts, judiciary and legal professions.

Applying those key features to Wales

a. A defined territory

There are two principal definitions of “Wales” which suggests that there is already a reasonably ascertainable defined territory for Wales.

These definitions can be found in Schedule 1 to the Interpretation Act 1978 (which is based, principally, on the land area of Wales) and section 158 of the Government of Wales Act 2006 (which also includes the territorial waters around the Welsh coast).

1. Do you agree that a defined geographical territory would be an essential feature for a separate Welsh legal jurisdiction?

⁴ For example Sir Roderick Evans and Professor Iwan Davies in their evidence to the Richard Commission; Professor Keith Patchett, ‘Welsh Law’, IWA Agenda article Winter 2007-8; the Report of the All Wales Convention paragraph 3.9.15; Jones and Williams, ‘Wales as a Jurisdiction’, Public Law Journal 2004

1.1 What, for the purposes of a separate Welsh legal jurisdiction, might that territory be – “Wales” as defined in the Interpretation Act 1978 or as defined in the Government of Wales Act 2006?

b. A distinct body of law

“Distinct” in this context can mean two things.

Firstly, a body of law may be distinct because it is different in substance.

Secondly, a body of law may be distinct because of the territory over which it applies, irrespective of whether the law is different in substance.

There is already a body of legislation applying in Wales that is different from England – e.g. the Rights of Children and Young Persons (Wales) Measure 2011 or the Welsh Language Act 1993 – and it is highly likely that this divergence will continue to increase.

This divergent legislation derives from a number of sources – e.g. the Assembly, the UK Parliament, Welsh Ministers and UK Government Ministers.

There are currently three legal jurisdictions within the UK; Scotland and Northern Ireland are two, and England and Wales is the third. These are the three territories to which legislation can extend. Legislation passed by Parliament can extend to just one or to all three territories, or any combination of them. An Act of Parliament may be for the whole UK, or for England and Wales only, or for England and Wales plus Northern Ireland but excluding Scotland, and so on.

The Scottish Parliament and Northern Ireland Assembly can legislate only for their own particular territory. The National Assembly for Wales is different. Wales and England currently form a single territory for this purpose, so its legislation becomes part of the law of the England and Wales jurisdiction, even if it only applies in Wales.

This difference between the extent and the application of legislation can be a difficult concept to understand. A way to explain this is that the legislation becomes part of the body of law of England and Wales even if it only has effect in Wales.

The following example may help.

The National Assembly for Wales passes an Act of the Assembly dealing with repairing the footpaths on Mount Snowdon. Clearly, the Act will only have a practical effect within Wales, and this can be referred to as its application.

However, like all Welsh devolved legislation the Act will become part of the body of law of England and Wales, and it will extend to the whole jurisdiction. As a result, if a walker from Norwich was injured whilst using one of Snowdon's footpaths and wanted to bring a claim against the authority responsible for maintaining them, he or she could use a local solicitor to bring the claim in Norwich county court and rely on the Assembly Act as it forms part of the laws of England and Wales and will, therefore, be recognised as such by the courts of England and Wales. The Assembly Act would not have any practical application in Norwich, but it would extend there because of the shared England and Wales jurisdiction.

By contrast, if he or she had an accident in similar circumstances whilst walking up Ben Nevis, and wanted to bring a claim under an Act of the Scottish Parliament, he or she may be required to do so in a court in Scotland. This is because Scotland is a separate legal jurisdiction and Scottish law under an Act of the Scottish Parliament would apply, whilst the defendant would be a Scottish public body, so an English court may not be the appropriate forum.⁵

The fact that there is currently no such thing as 'the law of Wales' (or, of course, 'the law of England'), only the law of England and Wales, means neither Wales nor England can be described as a jurisdiction in its own right. As a result, a court in England could hear a case brought under Assembly legislation, just as a court in Wales could hear a case brought under an Act of Parliament that applied only in England.

2. To what extent (if any) is a distinct body of law an essential feature for a separate legal jurisdiction?

2.1 When is a body of law distinct enough in this regard?

2.2 Does it matter whether the law in question is statute law or common law?

2.3 Does it matter what the nature of the subject-matter of the law is – e.g. criminal, civil, family?

c. *A separate legal system*

Wales already has a devolved legislature and government.

