Constitutional and Legislative Affairs Committee

Meeting Venue:
Committee Room 2 - Senedd

Meeting date:
31 March 2014

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** (Pages 1 - 2)
CLA(4)-11-14 - Paper 1 - Staturtory instruments with clear reports

Negative Resolution Instruments

CLA387 - The Tuberculosis (Miscellaneous Amendments) (Wales) Order 2014
Negative procedure: Date made: 12 March 2014; Date laid: 14 March 2014; Coming into force date: 6 April 2014.

CLA390 - The National Assistance (Sums for Personal Requirements) (Assessment of Resources) and Social Care Charges (Wales) (Miscellaneous Amendments) Regulations

2014
Negative procedure: Date made: 14 March 2014; Date laid: 17 March 2014; Coming into force date: 7 April 2014.

CLA391 - The Smoke Control Areas (Authorised Fuels) (Wales) Regulations 2014
Negative procedure: Date made: 12 March 2014; Date laid: 18 March 2014; Coming into force date: 11 April 2014.

CLA392 - The Smoke Control Areas (Exempted Fireplaces) (Wales) Order 2014
Negative procedure: Date made: 12 March 2014; Date laid: 18 March 2014; Coming into force date: 11 April 2014.

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

Composite Negative Resolution Instruments

CLA388 - The Waste (England and Wales) (Amendment) Regulations 2014 (Pages 3 - 31)
Composite Negative procedure: Date made: 14 March 2014; Date laid: 14 March 2014; Coming into force date: 6 April 2014.

CLA(4)-11-14 - Paper 2 - Regulations
CLA(4)-11-14 - Paper 3 - Explanatory Memorandum
CLA(4)-11-14 - Paper 4 - Report

CLA389 - The Education (Student Loans) (Repayment) (Amendment) Regulations 2014 (Pages 32 - 41)
Composite Negative procedure: Date made: 13 March 2014; Date laid: 14 March 2014; Coming into force date: 6 April 2014.

CLA(4)-11-14 - Paper 5 - Regulations
CLA(4)-11-14 - Paper 6 - Explanatory Memorandum

CLA(4)-11-14 – Paper 7 – Report

4 Legislative Consent Memorandum: Deregulation Bill (Pages 42 – 71)

CLA(4)-11-14 – Paper 8 – Legal Advice Note
CLA(4)-11-14 – Paper 9 – Legislative Consent Memorandum
CLA(4)-11-14 – Paper 10 – Letter from Chair, Draft Deregulation Bill

Deregulation Bill
http://services.parliament.uk/bills/2013-14/deregulation.html

5 Motion under Standing Order 17.42 to resolve to exclude the public from the meeting for the following business:

(ix) any matter relating to the internal business of the committee, or the Assembly, is to be discussed.

Forward Work Programme (Pages 72 – 74)
CLA(4)-11-14 – Paper 11 – Work Programme

Wales Bill: Update (Pages 75 – 83)
CLA(4)-11-14 – Paper 12

Constitutional and Legislative Affairs Committee
Statutory Instruments with Clear Reports
31 March 2014

CLA387 - The Tuberculosis (Miscellaneous Amendments) (Wales) Order 2014

Procedure: Negative

This Order amends the Tuberculosis (Wales) Order 2010 (S.I. 2010/1379 (W. 122)) and the Tuberculosis (Wales) Order 2011 (S.I. 2011/692 (W. 104)). It enables the Welsh Ministers to approve veterinary surgeons to carry out certain diagnostic tests for tuberculosis (relevant tests) on bovine, and non-bovine, animals and to examine and mark such animals. It provides for automatic requirements to apply to a keeper where a relevant test reveals a reactor or inconclusive reactor.

CLA390 - The National Assistance (Sums for Personal Requirements) (Assessment of Resources) and Social Care Charges (Wales) (Miscellaneous Amendments) Regulations 2014

Procedure: Negative

The Regulations relate to the financial assessment of individuals for charging for both residential and non-residential care and will:-

Residential Care

- increase the weekly sum of money that local authorities must enable a resident in care to retain to spend on personal items from £24.50 to £25.00 per week;
- increase the single capital limit (the value of property, savings and investments held to determine whether the resident or their local authority funds their residential care) from £23,750 to £24,000;

Non –residential Care

- make a technical amendment that introduces a partial disregard in financial assessments of the first £10 per week of a Guaranteed Income Payment made under the Armed Forces and Reserve Forces

(Compensation Scheme) Order 2011 to an ex-armed forces personnel's spouse, civil partner or adult dependent;

- increase the maximum amount a local authority may determine to be a reasonable charge for the provision of a service or combination of services, and the maximum amount a local authority may determine to be a reasonable amount for a contribution or reimbursement for receiving a direct payment, from £50 per week to £55 per week.

CLA391 - The Smoke Control Areas (Authorised Fuels) (Wales) Regulations 2014

Procedure: Negative

These Regulations revoke, replace and amend the corresponding Regulations from 2008. These Regulations specify the fuels which are currently authorised for use in a smoke control area (i.e. an area designated by a local authority as a smoke control area).

CLA392 - The Smoke Control Areas (Exempted Fireplaces) (Wales) Order 2014

Procedure: Negative

The Clean Air Act 1993 prohibits the emission of smoke in smoke control areas. However, the 1993 Act allows exemptions for specified classes of fireplaces. This Order specifies those exempted fireplaces (and revokes, replaces and amends the corresponding 2013 Order).

STATUTORY INSTRUMENTS

2014 No. 656

ENVIRONMENTAL PROTECTION, ENGLAND AND WALES

The Waste (England and Wales) (Amendment) Regulations 2014

Made - - - -	*14th March 2014*
Laid before Parliament	*14th March 2014*
Laid before the National Assembly for Wales	*14th March 2014*
Coming into force - -	*6th April 2014*

The Secretary of State, in relation to England, and the Welsh Ministers, in relation to Wales, have in accordance with section 2(4) of the Pollution Prevention and Control Act 1999(**a**) consulted—

(a) the Environment Agency;

(b) the Natural Resources Body for Wales;

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

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

The Secretary of State is designated(**b**) for the purposes of the European Communities Act 1972(**c**) in relation to the environment. The Welsh Ministers are designated(**d**) 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, make these Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972, sections 5(3)(b) and (4)(b) and 8(2) of the Control of Pollution (Amendment) Act 1989(**e**), and section 2 of, and Schedule 1 to, the Pollution Prevention and Control Act 1999.

(**a**) 1999 c.24. Functions of the Secretary of State under section 2 (except in relation to offshore oil and gas exploration and exploitation), so far as exercisable in relation to Wales, were transferred to the National Assembly for Wales by article 3 of S.I. 2005/1958. Those functions were then transferred to the Welsh Ministers by section 162 of, and paragraph 30 of Schedule 11 to, the Government of Wales Act 2006 (c. 32). Section 2(4)(aa) was inserted by S.I. 2013/755 (W 90), article 4(1), Schedule 2, Part 1, paragraphs 394 and 395(1) extending the consultation duty in section 2(4) to the Natural Resources Body for Wales to the extent that regulations made under section 2 apply to Wales.

(**b**) S.I. 2008/301.

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

(**d**) S.I. 2010/1552.

(**e**) 1989 c.14. In relation to Wales, the functions of the Secretary of State conferred by that Act were transferred to the National Assembly for Wales by article 2 of the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672). Those functions were then transferred to the Welsh Ministers by virtue of section 162 of, and paragraph 30 of Schedule 11 to, the Government of Wales Act 2006 (c.32). Section 5, as originally enacted, was substituted in England and Wales by the Clean Neighbourhoods and Environment Act 2005 (c.16), section 37. For the definition of "appropriate person" and "prescribed" see section 9(1) of the Control of Pollution (Amendment) Act 1989 (the definition of "appropriate person" was inserted by section 39(1) of the Clean Neighbourhoods and Environment Act 2005).

Title, commencement and interpretation

1.—(1) These Regulations—

(a) may be cited as the Waste (England and Wales) (Amendment) Regulations 2014;

(b) come into force on 6th April 2014.

(2) In these Regulations, "the Waste Regulations" means the Waste (England and Wales) Regulations 2011(**a**).

Amendment of the Waste Regulations

2. The Waste Regulations are amended in accordance with regulations 3 to 7.

Regulation 24 (interpretation)

3. For regulation 24(3)(b), substitute—

"(b) references to a prescribed offence include a relevant offence within the meaning of regulation 29".

Regulation 29 (procedure for registration)

4. Regulation 29 is amended as follows—

(a) for paragraph (5)(b), substitute—

"(b) the applicant or another relevant person has been convicted of a relevant offence";

(b) after paragraph (5), insert—

"(5A) A "relevant offence" means an offence under—

(a) the Scrap Metal Dealers Act 1964(**b**),

(b) section 1, 8, 9, 10, 11, 17, 18, 22 or 25 of the Theft Act 1968(**c**), where the offence relates to scrap metal or is an environment-related offence,

(c) section 170 or 170B of the Customs and Excise Management Act 1979(**d**), where the offence relates to scrap metal,

(d) section 9 of the Food and Environment Protection Act 1985(**e**),

(e) section 1, 5 or 7 of the Control of Pollution (Amendment) Act 1989(**f**),

(f) section 33, 34 or 34B of the Environmental Protection Act 1990(**g**),

(g) section 85, 202 or 206 of the Water Resources Act 1991(**h**),

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(**a**) 2011/988, amended by S.I. 2013/755 (W 90); there are other amending instruments but none is relevant.

(**b**) 1964 c.69. This Act was repealed by section 19(1)(a) of the Scrap Metal Dealers Act 2013 (c.10).

(**c**) 1968 c.60. Section 9 was amended the Sexual Offences Act 2003 (c. 42), sections 139 and 140 and Schedule 6, paragraph 17 and Schedule 7. Section 18 was amended by the Fraud Act 2006 (c. 35), section 14(1) and (3) and Schedule 1, paragraph 4 and Schedule 3. Section 25 was also amended by that Act, section 14(1) and Schedule 1, paragraph 8(a).

(**d**) 1979 c.2. Section 170B was inserted by the Finance (No 2) Act 1992 (c.48), section 3 and Schedule 2, paragraph 8.

(**e**) 1985 c.48.

(**f**) Section 1 was amended by the Environmental Protection Act 1990 (c.43), section 162 and paragraph 31 of Schedule 15 and by the Clean Neighbourhoods and Environment Act 2005 (c.16), sections 35 and 107 and Part 4 of Schedule 5. Section 7(3) was amended by the Environmental Protection Act 1990, section 162 and paragraph 31 of Schedule 15 and by the Environment Act 1995 (c.25), section 112 and paragraph 3 of Schedule 19.

(**g**) 1990 c.43. Section 33 was amended by S.I. 2005/894, 2006/937, 2007/3538, 2009/1799 and 2010/675 and by the Environment Act 1995 (c. 25) and the Clean Neighbourhoods and Environment Act 2005 (c.16). Section 34 was amended by the Deregulation and Contracting Out Act 1994 (c. 40) and by S.I. 1999/1820, 2000/1973, 2005/2900, 2006/123 and 2007/3538. Section 34B was inserted by the Clean Neighbourhoods and Environment Act 2005 (c. 16) and amended by S.I. 2007/3538.

(**h**) 1991 c.57. Section 85 was repealed by S.I. 2010/675, regulation 107 and Schedule 26, Part 1, paragraph 8(2)(a). Section 202 was amended by the Environment Act 1995 (c. 25), section 120, Schedule 22, paragraph 128. Section 206 was also amended by that Act, section 112, Schedule 19, paragraphs 5(2) to 5(5) and by the Water Act 2003 (c. 37), section 101(1), Schedule 7, Part 1, paragraph 11.

(h) the Transfrontier Shipment of Waste Regulations 1994(**a**),

(i) section 110 of the Environment Act 1995(**b**),

(j) the Control of Major Accident Hazards Regulations 1999(**c**),

(k) the Pollution Prevention and Control (England and Wales) Regulations 2000(**d**),

(l) Part 1 of the Vehicles (Crimes) Act 2001(**e**),

(m) regulation 17(1) of the Landfill (England and Wales) Regulations 2002(**f**),

(n) section 327, 328 or 330 to 332 of the Proceeds of Crime Act 2002 (**g**),

(o) the Hazardous Waste (England and Wales) Regulations 2005(**h**),

(p) the Hazardous Waste (Wales) Regulations 2005(**i**),

(q) section 1 of the Fraud Act 2006(**j**), where the offence relates to scrap metal or is an environment-related offence,

(r) the Waste Electrical and Electronic Equipment Regulations 2006(**k**),

(s) regulation 38 of the Environmental Permitting (England and Wales) Regulations 2007(**l**),

(t) the Producer Responsibility Obligations (Packaging Waste) Regulations 2007(**m**),

(u) the Transfrontier Shipment of Waste Regulations 2007(**n**),

(v) regulation 38 of the Environmental Permitting (England and Wales) Regulations 2010(**o**),

(w) regulation 42 of these Regulations,

(x) section 146 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012(**p**),

(y) the Waste Electrical and Electronic Equipment Regulations 2013(**q**),

(z) the Scrap Metal Dealers Act 2013(**r**).

(5B) A relevant offence also includes—

(a) attempting or conspiring to commit a relevant offence;

(b) inciting or aiding, abetting, counselling or procuring the commission of a relevant offence; and

(c) an offence under Part 2 of the Serious Crime Act 2007(**s**) (encouraging or assisting crime) committed in relation to a relevant offence.

(5C) For the purposes of paragraph (5A)—

(**a**) S.I. 1994/1137. These Regulations were revoked by S.I. 2007/1711, regulation 60(1)(a) and (2).
(**b**) 1995 c.25.
(**c**) S.I. 1999/743, amended by S.I. 2005/1088; there are other amending instruments but none is relevant.
(**d**) S.I. 2000/1973. These Regulations were revoked by S.I. 2007/3538, regulation 74(1) and Schedule 22.
(**e**) 2001 c.3. Part 1 was repealed by section 19(1)(d)(i) of the Scrap Metal Dealers Act 2013.
(**f**) S.I. 2002/1559. These Regulations were revoked by S.I. 2007/3538, regulation 74(1) and Schedule 22.
(**g**) 2002 c.29. Sections 327 and 328 were amended by the Serious Organised Crime and Police Act 2005, section 102(1) and (2). Section 330 was amended by section 104(1) of that Act and by S.I. 2006/308 and 2007/3398. Sections 331 and 332 were amended by sections 102(1), (6) and (7) and 104(1), (5) and (6) of that Act and by the Crime and Courts Act 2013, section 15(3), Schedule 8, Part 2, paragraphs 108, 130 and 131.
(**h**) S.I. 2005/894, relevant amending instruments are S.I. 2007/3476 and S.I. 2011/988.
(**i**) S.I. 2005/1806 (W. 138), amended by S.I. 2011/971 (W. 141); there are other amending instruments but none is relevant.
(**j**) 2006 c.35.
(**k**) S.I. 2006/3289. These Regulations were revoked by S.I. 2013/3113, regulation 96(2)
(**l**) S.I. 2007/3538. Regulation 38 was revoked by S.I. 2010/675, regulation 108(1) and Schedule 27.
(**m**) S.I. 2007/871. to which there are amendments not relevant to these Regulations.
(**n**) S.I. 2007/1711, to which there are amendments not relevant to these Regulations.
(**o**) S.I. 2010/675, to which there are amendments not relevant to these Regulations.
(**p**) 2012 c.10. Section 146 was repealed by the Scrap Metal Dealers Act 2013, section 19(1)(f).
(**q**) S.I. 2013/3113.
(**r**) 2013 c.10.
(**s**) 2007 c.27.

"environment-related offence" means an offence which relates to the transportation, shipment or transfer of waste, or to the prevention, minimisation or control of pollution of the air, water or land which may give rise to any harm;

"harm" means—

(a) harm to the health of human beings or other living organisms;

(b) harm to the quality of the environment;

(c) offence to the senses of human beings;

(d) damage to property; or

(e) impairment of, or interference with, amenities or other legitimate uses of the environment.".

(c) after paragraph (6), insert—

"(6A) The appropriate body must, on payment of a reasonable charge, provide any person who has been provided with a certificate of registration under paragraph (6) with a copy of the certificate if requested.

(6B) The appropriate body must ensure that any copy is numbered and marked so as to show that it is a copy of the certificate and that it has been provided by the appropriate body under this regulation.".

Regulation 32 (revocation of registration)

5. For regulation 32(1)(a), substitute—

"(a) the registered person or another relevant person has been convicted of a relevant offence within the meaning of regulation 29;".

Regulation 35 (the transfer note)

6. Regulation 35 is amended as follows—

(a) in the heading, for "The transfer note" substitute "Waste information";

(b) in paragraph (2), for "("the transfer note")" substitute "("written information")";

(c) in paragraph (3)—

"(i) for "a transfer note" substitute "the written information",

(ii) for "information" substitute "matters"."

(d) in paragraphs (4) and (5), in each place where it occurs, for "transfer note" substitute "written information";

(e) in paragraph (6), for "a transfer note" substitute "the written information".

