Agenda – Constitutional and Legislative Affairs Committee – Fourth Assembly

Meeting Venue:
Committee Room 2 – Senedd
Meeting date: Monday, 16 January 2012
Meeting time: 14.30

For further information contact:
Steve George
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1 Introduction, apologies, substitutions and declarations of interest

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

Negative Resolution Instruments

CLA64 – The Civil Enforcement of Parking Contraventions (County Borough of Merthyr Tydfil) Designation Order 2011

Negative Procedure. Date made 29 November 2011. Date laid 1 December 2011. Coming into force date 11 January 2012

CLA65 – The Flood Risk (Amendment) (Wales) Regulations 2011

Negative Procedure. Date made 30 November 2011. Date laid 1 December 2011. Coming into force date 22 December 2011

CLA67 – The National Health Service (Pharmaceutical Services) (Amendment) (Wales) Regulations 2011

Negative Procedure. Date made 4 December 2011. Date laid 6 December 2011. Coming into force date 31 December 2011

CLA69 - The General Teaching Council for Wales (Disciplinary Functions) (Amendment) Regulations 2011

Negative Procedure. Date made 2 December 2011. Date laid 6 December 2011. Coming into force date 31 December 2011

CLA70 - The School Teacher Appraisal (Wales) Regulations 2011

Negative Procedure. Date made 6 December 2011. Date laid 8 December 2011. Coming into force date 1 January 2012

CLA71 - The Common Agricultural Policy Single Payment and Support Schemes (Cross Compliance) (Wales) (Amendment) Regulations 2011

Negative Procedure. Date made 7 December 2011. Date laid 8 December 2011. Coming into force date 1 January 2012

CLA75 -The Landfill Allowances Scheme (Wales) (Amendment) (No. 2) Regulations 2011

Negative Procedure. Date made 19 December 2011. Date laid 20 December 2011. Coming into force date 16 January 2012

Affirmative Resolution Instruments

None

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

Negative Resolution Instruments

CLA66 - The National Health Service (Charges to Overseas Visitors) (Amendment) (Wales) Regulations 2011

(Pages 1 - 9)

Negative Procedure. Date made 4 December 2011. Date laid 6 December 2011. Coming into force date 27 December 2011

CLA68 - The Smoke Control Areas (Authorised Fuels) (Wales) (Amendment) Regulations 2011

(Pages 10 - 24)

Negative Procedure. Date made 2 December 2011. Date laid 6 December 2011. Coming into force date 31 December 2011

CLA72 - The Non-Commercial Movement of Pet Animals Order 2011

(Pages 25 - 81)

Negative Procedure. Date made 6 December 2011. Date laid before Parliament 9 December 2011. Date laid before the National Assembly for Wales 9 December 2011. Coming into force date 1 January 2012

CLA73 - The Environmental Permitting (England and Wales) (Amendment) (No. 2) Regulations 2011

(Pages 82 - 167)

Negative Procedure. Date made 6 December 2011. Date laid before Parliament 9 December 2011. Date laid before the National Assembly for Wales 9 December 2011. Coming into force date 1 January 2012

CLA74 - The Eels (England and Wales) (Amendment) Regulations 2011

(Pages 168 - 172)

Negative Procedure. Date made 12 December 2011. Date laid before Parliament 13 December 2011. Date laid before the National Assembly for Wales 13 December 2011. Coming into force date 3 January 2012

Affirmative Resolution Instruments

None

4 Local Government Byelaws Bill

(Pages 173 - 243)

Papers:

CLA(4)-01-12 (p1) - Local Government Byelaws Bill
CLA(4)-01-12 (p2) – Explanatory Memorandum to the Local Government Byelaws Bill

5 Committee Correspondence

CLA49 - The Audit and Assessment Reports (Wales) (Amendment) Order 2011

(Pages 244 - 245)

Papers:

CLA(4)-01-12(p3) – Letter from the Chair to the Minister dated 17 November 2011
CLA(4)-01-12(p4) – The Minister's response dated 7 December 2011

Amendments to the Localism Bill

(Pages 246 - 248)

Papers:

CLA(4)-01-12(p5) – Letter from the Chair to the Minister dated 14 November 2011
CLA(4)-01-12(p6) – The First Minister's response dated 15 December 2011

6 Date of the next meeting

Paper to note

CLA(4)-14-11 – Report of the Meeting 5 December 2011

Constitutional and Legislative Affairs Committee

CLA(4)-01-12

CLA66

Constitutional and Legislative Affairs Committee Report

Title: The National Health Service (Charges to Overseas Visitors) (Amendment) (Wales) Regulations 2011

Procedure: Negative

These Regulations amend the National Health Service (Charges to Overseas Visitors) Regulations 1989 by updating, by the addition of Jersey, the list of countries or territories with which the UK Government has entered into a reciprocal health care arrangement. The Regulations also introduce exemptions from charges for NHS treatment (for the period 9 July 2012 to 12 September 2012) for members of the Olympic and Paralympic Games Families taking part in the 2012 Olympic and Paralympic Games.

Technical Scrutiny

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

Merits Scrutiny

Under Standing Order 21.3(ii) (matters giving rise to issues of public policy likely to be of interest to the Assembly) the Assembly is invited o pay special attention to the following instrument.

Members may wish to note that in December 2009 the then Minister for Health and Social Services notified the Committee of the cessation in March 2009 by the Department of Health of the bilateral agreement which had been in place between the UK and the Channel Islands. The cessation of the agreement was given effect to by The National Health Service (Charges to Overseas Visitors) (Amendment) (No.2) (Wales) Regulations 2009 - SLC353 refers.

It is not clear from the Explanatory Memorandum why a bilateral agreement is to be reinstated with Jersey, nor does the Explanatory Memorandum indicate why a similar arrangement is not being reinstated with the other Channel Islands. Nor is it clear whether Wales is alone in reinstating the agreement with Jersey. An explanation as to why the Welsh government is now reinstating the bilateral agreement with Jersey would be welcome.

Legal Advisers
Constitutional and Legislative Affairs Committee

19 December 2011

The Government has responded as follows:

The National Health Service (Charges to Overseas Visitors) (Amendment) (Wales) Regulations 2011

In response to your Committee's report CLA66, I set out below further information on the points raised.

The UK government agreed a reciprocal healthcare agreement with the State of Jersey effective from April 2011. The earlier 'agreement' was rescinded in 2009. Under the previous agreement the UK was charged for the costs of treatment for UK visitors to Jersey and the UK charged Jersey for the cost of treatment for visitors to the UK from Jersey. The Department of Health (DH) estimated that there was a net loss to the UK Administrations of several million pounds under the terms of this agreement. Jersey did not co-operate with the required exchange of data regarding patient numbers and treatment costs and the decision was made to cancel the agreement.

DH negotiated a new agreement with Jersey under which no money would be exchanged. This brings Jersey into line with other countries and territories with which the UK has reciprocal Healthcare Agreements. The devolved administrations were consulted prior to the new agreement being entered into and all supported the new agreement. The new reciprocal agreement has also been implemented by Northern Ireland and Scotland.

It is probable that there will be a net financial gain for Wales under the new agreement as historically the number of visitors from Jersey requiring immediate and necessary treatment in Wales is small. Figures are not available from Jersey as to how many visitors from Wales required immediate and necessary treatment when visiting Jersey.

The reciprocal agreement between the UK and Guernsey was terminated in 2009.The situation with Guernsey is more complicated as healthcare covered by reciprocal agreements, that is immediately necessary treatment including A & E, is not free for local residents. If Guernsey was to enter into a reciprocal healthcare agreement with the UK which is similar to the one that the UK has entered into with Jersey, Guernsey would have a difficult situation where UK visitors would receive free healthcare whereas Guernsey residents would be charged.

At present Guernsey is not willing to enter into a reciprocal healthcare agreement with the UK which includes the provision that no money is exchanged between administrations.

Even though not one of the Channel Islands, the Committee may be interested to know the position regarding the Isle of Man. The original agreement between the UK and the Isle of Man was due to end in March 2010 but was extended until September 2010. A new agreement was implemented on 1st October 2010 so there has always been a reciprocal healthcare agreement in place with the Isle of Man.

WELSH STATUTORY INSTRUMENTS

2011 No. 2906 (W. 310)

NATIONAL HEALTH SERVICE, WALES

The National Health Service (Charges to Overseas Visitors) (Amendment) (Wales) Regulations 2011

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the National Health Service (Charges to Overseas Visitors) Regulations 1989 (S.I. 1989/306) ("the principal Regulations").

Regulation 5 of the principal Regulations sets out the circumstances in which an overseas visitor will be exempt from charges for treatment the need for which arose during the overseas visitor's visit to the United Kingdom. Regulations 2(2) and (3) of these Regulations amend the principal Regulations to provide an exemption for individuals who are part of the Games Family during the Olympic and Paralympic Games in London 2012 between 9 July 2012 and 12 September 2012.

Regulation 2(5) of these Regulations inserts a new Schedule 3 into the principal Regulations which defines what is meant by "Games Family".

Regulation 2(4) of these Regulations inserts Jersey into the list of countries or territories in Schedule 2 to the principal Regulations in respect of which the United Kingdom Government has entered into a reciprocal agreement.

WELSH STATUTORY INSTRUMENTS

2011 No. 2906 (W. 310)

NATIONAL HEALTH SERVICE, WALES

The National Health Service (Charges to Overseas Visitors) (Amendment) (Wales) Regulations 2011

Made *4 December 2011*

Laid before the National Assembly for Wales *6 December 2011*

Coming into force *27 December 2011*

The Welsh Ministers make the following Regulations in exercise of the powers conferred by sections 124 and 203(9) and (10) of the National Health Service (Wales) Act 2006(**1**).

Title, commencement, application and interpretation

1.—(1) The title of these Regulations is the National Health Service (Charges to Overseas Visitors) (Amendment) (Wales) Regulations 2011 and they come into force on 27 December 2011.

(2) These Regulations apply in relation to Wales.

(3) In these Regulations, "the principal Regulations" (*"y prif Reoliadau"*) means the National Health Service (Charges to Overseas Visitors) Regulations 1989(**2**).

Amendments to the principal Regulations

2.—(1) The principal Regulations are amended as follows.

(**1**) 2006 c.42.

(**2**) S.I. 1989/306 as amended by S.I. 1991/438; S.I. 1994/1535; S.I. 2004/1433 (W.146); S.I. 2008/2364 (W.203); S.I. 2009/1175 (W. 102); S.I. 2009/1512 (W.148); S.I. 2009/1824 (W.165); S.I. 2009/3005 (W.264); S.I. 2010/927 (W.94).

(2) After the definition of "refugee" in regulation 1(2) (citation, commencement and interpretation) insert the following definition—

" "the relevant period" means the period from 9 July 2012 to 12 September 2012;".

(3) In regulation 5 (exemption from charges for treatment the need for which arose during the visit) —

(a) after the word "companion" in paragraph (f), delete the full stop and insert "; or"; and

(b) at the end of the regulation insert the following paragraph —

"(g) an individual who is in the United Kingdom as part of the "Games Family", as defined in Schedule 3, during the relevant period.".

(4) In Schedule 2 insert in the appropriate alphabetical position the word—

"Jersey".

(5) After Schedule 2 insert the following Schedule —

"SCHEDULE 3

Regulation 5(g)

Games Family

"Games Family" —means the group of individuals who are taking part or involved in the Olympic or Paralympic Games in London 2012 ("the Games"), and who have been given a letter code for the purpose of receiving free treatment the need for which arose during the visit to the United Kingdom.

This includes the following groups:

Athletes – comprising athletes and their supporting team officials participating in the Games as accredited members of a National Olympic Committee or National Paralympic Committee delegation;

Technical officials – comprising the team of individuals that officiates the field of play and athlete areas at the Games;

Press – comprising the Games accredited representatives of photographic and written press;

Broadcasters – comprising the Olympic Broadcast Service and all the Games-related rights holding broadcasting organisations;

Olympic and Paralympic family – comprising the International Olympic

Committee and International Paralympic Committee organisations (and their constituents), Chairmen and Chief Executive Officers (or equivalent). ”.