There is a unified court system, judiciary and legal profession throughout England and Wales. Responsibility for the courts, the judiciary and most administration of justice functions is not devolved in Wales and remains with the Ministry of Justice.

⁵ See the section 'Enforcement of the law of one jurisdiction in the courts of another jurisdiction', pages 9-10

Experience shows that where there is a separate legal jurisdiction there may also be a separate courts system which deals with cases of all kinds and this may be so even if some areas of the law that those courts deal with are not within the competence of that jurisdiction's government and legislature.

In Canada, for example, the criminal courts are run by the provincial authorities, but the creation of criminal offences and defences is reserved to the federal government. Similarly, consumer protection is generally speaking a reserved matter throughout the whole UK, but is dealt with by the separate court systems of England and Wales, Scotland, and Northern Ireland. The same employment law is also applied across the UK, even though the separate tribunals systems in England and Wales, Scotland and Northern Ireland may have different procedural rules.

Within the UK, all three of the UK's jurisdictions have their own courts up to their individual courts of appeal. However, the Supreme Court, the final UK appeal court in most matters⁶, operates across all three jurisdictions, deciding cases in accordance with the laws applicable in that jurisdiction. As the final appeal court, the Supreme Court sets precedents which must be followed by lower courts within that jurisdiction. While it is usual for courts to operate in just one jurisdiction, the Supreme Court demonstrates that it is possible for a court to be cross-jurisdictional.

Therefore, it may be possible that a unified court system of England and Wales could still operate even if England and Wales were to become separate jurisdictions. Likewise it may be possible for the existing unified court system to be retained at different levels, e.g. to include the High Court, Court of Appeal, and Supreme Court as currently constituted; or alternatively Court of Appeal and Supreme Court; or simply the Supreme Court. Thus in the last two examples, Wales would have to have its own separate High Court or equivalent, or High Court plus Court of Appeal.

3. To what extent (if any) is the separation of responsibilities (i.e. Wales from England) for the administration of justice an essential feature of a separate legal jurisdiction?

- 3.1 To what extent (if any) is a separate Welsh legal jurisdiction compatible with a unified England and Wales court system?
- 3.2 To what extent (if any) is a separate Welsh legal jurisdiction compatible with a unified England and Wales judiciary?
- 3.3 If there were a separate Welsh courts system, which courts would be affected?
- 3.4 Would there need to be a separate High Court and/or Court of Appeal for Wales?
- 3.5 Should Wales continue to share some courts with England, and if so, which ones?
- 3.6 If Wales and England continued to share some courts, what (if any) changes might be needed in the organisation of those courts?

⁶ Scottish criminal cases do not go to the Supreme Court, unless they raise a human rights or other devolution issue.

4. To what extent (if at all) would it be necessary for the devolved legislature to have general legislative competence over the criminal law as a separate devolved subject if responsibility for the administration of justice was devolved?

4.1 Are there any other subjects of legislative competence that should be devolved in such a case?

5. How might a unified England and Wales court system work if:

5.1 There were a separate Welsh legal jurisdiction and the Assembly's legislative competence:

- a. remained, as now, with the ability to expand incrementally, or
- b. extended over all matters except for those expressly reserved to the UK Parliament?

5.2 The current unified legal jurisdiction of England and Wales continued and the Assembly's legislative competence:

- a. remained, as now, with the ability to expand incrementally, or
- b. extended over all matters except for those expressly reserved to the UK Parliament?

There appears to be no single method or process for the creation or emergence of a separate legal jurisdiction.

A separate legal jurisdiction cannot, however, be created unilaterally by the devolved institutions in Wales and such a jurisdiction could not exist until it is recognised by institutions such as Parliament and the courts, for example in a UK Parliament Act that recognises Wales as a separate legal jurisdiction in its extent provisions, in the same way as it does now does for Scotland and Northern Ireland.