Part 10A (authority to transport controlled waste)

7. After regulation 45 (proceedings for contravention of section 1 of the Control of Pollution (Amendment) Act 1989), insert—

"PART 10A

Authority to transport controlled waste

Specified requirements under section 5 of the Control of Pollution (Amendment) Act 1989

45A.—(1) Where a person is required to produce an authority for transporting controlled waste under section 5(2)(a) (power to require production of authority, stop and search etc) of the Control of Pollution (Amendment) Act 1989—

(a) a copy of that person's certificate of registration as a carrier of controlled waste made in accordance with regulation 29(6A) and (6B) is authority for these purposes(**a**); and

(b) where the authority cannot be produced forthwith when required to do so, the authority must be produced at, or sent to, the relevant office no later than 5 working days from when required.

(2) For the purposes of paragraph (1)(b)—

(a) "relevant office" means an office of the appropriate body as may be specified by the authorised officer of a regulation authority or constable at the time the requirement is made;

(b) "working day" means any day except a Saturday or Sunday, Christmas Day, Good Friday or a bank holiday under section 1 of the Banking and Financial Dealings Act 1971(**b**).

(3) For the purposes of paragraph (2)—

(a) "authorised officer" has the meaning given in section 9(1B) of the Control of Pollution (Amendment) Act 1989(**c**);

(b) "regulation authority" has the meaning given in section 9(1) of that Act, as read with section 9(1A) and (1AA)(**d**).".

Dan Rogerson
Parliamentary Under Secretary of State
14th March 2014 Department for Environment, Food and Rural Affairs

Alun Davies
Minister for Natural Resources and Food
12th March 2014 one of the Welsh Ministers

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Waste (England and Wales) Regulations 2011 (S.I. 2011/988) ("the Waste Regulations"). The Waste Regulations transpose, for England and Wales, Directive 2008/98/EC of the European Parliament and of the Council on waste (OJ No. L 312, 22.11.2008, p3).

(**a**) Section 5(3)(a) of the Control of the Pollution (Amendment) Act 1989 provides that for the purposes of subsection (2)(a), a person's authority for transporting controlled waste is his certificate of registration as a carrier of controlled waste.
(**b**) 1971 c.80.
(**c**) Section 9(1B) of the Control of the Pollution (Amendment) Act 1989 was inserted, in relation to England and Wales, by the Clean Neighbourhoods and Environment Act, section 39(1), (3).
(**d**) The definition of "regulation authority" in section 9(1) of the Control of the Pollution (Amendment) Act 1989 was substituted by the Environment Act 1995, section 120, Schedule 22, paragraph 37(8). In the definition of "regulation authority" paragraph (aa) was inserted by S.I. 2013/755 (W 90) article 4(1), Schedule 2, Part 1, paragraphs 188 and 190(b). Section 9(1A) was inserted, in relation to England and Wales, by the Anti-Social Behaviour Act 2003, section 55(1), (3). Section 9(1AA) was inserted, in relation to England and Wales by S.I. 2011/988, regulation 48(3), Schedule 4, Part 1, paragraph 1.

Regulation 4 amends regulation 29 of the Waste Regulations by adding a new list of "relevant offences" for the purposes of refusing registration of carriers, brokers and dealers of controlled waste in accordance with regulation 29(5) and by providing for the making of copies of certificates of registration.

Regulation 6 amends regulation 35 by replacing the references in that regulation to "a transfer note" with references to "written information".

Regulation 7 inserts a new Part relating to the production of authority for transporting controlled waste (which is the certificate of registration) where this is required under section 5(2)(a) of the Control of Pollution (Amendment) Act 1989 (c.14).

A full impact assessment of the effect that this instrument will have on business, the voluntary sector and the public sector is available from Waste Regulation and Crime, Department for Environment, Food and Rural Affairs, Area 2B, Nobel House, 17 Smith Square, London, SW1P 3JR and is annexed to the Explanatory Memorandum which is available alongside the instrument on www.legislation.gov.uk.

Explanatory Memorandum to The Waste (England and Wales) (Amendment) Regulations 2014

This Explanatory Memorandum has been prepared by the Department for Natural Resources and Food 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 Waste (England and Wales) (Amendment) Regulations 2014. I am satisfied that the benefits outweigh any costs.

Alun Davies AM

Minister for Natural Resources and Food

12 March 2014

1. Description

These Regulations amend The Waste (England and Wales) Regulations 2011 (S.I. 2011/988) which transpose the revised Waste Framework Directive (Directive 2008/98/EC) in England and Wales. Part 8 of the 2011 regulations makes provision in relation to registration of carriers of waste and brokers and dealers in waste and part 9 provides for a transfer note to be completed on the transfer of waste These amending regulations make the following changes:-

- They amend regulation 35 by replacing the references in that regulation to "a transfer note" with a reference to "written information".
- They amend regulation 29(5) of the 2011 Regulations by adding a new list of "relevant offences". Relevant offences are taken into account by the regulators when considering an application for registration of a carrier, broker and dealer of controlled waste.
- They reinstate provisions relating to the requirement by a carrier of waste to produce their authority (an official waste registration certificate), for transporting controlled waste and provide for provisions relating to the making of copies of certificates of registration.

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

These Regulations make minor amendments to earlier England and Wales regulations and are being made on a composite basis with the Secretary of State for DEFRA. Maintaining a consistent approach for businesses in Wales with England is considered beneficial for businesses, particularly for those businesses that operate on a cross border basis. Defra wish to bring these changes into effect by the 6 April (to meet common coming into force dates) and as we are not intending to do anything different in Wales a composite regulation is being proposed for expediency and to not disadvantage businesses in Wales.

This composite SI applies to Wales and England and is subject to approval by the National Assembly for Wales and by Parliament. It is therefore not considered reasonably practicable for this instrument to be made bilingually.

Section 2(8) of the Pollution Prevention and Control Act 1999 requires regulations made under that section, to be subject to approval by the Assembly, in the circumstances in section 2(9), that is, where the regulations are the first regulations under that section to be made in relation Wales, where they create an offence or increase a penalty for an existing offence, or where they amend or repeal any provision of an Act. Those circumstances do not apply in relation to this instrument, and it is therefore appropriate to follow negative Assembly procedure.

By virtue of section 8 Control of Pollution Act 1989, regulations made under that Act are subject to negative Assembly procedure.

By virtue of Section 2(2) European Communities Act 1972 there is a choice of Assembly procedure. The negative procedure has been proposed because the provisions do not amend any provisions of an Act or Measure and neither do they impose obligations of special importance. The amendments are relatively minor and relate to technical matters (for example Businesses may continue to use Waste Transfer Notes or choose to use alternative documentation and incur transition costs if it suits their business model). Accordingly there is no factor indicating the use of the affirmative procedure.

3. Legislative background

The Welsh Ministers will make the changes to the Waste (England and Wales) Regulations 2011 under powers contained in section 2 and Schedule 1 to the Pollution Prevention and Control Act 1999 and section 2(2) European Communities Act 1972. The Welsh Ministers are designated (European Communities (Designation) (No 2) Order 2010 [S.I.2010/1552]) for the purposes of section 2(2) ECA 1972, in relation to the prevention, reduction and management of waste. These powers were transferred to the National Assembly for Wales by article 2 of the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672) and are exercisable by the Welsh Ministers by virtue of section 162 of, and paragraph 30 of Schedule 11 to, the Government of Wales Act 2006 (c. 32).

The shift of emphasis from “transfer note” to “written information” proposed in Regulation 35 is consistent with the statutory requirements in section 34(1)(c)(ii) of the Environmental Protection Act 1990 (EPA) provided that when presented in the proposed more flexible format, the waste information is in writing and in aggregate, meets those statutory requirements.

This Statutory Instrument is subject to annulment of the National Assembly for Wales and follows the negative procedure.

4. Purpose and Intended Effect of the Legislation

This legislation will provide greater flexibility to business in the documentation they can use to provide a description of wastes they transfer. Evidence provided to the UK Government’s Red Tape Challenge suggests that businesses (particularly small businesses) find it burdensome to fill in Waste Transfer Notes. Around 23.5 million Waste Transfer Notes are currently produced in the UK each year at a cost of £1.22 each which includes their creation, storage and retrieval. The biggest burden of Waste Transfer Note administration falls on smaller businesses which do not contract with the larger waste management companies

for their waste arrangements. This is because these businesses have to complete the paperwork and store the Waste Transfer Notes themselves.

Although this is a response to the UK Governments Red Tape Challenge, it is considered beneficial to businesses in Wales for the same provisions to apply. These concerns have been raised by the industry and the proposals will help reduce the requirements on businesses but at the same time still meet their legal obligation under the Waste Management Duty of Care. These amending Regulations will provide greater flexibility to businesses by clarifying in the 2011 Regulations that alternative forms of documentation will be acceptable to record the information required under the statutory Duty of Care.

This change needs to be put into context next to the electronic Duty of Care (EDoC) system, launched in January 2014 which will allow the electronic recording and storage of Waste Transfer Notes. It is estimated that 80% of waste transfers will be recorded on the voluntary EDoC system. This will leave around 20% of transfers using paper Waste Transfer Notes. These changes will therefore complement EDoC and increase the flexibility for those wishing to continue to use paper-based systems.

The amendments will also provide clarity to waste carriers on the evidence they need to provide if they are required to do so by the regulator Natural Resources Wales. A person will be required to produce, or send their authorisation to carry controlled waste to the relevant regulator within 5 working days from the date they are initially required to do so, and an authorised copy of the original certificate will be acceptable to demonstrate this authority. It is essential that clear procedures are in place that allows those stopped or required to produce evidence of their status to carry waste to be able to do so and so avoid enforcement action. The proposals also set clear requirements for how and where such evidence shall be produced. This will help to make the regulators' task easier.

Natural Resources Wales (NRW) register waste carriers, brokers and dealers in Wales in accordance with the provisions set out in the 2011 Regulations. When dealing with an application for registration NRW can refer to the list of relevant convictions in the current Regulations and can refuse an application if in their opinion it is undesirable for the applicant to be authorised to transport waste or to act as a dealer or broker of controlled waste. These amendments will limit the ability of convicted criminals to become authorised as waste carriers, brokers and dealers by adding convictions for offences such as metal theft and fraud, to the current list of relevant convictions. Furthermore the changes will provide a consistent approach across environmental permitting, scrap metal dealer licensing and waste carrier legislation in the range of circumstances where relevant offences are considered.

5. Consultation

These proposals have been subject to a joint public consultation with Defra over a 6 week period with a variety of stakeholders including private businesses, regulators, local authorities, trade associations and charities. The proposals concerning Waste Transfer Notes have come from recommendations made under the UK Government Red Tape Challenge process and the proposed amendments to waste legislation have been classed by the Cabinet Office as minor. As the issues affect only the waste sector and is reducing regulatory impact it was agreed that it was reasonable to have a shorter consultation period.

Wales received 6 responses to the consultation: four from local authorities, one from a large business and another from a charity. These responses have been included in the joint summary report published by Defra. Although there was an almost 2 to 1 response against the main proposal for alternative documentation, none were able to offer any substantial reasoning to not proceed with the amendments. Given the support for the proposals came from businesses including key stakeholders such as the Federation of Small Businesses and the National Farmers Union, both the Welsh Government and UK Government intend to proceed with the proposed amendments to the 2011 Regulations and from April 2014, allow alternative information to be used to record the written description of waste.

There was strong positive support for the rest of the proposed amendments.

A list of consultees is available at: https://consult.defra.gov.uk/waste/red-tape-challenge-alternatives-to-waste-transfers

6. Regulatory Impact Assessment (RIA)

Defra and the Welsh Government have prepared a joint Impact Assessment which examines costs and benefits, which is attached to this Explanatory Memorandum. The Impact Assessment is based on the best available information.

7. Post Implementation Review

The requirement to prepare a description of waste has operated effectively since 1991. The Welsh Government will continue to discuss the management of Waste Transfer Notes with Local Authorities and Natural Resources Wales and to monitor the effectiveness of changes to the provision and the Statutory Instrument.

Title:
Consultation on alternatives to Waste Transfer Notes arising from the Red Tape Challenge and other aspects of waste regulation

Lead department or agency:
Department for Environment, Food and Rural Affairs (Defra)

Other departments or agencies:
Welsh Government

Impact Assessment (IA)

IA No: DEFRA 1535

Date: 18/11/2013

Stage: Consultation

Source intervention: Consultation

Type of measure: Secondary legislation

Contact for enquiries: Sean Quirke 0207 2384840

Summary: Intervention and Options

RPC Opinion: Awaiting Scrutiny

Cost of Preferred (or more likely Option

Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, Two-Out?	Measure qualifies as
Unknown	Unknown	Unknown	Yes	OUT

What is the problem under consideration? Why is government intervention necessary?
The Red Tape Challenge concluded that some businesses find it burdensome to fill in Waste Transfer Notes (WTNs) that are used when waste is transferred to another person. In response we gave a commitment to (a) consult on clarifying the regulations that will allow businesses to use alternative documentation if they wish. We are also consulting on: (b) reinstating procedures on how waste carriers produce evidence of their authorisation to carry waste. The procedures were unintentionally repealed and this has caused difficulty for waste carriers and regulators; and (c) adding to the list of 'relevant offences' the Environment Agency may take into account when registering waste carriers, brokers and dealers.

What are the policy objectives and the intended effects?
The policy objectives are: (a) to provide greater flexibility to businesses by clarifying the regulations allow them to use alternative forms of documentation to record the information required under the statutory Duty of Care; (b) to provide clarity to waste carriers on the evidence they need to provide if they are required to do so by the regulator and where and when it must be produced; and (c) to limit the ability of convicted criminals to become authorised as waste carriers, brokers and dealers by allowing convictions for offences such as metal theft and fraud, in addition to the current list of relevant convictions, to be taken into consideration by the Environment Agency when considering their registration.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)
Option 0 - Do nothing. (a) Every waste movement will continue to require a WTN. (b) Waste carriers will be required to carry authorisation to transport waste at all times or risk prosecution; and (c) persons convicted of offences relating to metal theft may be able to register as waste carriers, brokers and dealers.
Option 1 - Remove references to ‘transfer notes’ in Regulation 35 of the Waste (England and Wales) Regulations 2011 and replace with 'waste information'. Option 1 is preferred as it is a permissive change, will reduce cost and administration. There is no alternative but to reinstate how waste carriers can demonstrate their authority to carry waste other than in the way previously set out. Not to do so makes the requirement to produce evidence unworkable. The addition of new 'relevant convictions' is part of a package of measures to tackle metal theft and will bring the registration of waste carriers, brokers and dealer provisions in line with 'relevant offences' listed in other waste legislation.

Will the policy be reviewed? The proposals will be reviewed in light of the consultation.

Does implementation go beyond minimum EU requirements?			N/A			
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	**Micro** Yes	**<20** Yes	**Small** Yes	**Medium** Yes	**Large** Yes	
What is the CO2 equivalent change in greenhouse gas emissions? (Million tonnes CO2 equivalent)			**Traded:** N/A	**Non-traded:** N/A		

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

Signed by the responsible SELECT SIGNATORY: Date:

Summary: Analysis & Evidence Policy Option 1

Description: (a) Waste Transfer Notes; (b) Demonstrating authorisation to transport controlled waste; (c) Waste carrier, broker and dealer registration – relevant convictions

FULL ECONOMIC ASSESSMENT

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

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

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

Other key non-monetised costs by 'main affected groups'
Businesses using Waste Transfer Notes who choose to adopt alternative documentation may incur transition costs. As this is a permissive change, businesses may continue to use WTNs and therefore businesses are only expected to incur transition costs if an overall net benefit is expected. There is a potential cost to businesses using alternative documentation if they do not record all the information required on a WTN as they open themselves up to non-compliance of the law.

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

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

Other key non-monetised costs by 'main affected groups'
(a) All businesses will have greater flexibility in providing the information required in a WTN. There will be minimal benefit for those using EDoC (estimated to cover 80% of waste transfers), however businesses involved in the remaining 20% of transfers will benefit from this permissive change. (b) Reinstating the procedures around authority to transport waste reduces the possibility of unfair prosecution for waste carriers; and (c) adding to the list of relevant offences may reduce the risk of negative environmental impact.

Key assumptions/sensitivities/risks Discount rate (%)

Electronic Duty of Care (EDoC) is a voluntary electronic system for recording WTNs that will be launched from January 2014 and is estimated will save businesses between £7.8m- £13.4m per annum. It is also estimated that 80% of waste transfers will be dealt with via the EDoC system. Our consultation assumes that the total benefits to businesses from EDoC will be realised. Therefore the changes proposed here relate to the businesses that choose to continue using paper based systems (covering the remaining 20% of waste transfers).

BUSINESS ASSESSMENT (Option 1)

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

Evidence Base (for summary sheets)

Executive summary

The Red Tape Challenge stated it was burdensome for some small businesses to fill in WTNs. In response we are proposing to clarify the legislation that alternative forms of documentation can be used instead of a WTN. Simultaneously we propose to invite consultees to suggest possible revisions to the nature of the information that is currently required to be recorded on a WTN.

The consultation proposes to amend regulation 35 of the 2011 Regulations and in particular replace the references to the 'transfer note' with 'waste information'. This will provide greater flexibility for businesses by clarifying that alternative, existing documentation can be used to record the required information. We have been working with relevant stakeholders and have received the support of the Federation of Small Businesses and Department of Business Innovation and Skills. Although we have been unable to ascertain an associated cost benefit to business with this proposal, however as it is a permissive change any businesses who do not see a benefit may continue using WTNs.