Lesley Griffiths

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

4 December 2011

Explanatory Memorandum to the National Health Service (Charges to Overseas Visitors) (Amendment) (Wales) Regulations 2011 ("the Regulations")

This Explanatory Memorandum has been prepared by The Department for Health and Social Services and is laid before the National Assembly for Wales in accordance with Standing Order 27.1.

Ministers Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the **National Health Service (Charges to Overseas Visitors) (Amendment) (Wales) Regulations 2011**

Lesley Griffiths

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

4 December 2011

(i) Description

The Regulations amend the National Health Service (Charges to Overseas Visitors) Regulations 1989 ("the principal Regulations").

The Regulations amend the principal Regulations by updating the list of countries or territories with which the UK Government has entered into a reciprocal health care agreement, and introduce exemptions from charges for NHS treatment for members of the Olympic and Paralympic Games Families who are taking part in the London 2012 Olympics and Paralympics.

(ii) Matters of special interest to the Constitutional and Legislative Affairs Committee

None.

(iii) Purpose and intended effect of the legislation

The Regulations amend the principal Regulations as follows:

- to include Jersey in the list of countries with which the UK Government has entered into a reciprocal agreement. This means that a resident of

Jersey will be exempt from NHS charges for treatment the need for which arose during his or her visit; and

- to make provision for members of the Games Family to be exempt from NHS charges for treatment the need for which arose during the Games period which is defined as being from 9 July 2012 to 12 September 2012. The Games Family is defined in Schedule 3 which is inserted into the principal Regulations by regulation 2(5) of the Regulations and includes Olympic and Paralympic athletes and technical officials who officiate at the Olympic and Paralympic Games.

(iv) Implementation

It is intended that these Regulations will come into force on 27 December 2011.

(v) Consultation

There was no requirement to hold consultations because

- The reciprocal healthcare agreement is between the UK Government and Jersey. The Department of Health, as they are required to do, sought the view of the Welsh Government prior to entering into the agreement.
- The agreement to exempt accredited members of the Olympic and Paralympic Games Families was to honour the UK Government commitment given in support of the London 2012 bid.

(vi) Regulatory Impact Assessment

A Regulatory Impact Assessment has not been prepared for this instrument as the Regulations simply amend the principal Regulations (1) to make a routine update to the list of territories with which the UK Government has entered into a reciprocal health care agreement, and (2) to provide for a narrow, time limited extension to the categories of individual who will be entitled to NHS treatment without charge the need for which arose during their visit.

There is no major policy impact on the existing regime that governs when overseas visitors must be charged for NHS treatment.

Constitutional and Legislative Affairs Committee

(CLA(4)-01-12)

CLA68

Constitutional and Legislative Affairs Committee Draft Report

Title: The Smoke Control Areas (Authorised Fuels) (Wales) (Amendment) Regulations 2011

Procedure: Negative

These Regulations amend the Smoke Control Areas (Authorised Fuels) (Wales) Regulations 2008 (S.I. 2008/3100) by adding five new fuels to, and amending the specification of one other fuel, in the list of fuels declared to be authorised fuels for the purposes of Part III of the Clean Air Act 1993.

Technical Scrutiny

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

(1) The newly substituted paragraph 36 at sub-paragraph (c) of the English version does not refer to the "cushion shaped briquettes" being unmarked whereas the Welsh text does refer to the "cushion shaped briquettes" being unmarked. It is unclear which the correct version is.

[Standing Order 21.2 (vii)-that there appear to be inconsistencies between the meaning of its English and Welsh texts] and [Standing Order 21.2 (vi) that its drafting appears to be defective or it fails to fulfil its statutory requirement].

(2) Regulation 3 (Saving) of the English text refers to paragraph 36 of the Schedule of the Smoke Control Areas (Authorised Fuels) (Wales) Regulations 2008 ("2008 Regulations"), whereas although the Welsh version refers to paragraph 36, it does not refer to the Schedule of the 2008 Regulations, and so it is unclear as to where paragraph 36 originates in the Welsh text.

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

Merits Scrutiny

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

Legal Advisers
Constitutional and Legislative Affairs Committee

December 2011

The Government has responded as follows:

The Smoke Control Areas (Authorised Fuels) (Wales) (Amendment) Regulations 2011

Response to the issues that have been raised by the Legal Advisers to the Constitutional and Legislative Affairs Committee

Point 1
There is, as the draft report says, a difference between the Welsh and English texts of the newly substituted paragraph 36 at sub-paragraph (c). This is contained in regulation 2(dd) of the Welsh text and the corresponding regulation 2(f) of the English text.

The Welsh text incorrectly states that the briquettes are unmarked but then goes on to correctly describe the marking on the briquette. The Welsh text is, therefore, ambiguous but does contain words indicating that marking is present. The English text is correct and unambiguous, and correctly reflects the purpose and intended effect as set out in the Explanatory Memorandum. Given the description of the marking in the Welsh text, taken in combination with the English text, there is no doubt as to which text is correct: the error is clearly with the Welsh text of the newly substituted paragraph 36(c). Therefore, it is appropriate, in order to remove the ambiguity, for the Welsh text to be corrected on publication by the deletion of the words “heb eu marcio”, and this will be done.

Point 2
There is, as the draft report says, a difference between regulation 3 of the Welsh and English texts. However, despite the inconsistency, the legal effect of the Welsh text is clear, and is the same as the English text. This is because there is no paragraph 36 in the main body of the Regulations being amended, only in the sole Schedule to those Regulations (to which the English text clearly refers). Accordingly, it is appropriate for the error to be corrected on publication and this will be done.

WELSH STATUTORY INSTRUMENTS

2011 No. 2909 (W. 313)

CLEAN AIR, WALES

The Smoke Control Areas (Authorised Fuels) (Wales) (Amendment) Regulations 2011

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Smoke Control Areas (Authorised Fuels) (Wales) Regulations 2008 (S.I. 2008/3100 (W.274)) ("the 2008 Regulations"), which set out the fuels declared to be authorised fuels for the purposes of Part III (including section 20) of the Clean Air Act 1993 ("the 1993 Act").

These Regulations amend the list of authorised fuels in the Schedule to the 2008 Regulations by—

(a) adding five new fuels (Big K Restaurant Grade Charcoal, Briteheat Plus briquettes, EDF Fuel briquettes, Homefire Fire Logs and Newflame Plus briquettes); and

(b) amending the specification of one other fuel (Stoveheat Premium briquettes),

Regulation 3 ensures that any fuel (namely Stoveheat Premium briquettes) that was manufactured before the coming into force of these Regulations, and which was an authorised fuel when it was manufactured, will continue to be an authorised fuel.

Section 20 of the 1993 Act provides that it is an offence to emit smoke from a chimney of a building or a chimney serving a furnace of a fixed boiler or industrial plant, if that chimney is within a smoke control area. However, it is a defence to prove that the alleged emission was caused solely by the use of an authorised fuel.

In Wales, an authorised fuel means a fuel declared to be an authorised fuel by regulations made by the Welsh Ministers.

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, a

regulatory impact assessment has been prepared as to the likely costs and benefits of complying with these Regulations. A copy can be obtained from the Welsh Government, Cathays Park, Cardiff, CF10 3NQ.

WELSH STATUTORY INSTRUMENTS

2011 No. 2909 (W. 313)

CLEAN AIR, WALES

The Smoke Control Areas (Authorised Fuels) (Wales) (Amendment) Regulations 2011

Made *2 December 2011*

Laid before the National Assembly for Wales *6 December 2011*

Coming into force *31 December 2011*

The Welsh Ministers make the following regulations in exercise of the powers conferred upon the Secretary of State by sections 20(6) and 63(1) of the Clean Air Act 1993(**1**) and now vested in the Welsh Ministers(**2**) so far as exercisable in relation to Wales:

Title, commencement and application

1.—(1) The title of these Regulations is the Smoke Control Areas (Authorised Fuels) (Wales) (Amendment) Regulations 2011 and they come into force on 31 December 2011.

(2) These Regulations apply in relation to Wales.

Amendments

2. In the Schedule (Authorised Fuels) to the Smoke Control Areas (Authorised Fuels) (Wales) Regulations 2008(**3**)—

(a) after paragraph 4, insert—

(**1**) 1993 (c.11).

(**2**) The relevant functions of the Secretary of State were, so far as exercisable in relation to Wales, transferred to the National Assembly for Wales by virtue of article 2 of, and Schedule 1 to, the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672). Those functions are now 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).

(**3**) SI 2008/3100 (W.274), which has been amended by SI 2009/3225 (W.279).

"**4A.** Big K Restaurant Grade Charcoal, manufactured by Big K Products UK Limited at Parque Industrial Alvear, 2126 Alvear, Provincia de Santa Fe, Argentina, which—

(a) comprise pyrolised white quebracho wood;

(b) were manufactured using a kiln pyrolysis process at approximately 450°C;

(c) are unmarked charcoal pieces of between 30 millimetres to 150 millimetres; and

(d) have a sulphur content not exceeding 2 per cent of the total weight.".

(b) after paragraph 8A, insert—

"**8B.** Briteheat Plus briquettes, manufactured by Coal Products Limited at Immingham Briquetting Works, Immingham, North East Lincolnshire, which—

(a) comprise anthracite duff (as to approximately 75 to 95 per cent of the total weight), petroleum coke (up to approximately 20 per cent of the total weight) and an organic binder (as to the remaining weight);

(b) were manufactured from those constituents by a process involving roll-pressing;

(c) are unmarked pillow shaped briquettes;

(d) have an average weight of 80 grams per briquette; and

(e) have a sulphur content not exceeding 2 per cent of the total weight.".

(c) after paragraph 18, insert—

"**18A.** EDF Fuel Briquettes, manufactured by TheGreenFactory at the Laboratoire de Chimie Agro-industrielle UMR 1010 INRA/INP-ENSIACET AGROMAT, Site de l'ENIT 47, Avenue D'Azereiz, -BP 1629 65016 Tarbes Cedex, France, which

(a) comprise approximately 100 grams of unprocessed Miscanthus (as to approximately 45 per cent of the total weight), approximately 95 grams of Copra ester (as to approximately 43 per cent of the total weight), and approximately 25 grams of a binder produced from Miscanthus (processed with calcium oxide as to approximately 0.5 per cent of the total weight) as to the remaining weight;

(b) are manufactured from those constituents by a process involving

Miscanthus processing, mixing, hot pressing and soaking in an ester bath;

(c) are unmarked cylinder-shaped briquettes of 120 millimetres height and 60 millimetres diameter with a star-shaped hole running centrally through the longer length of the briquette;

(d) have an average weight of 220 grams per briquette; and

(e) have a sulphur content not exceeding 2 per cent of the total weight.".

(d) after paragraph 21, insert—

"**21A.** Homefire Fire Logs, manufactured by De Lange B.V., Rustenbugerweg 3, 1646 WJ Ursem, the Netherlands, which—

(a) comprise slackwax (as to approximately 50 per cent of the total weight) and sawdust (as to approximately 50 per cent of the total weight);

(b) were manufactured from those constituents by a process of heat treatment and extrusion;

(c) are firelogs approximately 280 millimetres in length and 75 millimetres x 75 millimetres with a single groove running along each of the four 280 millimetre length faces;

(d) have an average weight of 1.1 kilograms per firelog; and

(e) have a sulphur content not exceeding 0.2 per cent of the total weight.".

(e) after paragraph 30, insert—

"**30A.** Newflame Plus briquettes, manufactured by Maxibrite Limited, Mwyndy Industrial Estate, Llantrisant, Rhondda Cynon Taf, CF72 8PN, which—

(a) comprise 10 to 15 per cent bituminous coal, 10 to 15 per cent petroleum coke, and anthracite duff and starch binder as to the remaining weight;

(b) were manufactured from those constituents by a process involving roll-pressing and heat treatment at about 260°C;

(c) are unmarked pillow-shaped briquettes with approximate maximum dimensions 68 millimetres x 63 millimetres x 38 millimetres;

(d) have an average weight of 110 grams per briquette; and

(e) have a sulphur content not exceeding 1.9 per cent sulphur on a dry basis.".