There is an argument that all that would be required in order for a separate legal jurisdiction to exist in Wales is to recognise Wales, for legislative purposes, as a separate and distinct unit of the UK. In such a case the UK Parliament, if it intended to make law for Wales, would provide that the law extends to Wales (just as is does now in respect of Scotland and Northern Ireland). The power of the Assembly to legislate by Assembly Act may also need to be modified (see question 19 below) so that its legislation extends only to Wales.

6. When reference is made to a 'legal jurisdiction' in the sense of England and Wales being a legal jurisdiction separate from, for example, Scotland what, in its simplest form, does that mean?

6.1 In this context does legal jurisdiction just mean the territory over which the legislature (or executive) has power to legislate?

7. Are there any other *essential* features of a separate legal jurisdiction?

Is the current single legal jurisdiction of England and Wales sustainable within the existing devolution settlement?

History suggests that the conditions for recognition of a separate legal jurisdiction depend on the particular circumstances of the territory concerned. Sometimes the conditions are practical and in other cases there are political or other conditions.

Practical conditions include, for example, when a region has acquired a degree of autonomy and its laws and/or legal institutions gradually diverge from that of the parent jurisdiction.

If this divergence becomes sufficiently great, it may become impractical for lawyers and judges trained only in the law of the parent jurisdiction to deal with the law of the autonomous or semi-autonomous region without additional training. Canada and other former colonies provide examples of this process. The gradual devolution to Canada of executive and legislative powers caused its law to develop differently to the point where full legal separation became a practical necessity.

In the absence of practical necessity the existence of political or other conditions may support the recognition of a separate legal jurisdiction. Northern Ireland is perhaps the best example; its legal system, intended to have jurisdiction over its territory, came into being when Northern Ireland itself was recognised as a distinct region of the UK and the whole arrangement was designed to prevent further civil unrest in Ireland. At this time, Northern Ireland did not have a distinctive body of law of its own, and indeed its law remains very similar to that of England and Wales.

8. Is the single legal jurisdiction of England and Wales sustainable in the long term given the potentially increasing divergence of the laws applicable in Wales compared with those applicable in England and the rest of the UK?

9. If you consider that the current legal jurisdiction is sustainable then are there any short-term or long-term changes that should be made to any of the following?

- a. The administration of the courts and/or tribunals systems
- b. The judiciary (including the magistracy)
- c. The legal professions (including their regulation)
- d. Education and training in law
- e. Accessibility of legislation

10. If you consider that the current legal jurisdiction is sustainable then are there any other short-term or long-term changes that should be made?

Enforcement of the law of one jurisdiction in the courts of another jurisdiction

Where a court is faced with a case that involves ‘foreign’ law, there are bodies of rules used by the courts to determine which jurisdiction’s law should be used to decide the case. These rules are referred to as “conflict of laws” or “private international law” and apply unless legislation makes express provision for resolving the issue. The rules apply as between different countries, and between different legal jurisdictions within the same country, including the three existing legal jurisdictions of the UK. If the applicable law is found to be that of another jurisdiction, the court may decline to hear the case if it could be dealt with more conveniently in the other jurisdiction. In some circumstances, the court might decide to deal with the case itself, but decide it using the other jurisdiction’s law. If the law of another jurisdiction is to be used, an expert on the relevant law must give evidence about its content. The court will always use its own procedures and its own remedies.

For example, if a court in Wales were presented with a dispute between a local company, and a company based in another legal jurisdiction, such as Scotland, it would first have to decide whether it had jurisdiction to hear the case at all, and if it did, whose law should apply. If it found that the matter should be governed by Scottish law, it would then have to decide whether to decline to hear the case, on the basis that it ought to be dealt with in Scotland, or to deal with it but apply Scottish law⁷.

Enforcement of judgments across the existing UK jurisdictions

To enable a judgment of a Scottish or Northern Irish court to be enforced in England and Wales, the court in Scotland or Northern Ireland issues a certificate certifying the details of the judgment⁸. The certificate then has to be registered within six months in the High Court in London before a warrant of execution can be issued. Once the ‘foreign’ judgment has been registered the High Court can issue a warrant of execution and normal enforcement procedures, such as the use of bailiffs, can begin. A similar process applies for registering and enforcing judgments of the courts of England and Wales in Scotland, again based on registration of a certificate from the court that made the judgment. The procedure is essentially administrative and there is no need to start a new claim in the jurisdiction where enforcement is sought.