We will also be seeking to amend the 2011 Regulations to reinstate procedures which allow a waste carrier to produce their authorisation to carry controlled waste up to 5 working days after they were required to; and that a copy of the original certificate is acceptable to demonstrate this authorisation. Finally in relation to the Scrap Metal Dealers Act 2013 we will be seeking to amend the 2011 Regulations to update the relevant convictions the Environment Agency can take into account when registering waste carriers, brokers and dealers. These amendments will provide clarity to waste carriers on the evidence they need to provide if they are required to do so by the regulator and where and when it must be produced; and will limit the ability of convicted criminals to become authorised as waste carriers, brokers and dealers by allowing convictions for offences such as metal theft and fraud, in addition to the current list of relevant convictions, to be taken into consideration when considering their registration.

(a) Waste Transfer Notes

A Waste Transfer Note (WTN) is a document that details the transfer of waste from one person to another. Every load of household, industrial or commercial waste (known as controlled waste) transferred from one establishment or person to another must be covered by a WTN (this does not apply to householders). The information recorded on the WTN provides the 'written description' of waste required to meet the Waste Duty of Care provisions under section 34(1)(c) of the Environmental Protection Act 1990. Regulation 35 of the Waste (England and Wales) Regulations 2011 (2011 Regulations) sets out what must be recorded in the written description of waste in order to comply with section 34(1)(c) of the Environmental Protection Act 1990.

WTNs perform the following role in the UK's system of waste:

- They create a self-policing auditable system which tracks waste and therefore reduces the opportunity for unlawful disposal. In essence, they provide a mechanism for businesses to demonstrate that they are doing the right thing and handing their waste to an authorised person. The requirement to keep copies of WTNs provides a system whereby the Environment Agency in England and their equivalents in the devolved administrations and local authorities are able to carry out cradle to grave audits of waste in the UK.

- Supports the enforcement and prosecution by the Environment Agency in cases of illegal disposal. Many of the successful prosecutions for the illegal dumping have relied heavily on evidence obtained from WTNs.

- Helps implement the requirements of the revised Waste Framework Directive (rWFD) which requires Member States to ensure that waste is managed up the waste hierarchy, is handled by an authorised person and ensure that waste management is only treated at authorised facilities without endangering human health or the environment.

- The obligation to produce a WTN rests as much on the transferor of the waste as transferee of that waste. The way in which the requirement for a WTN has been implemented means all transferors and transferees retain a copy of a WTN. This places an obligation on businesses to both complete and store a specific document for this purpose alone.

23.5 million WTNs are currently produced in the UK each year (calculated as part of the Electronic Duty of Care (EDoC) pilot in 2010); http://www.environment-agency.gov.uk/static/documents/edoc_A4_leaflet_(PDF_2MB).pdf The Red Tape Challenge stated that it is burdensome for some small businesses to fill in WTNs.

We made a commitment as part of Defra's response to the Red Tape Challenge to consult on providing businesses with greater flexibility as to the types of documents that can be used as an alternative to WTNs.

There is already some flexibility in the system as businesses can design transfer notes themselves as long as they contain the information required by statute, although it is difficult to quantify to what extent this option is used.

There is also the option to use an annual "season ticket" and many businesses take advantage of this approach. This allows them to fill in a WTN at the start of a contract and covers all transfers for up to 12 months as long as the waste type and the parties to the transfer remain the same. This frees businesses from having to complete a WTN each time waste is transferred thus minimising the administrative burden.

As part of the EDoC pilot, project stakeholders estimated that, in 2010 the cost of filling in, storing and retrieving a WTN was about £1.22. This was based on information from waste companies who were closely involved in developing the EDoC system. In many cases, large waste management companies take care of the WTN requirements as part of the service they provide to businesses and local authorities. Smaller businesses are less likely to contract with large waste management companies and therefore may face a bigger burden of WTN administration. It is assumed that many of these businesses have to complete the paperwork and store the WTNs themselves, incurring disproportionately higher costs.

The policy objective is to reduce the administrative burden on businesses having to complete WTNs by giving them a clearer option to use alternative forms of documentation as evidence instead such as invoices, receipts or orders to record the required information.

(b) Demonstrating authorisation to transport controlled waste

All persons who carry waste as part of a business or for profit must be registered with the relevant regulator (Environment Agency, Natural Resources Wales). The regulator issues waste registration certificates to those who register to carry waste. They also issue official copy cards for those who want them as a convenient way of carrying around their proof of registration.

There is no duty on a waste carrier to have their certificate or a copy card with them when transporting waste. Local authorities and the regulators have the power to require a person to produce their authority to transport waste in much the same way as the Police do for driving licences or insurance by issuing a form requiring the person to produce evidence.

Prior to the Waste (England and Wales) Regulations 2011 (2011 Regulations) a regulation existed in the Controlled Waste (Registration of Carriers and Seizure of Vehicles) Regulations 1991 which set out:

- how a person could produce their authority to transport waste when this is not done at the time of request (i.e. allowing them to produce this up to 7 days later); and

- that copy certificates were acceptable as proof of registration (therefore not restricting registered carriers to carry around the original certificate).

This description of how to comply was unintentionally left out of the 2011 Regulations which recast the waste carrier provisions from predecessor regulations. The omission of these regulations has caused confusion to the relevant regulators as well as to waste carriers. It has taken away the flexibility for carriers not to carry their original certificate around at all times and there is anecdotal evidence that some people have been prosecuted for non-compliance.

The aim of the consultation is simply to recognise this fact and amend the error by reinstating a very similar provision. The new provision differs very slightly by allowing production up to **5 working days after the request** rather than 7 (calendar) days. The provision has limited scope and places no additional burden on businesses although it is important in tackling potential crime.

(c) Waste carrier, broker and dealer registration – relevant convictions

The Environment Agency and Natural Resources Wales register waste carriers, brokers and dealers under the Control of Pollution (Amendment) Act 1989 (the 1989 Act) and in accordance with the provisions set out in the Waste (England and Wales) Regulations 2011 (the 2011 Regulations).

The Environment Agency may refuse registration if, in its opinion, it is undesirable for the applicant to be authorised to transport or to act as a broker or dealer of controlled waste and the applicant or another relevant person has been convicted of one or more of the offences set out in regulation 29(b) of the 2011 Regulations. This provision is similar but not the same as the relevant convictions considerations under the operator competence provisions of the environmental permitting regime. The Environment Agency may also revoke an environmental permit or a registration as a carrier, broker or dealer of a person latterly convicted of a relevant offence.

The Government has taken a number of measures to tackle 'metal theft'. Key amongst these measures is the introduction of the Scrap Metal Dealers Act 2013 (the 2013 Act). The 2013 Act introduces the concept of scrap dealers being subject to a licensing system by local authorities. A licence may be refused or revoked where a dealer is convicted of a relevant offence.

As legitimate scrap metal dealers will invariably also be required to be registered as waste carriers, brokers or dealers or treat waste under an environmental permit, it is desirable that the list of relevant offences for which convictions will need to be declared should be the same under the environmental permitting, waste carrier, broker and dealers registration and scrap metal dealer licensing. Furthermore, the list of relevant offences should include those related to metal theft or the handling of stolen metal. The Environment Agency has already altered its guidance to applicants to broaden the range of relevant convictions for the purpose of obtaining an environmental permit. Unfortunately the 1989 Act does not provide for the relevant offences to be set out in guidance.

Accordingly the purpose of this consultation is to add additional offences that are connected to metal theft to the list of relevant offences in regulation 29(5) of the 2011 Regulations (See Annex A).

The list of relevant offences may need to be periodically updated if and when new offences are added to the 2013 Act.

The policy objective is to prevent those convicted of relevant offences from registering as waste carriers, brokers or dealers by ensuring persons applying to register must declare convictions relating to metal theft as well as other environmental offences. This will help tackle metal theft as persons who have committed offences relating to metal theft or the handling of stolen metal will be refused registration as a waste carrier therefore reducing the possible negative impact.

Description of options considered (including do nothing);

Option 0 - Do nothing: (a) Retain the current requirement for Waste Transfer Notes; (b) not make any amendments in respect of waste carriers demonstrating their authorisation to transport controlled waste; (c) and not include the additional offences that are connected to metal theft that must be declared when registering as a waste carrier, broker or dealer.

As part of the Red Tape Challenge we have committed to look at providing businesses with an alternative to WTNs, however we will retain the option of doing nothing. We are seeking to amend the unintentional omission from the 2011 Regulations regarding waste carriers demonstrating their authority to transport waste, however we will retain the option of doing nothing. We are seeking to include the additional offences relating to metal theft that must be declared when registering as a waste carrier, broker or dealer, however we will retain the right to do nothing.

Option 1 – (a) Remove references to 'transfer notes' in Regulation 35 of the 2011 Regulations and replace with 'waste information'; (b) Amend the 2011 Regulations to include how a person can demonstrate their authority to carry waste when evidence is not immediately available; (c) Amend regulation 29(b) of the 2011 Regulations to include the relevant offences that are connected to metal theft.

This is the preferred option as this will provide greater flexibility around WTNs to the transferor and transferees of controlled waste to meet their legal Duty of Care obligations and is supported by

business. As this is a permissive change businesses may still use WTNs if they see no benefit to using alternative documentation. This will only apply to businesses involved in the estimated 20% of transfers not handled through EDoC. This option also sets out how waste carriers can comply with demonstrating their authority to carry waste when required to do so, therefore clearing up possible confusion resulting from the unintentional repeal of the previous regulations. In addition, this option will help to tackle metal theft by restricting persons convicted of offences relating to metal theft from registering as a waste carrier, dealer or broker.

Monetised and non-monetised costs and benefits of each option (including administrative burden);

Option 0 – Do nothing

(a) Waste Transfer Notes

There were changes to the regulations in 2011 (The Waste (England and Wales) Regulations 2011) that enabled the WTN to be in non-paper form in the knowledge that the Environment Agency (EA) was developing and electronic Duty of Care (EDoC) system for waste transfer notes under an EU Life Plus funded project. The project is managed by the Environment Agency in partnership with other organisations and has industry-wide support.

EDoC is due to be introduced from January 2014 and will allow for the electronic recording of WTNs. EDoC is expected to reduce much of the administrative burden currently associated with WTNs by delivering an online waste tracking system to replace the present paper-based WTN system. Estimates of the savings are based on information provided by businesses and the Environment Agency. Taking into account the savings from reduced costs of creation, storage and retrieval of a WTN, it is estimated that EDoC will save businesses £0.68 in the current estimated costs of hard copy WTNs. This means an expected cost per WTN of £0.54 using 2010 prices. More than 50% of this saving comes from the storage and retrieval of WTNs as shown in Table 1 overleaf.

Table 1: Estimated saving from EDoC (2010 prices)

Costs per WTN	Current WTN system	Edoc	Savings
Creation	£0.55	£0.50	£0.05
Storage	£0.43	£0.00	£0.43
Retrieval	£0.24	£0.04	£0.20
Total	£1.22	£0.54	£0.68

Source: EA

Although EDoC is voluntary, the Environment Agency estimates take up by businesses will cover 80% of waste transfers with targeted communication and other publicity campaigns. The significant cost savings to businesses are expected to be the main driver of this take up rate. There will be transition costs of switching from paper based documentation to EDoC, but these costs of familiarisation with the portal and training of staff are expected to be low and are not expected to be undertaken if the potential savings are not expected to be realised. The Environment Agency is creating a large document management system that can easily be accessed via a web portal. Applications will be provided allowing companies to integrate EDoC directly with their existing waste management systems. Any UK company involved in the production, collection, transfer or disposal of waste will be able to use EDoC.

The benefits to business of EDoC are substantial. Scaling up the costs savings to 2013 using the GDP deflator gives £0.72 of savings per WTN. Assuming the number of WTN is unchanged (the total amount of waste and waste transactions can vary over time, but we do not have sufficient information to make an assumption about the number of WTNs required), there will be saving for 80% of the total number of WTNs or 18.8m. This could provide overall savings of up to £13.6m to businesses. These saving are expected to be fully realised from 2015. There are costs to government and the Environment Agency of developing and maintaining the system. There are support and maintenance costs and this is expected to be £300,000-£400,000. The estimated net benefit of the EDoC system assuming full take up and cost savings is £13.2m. A lower rate of take up would reduce this estimate.

There are additional benefits to take up of the EDoC system. According to the CBI, there is a lack of good quality data for commercial and industrial waste, which means it is difficult to identify opportunities for recycling and recovery. The EDoC system would fill a major gap in knowledge within the waste industry, providing a platform for the production of a real-time, accurate, benchmarking baseline of waste together with in-depth reporting of information on the UK's waste data such as disposal and treatment methods and waste streams.

EDoC is out of scope of any proposed legislative changes and is happening irrespective of this consultation and is therefore part of the counterfactual for this proposal. The counterfactual therefore assumes that 80% of WTNs are through EDoC and costs £0.57 (£0.54 inflated to 2013 prices) per WTN. It is further assumed that those businesses that do not take up EDoC are more likely to be smaller businesses, and will continue to incur the costs of full paper documentation for a WTN at a cost of £1.29 (GDP deflator applied to cost of £1.22 in 2010).The number of WTNs is assumed to remain unchanged at 23.5m as there is currently no evidence of any change since 2010. Although the total amount of waste arisings may vary over time, WTNs are expected to be related to the number of transactions which is less likely to be affected by overall changes in waste arisings. The total cost of WTNs is therefore £16.8m as shown in Table 2:

Table 2: Baseline costs for WTNs after 80% take up of EDoC

	Number of waste transactions requiring a WTN m	Cost per WTN/EDoC (2013 prices) £	Total £m
EDoC	18.8	0.57	10.8
WTN	4.7	1.29	6.1
Total	23.5		16.8

Source: EA

(b) Waste carrier demonstration of authorisation to transport controlled waste

There is no current legislation that stipulates how waste carriers can comply with the requirement to provide evidence of their authority to transport controlled waste when required to do so by a regulator and they do not have their original certificate with them.

This takes the assumption that every registered waste carrier would need to carry their certificate of authority with them at all times when operational to avoid possible penalties if required to show their authority by the relevant regulator. This also assumes that only the original certificate of authorisation is acceptable to demonstrate your authority when required. In some circumstances, businesses

registered as waste carriers will utilise a number of operational vehicles at one time under the same registration. This puts into practice that only one vehicle can carry the original authorisation at any one time therefore opening the other vehicles up to possible penalties.

The option of 'do nothing' restricts registered waste carriers from utilising more than one vehicle at any one time.

As the Environment Agency is currently taking a light touch approach around this legislation it is not possible to place a cost on it. There has been anecdotal evidence received, although nothing concrete, that some local authorities have stopped waste carriers who have not been carrying their certificate of authorisation and issued fixed penalty notices.

(c) Waste carrier, broker and dealer registration – relevant convictions

The Scrap Metal Dealers Act 2013 places restrictions on those who have been convicted of offences relating to metal theft and handling stolen metal from becoming licensed as scrap metal dealers. Persons who are unable to become licensed as scrap metal dealers may still register as waste carriers, brokers or dealers regardless of whether they have committed offences relating to metal theft.

If persons holding a scrap metal dealers licence and a waste carriers registration are convicted of offences relating to metal theft they may have their scrap metal dealers licence revoked but may continue to operate as a waste carrier under their registration.

This option may have a possible negative environmental impact associated as persons previously convicted of scrap metal theft offences will have the opportunity to become waste carriers and continue to work with scrap metal.

As this option is currently in place it is not possible to place a cost on retaining it.

Option 1:

(a) Remove references to 'transfer notes' in Regulation 35 of the 2011 Regulations and replace with 'waste information'.

There is no prescribed format for the transfer note and it can be in electronic form, so there is already some flexibility as to how the information can be provided. An example of a WTN is provided in a Code of Practice on how to comply with the Duty of Care.

This policy proposal offers greater flexibility around WTNs as it will clarify that there will is more than one way of complying with the Duty of Care by allowing businesses to use alternative forms of documentation as evidence to record the required information. However, there may be some upfront cost to businesses when adapting their existing system to incorporate these other forms of documentation.

During the consultation, we will request further information on using alternative documents and request associated costs savings and upfront costs of any change.

We have carried out informal research with stakeholders to ascertain if there will be any potential savings with this proposal. Our discussions with stakeholders indicate potential savings are unclear and suggest that a relatively small number of businesses will benefit from the proposed changes. The Federation of Small Businesses and Department of Business, Innovation and Skills have indicated their support for this option as, although it may not offer identified savings in terms of cost, the greater flexibility it offers businesses could result in savings that have not yet been identified.

This option is a permissive change, and as such businesses will not be required to stop using WTNs if they do not feel there is a benefit to do so. We will be using this consultation to invite views on the type of alternative documentation that could be provided and the associated cost savings.

As part of the consultation process we will also invite businesses to provide suggestions for possible revisions to the written description of waste that is currently required on WTNs. We may be limited as to the extent of changes we can implement as many of the existing requirements flow from our obligations under the revised Waste Framework Directive.

(b) Amend the 2011 Regulations to include how a person can demonstrate their authority to carry waste when not done immediately; and that copy of registration certificates are acceptable proof of registration

The 2011 Regulations do not stipulate how a waste carrier is required to provide evidence of their authorisation to carry controlled waste if required to do so by a regulator and they do not have their original certificate with them. The regulations also do not confirm whether an authorised copy of the original authorisation certificate is acceptable.