(f) for paragraph 36, substitute—

"**36.** Stoveheat Premium briquettes, manufactured by Coal Products Limited at Immingham Briquetting Works, Immingham, North East Lincolnshire, which—

(a) comprise anthracite duff (as to approximately 65 to 85 percent of the total weight), petroleum coke (as to approximately 20 per cent of the total weight) and a molasses and phosphoric acid binder (as to the remaining weight);

(b) were manufactured from those constituents by a process involving roll-pressing and heat treatment at about 300°C;

(c) are cushion shaped briquettes with an indented line running around the briquette;

(d) have an average weight of 30 grams per briquette; and

(e) have a sulphur content not exceeding 2 per cent of the total weight.".

Saving

3. Any fuel manufactured before the coming into force of these Regulations that was an authorised fuel when it was manufactured will continue to be an authorised fuel notwithstanding the substitution of paragraph 36 of the Schedule to the Smoke Control Areas (Authorised Fuels) (Wales) Regulations 2008.

John Griffiths

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

2 December 2011

EXPLANATORY MEMORANDUM TO

THE SMOKE CONTROL AREAS (AUTHORISED FUELS) (WALES) (AMENDMENT) REGULATIONS 2011

This explanatory memorandum has been prepared by the Department for Environment and Sustainable Development and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Smoke Control Areas (Authorised Fuels) (Wales) (Amendment) Regulations 2011. I am satisfied that the benefits outweigh any costs.

John Griffiths

Minster for Environment and Sustainable Development, one of the Welsh Ministers

2 December 2011

(i) Description

These Regulations amend the Smoke Control Areas (Authorised Fuels)(Wales) Regulations 2008 (SI 2008/3100) (W.274) by adding five new fuels to, and amending the specification of one other fuel, in the list of fuels declared to be authorised fuels for the purposes of Part III of the Clean Air Act 1993. The fuels have been tested and meet British Standard 3841.

(ii) Matters of special interest to the Constitutional and Legislative Affairs Committee

None.

(iii) Legislative Background

The power enabling this Instrument to be made is contained in Sections 20(6) and 63 of the Clean Air Act 1993.

The SI follows the negative resolution procedure.

(iv) Purpose and intended effect of the legislation

The Clean Air Act 1993 (a consolidation of 1956 and 1968 legislation) aims to safeguard public health from emissions of smoke. In particular it empowers local authorities to declare smoke control areas in which it is an offence to emit smoke from chimneys. Households in those areas must use an "authorised" smokeless fuel – electricity, gas, or a solid smokeless fuel – or install an "exempt" appliance capable of burning certain non-authorised smoky fuels (wood, for example) without emitting smoke.

Since 1956 many local authorities have introduced smoke control areas in the major cities and urban areas. The controls which apply in smoke control areas have helped to significantly reduce concentrations of smoke and sulphur dioxide in those parts of the country.

The Act provides the Welsh Ministers with the power to authorise fuels for use in smoke control areas. These are fuels which have been tested against British Standard 3841 for solid smokeless fuels for domestic use.

Following the specified tests by the Welsh Government's preferred testing centre, AEA Energy & Environment; it is proposed to add five more fuels to those which are already authorised. They are:

Big K Restaurant Grade Charcoal.

Contact: Big K Products UK Limited, Whittington Hill, Stoke Ferry, Norfolk, PE33 9TE.

Manufactured by Big K Products UK Limited at Parque Industrial Alvear, 2126 Alvear, Provincia de Santa Fe, Argentina ; which :

(a) Comprise pyrolised white quebracho wood;
(b) were manufactured using a kiln pyrolysis process at approximately 450°C;

(c) are unmarked charcoal pieces of between 30mm to 150mm; and

(d) have a sulphur content not exceeding 2 per cent of the total weight.

Newflame Plus briquettes.

Manufactured by Maxibrite Limited at Mwyndy Industrial Estate, Llantrisant, Mid Glamorgan, which—

(a) comprise 10 to 15% bituminous coal, 10 to 15% petroleum coke, and anthracite duff and starch binder (as to the remaining weight);

(b) were manufactured from those constituents by a process involving roll-pressing and heat treatment at about 260°C;

(c) are unmarked pillow-shaped briquettes with approximate maximum dimensions 68mm, 63mm and 38mm;

(d) have an average weight of 110 grams per briquette; and

(e) have a sulphur content not exceeding 1.9% sulphur on a dry basis.

Homefire Fire Logs

Manufactured by De Lange B.V., Rustenbugerweg 3, 1646 WJ Ursem, the Netherlands, which -

(a) comprise slackwax (as to approximately 50% of the total weight) and sawdust (as to approximately 50% of the total weight) ;

(b) were manufactured from those constituents by a process of heat treatment and extrusion;

(c) are firelogs approximately 280mm in length and 75mm x 75mm with a single groove running along each of the four 280mm length faces ;

(d) have an average weight of 1.1 kilograms per firelog ; and

(e) have a sulphur content not exceeding 0.2% of the total weight.

Briteheat Plus briquettes.

Manufactured by Coal Products Limited at Immingham Briquetting Works, Immingham, North East Lincolnshire, which -

(a) comprise anthracite duff (as to approximately 75% to 95% of the total weight), petroleum coke (up to approximately 20% of the total weight) and an organic binder (as to the remaining weight);

(b) were manufactured from those constituents by a process involving roll-pressing;

(c) are unmarked pillow-shaped briquettes;

(d) have an average weight of 80 grammes per briquette; and

(e) have a sulphur content not exceeding 2 per cent of the total weight.

EDF Fuel Briquettes.

Contact: EDF-Energy, 49 Southwark Bridge Road, 4th Floor, London, SE1 9HH.

Manufactured by TheGreenFactory at the Laboratoire de Chimie Agro-industrielle - UMR 1010 INRA/INP-ENSIACET AGROMAT - Site de l'ENIT 47, avenue d'Azereix - BP 1629 65016 Tarbes Cedex, France, which –

(a) comprise approximately 100g of unprocessed Miscanthus (as to approximately 45% of the total weight), approximately 95g of Copra ester (as

to approximately 43% of the total weight), and approximately 25g of a binder produced from Miscanthus (processed with calcium oxide as to approximately 0.5% of the total weight) as to the remaining weight;

(b) are manufactured from those constituents by a process involving Miscanthus processing, mixing, hot pressing and soaking in an ester bath;

(c) are unmarked cylinder-shaped briquettes of 120mm height and 60mm diameter with a star-shaped hole running centrally through longer length of the briquette;

(d) have an average weight of 220g per briquette; and

(e) have a sulphur content not exceeding 2% of the total weight.

The specifical in relation to the following authorised fuel is amended to read;

Stoveheat Premium briquettes.

Manufactured by Coal Products Limited at Immingham Briquetting Works, Immingham, North East Lincolnshire, which -

(a) comprise anthracite duff (as to approximately 65% to 85% of the total weight), petroleum coke (as to approximately 20% of the total weight) and a molasses and phosphoric acid binder (as to the remaining weight);

(b) were manufactured from those constituents by a process involving roll-pressing and heat treatment at about 300°C;

(c) are cushion shaped briquettes with an indented line running longitudinally around the briquette;

(d) have an average weight of 30g per briquette; and

(e) have a sulphur content not exceeding 2% of the total weight.

(v) Implementation

It is intended that the proposed instrument will come into force on 31 December 2011. If the Welsh Ministers were not to authorise Fuels under sections 20(6) and 63 of the Clean Air Act 1993 within a reasonable time, then there is a risk of criticism and possible representations from manufacturers, who will in practice be unable to market and sell their products effectively within smoke control areas in Wales.

(vi) Consultation

It was not deemed necessary to consult as the Regulations do not amend the regime of smoke control within Wales, but will merely ensure the regime is brought up to date, by adding further fuels to those which are already authorised, for use in smoke control areas. In addition, the Regulations do not affect policy relating to air quality control.

(vii) Regulatory Impact Assessment

a) Options

Do nothing
This would mean that the Welsh Government decides not to authorise any further tested and approved fuels for use in smoke control areas.

Make Legislation
This would entail making regulations authorising specified fuels from the provisions of Section 20 of the Clean Air Act 1993. The Smoke Control Areas (Authorised Fuels) (Amendment) (Wales) Regulations 2011 do not affect the nature of the regime of control imposed by the 1993 Act: they merely ensure that the regime as effected in Wales responds appropriately to new fuels developed by the manufacturers.

b) Benefits

Do nothing

There are no benefits implicit in this option.

Make the Legislation

The benefits of this option are as follows:

- Increasing the variety of authorised fuels will encourage compliance with restrictions in smoke control areas;
- Products will be available to consumers throughout Wales without inappropriate discouragement to those consumers in smoke-control areas;
- Manufacturers of authorised products will not have a restriction on marketing their products within smoke-controlled areas; and
- Cleaner air.

c) Costs

Do nothing
If the Welsh Ministers were not to authorise approved fuels from the provisions of Section 20 of the Clean Air Act 1993 then there is the risk of criticism and possible representations from manufacturers who will in practice be unable to market and sell their product effectively in a smoke control area in Wales.

Make the Legislation

The only interested parties are the manufacturer and potential customers. However, no compliance costs will be imposed on either of these groups as a result of the proposed Regulations being made. The only cost linked to these Regulations results from the testing and approval process.

d) Competition Assessment

The competition filter has been applied to the proposed Regulations and it is clear that they will not have a detrimental affect on competition. The intended Regulations will merely add tested and approved fuels to the list of authorised fuels. By not updating the legislation in this way the Welsh Ministers would be preventing a business from effectively marketing their product uniformly throughout the UK.

e) Consultation

It was not deemed necessary to consult as the Regulations will not amend the regime of smoke control within Wales, but will merely ensure the regime is brought up to date, by adding further fuels to those which are already authorised for use in smoke control areas. In addition, the Regulations will not affect policy relating to air quality control. Those fuels proposed for authorisation in these Regulations have been subject to a detailed and quantitative emissions testing protocol.

f) Post implementation review

No review of the Regulations will be necessary: when a fuel has been tested and approved it is appropriate to authorise it permanently. The descriptions of fuels and the conditions imposed on their use are detailed, so that if a manufacturer were to amend the specification of the fuel, it would no longer be authorised. The amended fuel would have to be resubmitted for approval and (if successful) new Regulations would have to be made. The structure of the Act's control regime therefore provides an automatic review process.

g) Summary

The costs and benefits of making the Regulations accrue to the manufacturer of the fuel. Once a fuel has been tested and approved, a manufacturer can, in effect, only market their product in a smoke control area once Regulations have been made adding their product to the list of authorised fuels. The Regulations will ensure that the application of the smoke control regime intended by the Act is updated to reflect the development of new fuels.

Constitutional and Legislative Affairs Committee

(CLA(4)-01-12)

CLA72

Constitutional and Legislative Affairs Committee Draft Report

Title: The Non-Commercial Movement of Pet Animals Order 2011

Procedure: Negative

This Order makes provision for the administration and enforcement of a number of Commission Decisions in Great Britain, including those dealing with protection measures with regard to monkey pox virus, highly pathogenic avian influenza and movements of pet birds accompanying their owners into the Community, the protection against the risk of the introduction of rabies, Hendra disease, Nipah disease and for the administration and enforcement of Commission Delegated Regulation (EU) No 1152/2011 supplementing Regulation (EC) No. 998/2003 as regards preventive health measures for the control of tapeworm infection in dogs.

Technical Scrutiny

The following point is identified for reporting under Standing Order 21.2 in respect of this instrument.

The Non-Commercial Movement of Pet Animals Order 2011 has not been made bilingually.

[Standing Order 21.2 (ix)-that it is not made in both English and Welsh.