At present, the judgments and orders made by courts sitting in Wales can be enforced in England, even if made under devolved legislation, without any additional formalities, because the jurisdiction and legal system are the same.

Criminal proceedings across the existing UK jurisdictions

A significant proportion of criminal law is different between the jurisdictions of England and Wales, on the one hand, and Scotland on the other, but there is a statutory framework for the enforcement of warrants and the arrest of suspects across the jurisdictions. A warrant issued in England and Wales (or Northern Ireland)

⁷ See section 16 of and Schedule 4 to the Civil Jurisdiction and Judgments Act 1982

⁸ Section 18 of and Schedules 6 and 7 to the Civil Jurisdiction and Judgments Act 1982

can be executed in Scotland either by a Scottish police officer, or by an officer from the issuing jurisdiction. Similarly a Scottish warrant can be executed in England and Wales by either a Scottish or a local officer⁹. Officers from England and Wales also have the power to arrest suspects in Scotland without a warrant for crimes committed in England and Wales (and vice versa for Scottish officers) if it appears to them the arrest would have been lawful if the suspect were still in their home jurisdiction¹⁰.

Therefore, although the law on arresting suspects is not identical across the jurisdictions, the legality of a cross-border arrest can be easily and predictably determined by reference to statute.

When answering the following questions (11 to 15 (inclusive)) it would be helpful if you could provide your answers firstly on the basis of a unified England and Wales court system and secondly on the basis of a separate Welsh court system.

11. Would statute law that only extends to a separate Welsh legal jurisdiction be recognised as a law in other jurisdictions within the UK?
12. Would such statute law be judicially noticed in those other jurisdictions?
13. Would such statute law be capable of being the subject of civil proceedings in those other jurisdictions – e.g. for enforcement or through judicial review?
14. Would such statute law be capable of being the subject of criminal proceedings in those other jurisdictions – e.g. arrest, charge, prosecution, conviction and sentencing?
15. What are the potential implications of a separate Welsh legal jurisdiction in terms of private international law (or “conflict of laws”) between Wales and the rest of the UK?

⁹ Criminal Justice and Public Order Act 1994, s.136

¹⁰ Criminal Justice and Public Order Act 1994, s.137

Impact of possible separate legal jurisdiction on powers of the Assembly

Devolution works differently in Wales and Scotland. The Scottish Parliament has general legislative competence, which means it can pass laws in relation to any subject, provided the subject is not specifically reserved to the UK Parliament. The Assembly has defined legislative competence, which means it can pass laws only in relation to subjects that have been specifically devolved to it.

At the time of the passage of the Government of Wales Act 2006, it was suggested that the defined powers model was the most appropriate form of devolution for Wales, because the shared England and Wales legal jurisdiction made a wider ranging settlement like Scotland's unworkable. It is sometimes said that because of this a separate Welsh jurisdiction would be a necessary part of any new, wider devolution settlement.

However, others have argued that it would have been possible to create a form of devolution similar to the Scottish system that was compatible with the shared England and Wales legal jurisdiction. Certain areas of law would have had to be reserved to maintain consistency across the jurisdiction where necessary.

16. In the event that Wales moved towards a 'reserved powers' form of devolution, like Scotland's, do you think a separate Welsh legal jurisdiction would be:

- a. essential;
- b. desirable;
- c. undesirable; or
- d. irrelevant?

17. Would the shared England and Wales jurisdiction be sustainable if Welsh devolution were widened?

18. If it would be sustainable, which areas of law would need to be reserved to the UK Parliament?

Under section 108(5) of the Government of Wales Act 2006, the Assembly can in certain circumstances make provisions in Assembly Acts that apply in England as well as in Wales. Such provision can be made, for example, if it is needed to make the provisions of an Assembly Act effective or to allow the Assembly Act to be enforced.