The policy proposed will reinstate the unintentional repeal of the relent parts of the Controlled Waste (Registration of Carriers and Seizure of Vehicles) Regulations 1991 which will allow a waste carrier to:

- produce their authorisation or send it to the principal office of the regulation authority for the area in which they are stopped within 5 working days after the date they were required to produce it; and

- establish that a copy of a waste carrier's certificate of registration as a carrier is acceptable to act as the authority for transporting controlled waste.

The EA offer authorised copies of registration certificates for an additional £5 fee. This policy will propose to reinstate that waste carriers are able to use these copies as a way of demonstrating authorisation to transport controlled waste.

The EA is currently taking a light touch approach to this legislation. This option will help to bring an explicit understanding to this legislation.

(c) Amend regulation 29(b) of the 2011 Regulations to include the relevant offences that are connected to metal theft as set out in the Scrap Metal Dealers Act 2013.

The policy proposed will help align offences taken into consideration when applying to register as a waste carrier, broker or dealer or applying for a licence as a scrap metal dealer.

It is important that persons who have been refused a scrap metal dealers licence by a local authority because they have been convicted of a relevant offence are not able to register as a waste carrier, broker or dealer without those same offences being taken into consideration as this would allow a possible loophole in the waste system. This policy will stop the ability for persons convicted of offences related to metal theft and the handling of stolen metal to continue this practice under registration as a waste carrier, broker or dealer. Persons, who are licensed as a scrap metal dealer and registered as a waste carrier, if convicted of offences relating to metal theft, may then have their scrap metal dealers licence or waste carrier registration revoked. However, it does not mean that the EA will automatically refuse a convicted person from registering as a carrier. However, the convictions will be taken into consideration. This is an important policy in the government's fight against metal theft.

This option will affect any persons with convictions relating to metal theft as they may no longer be allowed to register as waste carriers, brokers or dealers. The EA have already altered their list of offences to take into account when registering waste carriers, brokers or dealers.

Costs and Benefits

For proposal (a) it is expected that businesses involved in the 20% of transfers that are not handled through EDoC will take advantage of this permissive change if there are benefits to doing so. This change is expected to deliver benefits to businesses but there is currently insufficient information to monetise any expected benefits from the increased flexibility from the proposal for WTNs. The baseline already takes into account the substantial savings to the businesses involved in the other 80% transfers handled through EDoC. Information from the consultation will be used to estimate the number of businesses affected and the expected benefits from alternative forms of documentation. There may be transition costs that are incurred but these are expected to be more than offset by any benefits of the increased flexibility.

Proposals (b) and (c) are not expected to incur additional costs to legitimate businesses.

Risks

There is a risk that by using alternative documentation the required information under the 'written description' of waste may not be fully documented. This would mean both the transferor and transferee of the waste are not in compliance with their Waste Duty of Care and could be liable for financial penalties.

Summary of all proposals

Option 1 is the preferred option. This replaces references to 'transfer notes' in Regulation 35 of the 2011 Regulations with 'waste information'. This option provides greater flexibility for businesses to meet their Waste Duty of Care requirements and has the support of BIS/ the Federation of Small Businesses (FSB).

It is difficult to judge any impacts at this stage as we are unsure how many businesses will take up this option. Consultation from the FSB indicates the greater flexibility around WTNs will provide a positive impact to business.

With this in mind we are unable to calculate the EANCB for option 1. Our informal discussions with stakeholders have been unable to ascertain the level of cost saving for this option over the current practice. It has not been possible to establish the true potential savings of option 1 despite an understanding of the current cost of filling in a WTN. This consultation will be used to invite views on

the true cost of option 1 and we will seek to establish the value of the reduction in EANCB after it has closed.

Furthermore, this option will clarify how waste carriers are able to demonstrate their authority to carry waste when evidence is not immediately available as well as confirming that authorised copies of the original certificate are acceptable. This will have a positive impact on waste carriers who are unable to carry their certificate of authorisation with them as well as businesses that use multiple vehicles and therefore are reliant on copies of authorisation certificates.

This option will also allow the relevant regulators to take further convictions relating to metal theft and handling of stolen metal into account when registering persons as waste carriers, brokers or dealers. This will impact all persons convicted of offences relating to metal theft who are seeking to register as a waste carrier, broker or dealer as they may no longer be able to do so.

Consultation Questions

The following questions will be asked to consultees as part of the consultation document:

- **1a) please state whether clarifying in regulation 35 of the Waste (England and Wales) Regulations 2011 that the written description of waste can be recorded on documentation other than a WTN will provide any benefits and why?**
  If so please –
- **1b) provide any additional benefits not stated in the consultation where alternative documentation will help businesses comply with their Waste Duty of Care?**
- **1c) please provide estimated cost savings from the use of alternative documentation to record the written description of waste. This additional information will help establish additional monetary benefits or costs for this proposed amendment.**
- **Question 2) what are your views on the current information currently required to be recorded under regulation 35(2) of the Waste (England and Wales) Regulations 2011 and how helpful or necessary is this information to adequately meet the waste Duty of Care? Please provide specific examples of where changes may be made.**
- **Question 3) can you provide any reasons why reinstating the provisions regarding how a waste carrier presents their authority to carry waste may have a negative effect?**
- **Question 4) please give your views on the proposed additional relevant offences being taken into consideration when the Agencies exercise their power to refuse registration of a waste carrier, broker or dealer or revoke an existing registration?**

One in Two Out

Option 1 is in scope of One In Two Out and is classed as an out as the amendment around WTNs stems from the Red Tape Challenge and is deregulatory.

Option 1 gives businesses greater flexibility and makes it easier to comply with their waste Duty of Care responsibility. Currently there is no option but to fill in a Waste Transfer Note for every movement of waste. Option 1 gives them the flexibility to use alternative, existing documentation relieving some of the administrative burden.

The amendments concerning demonstrating authorisation to transfer waste and including the including relevant offences around metal theft have been classed as trivial by the Cabinet Office.

Implementation review

The proposals will be reviewed in light of this consultation.

Annex A –The proposed regulations

STATUTORY INSTRUMENTS

2014 No.

ENVIRONMENTAL PROTECTION, ENGLAND AND WALES

The Waste (England and Wales) (Amendment) Regulations 2014

Made - - - -	***
Laid before Parliament	***
Laid before the National Assembly for Wales	***
Coming into force in accordance with regulation 1(2)	

The Secretary of State is designated(**1**) for the purposes of the European Communities Act 1972(**2**) in relation to the environment. The Welsh Ministers are designated(**3**) 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, make these Regulations in exercise of the powers conferred by sections 5(3)(b) and (4)(b) and 8 of the Control of Pollution (Amendment) Act 1989(**4**) and section 2(2) of the European Communities Act 1972.

Title, commencement and interpretation

—a) These Regulations may be cited as the Waste (England and Wales) (Amendment) Regulations 2014.

These Regulations come into force on xx February 2014.

In these Regulations, “the Waste Regulations” means the Waste (England and Wales) Regulations 2011(**5**).

Amendment of the Waste (England and Wales) Regulations 2011

The Waste Regulations are amended in accordance with regulations 3 to 5.

(**1**) S.I. 2008/301.
(**2**) 1972 c.68. Section 2(2) was amended by section 27(1)(a) of the Legislative and Regulatory Reform Act 2006 (c. 51) and section 3(3) of, and Part 1 of the Schedule to, the European Union (Amendment) Act 2008 c. 7.
(**3**) 2010/1552.
(**4**) 1989 c.14.
(**5**) 2011/988 to which there are amendments not relevant to this instrument.

Amendment of regulation 29 (procedure for registration)

—b) Regulation 29 of the Waste Regulations is amended as follows—

for paragraph (5)(b), substitute—

"(b) the applicant or another relevant person has been convicted of a relevant offence." ;

after paragraph (5), insert—

"(5A) For the purposes of paragraph (5)(b), a "relevant offence" means an offence under—

(a) the Scrap Metal Dealers Act 1964(**6**),

(b) section 1, 8, 9, 10, 11, 17, 18, 22 or 25 of the Theft Act 1968(**7**), where the specific offence concerned relates to scrap metal, or is an environment-related offence,

(c) section 170 or 170B of the Customs and Excise Management Act 1979(**8**), where the specific offence concerned relates to scrap metal,

(d) section 9 of the Food and Environment Protection Act 1985(**9**),

(e) section 1, 5 or 7 of the Control of Pollution (Amendment) Act 1989(**10**),

(f) section 33, 34 or 34B of the Environmental Protection Act 1990(**11**),

(g) section 85, 202 or 206 of the Water Resources Act 1991(**12**),

(h) the Transfrontier Shipment of Waste Regulations 1994(**13**),

(i) section 110 of the Environment Act 1995(**14**),

(j) the Control of Major Accidents and Hazards Regulations 1999(**15**),

(k) the Pollution Prevention and Control (England and Wales) Regulations 2000(**16**),

(l) regulation 17(1) of the Landfill (England and Wales) Regulations 2002(**17**),

(m) section 327, 328 or 330 to 332 of the Proceeds of Crime Act 2002 (**18**),

(n) the Hazardous Waste (England and Wales) Regulations 2005(**19**),

(o) the Hazardous Waste (Wales) Regulations 2005(**20**),

(p) section 1 of the Fraud Act 2006(**21**), where the specific offence concerned relates to scrap metal or is an environment-related offence,

(q) the Waste Electrical and Electronic Equipment Regulations 2006(**22**),

(r) regulation 38 of the Environmental Permitting (England and Wales) Regulations 2007(**23**),

(s) the Producer Responsibility Obligations (Packaging Waste) Regulations 2007(**24**),

(t) the Transfrontier Shipment of Waste Regulations 2007(**25**),

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(**6**) 1964 c.69. This Act is to be repealed by section 19(1)(a) of the Scrap Metal Dealers Act 2013, which has not yet been commenced.
(**7**) 1968 c.60.
(**8**) 1979 c.2. Section 170B was inserted by the Finance (No 2) Act 1992 (c.48), section 3, Schedule 2, paragraph 8.
(**9**) 1985 c.48.
(**10**) 1989 c.14.
(**11**) 1990 c.43. Section 34B was inserted, in relation to England and Wales, by the Clean Neighbourhoods and Environment act 2005 (c.16), section 46.
(**12**) 1991 c.57. Section 85 was repealed by S.I. 2010/675, regulation 107 and Schedule 26, Part 1 paragraph 8(2)(a).
(**13**) S.I. 1994/1137. These Regulations were revoked by S.I. 2007/1711, regulation 60(1)(a) and (2).
(**14**) 1995 c.25.
(**15**) S.I. 1999/743.
(**16**) S.I. 2000/1973. These Regulations were revoked by S.I. 2007/3538, regulation 74(1) and Schedule 22.
(**17**) S.I. 2002/1559. These Regulations were revoked by S.I. 2007/3538, regulation 74(1) and Schedule 22.
(**18**) 2002 c.29.
(**19**) S.I. 2005/894.
(**20**) S.I. 2005/1806.
(**21**) 2006 c.35.
(**22**) S.I. 2006/3289.
(**23**) S.I. 2007/3538. Regulation 38 was revoked by S.I. 2010/675, regulation 108(1) and Schedule 27.
(**24**) S.I. 2007/871.

(u) regulation 38 of the Environmental Permitting (England and Wales) Regulations 2010(**26**),

(v) regulation 42 of these Regulations,

(w) section 46 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012(**27**),

(x) the Scrap Metal Dealers Act 2013(**28**).

(5B) The offences listed in paragraph (5A) include an offence of—

(a) attempting or conspiring to commit any of those offences;

(b) inciting or aiding, abetting, counselling or procuring the commission of any of those offences.

(5C) For the purposes of paragraph (5A)—

"environment-related offence" means an offence which relates to the transportation, shipment or transfer of waste, or to the prevention, minimisation or control of pollution of the air, water or land which may give risk to any harm;

"harm" means—

(a) harm to the health of human beings or other living organisms;

(b) harm to the quality of the environment;

(c) offence to the senses of human beings;

(d) damage to property; or

(e) impairment of, or interference with, amenities or other legitimate uses of the environment.";

after paragraph (6), insert—

"(6A) The appropriate body must, on payment of its reasonable charges, provide any person who has been provided with a certificate of registration under paragraph (6) such copies of the certificate as may requested by that person.

(6B) The appropriate body must ensure that the copies of the certificate are numbered and marked so as to show that they are copies of the certificate and that they have been provided by the appropriate body under this regulation.".

Amendment of regulation 35 (the transfer note)

—c) Regulation 35 of the Waste Regulations is amended as follow—

in the heading for "The transfer note" substitute "Waste information";

in paragraph (2), for "("the transfer note")", substitute "("written information")";

in paragraph (3)—

(i) for "a transfer note", substitute "the written information",

(ii) for "information", substitute "matters".

in paragraphs (4) and (5), in each place where it occurs, for "transfer note" substitute "written information";

in paragraph (6), for "a transfer note" substitute "the written information".

Insertion of new Part 10A (authority to transport controlled waste)

After Part 10 (enforcement) of the Waste Regulations, insert Part 10A as follows—

(**25**) S.I. 2007/1711.
(**26**) S.I. 2010/675.
(**27**) 2012 c.10. Section 146 is to be repealed by section 19(1)(f) of the Scrap Metal Dealers Act 2013, which has not yet been commenced.
(**28**) 2013 c.10.

“PART 10A

Authority to transport controlled waste

Specified requirements under section 5 of the Control of Pollution (Amendment) Act 1989

45A.—(1) Where a person is required to produce authority to transport controlled waste under section 5(2)(a) (power to require production of authority, stop and search etc) of the Control of Pollution (Amendment) Act 1989—

(a) for the purposes of section 5(3)(b) of that Act, the authority is the certificate of registration provided under regulation 29(6) of these Regulations and it includes any copies of the certificate made in accordance with regulation 29(6A) and (6B); and

(b) for the purposes of section 5(4)(b) of that Act, the authority must be produced—

(i) forthwith at the time the requirement is made; or

(ii) at, or sent to, the relevant office no later than 5 working days from the date the request was made.

(2) For the purposes paragraph (1)(b)(ii), the “relevant office” means an office of the appropriate body as may be specified by the authorised officer of a regulation authority or constable at the time the requirement is made.

(3) For the purposes of paragraph (2)—

(a) “authorised officer” has the meaning given in section 9(1B) of Control of Pollution (Amendment) Act 1989;

(b) “regulation authority” has the meaning given in section 9(1) of that Act, as read with section 9(1A) and (1AA).”.

Name
Parliamentary Under Secretary of State
Date Department for Environment, Food and Rural Affairs

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Waste (England and Wales) Regulations 2011 (S.I. 2011/988). They amend regulation 29(5) of those Regulations by adding a new list of “relevant offences” for the purposes of the remaining provisions in that regulation which apply to the registration of carriers, brokers and dealers of controlled waste. The Regulations insert provisions relating to the production of authority for transporting controlled waste (which is the certificate of registration issued in accordance with regulation 29) where this is required under section 5(2)(a) of the Control of Pollution (Amendment) Act 1989 (c. 14) and relating to the making of copies of certificates of registration. The Regulations amend regulation 35 by replacing the references in that regulation to “a transfer note” with a reference to “written information”.

A full impact assessment of the effect that this instrument will have on business, the voluntary sector and the public sector is available from Waste Regulation and Crime, Department for Environment, Food and Rural Affairs, Area 2B, Nobel House, 17 Smith Square, London, SW1P 3JR and is annexed to the Explanatory Memorandum which is available alongside the instrument on www.legislation.gov.uk.

Constitutional and Legislative Affairs Committee Draft Report

CLA(4)-11-14

CLA388 - The Waste (England and Wales) (Amendment) (Regulations) 2014

These Regulations amend the Waste (England and Wales) Regulations 2011 (which transpose the revised Waste Framework Directive (Directive 2008/98/EC)) in relation to the registration of carriers of waste and brokers and dealers in waste and the documentation to be completed on the transfer if waste.

The Regulations aim to provide greater flexibility to businesses in the documentation used to describe the wastes transferred. They also amend the list of relevant offences which are taken into account by regulators when considering an application for registration of a carrier.

The Welsh Ministers are making these Regulations on a composite basis with the Secretary of State on the basis that a consistent approach in Wales and England is considered beneficial for businesses in Wales, particularly those operating on a cross-border basis.

Procedure: Negative

1. Technical Scrutiny

The following points are identified for reporting under Standing Order 21.2 in respect of this instrument.

1. Being a Composite Order, this Order has been made in English only.

[Standing Order 21.2(ix) – that the instrument is not made in both English and Welsh.].

2. Merits Scrutiny

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

Legal Advisers
Constitutional and Legislative Affairs Committee

21 March 2014

STATUTORY INSTRUMENTS

2014 No. 651

EDUCATION

The Education (Student Loans) (Repayment) (Amendment) Regulations 2014

Made - - - -	*13th March 2014*
Laid before Parliament	*14th March 2014*
Laid before the National Assembly for Wales	*14th March 2014*
Coming into force - -	*6th April 2014*

The Secretary of State for Business, Innovation and Skills makes the following Regulations in exercise of the powers conferred by sections 22 and 42 of the Teaching and Higher Education Act 1998(**a**).