Merits Scrutiny

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

Legal Advisers
Constitutional and Legislative Affairs Committee

December 2011

The Government has responded as follows:

The Non-Commercial Movement of Pet Animals Order 2011

This composite Order applies to England and Wales and is subject to approval by the National Assembly for Wales and by Parliament. Accordingly, it is not considered reasonably practicable for this Instrument to be laid in draft, or made, bilingually.

STATUTORY INSTRUMENTS

2011 No. 2883

ANIMALS

ANIMAL HEALTH

The Non-Commercial Movement of Pet Animals Order 2011

Made - - - - 6th December 2011

Laid before Parliament 9th December 2011

Laid before the National Assembly for Wales 9th December 2011

Coming into force - - 1st January 2012

CONTENTS

PART 5

Transitional provision, amendments, revocations and review

The Secretary of State and the Welsh Ministers are designated(**a**) for the purposes of section 2(2) of the European Communities Act 1972(**b**) in relation to the common agricultural policy of the European Union and measures in the veterinary and phytosanitary fields for the protection of public health.

The Secretary of State, in relation to England and Scotland, and the Welsh Ministers, in relation to Wales, make this Order in exercise of the powers conferred by section 10 of the Animal Health Act 1981(**c**) and section 2(2) of, and paragraph 1A of Schedule 2 to, the European Communities Act 1972(**d**).

To the extent that this Order makes provision for a purpose mentioned in section 2(2) of the European Communities Act 1972, it appears to the Secretary of State and the Welsh Ministers that it is expedient for the references in this Order to the Decision specified in paragraph (a), and to the

(**a**) For the Secretary of State, see S.I. 1972/1811 and S.I. 1999/2027 and for the Welsh Ministers, see S.I. 2010/2690 and S.I. 2008/1792.

(**b**) 1972 c. 68 ("the 1972 Act"). Section 2(2) was amended by the Legislative and Regulatory Reform Act 2006 (c. 51), section 27(1)(a), and the European Union (Amendment) Act 2008 (c. 7), Part 1 of the Schedule.

(**c**) 1981 c. 22 ("the 1981 Act"). Functions conferred under the 1981 Act on "the Ministers" (as defined in section 86) are now exercisable by the Secretary of State in relation to England, the Welsh Ministers in relation to Wales and the Scottish Ministers in relation to Scotland. In relation to England they were transferred, so far as exercisable by the Secretaries of State for Scotland and Wales, to the Minister of Agriculture, Fisheries and Food by the Transfer of Functions (Agriculture and Food) Order 1999 (S.I. 1999/3141) and were then further transferred to the Secretary of State by the Ministry of Agriculture, Fisheries and Food (Dissolution) Order 2002 (S.I. 2002/794). In relation to Wales, the functions of "the Ministers" were transferred to the National Assembly for Wales by the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672) and were then further transferred to the Welsh Ministers by section 162 of, and paragraph 30 of Schedule 11 to, the Government of Wales Act 2006 (c. 32). In relation to Scotland, functions were transferred to the Scottish Ministers by section 53 of the Scotland Act 1998 (c. 46). Despite this transfer, the Secretary of State retains power to exercise functions under section 10 of the 1981 Act by virtue of article 3(1) of, and Schedule 1 to, the Scotland Act 1998 (Concurrent Functions) Order 1999 (S.I. 1999/1592).

(**d**) Paragraph 1A of Schedule 2 was inserted by section 28 of the Legislative and Regulatory Reform Act 2006, and amended by the European Union (Amendment) Act 2008, Part 1 of the Schedule, and S.I. 2007/1388. The Secretary of State retains power to exercise functions under section 2(2) of the 1972 Act as regards Scotland by virtue of section 57(1) of the Scotland Act 1998.

provisions of the Regulation specified in paragraph (b), to be construed as references to that Decision or those provisions as amended from time to time—

(a) Commission Decision 2007/25/EC as regards certain protection measures in relation to highly pathogenic avian influenza and movements of pet birds accompanying their owners into the Community(**a**), and

(b) Annexes I and II to Regulation (EC) No 998/2003 of the European Parliament and of the Council on the animal health requirements applicable to the non-commercial movement of pet animals and amending Council Directive 92/65/EEC(**b**).

PART 1

General

Title, extent and commencement

1.—(1) This Order may be cited as the Non-Commercial Movement of Pet Animals Order 2011.

(2) It extends to Great Britain.

(3) It comes into force on 1st January 2012.

Interpretation

2.—(1) In this Order—

"the appropriate authority" means—

(a) in relation to England, the Secretary of State,

(b) in relation to Scotland, the Scottish Ministers,

(c) in relation to Wales, the Welsh Ministers;

"carrier" means any undertaking carrying goods or passengers for hire by land, sea or air;

"Decision 2003/459/EC" means Commission Decision 2003/459/EC on certain protection measures with regard to monkey pox virus(**c**);

"Decision 2006/146/EC" means Commission Decision 2006/146/EC on certain protection measures with regard to certain fruit bats, dogs and cats coming from Malaysia (Peninsula) and Australia(**d**);

"Decision 2007/25/EC" means Commission Decision 2007/25/EC as regards certain protection measures in relation to highly pathogenic avian influenza and movements of pet birds accompanying their owners into the Community;

"health certificate" means a certificate issued in accordance with Article 8(2) of the Pets Regulation;

"local authority" has the meaning given in article 3.(1);

"pet bird" has the same meaning as in Decision 2007/25/EC;

"the Pets Regulation" means Regulation (EC) No 998/2003 of the European Parliament and of the Council on the animal health requirements applicable to the non-commercial movement of pet animals and amending Council Directive 92/65/EEC;

"the supplementary Regulation" means Commission Delegated Regulation (EU) No 1152/2011 supplementing Regulation (EC) No 998/2003 of the European Parliament and of

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(**a**) OJ No L 8, 13.1.2007, p29, as last amended by Commission Decision 2010/734/EU (OJ No L 316, 2.12.2010, p10).
(**b**) OJ No L 146, 13.6.2003, p1, as last amended by Commission Delegated Regulation (EU) No 1153/2011 (OJ No L 296, 15.11.2011, p13).
(**c**) OJ No L 154, 21.6.2003, p112.
(**d**) OJ No L 55, 25.2.2006, p44.

the Council as regards preventive health measures for the control of *Echinococcus multilocularis* infection in dogs(**a**).

(2) Terms and expressions used in this Order and in the Pets Regulation have the same meaning as in the Pets Regulation.

(3) In this Order—

(a) any reference to Decision 2007/25/EC is a reference to that Decision as amended from time to time, and

(b) any reference to Annex I or II to the Pets Regulation is a reference to that Annex to that Regulation as amended from time to time.

Meaning of local authority

3.—(1) In England, "local authority" means—

(a) where there is, within the meaning of the Local Government Changes for England Regulations 1994(**b**), a unitary authority, that authority,

(b) where there is not a unitary authority—

(i) in a metropolitan district, the council of that district,

(ii) in a non-metropolitan county, the council of that county,

(iii) in a London borough, the council of that borough,

(c) in the City of London, the Common Council, or

(d) in the Isles of Scilly, the Council.

(2) In Scotland, "local authority" means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994(**c**).

(3) In Wales, "local authority" means a county council or a county borough council.

Designation

4.—(1) The appropriate authority—

(a) is the competent authority for the purposes of Article 5(1)(b) of the Pets Regulation, and

(b) acts as the member State for the purposes of Article 1(1) of Decision 2007/25/EC.

(2) The appropriate authority and the local authority are the competent authorities for the purposes of—

(a) Article 12 of the Pets Regulation, and

(b) Article 2(1) of Decision 2007/25/EC.

PART 2

Controls on diseases

Controls on rabies and certain other diseases of mammals

5.—(1) The Rabies (Importation of Dogs, Cats and Other Mammals) Order 1974(**d**) does not apply to the landing of a pet animal in Great Britain which—

(**a**) OJ No L 296, 15.11.2011, p6.
(**b**) S.I. 1994/867; relevant amending instruments are S.I. 1996/611 and 2008/2867.
(**c**) 1994 c.39.
(**d**) S.I. 1974/2211. Amending instruments are, in relation to Great Britain, S.I. 1977/361, 1984/1182, 1986/2062, 1990/2371, 1993/1813, 1994/1405, 1994/1716, 1995/2922 and 2002/3135; in relation to England, S.I. 2004/2364; in relation to Wales, S.I. 2002/882; and in relation to Scotland, S.S.I. 2003/229 and 2011/46.

(a) is an animal of a species listed in Part A or B of Annex I to the Pets Regulation and is brought into Great Britain on a carrier approved in accordance with article 11 (unless article 11(2) applies) and satisfies—

(i) the requirement in respect of rabies in article 6,

(ii) the requirement in respect of Nipah disease in article 7 (where applicable),

(iii) the requirement in respect of Hendra disease in article 8 (where applicable), and

(iv) the requirement in respect of *Echinococcus multilocularis* in article 9 (where applicable),

(b) is brought into Great Britain from Northern Ireland, the Channel Islands or the Isle of Man, or

(c) is an animal of a species listed in Part C of Annex I to the Pets Regulation and is brought into Great Britain from another member State or a territory listed in Part B of Annex II to the Pets Regulation.

(2) But the Rabies (Importation of Dogs, Cats and Other Mammals) Order 1974 does apply to the importation into Great Britain of a pet animal which is—

(a) a prairie dog originating in or coming from the United States of America, or

(b) a rodent of non-domestic species or a squirrel originating in or coming from a third country of the African sub-Saharan region.

Rabies

6. The requirement in respect of rabies is that the animal complies with Article 5 or 8 of the Pets Regulation (as the case may be).

Nipah disease

7. The requirement in respect of Nipah disease is that a dog or cat imported from Malaysia (Peninsula) must be accompanied by a certificate which—

(a) is signed by a representative of the Malaysian government veterinary services,

(b) states the number of the microchip implanted in the dog or cat, and

(c) certifies that the conditions in Article 2(2) of Decision 2006/146/EC have been met.

Hendra disease

8. The requirement in respect of Hendra disease is that a cat imported from Australia must be accompanied by a certificate which—

(a) is signed by a representative of the Australian government veterinary services,

(b) states the number of the microchip implanted in the cat, and

(c) certifies that the condition in Article 3(2) of Decision 2006/146/EC has been met.

Echinococcus multilocularis

9. The requirement in respect of *Echinococcus multilocularis* is that a dog complies with the preventive health measures in Article 7 of the supplementary Regulation, except where those measures do not apply by virtue of Article 2(2) of that Regulation.

Highly pathogenic avian influenza

10.—(1) The Importation of Birds, Poultry and Hatching Eggs Order 1979(**a**) does not apply to the landing of a pet bird to which Decision 2007/25/EC applies.

(**a**) S.I. 1979/1702, amended by S.I. 1990/2371.

(2) Paragraphs (3) to (5) apply where a pet bird is part of a movement into Great Britain which does not comply with Decision 2007/25/EC.

(3) An officer of the competent authority may serve a written notice on the person accompanying the bird, requiring that person to—

(a) return the bird to its country of origin,

(b) place the bird in quarantine for such period, at such place and subject to such conditions as may be specified in the notice, or

(c) where the return or quarantine of the bird is not possible, cause the bird to be destroyed by a date specified in the notice.

(4) A person on whom a notice is served must comply with it at that person's own expense.

(5) Where a notice is not complied with, an officer of the competent authority may seize the bird, detain it and arrange for it to be treated as required by the notice at the expense of the person on whom notice is served.

PART 3

Carriers

Approval of carriers

11.—(1) A carrier who moves a pet animal which is subject to Article 5 or 8 of the Pets Regulation into Great Britain must be approved for the purpose by the appropriate authority.

(2) But approval is not required where—

(a) the movement is from the Republic of Ireland, or

(b) the carrier is a Community air carrier and the movement is of a recognised assistance dog.

(3) Approval may be granted subject to such terms and conditions as the authority considers necessary or expedient to ensure that pet animals are checked by or on behalf of the carrier for compliance with the Pets Regulation and (if applicable) the supplementary Regulation and Decision 2006/146/EC.