Example

If the Assembly passed an Act aimed at preventing children from playing truant from Welsh schools, it could confer a power on local authority education officers to take truant children and return them to school. However, the Act would clearly be less effective if children in border areas could evade the officers by going into England. Therefore, the Assembly could also use section 108(5) to confer the same powers on the education officers of English local authorities. This would be permitted because its aim would be to make an Assembly Act applying to Wales effective and to ensure that it could be enforced.

This is possible at present because England and Wales form a single legal jurisdiction and Assembly Acts are part of the law of that jurisdiction, so laws made in Wales can be recognised by courts in both Wales and England. By contrast, the Scottish Parliament's legislation can only take effect in Scotland, because it is a separate legal jurisdiction.

19. Would the emergence of a separate Welsh legal jurisdiction require the removal of the Assembly's power that enables it in certain circumstances to make laws applying in England?

19.1 Would there be any legal, constitutional or practical difficulty in the Assembly retaining such a power:

- a. upon the basis that any provision made in relation to England would extend to and form part of the law of England?
- b. otherwise, and if so how?

19.2 If you think that there would be such difficulties:

- a. what are they?
- b. would those difficulties be any different to the current situation where the Assembly already has the power to make provision applicable in England?

Impact of possible separate legal jurisdiction on the legal professions

The requirements imposed on legal professionals who want to practise in a different jurisdiction vary, depending on how much the law of the jurisdiction in which they wish to practise differs from that of their home jurisdiction.

The law of Scotland is different from that of the rest of the UK in a number of important respects, and Scotland has very different legal procedural rules in many instances, so Scottish lawyers who want to practise in England and Wales or Northern Ireland are required to undertake additional training, as are English and Welsh or Northern Irish lawyers before they can practise in Scotland.

The law and legal practises of Northern Ireland are not so substantially distinct from that of England and Wales, so lawyers moving between those jurisdictions generally do not have to retrain at all.

The question therefore arises whether, and to what extent, a separate legal jurisdiction would require separate legal professions.

20. To what extent (if any) is the concept of a separate Welsh legal jurisdiction compatible with the unified England and Wales legal professions?

20.1 What are the potential effects (if any) of a separate Welsh legal jurisdiction on the following aspects of the legal professions?

- a. education and training;
- b. qualification;
- c. regulation.

Impact of possible separate Welsh legal jurisdiction on the common law

England and Wales is a common law jurisdiction. In common law jurisdictions, the law comes both from legislation, made by legislatures and governments, and from decisions of the courts. Decisions of the highest courts have to be followed by judges in lower courts when dealing with cases where the facts are similar – i.e. the higher courts set legal precedents for the lower courts to follow.

The decisions of courts of other legal jurisdictions (including Scotland and Northern Ireland) are not binding in England and Wales. However in some cases they may be taken into account and may be persuasive in the sense that a court in one jurisdiction may adopt the legal reasoning of the court from the other jurisdiction.

The common law will continue to develop as it has always done.

However, devolved powers are statutory in nature and an Assembly Act may replace a common law rule with a statutory rule, provided that it is within the Assembly's competence.

There is an argument that a separate legal jurisdiction in Wales (whether or not this is coupled with a separate court system) would not directly affect the development of the common law. Wales would remain a common law jurisdiction with the UK Supreme Court as the final court of appeal, as in the case of those Commonwealth countries, such as Jamaica at present, which still look to the Judicial Committee of the Privy Council in this way.

21. Would the common law that has evolved as part of the unified jurisdiction of England and Wales be affected by the creation of a separate Welsh legal jurisdiction?

22. Would your answer be different if there was a separate court system in Wales?

23. Would your answer be different if the Assembly had legislative competence generally over all (or most of) the:

- a criminal law;
- b civil law; or
- c any other area of law that you do not consider falls within (a) or (b)?

24. Could there be express reservations excluding the common (judge-made) law from the legislative competence of the Assembly?