The Welsh Ministers make the following Regulations in exercise of the powers conferred on the Secretary of State by sections 22 and 42 of the Teaching and Higher Education Act 1998, now exercisable by them(**b**).

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Education (Student Loans) (Repayment) (Amendment) Regulations 2014 and come into force on 6th April 2014.

(2) Subject to paragraph (3), these Regulations extend to England and Wales only.

(3) Regulations 3 and 5 to 11 extend to all of the United Kingdom in so far as they impose any obligation or confer any power on Her Majesty's Revenue and Customs, an employer or a borrower in relation to repayments under Part 3 or 4 of the Education (Student Loans) (Repayment) Regulations 2009(**c**).

(**a**) 1998 c.30; section 22 was amended by the Learning and Skills Act 2000 (c.21) section 146, the Income Tax (Earnings and Pensions) Act 2003 (c.1) Schedule 6, the Finance Act 2003 (c.14) section 147, the Higher Education Act 2004 (c.8) sections 42, 43 and Schedule 7, the Apprenticeships, Skills, Children and Learning Act 2009 (c.22) section 257 and the Education Act 2011 (c.21) section 76.

(**b**) The functions of the Secretary of State under section 22 of the Teaching and Higher Education Act 1998 as regards Wales were transferred to the National Assembly for Wales by section 44 of the Higher Education Act 2004, except for those functions under section 22(2)(a), (c), (j) and (k), (3)(e) and (f) and (5). Functions under subsections (2)(a), (c) and (k) are exercisable by the Secretary of State concurrently with the National Assembly for Wales. The section 22 functions which were transferred to, or became exercisable by, the National Assembly for Wales were subsequently transferred to the Welsh Ministers by the Government of Wales Act 2006 (c.32) section 162 and paragraph 30 of Schedule 11. The functions of the Secretary of State under section 42 of the Teaching and Higher Education Act 1998 as regards Wales were transferred to the National Assembly for Wales by the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672). The section 42 functions which were transferred to the National Assembly for Wales were subsequently transferred to the Welsh Ministers by the Government of Wales Act 2006 (c.32) section 162 and paragraph 30 of Schedule 11.

(**c**) S.I. 2009/470, amended by S.I. 2010/661, 2010/1010, 2011/784, 2012/836, 2012/1309 and 2013/607.

Amendment of the Education (Student Loans) (Repayment) Regulations 2009

2. The Education (Student Loans) (Repayment) Regulations 2009 are amended in accordance with regulations 3 to 12.

3. In regulation 23, after paragraph (2)(f) insert—

"(g) such other information about the borrower's financial position as may be required to determine whether the borrower is in receipt of any income."

4. In regulation 29(7)—

(a) in sub-paragraph (b) delete "but before or on 5 April 2016"; and

(b) delete sub-paragraph (c).

5. In regulation 58—

(a) for paragraph (1), substitute—

"(1) Subject to paragraphs (1A) and (2), where an employer has not on or before the 14th day after the end of an income tax period, beginning on or after 6 April 2014, paid an amount which the employer is liable to pay to HMRC under regulation 54 for that period, that amount will carry interest at the rate applicable under section 103 of the Finance Act 2009 for the purposes of section 101 of the Finance Act 2009 from that date until payment.

(1A) Subject to paragraph (2), any amount which an employer is liable to pay to HMRC under regulation 54 and which is outstanding immediately prior to 6 April 2014 will carry interest from the 14th day after the end of the tax year in which it should have been paid to the date of payment at the rate applicable under—

(a) section 178 of the Finance Act 1989 for the purposes of section 86 of the 1970 Act in respect of the period up to and including 5 April 2014; and

(b) sections 101 and 103 of the Finance Act 2009 in respect of the period from 6 April 2014."; and

(b) in paragraph (2) for "year" substitute "period".

6. In regulation 59B—

(a) at the end of paragraph (1) insert "but this is subject to paragraph (1A)"; and

(b) after paragraph (1) insert—

"(1A) But a Real Time Information employer—

(a) which for the tax year 2014-15 meets Conditions A and B, or

(b) which for the tax year 2015-16 meets Conditions A and C,

may instead for that tax year deliver to HMRC the information specified in Schedule 2 in respect of all relevant payments made to an employee in a tax month on or before making the last relevant payment in that month.

(1B) Condition A is that at 5 April 2014 the employer is one to whom HMRC has issued an employer's PAYE reference.

(1C) Condition B is that at 6 April 2014 that Real Time Information employer employs no more than 9 employees.

(1D) Condition C is that at 6 April 2015 that Real Time Information employer employs no more than 9 employees.

(1E) In this regulation "employer's PAYE reference" means the combination of letters, numbers or both used by HMRC to identify an employer for the purposes of the PAYE Regulations and the number which identifies the employer's HMRC office."

7. In regulation 59E—

(a) at the end of paragraph (1) insert—

",

but this is subject to paragraph (2B)";

(b) after paragraph (2A) insert—

"(2B) This regulation does not apply if a Real Time Information employer within paragraph (1) makes a return using an approved method of electronic communications.";

(c) in paragraphs (3) and (6) for "month" substitute "quarter"; and

(d) in paragraph (5) for "period" substitute "quarter".

8. In regulation 59F—

(a) in paragraph (1) for "an employer discovers an error in a return" substitute "there is an inaccuracy in a return, whether careless or deliberate,";

(b) in paragraphs (2), (3) and (7)(a) for "error" substitute "inaccuracy";

(c) for paragraph (4) substitute—

"(4) When the employer becomes aware of an inaccuracy in a return submitted under regulation 59B or 59E, the employer must provide the correct information in the next return for the tax year in question."; and

(d) in paragraph (6)(b) for "discovery of the error" substitute "employer becomes aware of the inaccuracy".

9. In regulation 59G(5), at the end insert "but this paragraph does not apply to a return for the tax year 2014-15 or subsequent tax years".

10. In regulation 63, for paragraph (1), substitute—

"(1) Subject to paragraph (1A), where—

(a) an employer has not paid an amount of repayments to HMRC under regulation 54;

(b) HMRC makes a determination of the amount of such repayments under regulation 62; and

(c) repayments are payable pursuant to that determination,

those repayments will carry interest at the applicable rate under section 103 of the Finance Act 2009 for the purposes of section 101 of the Finance Act 2009 from the 14th day after the end of the income tax period in which they are payable, beginning on or after 6 April 2014, until payment.

(1A) Any repayments under paragraph (1) that are outstanding immediately prior to 6 April 2014 will carry interest from the 14th day after the end of the tax year in which it should have been paid to the date of payment at the applicable rate under—

(a) section 178 of the Finance Act 1989 for the purposes of section 86 of the 1970 Act in respect of the period up to and including 5 April 2014; and

(b) sections 101 and 103 of the Finance Act 2009 in respect of the period from 6 April 2014."

11. In regulation 68—

(a) in paragraph (1), omit "Subject to paragraph (3),"; and

(b) after paragraph (3), insert—

"(4) For tax years commencing on or after 6 April 2014, where the date on which the return is due to be filed is on or after 6 April 2014, where a Real Time Information employer—

(a) carelessly or deliberately makes an incorrect return under regulations 59B or 59E; and

(b) the return contains an inaccuracy which amounts to, or leads to–

(i) an understatement of liability under this Part to make payments to HMRC; or

(ii) false or inflated claim for the recovery of payments made to HMRC under this Part,

penalties as set out in Schedule 24 to the Finance Act 2007 (penalties for error) will apply as they apply in connection with a return for the purposes of the PAYE Regulations."

12. In regulation 76(1A), delete "until and including 6 April 2015".

David Willetts
Minister of State for Universities and Science
13th March 2014 Department for Business, Innovation and Skills

Huw Lewis
Minister for Education and Skills
13th March 2014 One of the Welsh Ministers

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Education (Student Loans) (Repayment) Regulations 2009 (S.I. 2009/470) ("the Principal Regulations"). The Principal Regulations govern the repayment of income-contingent student loans paid to students under section 22 of the Teaching and Higher Education Act 1998(c.30).

Regulations 3 to 12 amend the Principal Regulations.

Regulation 3 amends the content which may form part of a information notice which may be served on a borrower.

Regulations 4 and 12 remove the limit to the number of annual increases to repayment threshold and the applicable threshold for student loans which are not post-2012 student loans, by the retail price index, where the final increase would have been for the year 6 April 2015 to 5 April 2016.

Regulations 5 and 10 change the legislative provisions under which interest rates are calculated for amounts which employers have not paid to Her Majesty's Revenue and Customs.

Regulation 6 permits the smallest employers to file returns about all the student loan repayments in a month on or before making the last payment to employees in the tax month, providing that they meet certain conditions.

Regulation 7 extends the time for those employers who are permitted to file on paper (i.e. care and support employers) to file information with Her Majesty's Revenue and Customs from 14 days after the end of the tax month to 14 days after the end of the tax quarter.

Regulation 8 clarifies that regulation 59F (Returns under regulations 59B and 59E: amendments) applies whether the mistake is careless or deliberate.

Regulation 9 ensures there is no penalty awarded under section 98A Taxes Management Act 1970 (c.9) if the final return for 2014-15 is not made by 19th May 2015.

Regulation11 provides for penalties under Schedule 24 to Finance Act 2007 (c.11) where an employer makes an incorrect return and as a result of that return there is an understatement of a student loan or a false claim for repayment from Her Majesty's Revenue and Customs.

A final Impact Assessment covering regulations 5 and 10 of this instrument was published on 14 April 2009. This was produced following a consultation on the harmonisation of interest charged by Her Majesty's Revenue and Customs and is available on the National Archives' website at http://webarchive.nationalarchives.gov.uk/20090606121538/http:/www.hmrc.gov.uk/budget2009/interest-penalties-2410.pdf. It remains an accurate summary of the impacts that apply to regulations 5 and 10 of this instrument.

A Tax Information and Impact Note covering regulations 6 to 9 of this instrument was published on 15 March 2012 alongside the Income Tax (Pay As You Earn) (Amendment) Regulations 2012 (S. I. 2012/822). This was updated as a result of changes to the impacts as a result of the year long Real Time Information pilot and is available on the Her Majesty's Revenue and Customs' website at http://www.hmrc.gov.uk/thelibrary/tiins.htm. It remains an accurate summary of the impacts that apply to regulations 6 to 9 of this instrument.

A Tax Information and Impact Note covering regulation 11 of this instrument was published on 20 March 2013 and is available on the Her Majesty's Revenue and Customs' website at http://www.hmrc.gov.uk/budget2013/tiin-4762.pdf. It remains an accurate summary of the impacts that apply to regulation 11 of this instrument.

An impact assessment has not been produced for the regulations which are not covered by the Tax Information and Impact Notes and the Impact Assessment mentioned above because they have no impact on businesses or civil society organisations. The Explanatory Memorandum is published alongside the instrument on www.legislation.gov.uk.

Explanatory Memorandum to The Education (Student Loans) (Repayment) (Amendment) Regulations 2014

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

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Education (Student Loans) (Repayment) (Amendment) Regulations 2014.

Huw Lewis – Minister for Education and Skills
12 March 2014

1. Description

The Regulations further amend the Education (Student Loans) (Repayment) Regulations 2009 (SI 2009/470). The amendments cover a range of issues, from the confirming that the pre-2012 repayment threshold is to continue to increase annually by RPI for the lifetime of the pre-2012 loan book to technical language amendments.

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

These Regulations amend the Education (Student Loans) (Repayment) Regulations 2009 (SI 2009/470) ("the 2009 Regulations"). The 2009 Regulations were made as composite regulations by the Welsh Ministers (in relation to Wales) and the Secretary of State and they govern repayments of student loans by borrowers who have taken out income-contingent loans for courses which began on or after September 1998. The 2009 Regulations contain provisions (not devolved to the Welsh Ministers) which are made by the Secretary of State in relation to England and Wales which concern the tax system operated by Her Majesty's Revenue and Customs ("HMRC"). Some other provisions are made by the Welsh Ministers in relation to Wales and the Secretary of State in relation to England.

This composite statutory instrument is subject to the negative resolution procedure in the National Assembly for Wales and in the UK Parliament. Given the composite nature of the 2009 Regulations and that no routine Parliamentary processes exist by which to lay bi-lingual regulations before Parliament, these Regulations will be made in English only.

3. Legislative background

The relevant legal powers to make these Regulations are set out in sections 22 and 42 of the Teaching and Higher Education Act 1998.

The functions of the Secretary of State under Section 22 of the Teaching and Higher Education Act 1998 as regards Wales were transferred to the National Assembly for Wales by section 44 of the Higher Education Act 2004, except for those functions section 22(2)(a), (c), (j) and (k), 3(e) and (f) and (5). Functions under sub-sections 22(2)(a), (c) and (k) are exercisable concurrently with the Secretary of State. The functions in sections 22(2)(j), 22(3)(e) and (f) and section 22(5) remain Secretary of State functions. The functions so transferred subsequently became functions of the Welsh Ministers by virtue of section 162 of, and paragraph 30 of Schedule 11 to, the Government of Wales Act 2006.

This instrument will follow the Negative Resolution procedure.

4. Purpose & intended effect of the legislation

The amendments to the Regulations relate to functions exercisable in respect of Wales in part by the Welsh Ministers and in part by the Secretary of State. A summary of the changes is as follows:

Information notices: The amendment will enable the Welsh Ministers, or student loans company on their behalf , to require from a borrower information as to the borrower's financial position as may be needed to determine if the borrower is in receipt of any income. For example, in a situation where a borrower declares that they are unemployed and unable to repay their student loan.

Pre-2012 loan repayment threshold: The previous Regulations state that the pre-2012 loan repayment threshold will increase annually by the Retail Price Index (RPI) until 2015. The amendments will ensure that the threshold will continue to increase annually by RPI beyond 2015 for the lifetime of the pre-2012 loan book. This is the only provision which the Welsh Ministers have power to make in this current set of amendments.

HMRC amendments: There will be further changes to Real Time Information (RTI), in certain circumstances, inaccuracies by employers and to introduce new penalty provisions for late returns.

RTI aims to reduce administrative burdens for all employers, including small employers (upon whom the current burden of PAYE currently falls disproportionately). The aim is to achieve this by integrating employee payment and reporting to HMRC into a single payroll process. The Regulations keep student loan collection processes in line with the rest of the PAYE system. The changes concern how repayments are reported to HMRC, with no changes to how student loan repayments are collected.

5. Consultation

No formal consultation was undertaken as a result of these technical changes, as all relevant stakeholders were consulted on the changes to the higher education and student finance system for 2012/13 during the consultation exercise completed in February 2011.

These included proposals for the reform of the student loans repayments; the increase of repayment thresholds from £15,000 to £21,000; and the introduction of a variable progressive rate of interest charged depending on income. Technical consultation papers on the following issues were published on the Welsh Government's consultation web page:

- the implementation of the proposed new system of higher education funding and student finance; and

- the proposed system for part time higher education funding – including student finance for 2012/13.

The taxation changes will be publicised by HRMC. The effect of the Regulations were explained to the HMRC Student Loans Consultation Group, which HRMC uses to consult employers, representative bodies and payroll software providers on matters related to the collection of student loan repayments. Extensive guidance on RTI is published on HMRC's website.

6. Regulatory Impact Assessment (RIA)

A RIA was not undertaken in relation to these Regulations as there is no impact on business, charities, or voluntary bodies. There is no impact on statutory duties (sections 77-79 Government of Wales Act 2006 or statutory partners (sections 72-75 GOWA 2006).

Vulnerable borrowers (those with protected characteristics) will not generally be disadvantaged by these policies. There may be a potential issue in relation to the availability of interest- bearing loans for Muslim students. The UK Government will continue to monitor the effect of the Regulations on Muslim students in England and Wales, both in terms of their acceptance of university placements and student loans. The Department for Business, Innovation and Skills (BIS) is considering this issue further and Welsh Government officials will liaise with colleagues in BIS if the need for any change is identified.

All employers, including charities or voluntary bodies will be required to use RTI.

The impact of RTI on the public sector is the same as for any other employer.

Constitutional and Legislative Affairs Committee Draft Report

CLA(4)-11-14

CLA389 - The Education (Student Loans) (Repayment) (Amendment) Regulations 2014

These Regulations amend the Education (Student Loans) (Repayment) Regulations 2009 (S.I. 2009/470) ("the Principal Regulations"). The Principal Regulations govern the repayment of income-contingent student loans paid to students under section 22 of the Teaching and Higher Education Act 1998(c.30). The changes made by these Regulations relate to the provision of information and the making or repayments.

Procedure: **Negative**

1. Technical Scrutiny

The following points are identified for reporting under Standing Order 21.2 in respect of this instrument.

1. Being a Composite Order, this Order has been made in English only.

[Standing Order 21.2(ix) – that the instrument is not made in both English and Welsh.]

2. Merits Scrutiny

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

Legal Advisers
Constitutional and Legislative Affairs Committee

March 2014

Agenda Item 4

Constitutional and Legislative Affairs Committee

DEREGULATION BILL

Legal Advice Note

Introduction

1. In July 2013, the UK Government published a draft Deregulation Bill. A Joint Committee of both Houses of Parliament conducted pre-legislative scrutiny of the draft Bill and the policies underpinning it. Evidence was submitted by the Constitutional and Legislative Affairs Committee that was highly critical of a proposal in clauses 51 and 57(2) of the draft Bill that UK Ministers should be able by order to repeal and revoke 'legislation no longer of practical value'. That criticism was endorsed in very strong terms by other witnesses to the Joint Committee on the Draft Deregulation Bill. That Committee in turn issued a very critical report and that specific proposal has now been left out of the Bill as introduced.