(4) Approvals in force immediately before 1st January 2012 under article 7 of the Pet Travel Scheme (Scotland) Order 2003(**a**) and article 8 of the Non Commercial Movement of Pet Animals (England) Regulations 2004(**b**) continue in force as approvals under this Order.

(5) The appropriate authority may amend an approval by giving notice in writing to the carrier.

(6) In this article, "Community air carrier" and "recognised assistance dog" have the same meanings as in Regulation (EC) No 1107/2006 of the European Parliament and of the Council concerning the rights of disabled persons and persons with reduced mobility when travelling by air(**c**).

Suspension or withdrawal of approvals

12.—(1) Where the appropriate authority is satisfied that a carrier has failed to comply with its approval, the appropriate authority may suspend or withdraw the approval by giving notice in writing to the carrier.

(2) A suspension or withdrawal under paragraph (1) has effect at the end of the period of 21 days beginning with the date of service of the notice.

(3) But if it is necessary for the protection of public or animal health the appropriate authority may specify in the notice that the suspension or withdrawal has immediate effect.

(4) The notice must—

(**a**) S.S.I. 2003/229.
(**b**) S.I. 2004/2363.
(**c**) OJ No L 204, 26.7.2006, p1.

(a) give reasons,

(b) state when it comes into effect and, in the case of suspension, state on what date or event it is to cease to have effect, and

(c) explain the right of the carrier to make written representations in accordance with paragraph (6), and details of the person to whom such representations may be made.

(5) Where the notice does not have immediate effect and representations are made under paragraph (6), a suspension or withdrawal must not have effect until the final determination of the appropriate authority in accordance with paragraph (9), unless the appropriate authority decides that it is necessary for the protection of public or animal health for the suspension or withdrawal to have immediate effect and gives notice to that effect.

(6) A carrier may make written representations against a suspension or withdrawal of its approval to a person appointed for the purpose by the appropriate authority.

(7) Written representations must be made within the period of 21 days beginning with the date on which notice is served on the carrier to suspend or withdraw its approval.

(8) The appointed person must consider the representations and report in writing to the appropriate authority.

(9) The appropriate authority must give to the carrier written notification of its final determination and the reasons for it.

PART 4

Enforcement

Enforcement authority

13.—(1) The local authority enforces the Pets Regulation, Decision 2003/459/EC, Decision 2006/146/EC, Decision 2007/25/EC, the supplementary Regulation and this Order (in this Part, "the relevant instruments").

(2) In relation to cases of a particular description or to a particular case, the appropriate authority may direct that the relevant instruments be enforced by it instead.

Appointment of authorised officers

14.—(1) The local authority or the appropriate authority may authorise officers for the purpose of enforcing the relevant instruments.

(2) The following are authorised officers for the purpose of enforcing the relevant instruments—

(a) a person appointed as an inspector or a veterinary inspector for the purposes of the Animal Health Act 1981(**a**),

(b) a person appointed for the purposes of the Non Commercial Movement of Pet Animals (England) Regulations 2004(**b**) or the Pet Travel Scheme (Scotland) Order 2003(**c**).

Powers of authorised officers

15.—(1) An authorised officer may, on producing a duly authenticated authorisation if required, enter any premises at any reasonable hour for the purpose of enforcing the relevant instruments, and in this article "premises" includes any place, trailer, container, vessel, boat, aircraft or vehicle of any other description.

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

(**a**) 1981 c. 22.
(**b**) S.I. 2004/2363.
(**c**) S.S.I. 2003/229.

(3) Admission to premises used wholly or mainly as a private dwelling house may not be demanded as of right unless the entry is in accordance with a warrant granted under paragraph (4).

(4) A justice of the peace in England and Wales, or a sheriff, stipendiary magistrate or justice of the peace in Scotland may by signed warrant permit an authorised officer to enter premises used wholly or mainly as a private dwelling house, if necessary by reasonable force, if satisfied, on sworn information in writing (in England and Wales) or by evidence on oath (in Scotland)—

(a) that there are reasonable grounds to enter those premises for the purpose of enforcing the relevant instruments, and

(b) that any of the conditions in paragraph (5) are met.

(5) The conditions are—

(a) entry to the premises has been, or is likely to be, refused, and notice of the intention to apply for a warrant has been given to the occupier,

(b) asking for admission to the premises, or giving such a notice, would defeat the object of the entry,

(c) entry is required urgently, or

(d) the premises are unoccupied or the occupier is temporarily absent.

(6) A warrant is valid for three months.

(7) An authorised officer who enters any unoccupied premises must leave them as effectively secured against unauthorised entry as they were before entry.

(8) An authorised officer who has entered premises for the purposes of enforcing the relevant instruments may for those purposes—

(a) carry out any examination, investigation or test,

(b) inspect and search the premises,

(c) require the production of any document or record (including a passport or health certificate) and inspect and take a copy of or extract from such document or record,

(d) require any person to provide such assistance, information or facilities as is reasonable,

(e) seize and detain a pet animal or pet bird.

Offences

16.—(1) Failure to comply with either of the following is an offence—

(a) a notice served under article 10.(3),

(b) article 11.(1), except where article 11(2) applies.

(2) It is an offence—

(a) intentionally to obstruct any person acting in the execution of the relevant instruments,

(b) without reasonable cause, to fail to give to any such person any assistance or information that that person may reasonably require,

(c) to furnish to any such person any information knowing it to be false or misleading (including information contained in a passport or health certificate), or

(d) to fail to produce a document or record (including a passport or health certificate) to any such person when required to do so.

Penalties

17.—(1) A person guilty of an offence under article 16(1) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(2) A person guilty of an offence under article 16(2) is liable on summary conviction to imprisonment for a term not exceeding three months or to a fine not exceeding level 5 on the standard scale.

Offences by bodies corporate, partnerships and unincorporated associations

18.—(1) Where a body corporate is guilty of an offence under this Order, and that offence is proved to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of—

(a) a director, manager, secretary or other similar officer of the body corporate, or

(b) a person who was purporting to act in any such capacity,

that person, as well as the body corporate, is guilty of the offence.

(2) In paragraph (1) "director", in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate.

(3) Where a partnership or Scottish partnership is guilty of an offence under this Order, and that offence is proved to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of a partner, the partner, as well as the partnership or Scottish partnership, is guilty of the offence.

(4) In paragraph (3) "partner" includes a person purporting to act as a partner.

(5) Where an unincorporated association is guilty of an offence under this Order, and that offence is proved to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of an officer of the association, that officer, as well as the association, is guilty of the offence.

(6) In paragraph (5) "officer", in relation to an unincorporated association, means—

(a) an officer of the association or a member of its governing body, or

(b) a person purporting to act in such a capacity.

PART 5

Transitional provision, amendments, revocations and review

Transitional provision

19.—(1) Where a pet animal is detained and isolated in quarantine in Great Britain immediately before 1st January 2012 under the Rabies (Importation of Dogs, Cats and Other Mammals) Order 1974, the period of quarantine required by that Order ends on the earliest of the dates specified in paragraph (2).

(2) The dates are—

(a) in the case of an animal which, immediately before 1st January 2012, was subject to Article 6 or 8(1)(a)(ii) of the Pets Regulation, the date it satisfies the requirements of Article 5 of that Regulation,

(b) in the case of an animal which, immediately before 1st January 2012, was subject to Article 8(1)(b)(ii) of the Pets Regulation, the date it satisfies the requirements of Article 8(1)(b)(i) of that Regulation, or

(c) the expiry of the period of six months beginning with the date on which the animal was originally detained.

Amendments

20. The Schedule (amendments) has effect.

Revocations

21. The following instruments are revoked—

(a) the Rabies (Importation of Dogs, Cats and Other Mammals) (Amendment) Order 1994(**a**),

(b) the Rabies (Importation of Dogs, Cats and Other Mammals) (Amendment) (Wales) Order 2002(**b**),

(c) the Pet Travel Scheme (Scotland) Order 2003(**c**),

(d) the Non Commercial Movement of Pet Animals (England) Regulations 2004(**d**),

(e) the Rabies (Importation of Dogs, Cats and Other Mammals) (England) (Amendment) Order 2004(**e**), and

(f) the Rabies (Importation of Dogs, Cats and Other Mammals) Amendment (Scotland) Order 2011(**f**).

Review

22.—(1) The Secretary of State must from time to time—

(a) carry out a review of this Order,

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

(c) publish the report.

(2) In carrying out the review the Secretary of State must, so far as is reasonable, have regard to how the Pets Regulation, the supplementary Regulation, Decision 2003/459/EC, Decision 2006/146/EC and Decision 2007/25/EC are enforced in other member States.

(3) The report must in particular—

(a) set out the objectives intended to be achieved by this Order,

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

(c) assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved in a less burdensome way.

(4) The first report under this Order must be published before the end of the period of five years beginning with 1st January 2012.

(5) Reports under this article are afterwards to be published at intervals not exceeding five years.

Taylor of Holbeach
Parliamentary Under Secretary of State
6th December 2011 Department for Environment, Food and Rural Affairs

John Griffiths
Minister for Environment and Sustainable Development
5th December 2011 One of the Welsh Ministers

(**a**) S.I. 1994/1716.
(**b**) S.I. 2002/882.
(**c**) S.S.I. 2003/229.
(**d**) S.I. 2004/2363.
(**e**) S.I. 2004/2364.
(**f**) S.S.I. 2011/46.

SCHEDULE

Article 20

Amendments

PART 1

The Rabies (Importation of Dogs, Cats and Other Mammals) Order 1974

Amendment of the Rabies (Importation of Dogs, Cats and Other Mammals) Order 1974

1. The Rabies (Importation of Dogs, Cats and Other Mammals) Order 1974(**a**) is amended in accordance with this Part.

Amendment of article 2

2. In article 2—

(a) in paragraph (1), after the definition of "the Minister", insert—

""the Pets Regulation" means Regulation (EC) No 998/2003 of the European Parliament and of the Council on the animal health requirements applicable to the non-commercial movement of pet animals and amending Council Directive 92/65/EEC(**b**);

"the Pets Regulation quarantine end date" means—

(a) in the case of a cat or ferret subject to Article 5 of the Pets Regulation, the date on which the animal satisfies the requirements of that Article,

(b) in the case of a cat or ferret subject to Article 8 of the Pets Regulation, the date on which the animal satisfies the requirements of that Article,

(c) in the case of a dog subject to Article 5 of the Pets Regulation and Article 7 of the supplementary Regulation, the date on which the dog satisfies the requirements of both Articles,

(d) in the case of a dog subject to Article 5 of the Pets Regulation but exempt from Article 7 of the supplementary Regulation, the date on which the dog satisfies the requirements of Article 5 of the Pets Regulation,

(e) in the case of a dog subject to Article 8 of the Pets Regulation and Article 7 of the supplementary Regulation, the date on which the dog satisfies the requirements of both Articles,

and for the purposes of this definition "the supplementary Regulation" means Commission Delegated Regulation (EU) No 1152/2011 supplementing Regulation (EC) No 998/2003 of the European Parliament and of the Council as regards preventive health measures for the control of *Echinococcus multilocularis* infection in dogs(**c**);", and

(b) in paragraph (2)(**d**), after the words "leaves or escapes from, a vessel" insert ", vehicle".

(**a**) S.I. 1974/2211. Amending instruments are, in relation to Great Britain, S.I. 1977/361, 1984/1182, 1986/2062, 1990/2371, 1993/1813, 1994/1405, 1994/1716, 1995/2922 and 2002/3135; in relation to England, S.I. 2004/2364; in relation to Wales, S.I. 2002/882; and in relation to Scotland, S.S.I. 2003/229 and 2011/46.

(**b**) OJ No L 146, 13.6.2003, p1, as last amended by Commission Delegated Regulation (EU) No 1153/2011 (OJ No L 296, 15.11.2011, p13).

(**c**) OJ No L 296, 15.11.2011, p6.