24.1 Why would that be desirable, and how would it work in practice?

24.2 How difficult would that be?

Operation of and other possible impacts of a separate Welsh legal jurisdiction

25. Are there any wider economic (including resources), legal, political, linguistic or social ramifications of a move to a separate Welsh legal jurisdiction?
26. Given the numerous sources from which law applicable in Wales can originate, what systems would need to be in place in order to ensure that the law of a separate Welsh legal jurisdiction was readily accessible to the people of Wales and other interested parties?
27. In a specifically Welsh context, are there any additional features that would be appropriate for a separate legal jurisdiction to operate effectively?
28. Would your answers to any of the questions in this consultation paper be different if the approach to the Assembly's legislative competence was the same as that of the Scottish Parliament – i.e. if the Assembly had competence over all matters except those expressly reserved to the UK Parliament?

Complete List of Consultation Questions

1. Do you agree that a defined geographical territory would be an essential feature for a separate Welsh legal jurisdiction?
 - 1.1 What, for the purposes of a separate Welsh legal jurisdiction, might that territory be – “Wales” as defined in the Interpretation Act 1978 or as defined in the Government of Wales Act 2006?
2. To what extent (if any) is a distinct body of law an essential feature for a separate legal jurisdiction?
 - 2.1 When is a body of law distinct enough in this regard?
 - 2.2 Does it matter whether the law in question is statute law or common law?
 - 2.3 Does it matter what the nature of the subject-matter of the law is – e.g. criminal, civil, family?
3. To what extent (if any) is the separation of responsibilities (i.e. Wales from England) for the administration of justice an essential feature of a separate legal jurisdiction?
 - 3.1 To what extent (if any) is a separate Welsh legal jurisdiction compatible with a unified England and Wales court system?
 - 3.2 To what extent (if any) is a separate Welsh legal jurisdiction compatible with a unified England and Wales judiciary?
 - 3.3 If there were a separate Welsh courts system, which courts would be affected?

3.4 Would there need to be a separate High Court and/or Court of Appeal for Wales?

3.5 Should Wales continue to share some courts with England, and if so, which ones?

3.6 If Wales and England continued to share some courts, what (if any) changes might be needed in the organisation of those courts?

4. To what extent (if at all) would it be necessary for the devolved legislature to have general legislative competence over the criminal law as a separate devolved subject if responsibility for the administration of justice was devolved?

4.1 Are there any other subjects of legislative competence that should be devolved in such a case?

5. How might a unified England and Wales court system work if:

5.1 There were a separate Welsh legal jurisdiction and the Assembly's legislative competence:

- a. remained, as now, with the ability to expand incrementally, or
- b. extended over all matters except for those expressly reserved to the UK Parliament?

5.2 The current unified legal jurisdiction of England and Wales continued and the Assembly's legislative competence:

- a. remained, as now, with the ability to expand incrementally, or
- b. extended over all matters except for those expressly reserved to the UK Parliament?

6. When reference is made to a 'legal jurisdiction' in the sense of England and Wales being a legal jurisdiction separate from, for example, Scotland what, in its simplest form, does that mean?

6.1 In this context does legal jurisdiction just mean the territory over which the legislature (or executive) has power to legislate?

7. Are there any other *essential* features of a separate legal jurisdiction?

8. Is the single legal jurisdiction of England and Wales sustainable in the long term given the potentially increasing divergence of the laws applicable in Wales compared with those applicable in England and the rest of the UK?

9. If you consider that the current legal jurisdiction is sustainable then are there any short-term or long-term changes that should be made to any of the following?

- a. The administration of the courts and/or tribunals systems
 - b. The judiciary (including the magistracy)
 - c. The legal professions (including their regulation)
 - d. Education and training in law
 - e. Accessibility of legislation
10. If you consider that the current legal jurisdiction is sustainable then are there any other short-term or long-term changes that should be made?
11. Would statute law that only extends to a separate Welsh legal jurisdiction be recognised as a law in other jurisdictions within the UK?
12. Would such statute law be judicially noticed in those other jurisdictions?
13. Would such statute law be capable of being the subject of civil proceedings in those other jurisdictions – e.g. for enforcement or through judicial review?
14. Would such statute law be capable of being the subject of criminal proceedings in those other jurisdictions – e.g. arrest, charge, prosecution, conviction and sentencing?
15. What are the potential implications of a separate Welsh legal jurisdiction in terms of private international law (or “conflict of laws”) between Wales and the rest of the UK?
16. In the event that Wales moved towards a ‘reserved powers’ form of devolution, like Scotland’s, do you think a separate Welsh legal jurisdiction would be:
- a. essential;
 - b. desirable;
 - c. undesirable; or
 - d. irrelevant?
17. Would the shared England and Wales jurisdiction be sustainable if Welsh devolution were widened?
18. If it would be sustainable, which areas of law would need to be reserved to the UK Parliament?
19. Would the emergence of a separate Welsh legal jurisdiction require the removal of the Assembly’s power that enables it in certain circumstances to make laws applying in England?