2. The Bill was formally introduced in the House of Commons on the 23rd January 2014 and received its Second Reading on the 3rd February. Committee scrutiny in the House of Commons concluded on the 25th March. Report Stage will follow It has been resolved that proceedings on the Bill will carry over to the next parliamentary session.

Background

3. The foreword to the draft Bill described it as "the latest step in the Government's on-going drive to remove unnecessary bureaucracy that costs British businesses millions, slows down public services like schools and hospitals, and hinders millions of individuals in their daily lives." It describes the contents of Bill as reducing unnecessary burdens on three main groups:

- "Freeing business from red tape;
- "Making life easier for individuals and civil society; and
- "Reducing bureaucratic requirements on public bodies."

4. The Bill at introduction consisted of 69 clauses and 17 Schedules. Most deal with the removal of requirements that relate to specific subjects, which relate to varying degrees to the different parts of the United Kingdom. As far as Wales is concerned, many relate to non-devolved subjects such as company law, insolvency and international shipping. Others affect legislation that applies only to England. More significant are those that affect the law of England and Wales on subjects such as housing and local government. However, in most cases those detailed provisions limit the effect of those changes to England, even if that is done by specifying that the existing law will in future only apply to Wales. Sometimes that is done by way of restatement.

The Legislative Consent Memorandum

5. A Legislative Consent Memorandum (LCM) was laid by the Welsh Government on the 24th February in relation to the Bill as introduced. The LCM identified a series of matters within the legislative competence of the National Assembly in relation to which its consent will be sought.

6. Clause 3 and Schedule 1 make very minor changes to the law relating to apprenticeships in Wales under Part 1 of the Apprenticeships, Skills, Children and Learning Act 2009.

7. Clause 24 and Schedule 8 amend the law in relation to road humps. Requirements to publish proposals will no longer be set out in the Highways Act 1980, but in regulations to be made by the 'appropriate national authority' (the Welsh Ministers in relation to Wales).

8. Clause 30 and Schedule 11 contain a number of provisions relating to animals, food and the environment. The objective of the change to the Destructive Imported Animals Act 1932 is to remove a requirement on occupiers of land to report sightings of grey squirrels because they have become so common. That requirement is contained in a 1937 Order, that could normally be revoked by relying on the same power that enabled it to be made. It is said that:

> *22. Unfortunately, it is not possible to simply revoke or amend the 1937 Order in the usual way (i.e. by subsequent statutory instrument) because the enabling power in the 1932 Act (which is also the power under which the 1937 Order would be amended) requires that, in order to exercise the Order making power, the Welsh Ministers (for our purposes) must be satisfied that it is desirable to prohibit or control the keeping of grey squirrels and destroy any at large. Given that grey squirrels are now common in the UK, neither the Welsh Ministers nor the UK Government can be so satisfied and consequently, the power in the 1932 Act is no longer available in relation to that species.*

The logic of that argument is difficult to follow since it is easy to be satisfied that something is desirable, however difficult it may be to achieve that objective in practice. Nevertheless, the removal of a requirement to report sightings is clearly a reasonable objective for the Bill.

9. Subsequent Parts of Schedule 11 remove local authority functions in relation to air quality and noise abatement zones that are seen as superfluous.

10. Clause 35 and Schedule 12 relate to the abolition of the office of Chief Executive of Skills Funding in England and the transfer of functions to the Secretary of State. Amendments make minor consequential changes to a power to provide services in Wales only with the consent of the Welsh Ministers.

11. Clause 36 and Schedule 13 are intended to reduce burdens on local authority maintained further education institutions. As there are no such institutions in Wales, these changes will have no practical effect in Wales.

12. Clause 57 and Schedule 16 repeal duties relating to consultation or involvement. The majority relate to England only. Part 2 of Schedule 16 identifies two provisions that affect England and Wales. The first relates to the provision of sewers under the Water Industry Act 1991, and is not referred to in the LCM. It was the subject of a statement by the Minister for Natural Resources and Food on the 11th February 2014 that can be found here - http://www.assemblywales.org/bus-home/bus-business-fourth-assembly-laid-docs.htm?act=dis&id=253655&ds=2/2014

The second relates to the commencement of Business Improvement District arrangements, and is explained at length in the LCM. '

13. Clause 60 and Schedule 17 refer to legislation no longer of practical use. Although the order-making power included in the draft Bill is no longer included, the list of specific repeals remains. These are explained in detail in paragraphs 72-118 of the LCM-and whilst the inclusion of reference to competence in relation to 'Economic development' in some cases seems questionable, the provisions being repealed clearly do come within the Assembly's competence. The Committee may be particularly interested in the obscure offences under the Town Police Clauses Act 1847 that are to be repealed. These include the flying of kites and beating of carpets!

Matters not referred to in the Legislative Consent Memorandum

14. Clause 52 of the Bill repeals section 4(10) of the Care Standards Act 2000, which was added to section 4 of the 2000 Act by section 4 of the Children and Young Persons Act 2008. That provision has not been commenced in relation to Wales, but remains part of the 'Welsh Statute Book'. It is not referred to in the LCM and the Explanatory Memorandum to the Bill says that it is 'relevant only to England.' Nevertheless, the repeal of a provision that forms part of the law of Wales and is within the Assembly's competence in relation to Social Welfare should be part of the subject matter of a Legislative Consent Memorandum. It would be helpful if the Government were to explain why this provision has not been included in the LCM.

15. Provisions of a more general nature referred to in paragraphs 16-17 and 21 are also not included in the LCM. It may well be the case that these are the subject of ongoing discussions between the Welsh and UK Governments, but if they remain part of the Bill in anything like their current form, the Committee may consider that they will need to be the subject of a further LCM.

Power to spell out dates described in legislation

16. Clause 58 contains a power for a Minister of the Crown by order to replace a reference in legislation to the commencement of a provision with a reference to the actual date. Provisions within the competence of the Scottish Parliament and Northern Irish Assembly are specifically excluded. There was no reference to Wales on introduction. There is no reference to this clause in the LCM although it will affect legislation within the Assembly's competence. Paragraph 269 of the

Explanatory Memorandum to the Bill states that "Devolution discussions with all of the devolved administrations are ongoing."

17. On the 18th March, the Public Bill Committee agreed a government amendment that "an order under this section may not amend legislation made by the Welsh Ministers." As legislation for the purposes of this power is defined as 'an Act [of Parliament] or subordinate legislation' the power would not in any case have applied to Assembly Acts or Measures. The power will nevertheless apply to Acts of Parliament within the legislative competence of the Assembly.

Exercise of regulatory functions

18. Although not a matter that is itself within the Assembly's legislative competence, as is explained below, these provisions are for a purpose within that competence, namely 'economic development', which is one of the subjects in Schedule 7 to the Government of Wales Act 2006. It therefore comes within the test contained in Standing Order 29.1 in the same way that the Green Investment Bank provisions of the Enterprise and Regulatory Reform Bill were considered by the Assembly because they were for purposes related to the environment.

19. Clause 61(1) of the present Bill provides that "A person exercising a regulatory function to which this section applies must, in the exercise of the function, have regard to the desirability of promoting economic growth."

20. A Minister of the Crown would be able, by order, to specify the regulatory functions to which clause 61 would apply. Such an order could not specify a "regulatory function so far as exercisable in Wales, if or to the extent that the function relates to matters which are devolved Welsh matters." A devolved Welsh matter means a matter within the legislative competence of the National Assembly. Thus it would not apply, for example, to regulation by the Welsh Language

Commissioner in relation to the Welsh language, but would apply to the regulation of broadcasting in Wales by Ofcom.

General provisions

21. Clause 65(1) would empower a Secretary of State by order to make such provision as he or she considers appropriate in consequence of the Act. That may include transitional, transitory or saving provision and amend, repeal, revoke or otherwise modify legislative provisions, including those made by the National Assembly and devolved institutions in all parts of the United Kingdom. For example, if an Act of the Assembly referred to legislation to be repealed by the Bill, that reference could be deleted. In the usual way, amendments to primary legislation would be subject to the affirmative procedure at Westminster; changes to subordinate legislation would be subject to the negative procedure. The power to make such changes to Welsh legislation inevitably brings this power within the LCM process.

Postscript

22. The final session of the Committee Stage in the House of Commons took place on Tuesday the 25th March. Amendments agreed include Government amendments in relation to:

- Agricultural holdings;
- Taxis and Private Hire Vehicles;
- Building in England;
- Safety helmets: exemption for Sikhs;
- TV licences.

23. A further legislative consent memorandum will be required for any of these amendments that come within the test contained in Standing Order 29.1.

Legal Services

National Assembly for Wales

March 2014

LEGISLATIVE CONSENT MEMORANDUM

DEREGULATION BILL

1. This Legislative Consent Memorandum is laid under Standing Order ("SO") 29.2. SO29 prescribes that a Legislative Consent Memorandum must be laid, and a Legislative Consent Motion may be tabled, before the National Assembly for Wales if a UK Parliamentary Bill makes provision in relation to Wales for a purpose that falls within, or modifies the legislative competence of the National Assembly.

2. The Deregulation Bill (the "Bill") was introduced in the House of Commons on 23 January 2014. The Bill can be found at:

   http://services.parliament.uk/bills/2013-14/deregulation.html

Summary of the Bill and its Policy Objectives

3. The Bill is sponsored by the Cabinet Office. The UK Government's policy objective for the Bill is to remove or reduce unnecessary regulatory burdens that hinder or cost money to businesses, individuals, public services or the taxpayer.

4. The Bill includes measures relating to general and specific areas of business, companies and insolvency, the use of land, housing, transport, communications, the environment, education and training, entertainment, public authorities and the administration of justice. The Bill also provides for a duty on those exercising specified regulatory functions to have regard to the desirability of promoting economic growth. In addition the Bill will repeal legislation that is no longer of any practical use.

Provisions in the Bill for which consent is sought

5. For ease of reference, the provisions for which consent is sought are listed below in the order in which they appear in the Bill at introduction, followed by a detailed description of each of the provisions in turn. References to clause and schedule numbers are also as they appear in the Bill at introduction.

List of provisions in the Bill for which consent of the Assembly is sought:

Clause 3	Schedule 1	Park 3 (Apprenticeships: Wales)
Clause 24	Schedule 8	Part 2 (road humps)
Clause 30	Schedule 11	Part 1 (destructive imported animals)
Clause 30	Schedule 11	Part 4 (air quality)

Clause 30	Schedule 11	Part 5 (noise abatement zones)
Clause 35	Schedule 12	Part 1 (abolition of Office of the Chief Executive of Skills Funding)
Clause 36	Schedule 13	Part 1 (measures applying to England and Wales in relation to Further and Higher Education: reduction of burdens)
Clause 57	Schedule 16	Part 2, paragraph 18 (removal of consultation requirements)
Clause 60	Schedule 17	Part 5, paragraphs 17-21 (legislation no longer of practical use – environment)
Clause 60	Schedule 17	Part 6, paragraphs 22-27 (legislation no longer of practical use – animals and food)
Clause 60	Schedule 17	Part 8, paragraph 29 (legislation no longer of practical use – criminal law)

Clause 3 – Apprenticeships: Simplification

Schedule 1 – Part 3- Apprenticeships: Wales

6. Clause 3(4) introduces Part 3 (paragraphs 21 to 24) of Schedule 1, which contains minor amendments to the provisions about Welsh apprenticeships in Part 1 of the Apprenticeships, Skills, Children and Learning Act 2009 (the 2009 Act).

7. Paragraphs 21 to 24 of Schedule 1 amend, in part, sections 18 to 20 inclusive of the 2009 Act.

8. Section 18 of the 2009 Act provides Welsh Ministers with powers to designate a person to issue apprenticeship frameworks relating to a particular apprenticeship sector. Part 3 of Schedule 1 amends section 18 so that Welsh Ministers themselves may act as a Welsh issuing authority in addition to having the power to designate others. Part 3 of Schedule 1 also makes some amendments which are consequential on the amendments to section 18.

9. Clause 68(4) and (6) provide for Welsh Ministers' order making powers related to the Welsh apprenticeships provisions in Schedule 1 Part 3. Clause 68(4) provides a power for Welsh Ministers to commence the Schedule 1, Part 3 provisions by order made by statutory instrument.

10. Clause 68(6) provides a related power for Welsh Ministers by order made by statutory instrument to make such transitional, transitory or saving provision as they consider appropriate in connection with the coming into force of Schedule 1, Part 3.

11. As these order making powers relate to commencement of provisions, no Assembly procedures will apply.

12. It is the view of the Welsh Government that these provisions fall within the legislative competence of the National Assembly for Wales in so far as they relate to Education, vocational, social and physical training and the careers service; and promotion of advancement and application of knowledge, under paragraph 5 of Part 1, Schedule 7 to the Government of Wales Act 2006.

Clause 24 – Reduction of burdens relating to the use of roads and railways

Schedule 8, Part 2 relating to construction of road humps

13. Clause 24 of the Bill refers to Schedule 8. Part 2 of Schedule 8 amends section 90C of the Highways Act 1980. Section 90C currently requires the Welsh Ministers or a local highway authority to consult with the chief officer of police for the area and other persons or bodies as may be prescribed by regulations made by the Welsh Ministers before constructing road humps. Notice of any proposals must be published in one or more local newspapers and placed on site, and a local inquiry may be held to consider any objections received. The procedure to be followed at a local inquiry must comply with provisions in section 250(2) to (5) of the Local Government Act 1972 but with such modifications as may be prescribed by regulations made by the Welsh Ministers.

14. Part 2 of Schedule 8 would amend the above section so that the consultation and publication requirements, as well as local inquiries procedures, would all be specified in regulations to be made by the Welsh Ministers.

15. The provisions include powers for the Welsh Ministers to make subordinate legislation. The provisions give a regulation making power regarding the publication of details of proposals to construct road humps and procedures for making objections to such proposals, and procedures for dealing with such objections. Regulations would be made under the negative procedure.

16. It is the view of the Welsh Government that these provisions fall within the legislative competence of the National Assembly for Wales in so far as they relate to Highways and Transport under paragraph 4 of Part 1, Schedule 7 to the Government of Wales Act 2006.

Clause 30 – Other measures relating to animals, food and the environment

Schedule 11 - Part 1 – Destructive Imported Animals

17. Clause 30 of the Bill introduces Schedule 11 ("Other measures relating to animals, food and the environment"), Part 1 of Schedule 11 ("Destructive imported animals") makes amendments to the Destructive Imported Animals Act 1932 and the Grey Squirrel (Prohibition of Importation and Keeping) Order 1937 (paragraphs 1 and 2 of Part 1 of Schedule 11 to the Bill).

18. The proposed amendments remove the obligation for an occupier of land to report the presence of grey squirrels under the Grey Squirrels (Prohibition of Importation and Keeping) Order 1937 (SI 1937/437) and amend the enabling legislation, the Destructive Imported Animals Act 1932, to facilitate easier future amendments to the 1937 Order.

19. The Destructive Imported Animals Act 1932 enables regulation of the importation and keeping of certain destructive non-indigenous mammal species within Great Britain. It also requires occupiers of land to report sightings of any certain specified species seen (so that the animals concerned can be caught and removed and thus the species eradicated from the wild).

20. Initially the 1932 Act only applied to musk rats, but section 10 of the 1932 Act enables an Order to be made which extends the provisions of that Act to other non-indigenous mammalian species. The 1937 Order was made pursuant to that section and applied the provisions of the 1932 Act to grey squirrels. The effect of the 1937 Order is that sightings of grey squirrels by land occupiers should be reported.

21. Despite this measure and the introduction of a bounty scheme in the 1950's (introduced in 1953 but abandoned in 1958), efforts to eradicate the grey squirrel population in the UK have failed and they have subsequently become so well established that eradication is now impractical. A general obligation to report the presence of grey squirrels therefore has no management value at this stage.

22. Unfortunately, it is not possible to simply revoke or amend the 1937 Order in the usual way (i.e. by subsequent statutory instrument) because the enabling power in the 1932 Act (which is also the power under which the 1937 Order would be amended) requires that, in order to exercise the Order making power, the Welsh Ministers (for our purposes) must be satisfied that it is desirable to prohibit or control the keeping of grey squirrels and destroy any at large. Given that grey squirrels are now common in the UK, neither the Welsh Ministers nor the UK Government can be so satisfied and consequently, the power in the 1932 Act is no longer available in relation to that species.

23. The amendments proposed by paragraphs 1 and 2 of Part 1 of Schedule 11 to the Deregulation Bill will remove the reporting requirement within the 1937 Order and facilitate easier future amendments to the Order by way of amendment to the 1932 Act.

24. The need to prohibit the keeping and importation of grey squirrels still remains and so the remainder of the 1937 Order will remain in force. Land managers are investing significant time and money in the management of grey squirrels to conserve red squirrels and wider woodland biodiversity. Revocation of the Grey Squirrel Order in its entirety would remove an effective instrument for limiting the spread of the species to areas where they are currently absent or back into areas where they have been removed.