(**d**) Paragraph (2) was amended by S.I. 1990/2371, 1993/1813 and 1994/1405.

Amendment of article 4

3. In article 4—

(a) for paragraphs (2)(**a**) and (2A)(**b**) substitute—

"(2) The prohibition in paragraph (1) shall not apply to the landing in Great Britain of—

(a) an animal which—

(i) is brought to Great Britain from another member State, Norway, Switzerland or Liechtenstein,

(ii) is subject to Council Directive 92/65/EEC, and

(iii) complies with the trade requirements,

(b) an animal which—

(i) originates in, and is brought to Great Britain from, Northern Ireland, the Channel Islands or the Isle of Man, or

(ii) is subject to Council Directive 92/65/EEC and was brought to Northern Ireland, the Channel Islands or the Isle of Man from a place outside those territories and subsequently brought to Great Britain,

(c) an animal which originates in, and is brought to Great Britain from, the Republic of Ireland, unless—

(i) it is an animal which is subject to Article 5 of the Pets Regulation but fails to comply with the requirements of that Article, or

(ii) it is an animal which is subject to Council Directive 92/65/EEC but fails to comply with the trade requirements,

(d) an animal which—

(i) is brought to Northern Ireland, the Channel Islands, the Isle of Man or the Republic of Ireland from a place outside those countries or territories (other than Great Britain) and is subsequently brought to Great Britain,

(ii) is not subject to Council Directive 92/65/EEC or the Pets Regulation, and

(iii) has been detained and isolated in quarantine in Northern Ireland, the Channel Islands, the Isle of Man or the Republic of Ireland for a period of at least four months before being brought to Great Britain.",

(b) in paragraph (3), omit "previously",

(c) after paragraph (3), insert—

"(3A) But a licence may not be granted for the importation of—

(a) prairie dogs originating in or coming from the United States of America,

(b) rodents of non-domestic species and squirrels originating in or coming from a third country of the African sub-Saharan region,

(c) dogs or cats from Malaysia (Peninsula) which fail to meet the requirements in article 7 of the Pets Order (in respect of Nipah disease), or

(d) cats from Australia which fail to meet the requirements in article 8 of the Pets Order (in respect of Hendra disease).",

(d) in paragraph (4)—

(i) for the words from "The ports and airports which alone" to "Schedule 2 to this order", substitute "An animal may be landed in Great Britain only at an entry point which is specified in Schedule 2",

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(**a**) Paragraph (2) was amended in relation to Great Britain by S.I. 1994/1716 and in relation to England by S.I. 2000/1298. Paragraph (2)(a) was subsequently substituted in relation to England by S.I. 2004/2364.

(**b**) Paragraph (2A) was inserted in relation to England by S.I. 2000/1298 and subsequently substituted by S.I. 2004/2364.

(ii) for "at a port or airport other than a port or airport specified in that Schedule", substitute "at a point of entry other than a designated entry point specified in Schedule 2",

(e) for paragraph (4A)(**a**) substitute—

"(4A) The restriction in paragraph (4) does not apply to the landing in Great Britain of an animal to which, in accordance with paragraph (2), the prohibition in paragraph (1) does not apply.",

(f) in paragraph (5)—

(i) for "port or airport", substitute "designated entry point",

(ii) after "vessel", insert ", vehicle",

(g) in paragraph (8)(a), omit "the Republic of Ireland,", and

(h) after paragraph (10) add—

"(11) In this article—

(a) "the trade requirements" means—

(i) the requirements of Council Directive 92/65/EEC, and

(ii) the requirements of the Trade in Animals and Related Products Regulations 2011(**b**) (in relation to England), the Trade in Animals and Related Products (Wales) Regulations 2011(**c**) (in relation to Wales) or the Animals and Animal Products (Import and Export) (Scotland) Regulations 2007(**d**) (in relation to Scotland),

(b) "Council Directive 92/65/EEC" means Council Directive 92/65/EEC laying down animal health requirements governing trade in and imports into the Community of animals, semen, ova and embryos not subject to animal health requirements laid down in specific Community rules referred to in Annex A(I) to Directive 90/425/EEC(**e**), and

(c) "the Pets Order" means the Non-Commercial Movement of Pet Animals Order 2011(**f**).

(12) For the purposes of paragraph (11)(a), the requirements of Council Directive 92/65/EEC include the requirement that animals (other than dogs, cats and ferrets) were born on a registered holding and have been kept in captivity since birth, as referred to in Article 10(4) of that Directive.".

Revocation of articles 4A

4. Both articles 4A(**g**) are revoked.

Revocation of article 4B

5. Article 4B(**h**) is revoked.

Revocation of article 4C

6. Article 4C(**i**) is revoked.

(**a**) Paragraph (4A) was inserted in relation to Great Britain by S.I. 1977/361.
(**b**) S.I. 2011/1197.
(**c**) S.I. 2011/2379.
(**d**) S.S.I. 2007/194, as amended by S.S.I. 2007/375, 2008/155, 2009/227, 2010/343 and 2011/171.
(**e**) OJ No L 268, 14.9.1992, p.54, as last amended by Commission Regulation (EU) No 176/2010 (OJ No L 52, 3.3.2010, p.14).
(**f**) S.I. 2011/2883.
(**g**) Article 4A was inserted in relation to Great Britain by S.I. 1994/1716. This provision continues to apply to Scotland and Wales, but, in relation to England, Article 4A was substituted by S.I. 2004/2364.
(**h**) Article 4B was inserted, in relation to England, by S.I. 1999/3443 and subsequently substituted by S.I. 2004/2364.
(**i**) Article 4C was inserted, in relation to Scotland, by S.S.I. 2003/229.

Amendment of article 5

7. In article 5—

(a) for paragraph (2) and both paragraphs (2A)(**a**), substitute—

"(2) Where an animal specified in Part 2 of Schedule 1 is landed in Great Britain in accordance with a licence granted under article 4(3) it must be immediately detained and isolated in quarantine at its owner's expense at such premises and subject to such conditions as may be specified in the licence.

(2A) But paragraph (2) does not apply to an animal of the order *Rodentia* or *Lagomorpha* where the licence states that it is being brought into Great Britain—

(a) for use at research premises in connection with scientific research, or

(b) to an establishment licensed as a zoo under section 1 of the Zoo Licensing Act 1981(**b**).

(2B) The period of quarantine required under paragraph (2) is—

(a) in the case of an animal subject to Article 5 or 8 of the Pets Regulation, the period ending with the Pets Regulation quarantine end date,

(b) in any other case, subject to paragraph (2C), four months.

(2C) The Secretary of State (in England), the Scottish Ministers (in Scotland) or the Welsh Ministers (in Wales) may authorise release of an animal which is not subject to Article 5 or 8 of the Pets Regulation from quarantine or waive its period of quarantine if satisfied that such release will present negligible risk of the introduction of rabies into or spread of rabies within Great Britain.

(2D) Any offspring born to an animal during its quarantine must be kept in quarantine for the remainder of the period of the dam's quarantine, unless the release of either animal is authorised under paragraph (2C).", and

(b) in paragraph (3), for "referred to in that paragraph shall, unless the Minister" substitute "referred to in paragraph (2B) shall, unless the animals are subject to Article 5 or 8 of the Pets Regulation or the Minister".

Revocation of article 5A

8. Article 5A(**c**) is revoked.

Revocation of article 5B

9. Article 5B(**d**) is revoked.

Revocation of article 5C

10. Article 5C(**e**) is revoked.

Amendment of article 6

11. In article 6—

(a) for both headings(**f**), substitute "Vaccination of dogs and cats in quarantine", and

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(**a**) Paragraph (2A) was inserted in relation to England by S.I. 2004/2364; a corresponding provision was inserted in relation to Scotland by S.S.I. 2011/46.

(**b**) 1981 c.37. Section 1 was amended in relation to England by S.I. 2002/3080; in relation to Wales by S.I. 2003/992 and the Local Government (Wales) Act 1994 (c. 19), Schedule 16, paragraph 62(1), and Schedule 18; and in relation to Scotland by S.S.I. 2003/174 and the Local Government etc (Scotland) Act 1994 (c.39), Schedule 13, paragraph 124.

(**c**) Article 5A was inserted in relation to England by S.I. 1999/3443 and subsequently substituted by S.I. 2004/2364.

(**d**) Article 5B was inserted in relation to Wales by S.I. 2002/882.

(**e**) Article 5C was inserted in relation to Scotland by S.S.I. 2003/229.

(**f**) Article 5C was inserted in relation to Scotland by S.S.I. 2003/229.

(b) for both paragraphs (3)(**a**), substitute—

"(3) This article does not apply to a dog or cat which is subject to Article 5 or 8 of the Pets Regulation.".

Amendment of article 7

12. In article 7—

(a) in paragraph (1)(**b**)—

(i) for the words from "Where an animal" to "it shall be the duty", substitute "Where an animal is landed in Great Britain in accordance with a licence granted under article 4(3) (other than an animal exempted from quarantine under article 5(2A)), it shall be the duty",

(ii) in sub-paragraph (b), for "port or airport" substitute "designated entry point",

(b) in paragraphs (2) and (5), for "port or airport" substitute "designated entry point", and

(c) in paragraph (3), after "vessel", insert ", vehicle".

Amendment of article 8

13. In article 8—

(a) in paragraph (3)(**c**), for "port or airport for exportation" substitute "port, airport or such other place as may be specified in the licence",

(b) in paragraph (5)(**d**), for "six", substitute "four", and

(c) after paragraph (7), insert—

"(8) This article does not apply to the landing of an animal which is subject to Article 5 or 8 of the Pets Regulation.".

Amendment of article 12

14. In article 12(**e**)—

(a) in paragraph (1), for "6", substitute "four",

(b) for paragraph (3)(**f**), substitute—

"(3) Paragraph (2)(c) shall not apply to an animal which is landed—

(a) in accordance with article 4(2)(a),

(b) in accordance with a licence granted under article 4(3), or

(c) in the circumstances referred to in article 8.",

(c) in paragraph (5), for "six", substitute "four",

(d) after paragraph (5), insert—

"(5A) But—

(a) where an animal is subject to Article 5 or 8 of the Pets Regulation, the period of quarantine under paragraph (5) must end on the Pets Regulation quarantine end date,

(b) where an animal is not subject to Article 5 or 8 of the Pets Regulation, the Secretary of State (in England), the Scottish Ministers (in Scotland) or the Welsh

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(**a**) Paragraph (3) was inserted in relation to England by S.I. 1999/3443 and subsequently substituted by S.I. 2004/2364; a corresponding provision was inserted in relation to Scotland by S.S.I. 2003/229.

(**b**) Paragraph (1) was amended in relation to England by S.I. 2004/2364; a corresponding amendment was made in relation to Scotland by S.S.I. 2011/46.

(**c**) Paragraph (3) was amended in relation to Great Britain by S.I. 1984/1182.

(**d**) Paragraph (5) was amended in relation to Great Britain by S.I. 1977/361.

(**e**) Article 12 was substituted in relation to Great Britain by S.I. 1977/361.

(**f**) Paragraph (3) was amended in relation to Great Britain by S.I. 1994/1716.

Ministers (in Wales) may authorise release of the animal from quarantine or waive its period of quarantine if satisfied that such release will present negligible risk of the introduction of rabies into or spread of rabies within Great Britain.",

(e) in paragraph (8)(ii), for "six", substitute "four", and

(f) after paragraph (8), insert—

"(8A) But—

(a) where an animal is subject to Article 5 or 8 of the Pets Regulation, the period of quarantine under paragraph (8)(ii) must end on the Pets Regulation quarantine end date,

(b) where an animal is not subject to Article 5 or 8 of the Pets Regulation, the Secretary of State (in England), the Scottish Ministers (in Scotland) or the Welsh Ministers (in Wales) may authorise release of the animal from quarantine or waive its period of quarantine if satisfied that such release will present negligible risk of the introduction of rabies into or spread of rabies within Great Britain.".