19.1 Would there be any legal, constitutional or practical difficulty in the Assembly retaining such a power?¹¹

- a. upon the basis that any provision made in relation to England would extend to and from part of the law of England?
- b. Otherwise, and if so how?

19.2 If you think that there would be such difficulties:

- a. what are they?
- b. would those difficulties be any different to the current situation where the Assembly already has the power to make provision applicable in England?

20. To what extent (if any) is the concept of a separate Welsh legal jurisdiction compatible with the unified England and Wales legal professions?

20.1 What are the potential effects (if any) of a separate Welsh legal jurisdiction on the following aspects of the legal professions?

- a. education and training;
- b. qualification;
- c. regulation.

21. Would the common law that has evolved as part of the unified jurisdiction of England and Wales be affected by the creation of a separate Welsh legal jurisdiction?

22. Would your answer be different if there was a separate court system in Wales?

23. Would your answer be different if the Assembly had legislative competence generally over:

- a. criminal law;
- b. civil law; or
- c. any other area of law?

24. Could there need to be express reservations excluding the common (judge-made) law from the legislative competence of the Assembly?

24.1 Why would that be desirable, and how would it work in practice?

24.2 How difficult would that be?

¹¹ If such a power was retained it would be on the basis that any provision made in relation to England would extend to and form part of the law of England.

25. Are there any wider economic (including resources), legal, political, linguistic or social ramifications of a move to a separate Welsh legal jurisdiction?

26. Given the numerous sources from which law applicable in Wales can originate, what systems would need to be in place in order to ensure that the law of a separate Welsh legal jurisdiction was readily accessible to the people of Wales and other interested parties?

27. In a specifically Welsh context, are there any additional features that would be appropriate for a separate legal jurisdiction to operate effectively?

28. Would your answers to any of the questions in this consultation paper be different if the approach to the Assembly's legislative competence was the same as that of the Scottish Parliament – i.e. if the Assembly had competence over all matters except those expressly reserved to the UK Parliament?

29. We have asked a number of specific questions. If you have any related issues which we have not specifically addressed please tell us about them.

**Consultation
Response Form**

Your name:

Organisation (if applicable):

email / telephone number:

Your address:

Responses to consultations may be made public – on the internet or in a report. If you would prefer your response to be kept confidential, please tick here:

Cynulliad
Cenedlaethol
Cymru
National
Assembly for
Wales



Constitutional and Legislative Affairs Committee

Report: CLA(4)-07-12 : 26 March 2012

The Committee reports to the Assembly as follows:

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

Negative Resolution Instruments

CLA111 – The School Teachers’ Qualifications (Wales) Regulations 2012

Procedure: Negative.

Date made: 6 March 2012.

Date laid: 8 March 2012.

Coming in to force date: 1 April 2012

CLA112 – The Works on Common Land, etc. (Procedure) (Wales) Regulations 2012

Procedure: Negative.

Date made: 7 March 2012.

Date laid: 8 March 2012.

Coming in to force date: 1 April 2012

CLA113 – The Commons (Deregistration and Exchange Orders) (Interim Arrangements) (Wales) Regulations 2012

Procedure: Negative.

Date made: 7 March 2012.

Date laid: 8 March 2012.

Coming in to force date: 1 April 2012

CLA114 – The Deregistration and Exchange of Common Land and Greens (Procedure) (Wales) Regulations 2012

Procedure: Negative.

Date made: 7 March 2012.