25. The amendments to the 1932 Act and the 1937 Order do not, of themselves, provide any powers for the Welsh Ministers to make subordinate legislation. The amendments to section 10 of the 1932 Act do, however, make changes to a power to make an Order which is exercisable by the Welsh Ministers in relation to Wales. An Order under section 10 of the 1932 Act is subject to affirmative procedure (i.e. an Order under that section will have no effect until a resolution approving it has been made by the Assembly (in relation to Wales), see section 10(1) of the 1932 Act).

26. It is the view of the Welsh Government that these provisions fall within the legislative competence of the National Assembly for Wales in so far as they relate to Animal Health and Welfare under paragraph 1 of Part 1 of Schedule 7 to the Government of Wales Act 2006.

Schedule 11- Part 4 – Air Quality

27. Part 4 of Schedule 11 relates to 'Air Quality'. The provisions relate to the repeal of 'Further Assessments', which have to be carried out by local authorities following the declaration of an Air Quality Management Area (AQMA) as required in Section 84, Part IV, of the Environment Act 1995.

28. Local authorities have statutory duties for local air quality management (LAQM) under Part IV of the Environment Act 1995. These require them to:

    a) review present and likely future air quality in their local authority area against objectives set out in the Air Quality (Wales) Regulations 2000;
    b) carry out an assessment , along with a review, as to whether air quality standards and objectives are being achieved; and
    c) where it is projected that air quality standards and objectives will not be achieved, declare a local air quality area as an AQMA.

29. Section 84 (1) of the Environment Act requires that once an AQMA has been declared the local authority must instigate a "supplementary" assessment. Section 84 (2)(a) requires a report of the assessment,

known as a ‘Further Assessment’, to be published. An informal consultation with local authorities revealed that the Further Assessment was not helpful in preparing plans to improve air quality as in most cases the information would be gathered as part of the initial assessment which precedes it.

30. A formal consultation was carried out by the Welsh Government during summer 2013. Its conclusion was that the repeal was warranted. The functions under Section 84 of the Environment Act 1995, so far as exercisable in relation to Wales, transferred from the Secretary of State to the National Assembly for Wales, by the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1., and are now exercisable by the Welsh Ministers by virtue of section 162 and paragraph 30 of Schedule 11 to the Government of Wales Act 2006 (GOWA).

31. This provision does not include powers for Welsh Ministers to make subordinate legislation.

32. It is the view of the Welsh Government that these provisions fall within the legislative competence of the National Assembly for Wales in so far as they relate to Environmental protection, including pollution, nuisances and hazardous substances and powers and duties of local authorities under paragraph 6 and 12 of Part 1, Schedule 7 to the Government of Wales Act 2006.

Schedule 11- Part 5 – Noise Abatement Zones

33. These provisions repeal sections 57, 63 to 67 and 69, and amend section 73, in Part 3 of the Control of Pollution Act (COPA) 1974, which relate to local authorities’ duty to inspect and the power to implement Noise Abatement Zones (NAZs) in England, Wales and Scotland. They also repeal Schedule 1 to COPA, and make certain consequential changes to other legislation.

34. NAZs were introduced to prevent deterioration in environmental noiselevels and to achieve reductions in noise levels wherever practicable. The repeal and amendment of the relevant provisions of COPA will abolish existing NAZs and prevent new ones being established.

35. Analysis has shown that the legislation is little used. In some cases, NAZs have been set up but are not being actively enforced, and their abolition through these provisions provides a resource efficient way of removing the burden on local authorities of individually removing their NAZs.

36. In Wales, NAZs have only been implemented by Newport City Council and Swansea City Council. These are not being actively enforced as other more efficient noise enforcement measures are being used.

37. Responses to a joint consultation between the Department of Environment, Food and Rural Affairs (DEFRA) and the Welsh Government carried out by DEFRA in January 2013 unanimously supported the repeal and no unexpected negative consequences were highlighted.

38. These provisions purely repeal existing legislation, so do not contain powers for Welsh Ministers to make subordinate legislation.

39. It is the view of the Welsh Government that these provisions fall within the legislative competence of the National Assembly for Wales in so far as they relate to environmental protection, including pollution and nuisances (paragraph 6), and powers and duties of local authorities under paragraph 12, of Part 1 of Schedule 7 to the Government of Wales Act 2006.

Clause 35 – Abolition of office of Chief Executive of Skills Funding

Schedule 12 —Part 1 — Main amendments

40. Clause 35 abolishes the office of the Chief Executive of Skills Funding and introduces Schedule 12.

41. Paragraph 16 of Schedule 12 amends section 107 of the Apprenticeships, Skills, Children and Learning Act 2009. This section permits the Chief Executive of Skills Funding to provide services (including providing accommodation or managing accommodation, or procuring, or assisting in procuring goods and services) to a permitted recipient. The Welsh Ministers are specified in section 107(4)(b) as a permitted recipient'. The Welsh Ministers also have a power to specify by Order other 'permitted recipients' where such a person they provide education or training in Wales (107(4)(g)).

42. The effect of the proposed amendments are to replace references to the Chief Executive of Skills Funding with the Secretary of State meaning the Secretary of State rather than the Chief Executive of Skills Funding Agency must obtain the consent of the Welsh Ministers before providing services in Wales.

43. Paragraph 17 omits section 108 which enables the Chief Executive to take part in arrangements made by the Secretary of State, the Welsh Ministers or the Scottish Ministers under section 2 of the Employment and Training Act 1973.

44. This provision does not include new powers for Welsh Ministers to make subordinate legislation.

45. It is the view of the Welsh Government that this provision falls within the legislative competence of the National Assembly for Wales in so far as it relates to Education, vocational, social and physical training and the

careers service; and the promotion of advancement and application of knowledge, under paragraph 5 of Part 1, Schedule 7 to the Government of Wales Act 2006.

Clause 36 - Further and higher education sectors: reduction of burdens

Schedule 13 — Further and higher education: reduction of burdens

46. Clause 36 introduces Schedule 13 which makes provision for the reduction of burdens in the further and higher education sectors.

47. Paragraph 1 of Schedule 13 repeals section 3 of the Further Education Act 1985. Section 3 gives the Secretary of State powers to set the minimum interest rate of loans made by a Local Authority to Further Education (“FE”) or Higher Education (”HE”) Corporations or to local authority maintained FE or HE institutions. The Welsh Ministers also have powers under this section to set the minimum interest rate of loans made by Local Authorities but these powers have not recently been used and they are considered unnecessary. We are therefore content that section 3 of the 1985 Act should be repealed.

48. Paragraph 2 of Schedule 13 amends the Education (No 2) Act 1986, by repealing both section 61 and section 62 of the 1986 Act. Section 61 provides the Secretary of State in England, or Welsh Ministers in Wales, with a regulation making power to restrict the participation of student governors within the governing body of Local Authority maintained FE or HE institutions. Section 62 provides a regulation making power for the Secretary of State, or Welsh Ministers, to make available to people prescribed documents and information relating to the meetings and proceedings of the governing body of Local Authority maintained FE or HE institutions. There are currently no Local Authority maintained FE or HE institutions in Wales, therefore the powers in sections 61 and 62 of the 1986 Act are not viewed as necessary in Wales. We are therefore content that they should be repealed.

49. Paragraph 3 subparagraphs (2) - (4) of Schedule 13 amend the Education Reform Act 1988. Sub-paragraph 2 repeals section 158 of the 1988 Act, which provides a power to require reports from the governing bodies of Local Authority maintained FE or HE institutions. Sub-paragraph 3 repeals section 159 of the 1988 Act, which gives the Secretary of State, or Welsh Ministers, powers to make regulations requiring Local Authorities to provide information about Local Authority maintained FE or HE institutions. Sub-paragraph 4 omits section 219 of the 1988 Act, which provides the Secretary of State or (Welsh Ministers powers to prevent the unreasonable exercise of functions of the governing body of Local Authority maintained FE or HE institutions. The powers in sections 158, 159 and 219 of the 1988 Act have never been exercised by Welsh Ministers. The Welsh Government is therefore content that these provisions should be repealed.

50. Paragraph 4 of Schedule 13 makes amendments to the Further and Higher Education Act 1992 (FHEA 1992) in relation to local authority maintained further education institutions; there are no such institutions in Wales.

51. Paragraph 4(2) repeals sections 23 to 26 of the FHEA, which relate to powers which were concerned with the mechanics of transferring FE provision from institutions maintained by local authorities to FE corporations established by the FHEA 1992.

52. Paragraph 4(3) repeals section 32 and 33 which are time-dated sections concerning the transfer of property and staff from Local Authorities to Designated Institutions.

53. Paragraph 4(4) omits sections 34 which concerns powers connected with the mechanics of transferring FE provision from institutions maintained by local authorities to FE corporations established by the FHEA 1992. There is currently no policy intention to introduce Local Authority maintained FE corporations in Wales and so there is no practical reason to maintain these provisions.

54. Paragraph 4(5) contains consequential amendments in light of the repeals made by paragraph 4 (1) to (4).

55. There are no local authority maintained FE institutions in Wales, and there is currently no policy intention to introduce local authority maintained FE corporations in Wales either. There is, therefore, no practical research to keep these provisions for Wales, and the Welsh Government is therefore content that they should be repealed.

56. These are repealing provisions and therefore do not contain any new powers for Welsh Ministers to make subordinate legislation.

57. It is the view of the Welsh Government that these provisions fall within the legislative competence of the National Assembly for Wales in so far as they relate to Education, vocational, social and physical training and the careers service; and the promotion of advancement and application of knowledge, under paragraph 5 of Part 1, Schedule 7 to the Government of Wales Act 2006.

Clause 57- Repeal of duties relating to consultation or involvement

Schedule 16, Part 2 – Measures affecting England and Wales

58. Clause 57 introduces Schedule 16, which relates to the removal of certain consultation requirements in various legislation. Part 2 makes provision for legislation affecting England and Wales.

59. Consent is sought for the removal of Section 53(7) of the Local Government Act 2003 which relates to Business Improvement District (“BID”) arrangements. Section 53(7) requires the Welsh Ministers to seek the views of billing authorities (county councils and county borough

councils) and ratepayers about the day on which BID arrangements should come into force following an appeal against a veto.

60. A BID arrangement is a partnership between a billing authority and the local business community to develop projects and services for the benefit of a defined area. The non-domestic ratepayers in the area pay a levy in return for the benefits outlined in the BID arrangements, for example projects to regenerate the area, or to increase security. The provisions relating to BID arrangements are contained in Part 4 of the Local Government Act 2003 and the Business Improvement Districts (Wales) Regulations 2005.

61. BID arrangements may not come into force unless the proposals are approved by ballot of the non-domestic ratepayers who are to be liable to pay the levy.

62. Where the ballot approves the proposals, the billing authority may veto the proposals in prescribed circumstances. Section 52 of the 2003 Act allows any person entitled to vote in the ballot to appeal against the veto to the Welsh Ministers. In the event that an appeal against the veto is successful, the Welsh Ministers determine the day on which the BID arrangements are to come into force (section 53(5)).

63. Before making such a determination the Welsh Ministers must consult the relevant billing authority and such persons as appear to be representative of the non-domestic ratepayers who are to be liable for the proposed levy (section 53(7)). It is this consultation requirement that is being repealed.

64. Section 53(7) provides that:

"(7) Before making a determination under subsection (5), the Secretary of State must consult—

(a) the billing authority concerned, and

(b) such persons as appear to him to be representative of the non-domestic ratepayers who are to be liable for the proposed BID levy."

65. The repeal allows the Welsh Ministers to decide on the timing of the coming into force of a BID arrangement in a more timely and efficient way where there has been a successful appeal against a veto. The existing requirements include a stage in a process that, when examined as a whole, is unnecessary.

66. At the moment, before determining when a BID arrangement should come into force following an appeal against a veto the Welsh Ministers are required to consult with the billing authority and any other persons that appear to be representative of non domestic ratepayers.

67. The views of the billing authority will have already been made clear as it is they who have initiated the veto. The 'any other persons' that the legislation refers to will already have had the opportunity to express their views in the original ballot of non-domestic ratepayers.

68. The Welsh Ministers will therefore have sufficient information on which to base their decision on the timing of the coming into force of a BID arrangement without undertaking a further time consuming consultation.

69. Section 53 of the 2003 Act forms part of the law of England and Wales. The repeal will apply to BID arrangements in both England and Wales and will come into force at the end of the period of 2 months beginning with the day on which the Bill becomes an Act.

70. The provisions repeal section 53 (7) of the Local Government Act 2003 and do not contain powers for Welsh Ministers to make subordinate legislation.

71. It is the view of the Welsh Government that these provisions fall within the legislative competence of the National Assembly for Wales in so far as they relate to economic regeneration and development under paragraph 4 of Part 1, Schedule 7 to the Government of Wales Act 2006 and local government finance under paragraph 12 of Part 1, Schedule 7 to the Government of Wales Act 2006.

Clause 60 - Legislation no longer of practical use

Schedule 17, Part 5 – Environment

Farm and Garden Chemicals Act 1967 (c.50)

72. Clause 60 of the Deregulation Bill (entitled "Legislation no longer of practical use") introduces Schedule 17 which makes wide ranging amendments and repeals to the various specified legislation.

73. Paragraphs 17 and 18 (entitled "Farm and Garden Chemicals Act 1967 (c.50)") in Part 5 (Environment) of Schedule 18 to the Bill effect the repeal of the redundant Farm and Garden Chemical Act 1967 and, as a result of repealing that Act, make consequential amendments to the Food Safety Act 1990 (removing paragraph 5 of Schedule 3) and the Regulatory Enforcement and Sanctions Act 2008 (removing the entry for the Farm and Garden Chemicals Act 1967 in Schedule 3 to the 2008 Act). That repeal and those amendments will take effect in relation to England, Scotland and Wales.

74. The Farm and Garden Chemicals Act 1967 enables "the Ministers" as defined by section 5 of the 1967 Act, to make regulations regarding the labelling and marking of products which contain specified substances. Functions under the 1967 Act have not been transferred to the Welsh Ministers in relation to Wales. The Act makes it an offence to sell,

consign or deliver products which contain the specified substances unless those products have been labelled and marked in accordance with the provisions of regulations made under the Act. The Act also makes provision relating to evidence regarding the analysis of products where proceedings for an offence under that Act are being undertaken.

75. The provisions within the Farm and Garden Chemicals Act 1967 relating to the labelling and marking of farm and garden pesticides are now redundant as they have been replicated by specific legal requirements contained in other UK and EU legislation such as the Plant Protection Products Regulations 2011 (S.I. 2011/2131) and Plant Protection Products (Sustainable Use) Regulations 2012 (S.I. 2012/1657). Biocide and chemical product legislation have also been updated by the Biocidal Products and Chemicals (Appointment of Authorities and Enforcement) Regulations 2013 (S.I. 2013/1506).

76. The provisions repealing the Farm and Garden Chemicals Act 1967 and making consequential amendments described above do not, of themselves, provide any powers for the Welsh Ministers to make subordinate legislation.

77. It is the view of the Welsh Government that these provisions fall within the legislative competence of the National Assembly for Wales in so far as they relate to:

- Agriculture, Horticulture, Forestry, Plant Health and Rural Development under paragraph 1 of Part 1 of Schedule 7 to the Government of Wales Act 2006;

- Economic regeneration and development, including improvement of the environment excluding product standards, safety and liability, apart from in relation to food agricultural and horticultural products and pesticides (and things treated by virtue of any enactment as pesticides) under paragraph 4 of Part 1 of Schedule 7 to the Government of Wales Act 2006; and

- Environmental protection, including pollution, nuisances and hazardous substances, Nature conservation, biodiversity, smallholdings and allotments under paragraph 6 of Part 1 of Schedule 7 to the Government of Wales Act 2006.

Statutory Water Companies Act 1991 (c.58)

78. Paragraph 19 in Part 5 of this Schedule repeals the Statutory Water Companies Act 1991.

79. Paragraph 20 removes references to the 1991 Act and the term “statutory water company” from other Acts.

80. Statutory water companies were private businesses with share capital that were incorporated under individual Acts of Parliament. Most dated from the middle of the 19th Century and included, for example, York Waterworks which provided water supply services to the city of York. Unlike the water authorities that were privatised in 1989, statutory water companies were never in the public sector and were not required to register as limited companies under the Companies Act 1985 because they were incorporated under local Acts. The Statutory Water Companies Act regulated how the statutory water companies could operate. For example, it restricted the rate of dividend payable to shareholders and the amount the company could borrow.

81. There are no longer any statutory water companies left as, since privatisation, they have either merged with other water companies or been taken over by other limited companies. This means the provisions of the Statutory Water Companies Act are now redundant and can be repealed.

82. These provisions do not include powers for Welsh Ministers to make subordinate legislation.

83. It is the view of the Welsh Government that these provisions fall within the legislative competence of the National Assembly for Wales in so far as they relate to water supply, water resources management and water quality under paragraph 19 of Part 1, Schedule 7 to the Government of Wales Act 2006.

Sea Fish (Conservation) Act 1992 (c.60)

84. Paragraph 21 (entitled “Sea Fish (Conservation) Act 1992 (c. 60*)*”) in Part 5 (Environment) of Schedule 17 to the Bill will repeal section 10 of Sea Fish (Conservation) Act 1992 (c. 60*)*. Section 10 of the 1992 Act currently forms part of the law of England and Wales, Scotland and Northern Ireland.