Amendment of article 13

15. In article 13—

(a) in paragraph (1)(ii)(**a**), for "six", substitute "four",

(b) after paragraph (1), insert—

"(1A) But where an animal is subject to Article 5 or 8 of the Pets Regulation, the period of quarantine under paragraph (1) must end on the Pets Regulation quarantine end date (and notice given under that paragraph ceases to have effect on that date).",

(c) in paragraph (3), for "six", substitute "four", and

(d) after paragraph (3), insert—

"(3A) But—

(a) where an animal is subject to Article 5 or 8 of the Pets Regulation, the notice may not be terminated under paragraph (3) before the Pets Regulation quarantine end date,

(b) where an animal is not subject to Article 5 or 8 of the Pets Regulation, the Secretary of State (in England), the Scottish Ministers (in Scotland) or the Welsh Ministers (in Wales) may, if satisfied that release of the animal from quarantine or waiver of its quarantine period will present negligible risk of the introduction of rabies into or spread of rabies within Great Britain, terminate the operation of the notice by notice given to the person in charge of the animal.".

Amendment of article 14

16. In article 14(**b**)—

(a) renumber the provision as paragraph (1), and

(b) after paragraph (1), insert—

"(2) But, where the animal is subject to Article 8 of the Pets Regulation, paragraph (1) is subject to Article 14(c) of the Pets Regulation.".

Amendment of article 16

17. In article 16, after paragraph (2), insert—

(**a**) Paragraph (1) was amended in relation to Great Britain by S.I. 1990/2371.
(**b**) Article 14 was amended in relation to Great Britain by S.I. 1977/361.

"(3) This article does not apply to the landing or attempted landing of an animal subject to Article 5 of the Pets Regulation brought directly into Great Britain from a place in the Republic of Ireland.".

Amendment of article 17

18. In article 17—

(a) renumber the provision as paragraph (1), and

(b) after paragraph (1), insert—

"(2) This article does not apply to the landing or attempted landing of an animal subject to Article 5 of the Pets Regulation brought directly into Great Britain from a place in the Republic of Ireland.".

Amendment of Schedule 2

19. In Schedule 2(**a**)—

(a) for the heading, substitute "Designated Entry Points",

(b) in Part 1—

(i) insert the heading "Ports",

(ii) omit "Southampton",

(c) in Part 2—

(i) insert the heading "Airports",

(ii) omit "Birmingham", and

(d) after Part 2, insert—

"Part 3

Other Designated Entry Points

Eurotunnel Folkestone Terminal".

PART 2

The Zoonoses Order 1989

Amendment of the Zoonoses Order 1989

20. After article 8 of the Zoonoses Order 1989(**b**), insert—

"**Notification of *Echinococcus multilocularis***

8A.—(1) A person who knows or suspects that an animal or carcass is infected with *Echinococcus multilocularis* must give notice as soon as practicable.

(2) Notice must be given to the Secretary of State in England, the Welsh Ministers in Wales or the Scottish Ministers in Scotland.

(3) For the purpose of this article—

(a) "animal" means any kind of mammal except man, and

(**a**) Schedule 2 was substituted in relation to Great Britain by S.I. 1977/361; subsequent amendments were made in relation to Great Britain by S.I. 1984/1182 and 1986/2062 and in relation to England by S.I. 2004/2364.

(**b**) S.I. 1989/285.

(b) "carcass" means the carcass of an animal and includes part of a carcass or any portion thereof.".

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes provision for the administration and enforcement of the following EU instruments in Great Britain—

— Commission Decision 2003/459/EC on certain protection measures with regard to monkey pox virus (OJ No L 154, 21.6.2003, p112),

— Regulation (EC) No 998/2003 on the animal health requirements applicable to the non-commercial movement of pet animals and amending Council Directive 92/65/EEC (OJ No L 146, 13.6.2003, p1),

— Commission Decision 2006/146/EC on certain protection measures with regard to certain fruit bats, dogs and cats coming from Malaysia (Peninsula) and Australia (OJ No L 55, 25.2.2006, p44),

— Commission Decision 2007/25/EC as regards certain protection measures in relation to highly pathogenic avian influenza and movements of pet birds accompanying their owners into the Community (OJ No L 8, 13.1.2007, p29), and

— Commission Delegated Regulation (EU) No 1152/2011 supplementing Regulation (EC) No 998/2003 of the European Parliament and of the Council as regards preventive health measures for the control of *Echinococcus multilocularis* infection in dogs (OJ No L 296, 15.11.2011, p6).

This Order revokes and replaces the Non Commercial Movement of Pet Animals (England) Regulations 2004 (S.I. 2004/2363) and the Pet Travel Scheme (Scotland) Order 2003 (S.S.I. 2003/229).

Part 1 is introductory and includes definitions and designates the administrative authorities responsible for various functions under the Order.

Part 2 concerns the preventive health measures that apply to the movement of pet animals to Great Britain to protect against the risk of the introduction of rabies, *Echinococcus multilocularis* (tapeworm), Hendra disease, Nipah disease and highly pathogenic avian influenza into Great Britain. Article 5(1)(a) operates so as to exempt a pet dog, cat or ferret from the provisions of the Rabies (Importation of Dogs, Cats and Other Mammals) Order 1974 (S.I. 1974/2211) ("the 1974 Order") provided the pet dog, cat or ferret is brought into Great Britain on a carrier that is approved under article 11 and meets all preventive health measures that are applicable to that animal. Pet rodents and rabbits (as well as certain other species) brought to Great Britain from another member State or other European country listed in Part B of Annex II to Regulation (EC) No 998/2003 are also exempt from the provisions of the 1974 Order, as are pet animals brought to Great Britain from Northern Ireland, the Channel Islands or the Isle of Man (article 5(1)(b) and (c)). A pet bird brought to Great Britain from a third country (subject to certain exceptions) which does not comply with the preventive health measures in Commission Decision 2007/25/EC may be re-exported, detained in quarantine or destroyed (article 10).

Part 3 requires carriers that land pet dogs, cats and ferrets in Great Britain to be approved, subject to certain exceptions, and makes provision regarding the suspension or withdrawal of carrier approvals.

Part 4 contains provisions relating to enforcement. The Order is enforceable by local authorities (article 13). Authorised officers are given powers to require compliance with the Order, including powers of entry and seizure.

Offences listed in article 16(1) are punishable on summary conviction with a fine only. Offences listed in article 16(2) relating to obstruction of authorised officers or falsification of documentation are punishable on summary conviction with a fine or up to three months' imprisonment. Owners of pet dogs, cats or ferrets that are not brought into Great Britain on an

approved carrier (subject to certain exceptions) and in accordance with the preventive health measures applicable to that animal may also be subject to the offences in article 16 or 17 of the 1974 Order.

Part 5 provides a transitional arrangement for pet dogs, cats and ferrets already detained and isolated in quarantine on the coming into force of this Order and deals with amendments to other legislation, principally the 1974 Order. In particular, the 1974 Order has been amended to require all pet dogs, cats and ferrets that are subject to, but do not comply with, Article 5 or 8 of Regulation (EC) No 998/2003 and, where applicable, Commission Delegated Regulation (EU) No 1152/2011 when entering Great Britain to be detained in quarantine and to prohibit their release until they comply with those requirements. The 1974 Order has also been amended to reduce the quarantine period for rabies-susceptible animals (other than animals subject to Article 5 or 8 of Regulation (EC) No 998/2003) from 6 months to 4 months and to give a discretionary power to the appropriate authorities to reduce or waive the 4-month quarantine period if satisfied that the release of an animal from quarantine will present negligible risk of the introduction of rabies into Great Britain.

Article 22 requires the Secretary of State to review the operation and effect of this Order in Great Britain and publish a report within five years of 1st January 2012 and within every five years after that.

A full impact assessment of the effect that this instrument will have on the costs of business, the voluntary sector and the public sector is available on the Defra website at www.defra.gov.uk, and is published with the Explanatory Memorandum alongside the instrument on www.legislation.gov.uk.

Explanatory Memorandum to the Non Commercial Movement of Pet Animals Order 2011

This Explanatory Memorandum has been prepared by the Office of the Chief Veterinary Officer and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance 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 Non Commercial Movement of Pet Animals Order 2011. I am satisfied that the benefits outweigh any costs.

John Griffiths

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

5 December 2011

1. Description

1.1 The derogations to EC Regulation 998/2003, which have until now allowed the UK to retain additional rabies controls for pets entering from other Member States and listed third countries end on 31 December 2011. The additional controls were a blood test, a 6 month waiting period, tick and tapeworm treatment and quarantine for pets entering the UK from unlisted third countries.

1.2 The UK must now implement the requirements of EC Regulation 998/2003 as it currently applies across the EU with effect from 1 January 2012. This means that the additional controls for pets entering the UK from other Member States and listed third countries will no longer apply. The UK is allowed to retain pre-entry tapeworm controls for pet dogs. Pets from unlisted third countries will be able to enter the UK without the need for quarantine provided they meet very strict entry controls (which have applied for entry to other Member States since 2003).

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

2.1 The Order is being made in exercise of powers contained in section 2(2) of the European Communities Act 1972 and section 10 of the Animal Health Act 1981. The Order will be made by the Welsh Ministers and the Secretary of State for Environment, Food and Rural Affairs acting separately but within a single composite legal instrument. The Secretary of State will act in relation to England and Scotland.

2.2 The Welsh Ministers may exercise powers under section 2(2)of the European Communities Act 1972. Section 59(2) of the Government of Wales Act 2006 empowers the Welsh Ministers to exercise the section 2(2) powers if they have been appropriately designated for the purposes of section 2(2). The Welsh Ministers have been designated in relation to the common agricultural policy and in relation to measures in the veterinary and phytosanitary fields for the protection of human health. The relevant Designation Orders are SI 2010/2690 and SI 2008/1792

2.3 The powers under section 10 of the Animal Health Act 1981 may be exercised to prevent the introduction or spread of disease into Great Britain by importation. They vest in the Welsh Ministers by virtue of the National Assembly for Wales (Transfer of Functions) Order 1999 (SI 1999/672) and by operation of section 162 of and paragraph 30 of Schedule 11 to the Government of Wales Act 2006.

2.4 Section 2(2) of the European Communities Act 1972 will be relied upon to implement our EU obligations under EU Regulation 998/2003. Section 10 of the Animal Health Act 1981 will be relied upon to make consequential amendments to existing legislation.

2.5 A composite instrument is likely to minimise the differences of approach between administrations. Further, the order will be implemented across Great Britain by the Animal Health and Veterinary Laboratories Agency and a single instrument with wholly common provisions is for more advantageous to the Agency. Defra and the Welsh Government consider the consistent policy and implementation dates and enforcement coordination achieved by a composite statutory instrument are desirable for all three administrations and for those affected by the Order who may otherwise have to consult 2 or 3 pieces of legislation.

2.6 As this instrument is also subject to a Parliamentary procedure it is not considered reasonable or practicable for them to be made bilingually.

2.7 The Welsh Ministers are to determine whether an instrument made in exercise of the section 2(2) powers is to be subject to the negative or affirmative procedure. They are of the view that the negative procedure is appropriate for the nature of this Order because it gives effect to directly applicable EU obligations which the Welsh Ministers have no discretion to change. In addition it does not impose any new financial burden, does not introduce new criminal offences and does not amend primary legislation

The Order will::

(a) update the GB-wide Rabies (Importation of Dogs, Cats and Other Mammals) Order 1974 ("the Rabies Order") to:

- update references to the relevant EU instruments;
- require that pet animals that fail to meet the requirements on rabies and, where relevant, tapeworm when entering Great Britain, be detained in quarantine and their release prohibited until they comply with those requirements;
- consolidate the provisions in the Rabies Order that have been amended by the separate administrations on the basis that the Order now extends to Great Britain;
- remove certain provisions in the Rabies Order which will conflict with the relevant EU instruments after 31 December 2011;

(b) amend the Zoonoses Order 1989 to include a requirement to notify the appropriate authority if an animal (any mammal except man) is known or suspected to be infected with the tapeworm *Echinococcus multilocularis* in Great Britain.