Date laid: 8 March 2012.

Coming in to force date: 1 April 2012

CLA115 – The Partnership Council for Wales (Local Health Boards and National Health Service Trusts) Order 2012

Procedure: Negative.

Date made: 7 March 2012.

Date laid: 9 March 2012.
Coming in to force date: 3 April 2012

CLA116 – The Welsh Language Board (Transfer of Staff, Property, Rights and Liabilities) Order 2012

Procedure: Negative.
Date made: 7 March 2012.
Date laid: 9 March 2012.
Coming in to force date: 1 April 2012

CLA117 – The Welsh Language Measure (Registrable Interests) Regulations 2012

Procedure: Negative.
Date made: 7 March 2012.
Date laid: 9 March 2012.
Coming in to force date: 1 April 2012

CLA118 – The Town and Country Planning (Control of Advertisements) (Amendment) (Wales) Regulations 2012

Procedure: Negative.
Date made: 10 March 2012.
Date laid: 13 March 2012.
Coming in to force date: 30 April 2012

CLA119 – The Planning (Listed Buildings and Conservation Areas) (Wales) Regulations 2012

Procedure: Negative.
Date made: 10 March 2012.
Date laid: 13 March 2012.
Coming in to force date: 30 April 2012

CLA120 – The Town and Country Planning (Trees) (Amendment) (Wales) Regulations 2012

Procedure: Negative.
Date made: 10 March 2012.
Date laid: 13 March 2012.
Coming in to force date: 30 April 2012

CLA121 – The Town and Country Planning (Compensation) (Wales) Regulations 2012

Procedure: Negative.
Date made: 10 March 2012.
Date laid: 13 March 2012.
Coming in to force date: in accordance with regulation 1

CLA122 – The Town and Country Planning (Development Management Procedure) (Wales) Order 2012

Procedure: Negative.
Date made: 10 March 2012.

Date laid: 13 March 2012.
Coming in to force date: 30 April 2012

CLA125 – The Authorised Officers (Meat Inspection) (Revocation) (Wales) Regulations 2012

Procedure: Negative.
Date made: 13 March 2012.
Date laid: 15 March 2012.
Coming in to force date: 6 April 2012

Affirmative Resolution Instruments

None

Instruments that raise reporting issues under Standing Order 21.2 or 21.3

Negative Resolution Instruments

None

Affirmative Resolution Instruments

None

Orders made under the Public Bodies Bill 2011

CLA CM2 – Consent Memorandum for The Advisory Committee on Hazardous Substances (Abolition) Order 2012

The Committee considered CLA CM1 – Consent Memorandum for The Advisory Committee on Hazardous Substances (Abolition) Order 2012. The Committee agreed to report to the Assembly that it had identified no reason why consent should be withheld from the Order.

CLA CM3 – Consent Memorandum for The British Waterways Board (Transfer of Functions) Order 2012

The Committee considered CLA CM3 – Consent Memorandum for The British Waterways Board (Transfer of Functions) Order 2012. Although, on legal and constitutional grounds, there appeared to be no reason why consent should be withheld from the Order, there were concerns about whether the Consent Memorandum provided sufficient information, particularly about the scope of the Order and its relationship to the extensive legislative competence of the Assembly, to allow the Committee (and other Committees) to consider it properly. The Committee agreed to report that while it did not recommend withholding consent from the Order it had a number of concerns about the adequacy of the information set out in the Consent Memorandum.

Other Business

Committee Inquiries: Inquiry into the establishment of a separate Welsh jurisdiction

The Committee took oral evidence from Devolution Studies Research Group, Bangor University Law School, which was represented by Dr Alison Mawhinney, Lecturer in Law, Ms Sarah Nason, Lecturer in Law, and Mr Huw Pritchard, Doctoral candidate.

Resolution to Meet in Private

In accordance with Standing Order 17.42(vi) the Committee resolved to exclude the public from the remainder of the meeting to discuss the evidence submitted thus far on the Inquiry into the establishment of a separate Welsh jurisdiction.

David Melding AM

Chair, Constitutional and Legislative Affairs Committee

26 March 2012