85. Section 10 of The 1992 Act contained a requirement for the Minister to report to Parliament with a review of the Act, within 6 months of the 1 January 1997, after consulting those representing the interests of the fishing industry. On 20 March 1997, Lord Lucas answered a parliamentary question to explain that there was nothing of substance to report. He explained that the principal purpose of the Act had been to make provision for the introduction of restrictions on time spent at sea but the policy was suspended because of a legal challenge and a decision was subsequently made not to pursue it.

86. Paragraph 21 of Schedule 17 to the Bill repeals section 10 of the 1992 Act as the period within which the duty to report was to be discharged expired several years ago.

87. The provision simply repeals section 10 of Sea Fish (Conservation) Act 1992, and does not, consequently, provide any powers for the Welsh Ministers to make subordinate legislation.

88. It is the view of the Welsh Government these provisions fall within the legislative competence of the National Assembly for Wales in so far as they relate to Fisheries and Fishing under paragraph 1 of Part 1 of Schedule 7 to the Government of Wales Act 2006.

Schedule 17, Part 6 – Animals and Food

Agricultural Produce (Grading and Marking) Acts 1928 and 1931

89. Paragraphs 22 and 23 (entitled "Agricultural Produce (Grading and Marking) Acts 1928 and 1931") in Part 6 (Animals and Food) of Schedule 17 to the Bill effect the repeal of both the Agricultural Produce (Grading and Marking) Act 1928 and the Agricultural Produce (Grading and Marking) Amendment Act 1931.

90. The Agricultural Produce (Grading and Marking) Act 1928, as amended by the Agricultural Produce (Grading and Marking) Amendment Act 1931, currently enables regulations to be made prescribing grade designations and marks to indicate the quality of agricultural and fishery produce and contains provisions to do with the storage and marking of eggs.

91. The 1928 and 1931 Acts have hardly been used during the last 70 years. They have been overtaken by more recent domestic legislation as well as European Union marketing legislation. The Acts are regarded as redundant and as serving no useful purpose at this stage. Consequently, paragraph 22 in Part 6 of Schedule 17 to the Deregulation Bill repeals the 1928 and 1931 Acts and paragraph 23 of that Schedule makes consequential amendments to Acts as a result of the repeal of the 1928 and 1931 Acts.

92. The 1928 and 1931 Acts form part of the law of England and Wales and Scotland. The proposed repeal of the Agricultural Produce (Grading and Marketing) Acts 1928 and 1931, set out in the Deregulation Bill, extends to England and, with the consent of the Assembly, Wales.

93. The Bill provision simply repeals the Agricultural Produce (Grading and Marketing) Act 1928 and the Agricultural Produce (Grading and Marking) Amendment Act 1931, and does not, consequently, provide any powers for the Welsh Ministers to make subordinate legislation. The 1928 Act currently includes powers to make statutory instruments which, pursuant to section 6 of the 1928 Act, are subject to negative procedure.

94. It is the view of the Welsh Government that these provisions fall within the legislative competence of the National Assembly for Wales in so far as they as they relate to:

- Agriculture and Rural Development under paragraph 1 of Part 1 of Schedule 7 to the Government of Wales Act 2006:

- Economic Regeneration and Development and Promotion of business and competitiveness (which excludes product standards…except in relation to food…agricultural and horticultural products and animals and animal products) under paragraph 4 of Part 1 of Schedule 7 to the Government of Wales Act 2006; and

- Food and food products, Food safety and the Protection of interests of consumers in relation to food under paragraph 8 of Part 1 of Schedule 7 to the Government of Wales Act 2006.

Animal Health Act 1981(c. 22)

95. Paragraphs 24 and 25 (entitled "Animal Health Act 1981 (c.22)") in Part 6 (Animals and Food) of Schedule 17 to the Bill effect the repeal of Part 2A (Sections 36A to 36M) of the Animal Health Act 1981. Part 2A of the 1981 Act enables the Secretary of State to specify, by Order, sheep genotypes which are (in the Secretary of State's opinion) more susceptible to Scrapie and then provides powers for the Secretary of State to prohibit breeding from sheep of that genotype.

96. These powers were inserted in the 1981 Act by the Animal Health Act 2002 and reflected concerns (at that time) about the possibility that BSE in sheep might be masked by scrapie. At that time no tests existed which could distinguish between BSE and scrapie. The EU has since decided against the introduction of compulsory breeding programmes for genetic resistance to scrapie in sheep, making these powers redundant. In addition, tests are now available which can distinguish between BSE and scrapie.

97. A voluntary GB programme, the National Scrapie Plan (NSP), began in 2001 and closed in 2009 in response to updated scientific advice from the Spongiform Encephalopathies Advisory Committee (SEAC), that revealed that the risk of BSE in sheep is zero or negligible. To date, BSE has not been diagnosed in sheep in Great Britain or elsewhere in the world.

98. The powers in Part 2A (Sections 36A-M) of the Animal Health Act 1981 have never been used and, consequently, no-one will be affected by their proposed repeal.

99. These repealing provisions do not, of themselves, provide any powers for the Welsh Ministers to make subordinate legislation. Part 2A of the Animal Health Act 1981 (which is to be repealed) does contain powers to make statutory instruments. Those powers have never been used and will be removed by the proposed repeal.

100. It is the view of the Welsh Government that these provisions fall within the legislative competence of the National Assembly for Wales in so far as they relate to Agriculture and Animal Health and Welfare under paragraph 1 of Part 1 of Schedule 7 to the Government of Wales Act 2006.

Milk (Cessation of Production) Act 1985 (c. 4)

101. Paragraph 26 (entitled "Milk (Cessation of Production) Act 1985 (c.4)") in Part 6 (Animals and Food) of Schedule 17 to the Bill will repeal the Milk (Cessation of Production) Act 1985. That 1985 Act currently forms part of the law of England and Wales, Scotland and (for certain purposes) Northern Ireland.

102. Council Regulation (EEC) No 857/84 established, with effect from 2 April 1984, a system under which each producer of milk or milk products was allocated an individual "reference quantity". If a producer's production exceeded their reference quantity, there was provision for them to pay a levy. The reference quantity is commonly referred to as "milk quota".

103. Council Regulation (EEC) No 857/84 also allowed Member States to grant compensation to producers who undertook to discontinue milk production. Such cessation of production would involve surrender of the producer's milk quota. The 1985 Act enables schemes to be made allowing the payment of compensation on the cessation of milk production and the surrender of milk quota.

104. Such schemes were made under that Act in relation to England, Wales and Scotland. These schemes were revoked with effect from 6 April 2007 and have not been replaced (there is no intention to replace them). The underlying milk quota system itself (whose provisions are now contained in Council Regulation (EC) No 1234/2007) is intended to cease with effect from 31 March 2015.

105. The 1985 Act is, therefore, now redundant and paragraph 26 in Part 6 of Schedule 17 to the Bill will repeal that Act in relation to England, Northern Ireland and, with the consent of the Assembly, Wales. For information, the Scottish Government has confirmed that it intends to enact legislation to repeal the 1985 Act in relation to Scotland, at a later date.

106. The Bill provision simply repeals the Milk (Cessation of Production) Act 1985. This Bill provision does not, consequently, provide any powers for the Welsh Ministers to make subordinate legislation.

107. It is the view of the Welsh Government that these provisions fall within the legislative competence of the National Assembly for Wales in so far as they relate to:

- Agriculture and rural development under paragraph 1 of Part 1 of Schedule 7 to the Government of Wales Act 2006;

- Economic Regeneration and Development under paragraph 4 of Part 1 of Schedule 7 to the Government of Wales Act 2006; and

- Food and food products under paragraph 8 of Part 1 of Schedule 7 to the Government of Wales Act 2006.

Coal and Other Mines (Horses) Order 1956 (S.I. 1956/1777)

108. Paragraph 27 (entitled "Coal and Other Mines (Horses) Order 1956 (S.I. 1956/1777)) in Part 6 (Animals and Food) of Schedule 17 to the Bill will repeal The Coal and Other Mines (Horses) Order 1956 (SI 1956/1777). That 1956 Order sets out health and welfare rules for horses employed in mines and forms part of the law of England and Wales and Scotland.

109. This 1956 Order was originally made under section 190 of the Mines and Quarries Act 1954 ("the 1954 Act"). That enabling power has since been repealed and the 1956 Order now has effect by virtue of the Mines and Quarries Acts 1954 to 1971 (Repeals and Modifications) Regulations 1974 (S.I. 1974/2013) ("the 1974 Regulations") which were made under section 15 of the Health and Safety at Work etc. Act 1974.

110. The 1956 Order contains detailed provisions about the treatment of horses which work underground in mines, such as the age at which a horse may be taken underground, hours of work, veterinary inspections, stabling requirements etc.

111. The 1956 Order is no longer considered to be of practical use, since horses have not been used in mines in England and Wales for a considerable period of time.

112. Revoking the 1956 Order would remove an explicit prohibition on taking a horse underground if it is under four years of age, blind or not recently certified as being free of the disease of glanders. However, any horses employed in mines would in any event be appropriately protected under modern animal welfare legislation of general application, namely the Animal Welfare Act 2006.

113. The Bill provision described above simply repeals the Coal and Other Mines (Horses) Order 1956 and this Bill provision does not, consequently, provide any powers for the Welsh Ministers to make subordinate legislation.

114. It is the view of the Welsh Government that these provisions fall within the legislative competence of the National Assembly for Wales in so far as they relate to Animal Health and Welfare under paragraph 1 of Part 1 of Schedule 7 to the Government of Wales Act 2006.

Schedule 17, Part 8 – Criminal Law

Town Police Clauses Act 1847 (10&11 Vict (c.89))

115. This Part will repeal a number of provisions in the Town Police Clauses Act 1847, which are considered no longer to be of practical use.

116. Section 28 of the 1847 Act provides for a number of offences, in relation to certain activities carried out in the street. Broadly, these offences can be described and grouped as follows:

Animal issues

- Sale of animals
- Dangerous Dogs
- Slaughter of cattle
- Keeping a pigsty

Transport issues

- Not driving on the left
- Driving a horse and cart or carriage or cattle furiously
- Obstruction of the highway by a carriage or cart
- Safely securing loads on a cart or carriage
- Blocking footways with a horse, cart or carriage

Retail issues

- Shops displaying their wares on the footway
- Placing lines or cords across the street

General

- Providing or selling obscene literature or papers or singing obscene songs
- Discharging firearms, throwing stones, missiles or fireworks or making a bonfire
- Disturbing residents by ‘wantonly’ ringing the doorbell or knocking or extinguishing street lights
- Flying a kite or making snow or ice slides
- Making or repairing casks
- Laying down building materials unless they are safely enclosed
- Beating carpets or rugs (except doormats beaten before 8 am)
- Placing flower pots or boxes in upstairs windows without ensuring they are properly secured
- Throwing items from the roof of a house
- Allowing people to stand on windowsills to maintain the property
- Leaving cellar doors open without the appropriate handrails or fencing

Environmental

- Throwing litter

The proposed repeals would remove all but the following offences from the statute book:

- Every person who suffers to be at large any unmuzzled ferocious dog, or sets on or urges any dog or other animal to attack, worry or put in fear any person or animal.

- Every person who rides or drives furiously any horse or carriage, or drives furiously any cattle.

- Every person who wantonly discharges any firearm, or throws or discharges any stone or other missile, or makes any bonfire, or throws or sets fire to any firework.

117. Currently, these offences apply equally in both England and Wales. The inter-connected nature of the relevant Welsh and English administrative systems mean it is most effective and appropriate for provision to remove the offences to be taken forward at the same time in the same legislative instrument. Many of these offences are no longer relevant in today's world, and others have been overtaken by more recent legislation, therefore their removal from the statute book is not contentious.

118. It is the view of the Welsh Government that a number of the offences referred to above fall within the legislative competence of the National Assembly for Wales in so far as they relate to animal health and welfare under paragraph 1 of Part 1, Schedule 7 to the Government of Wales Act 2006; highways and transport facilities and services under paragraph 10 of Part 1, Schedule 7; and environmental protection under paragraph 6 of Part 2, Schedule 7 to Government of Wales Act 2006.

119. All the provisions in this Memorandum extend to Wales and apply in relation to Wales.

Advantages of utilising this Bill rather than Assembly legislation

120. It is the view of the Welsh Government that it is appropriate to deal with these provisions in this UK Bill as it represents the most practicable and proportionate legislative vehicle to enable these provisions to apply in relation to Wales because most Bill provisions, that are within the Welsh legislative competence, are technical and non-contentious. In addition, the inter-connected nature of the relevant Welsh and English administrative systems mean that it is most effective and appropriate for the Bill provisions for both to be taken forward at the same time in the same legislative instrument.

Financial implications

121. There are no financial implications for the Welsh Government.

Alun Davies, AM
Minister for Natural Resources and Food
February 2014

Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol
Constitutional and Legislative Affairs Committee

Cynulliad Cenedlaethol Cymru
National Assembly for Wales

Lord Rooker
Chair
Joint Committee on the Draft
Deregulation Bill
House of Lords
London
SW1A 0PW

10 October 2013

Dear

Draft Deregulation Bill

1. I refer to the draft Deregulation Bill, published by the UK Government on 16 July, which is being scrutinised by your Committee.

2. I am very grateful to you for agreeing to accept evidence from the National Assembly after your original deadline of 16 September 2013.

3. We considered the Bill at our meeting on 7 October.

4. We note that many provisions of the Bill, as far as Wales is concerned, relate to non-devolved subjects such as company law, insolvency and international shipping. Other provisions affect legislation that applies only to England.

5. More significant are those that affect the law of England and Wales on subjects such as housing and local government. However, a preliminary examination of those detailed provisions suggests that care has been taken to limit the effect of those changes to England, for example, clauses 20 and 21 that relate to housing.

6. We have therefore concentrated our consideration on provisions that would be of general, rather than specific, application. In the context of these provisions, we have serious concerns about the nature of the powers being given to UK Ministers in relation to Wales as currently provided for in this Bill.

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Clauses 51 and 57

7. From our perspective, the crucial provision of the Bill is clause 51. This would permit a Minister of the Crown to provide for legislation to cease to apply if the Minister considers that that legislation is no longer of practical value. The Minister would be able to do this simply by making an order. The legislation could be repealed or revoked generally or in relation to a specific part of the UK. The Bill contains examples of Westminster legislation that would cease to apply to England, but would continue to apply to Wales. "Minister of the Crown" is defined in the Ministers of the Crown Act 1975 as "the holder of an office in Her Majesty's Government in the United Kingdom, and includes the Treasury, the Board of Trade and the Defence Council." Legislation for these purposes means an Act (of Parliament) or subordinate legislation, but *not* an Act or Measure of the National Assembly.

8. However, by virtue of clause 57(2), this Ministerial power to repeal legislation *would* also be exercisable in relation to any provision made by, or under, an Act of the National Assembly or a Measure of the National Assembly to the extent that the repeal was an "incidental, supplementary, consequential, transitional, transitory or saving" provision.

9. As the Bill is currently drafted, if a proposed order contained provision which would be within the legislative competence of the National Assembly were it contained in an Act of the Assembly, the UK Minister would have to obtain the consent of the Welsh Ministers, not the National Assembly. This is inconsistent with subsequent clauses which specify a super-affirmative procedure at Westminster for scrutiny of the order.

10. We strongly believe that there would be much greater democratic legitimacy if the UK Government were required to obtain the consent of the National Assembly, rather than the Welsh Ministers, before it repealed legislation made by, or within the competence of, the National Assembly.

11. Placing a specific statutory requirement to this effect in the Bill would reinforce the principle contained in Devolution Guidance Note 9, which states that:

> "The UK Government would not normally bring forward or support proposals to legislate in relation to Wales on subjects in which the Assembly has legislative competence without the Assembly's consent."

Not making such a change to the Bill could undermine this principle.

12. The significance of such repeals should not be underestimated and they must be subject to thorough scrutiny in the National Assembly. As such, a proposal to repeal legislation of a nature described in paragraph 9 above should be laid before the National Assembly at the earliest opportunity to enable timely scrutiny by all relevant committees. We believe this to be a principle of such importance that a statutory duty to consult the National

Assembly (as well as to obtain its consent at a later stage in the process) should appear on the face of the Bill.

Clause 62

13. Clause 62(1) has a similar effect to clause 51. It would empower a Secretary of State by order to make such provision as he or she considers appropriate in consequence of the Act. That may include transitional, transitory or saving provision and amend, repeal, revoke or otherwise modify legislative provisions, *including* those made by the National Assembly. (For example, if an Act of the Assembly referred to legislation to be repealed by the Bill, that reference could be deleted.) Orders amending primary legislation would be subject to the affirmative procedure at Westminster; changes to subordinate legislation would be subject to the negative procedure.

14. In our view, orders made under clause 62(1) that amend, repeal, revoke or otherwise modify legislative provisions either made by the National Assembly or within its legislative competence must be subject to the National Assembly's consent.

15. Clauses 51, 57 and 62, and those related to them, are therefore of considerable concern to us and we believe should be changed or amended as we describe above to ensure that legislative scrutiny in the National Assembly is consistent with the process for legislative scrutiny at Westminster. We firmly believe that, if the Bill remains as currently drafted, it has the potential to undermine the existing devolution settlement in Wales.

Yours sincerely

David Melding AM
Chair

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Agenda Item 5.2

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