2.2 The Order is also made under domestic powers in section 10 of the Animal Health Act 1981, relating to the prevention of disease into Great Britain through the importation of animals, to make the following amendments to the Rabies Order which are not related to EU obligations:

- Include an exemption from quarantine for any animal of the Order *Rodentia* or *Lagomorpha* that is imported into Great Britain under licence for use at a research premises in connection with scientific research or to a zoo licensed under the Zoo Licensing Act 1981;
- Reduce the quarantine period for rabies-susceptible animals (other than a pet animal subject to EU Regulation 998/2003) from 6 months to 4 months and to amend references to this period throughout the Rabies Order;
- Grant discretionary powers to Ministers to reduce or waive the 4-month quarantine period for a rabies-susceptible animal (other than a pet animal) if satisfied that the release of the animal from quarantine will present negligible risk of the introduction of rabies into Great Britain.

2.3 The Order applies to Great Britain. It is executed by the Secretary of State in relation to England and Scotland and by the Welsh Ministers in relation to Wales exercising their powers in a single composite legal instrument. Separate legislation will be introduced in Northern Ireland and the Channel Islands.

3. Legislative background

Rabies

3.1 Regulation (EC) No 998/2003 lays down rabies import requirements which pets (dogs, cats and ferrets) must comply with when travelling between Member States and from third countries. Since 2004, that Regulation has included a derogation to enable the UK to apply more stringent import conditions for pets, these additional controls were permitted because of the UK's status as a rabies free country. The derogation expires on 31 December 2011, reduced incidence of rabies across the EU mean that those

additional controls can no longer be scientifically justified. From 1 January 2012, the EU-wide rabies import requirements under Regulation 998/2003 are directly applicable to the UK. This Order provides for the administration and enforcement of those requirements in Great Britain.

3.2 Unless an import licence has been granted in advance by the appropriate authority, it is an offence under the Rabies Order to land a pet dog, cat or ferret in Great Britain which fails to meet the requirements of Regulation 998/2003 and/or is transported into Great Britain on a carrier that has not been approved under the Order. Recognised assistance dogs as well as dogs, cats and ferrets travelling from the Republic of Ireland do not have to travel via an approved carrier. Pet dogs, cats or ferrets that fail to meet the rabies requirements when entering Great Britain are required to be detained in quarantine until such time as they comply with those requirements.

Tapeworm (Echinococcus multilocularis)

3.3 As well as rabies controls, the UK has also had a derogation under Regulation 998/2003 to apply additional import conditions on pet cats and dogs to protect against certain tick-borne diseases and the tapeworm *Echinococcus multilocularis*. This derogation also expires on 31 December 2011. From 1 January 2012, there will be no import controls for the UK relating to tick-borne diseases and the Order reflects that. Import controls relating to tapeworm have been revised and are implemented under a separate Commission Delegated Regulation. Under that Regulation, the new tapeworm import requirements, for dogs only, can be applied by Member States that are tapeworm-free, currently the UK, Ireland, Malta and Finland. The Order provides for the administration and enforcement of those tapeworm requirements in Great Britain.

3.4 It is an offence under the Rabies Order to land a pet dog in Great Britain which fails to meet the tapeworm import requirements in the Delegated Regulation unless an import licence has been issued in advance. Dogs that fail to meet the tapeworm requirements will be required to be detained in quarantine until they comply with the requirement (as well as any rabies import requirements that may apply).

3.5 In order to apply additional tapeworm controls under the Delegated Regulation, the UK is required to legislate to make *Echinococcus multilocularis* infection in host animals a notifiable disease. The Zoonoses Order 1989 is therefore amended to require notification of infection or suspected infection in Great Britain and failure to do so is made an offence.

Highly Pathogenic Avian Influenza

3.6 The Order enforces Commission Decision 2007/25/EC as regards certain protection measures that apply to the import of pet birds accompanying their owners into Great Britain to protect against the incursion of highly pathogenic avian influenza. If a pet bird is imported into Great Britain under the Order but does not comply with the obligations in the Decision, the appropriate authority has the option to serve notice on the pet owner requiring it to be re-exported, quarantined or destroyed. The Order creates a new criminal offence if the owner of the bird fails to meet the terms of such notice.

Nipah and Hendra

3.7 This Order enforces Commission Decision 2006/146/EC as regards certain protection measures that apply to the import of dogs and cats from Malaysia (Peninsula) to protect against the incursion of Nipah disease into Great Britain and the import of cats from Australia to protect against the incursion of Hendra disease into Great Britain. The Rabies Order has been amended to ensure that dogs and cats from Malaysia and cats from Australia which fail to meet the conditions in accordance with that Decision are prohibited from entering Great Britain and it is offence under that Order to land a dog or cat in Great Britain which fail to meet those conditions.

Pet Movements

3.8 The relevant EU instruments are directly applicable, so their provisions are not spelled out in the Order. Pet dogs, cats or ferrets brought into Great Britain from Northern Ireland, the Channel Islands and Isle of Man are not subject to the health requirements in the relevant EU instruments and are exempt from the provisions of the Rabies Order.

3.9 When the rules change on 1 January 2012, it will remain a requirement for pet dogs, cat and ferrets to enter Great Britain via an approved transport company ("carrier"). The responsibilities of carriers, such as carrying out identity and documentary checks on pets, are laid down in the terms and conditions of their approval. The Order requires carriers to comply with the conditions of their approval and sets out the general duties of carriers in this respect. The Secretary of State acting in relation to England or Scotland or Welsh Ministers acting in relation to Wales may suspend or withdraw an approval if satisfied the carrier has failed to comply with the terms of its approval. A carrier has the right to make representations against a suspension or withdrawal. It is an offence under the Order for a carrier to fail to comply with the conditions of its approval or to transport pets to Great Britain without an approval.

4. Purpose & intended effect of the legislation

4.1 From 1 January 2012, the UK will implement a revised Pet Travel Scheme to align its rabies import requirements with those currently applied by other Member States under European Regulation (EC) No 998/2003.

4.2 As well as rabies import requirements, the UK must also enforce requirements under separate EU legislation that protect against the risk of other diseases entering the UK via pet movements: highly pathogenic avian influenza (pet birds), Nipah disease (dogs and cats from Malaysia), Hendra disease (cats from Australia) and the tapeworm *Echinococcus multilocularis* (dogs).

The Non-Commercial Movement of Pet Animals Order 2011 ("the Order") enforces the following EU instruments in Great Britain:

- Regulation (EC) No 998/2003 on the animal health requirements applicable to the non-commercial movement of pet animals (rabies).
- Commission Decision 2006/146/EC on certain protection measures with regard to certain fruit bats, dogs and cats from Malaysia (Peninsula) and Australia (Nipah and Hendra)
- Commission Decision 2007/25/EC as regards certain protection measures in relation to highly pathogenic avian influenza and movements of pet birds accompanying their owners into the EU.
- Commission Delegated Regulation [2011/1152] on the preventative health measures for the control of *Echinococcus multilocularis* infection in dogs.

The Order also amends the Rabies (Importation, of Dogs, Cats and Other Mammals) Order 1974 and the Zoonoses Order 1989 (see paragraph 4.5 below).

4.3 Approximately 100,000 pet dogs, cats and ferrets enter the UK each year under the Pet Travel Scheme. From 1 January 2012, the entry rules for pets from other Member States and listed third countries will be simpler so it is expected that the number of pets entering the UK from those countries may increase. The simpler Pet Travel Scheme rules will also be of importance to pet owners in the UK so the number of UK pets travelling abroad is likely to increase. We will also expect to see pets entering the UK from unlisted third countries, which have previously been required to go into quarantine, but they will have to meet strict entry rules (including vaccination against rabies, a blood test and a 3 month waiting period). It is not expected that the numbers of pets entering from those countries

will be large (around 1,300 pets usually enter UK quarantine from those countries each year although this number reduced to around 750 in 2011). There are currently no authorised PETS entry routes in Wales.

4.4 Whilst the Pet Travel Scheme rules are being simplified, they will continue to provide control measures to protect human and animal health against the risk of disease entering the UK via the movement of pet animals. This is also significant to the broader UK population, e.g. those without pets and those with pets but who do not intend to take them abroad. Pets entering the UK will need to be identified and vaccinated against rabies and undergo a waiting period after vaccination. Dogs will need to be treated against tapeworm. Pets coming from non-listed third countries will need to satisfy much stricter conditions. Although an increased number of pets entering the UK under the new system are expected, the UK will continue to maintain its current system of ensuring that every pet is checked before it enters the UK to ensure that it meets the necessary animal health rules. If a pet does not meet the rules it will not be allowed to enter the UK unless it is placed into quarantine.

4.5 The Order also makes health rules on the import of five or less pet birds from third countries and requires dogs and cats from Malaysia to be accompanied by proof that they are protected against Nipah disease. For pet birds, a very small number of pet bird licences are issued each year. In terms of the number of dogs and cats entering from Malaysia, again this is very small.

5. Consultation

5.1 A formal consultation has not been undertaken as the changes to the Pet Travel Scheme are required by EU legislation and are directly applicable in the UK from 1 January 2012. The Order provides for the administration and proper enforcement of those directly applicable requirements. However, between May and August 2011, Defra and the Animal Health & Veterinary Laboratories Agency (AHVLA) held a number of meetings with relevant industry stakeholders, in particular veterinary organisations, quarantine owners and the transport sector, to discuss the changes and their effect and impact. Given that there are no authorised PETS carriers in Wales and only a very limited quarantine sector, Welsh Government officials agreed to DEFRA and AHVLA leading on these discussions, which were held on a GB basis. Meetings have also been held with the zoo industry to consider the implications of changes to the quarantine period for non-pet animals (i.e. those not covered by EC Regulation 998/2003).

6. Regulatory Impact Assessment (RIA)

Title: Changes to the UK Pet Travel Scheme and subsequent amendments to the Non-Commercial Movement of Pets Regulation **IA No: Defra 1370** **Lead department or agency:** Defra **Other departments or agencies:** DH, Devolved Administrations, AHVLA	**Impact Assessment (IA)** **Date: 05/10/2011** **Stage: Final** **Source of intervention:** EU **Type of measure:** Secondary legislation **Contact for enquiries:** Tonima Saha (policy) 0207 238 1811 Bob Young (economics) 0207 238 3248
Summary: Intervention and Options	**RPC:** GREEN

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, One-Out?**	**Measure qualifies as**
£73.3m	£m	£m	No	NA

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

EU Regulation 998/2003 lays down the conditions with which pets must comply when being moved between Member States and from third countries. This has the objective of protecting public and animal health from the risk of rabies. The UK has two temporary derogations under Regulation 998/2003 to apply more stringent measures to protect against rabies, and additional controls to protect against tick-borne diseases, and the tapeworm Echinococcus multilocularis (EM). Both derogations expire on 31 December 2011, although the UK is seeking to retain controls on tapeworm beyond that date. Legal and practical changes are required to bring the UK's Pet Travel Scheme in line with EU Regulation 998/2003.

What are the policy objectives and the intended effects?

The aim is the protection of public health, whilst ensuring that our domestic legislation will be fully up to date, consistent with EU law, and fit for purpose. From 1 Jan 2012 the UK will implement a revised Pet Travel Scheme to align its entry requirements with the standard pet movement controls for rabies required under Regulation 998/2003. Not implementing the changes will expose the UK to the risk of infraction. The Non-Commercial Movement of Pet Animal (England) Regulations 2004 will be revoked and replaced with GB-wide legislation to reflect the changes.

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

Option 0 – Maintain current UK Pet Travel Scheme. This would be in breach of our legal obligations under 998/2003 and lead to risk of infraction and a breakdown of the scheme on the ground as private sector partners are unlikely to continue to operate the scheme without a sound legal basis to do so.

Option 1 - harmonise fully with the EU scheme for rabies and with no controls on tapeworm or ticks. This is the 'legal default' when the UK's current derogations expire. However to abandon controls on tapeworm would put public health at risk so is not the preferred option. However, this may be the final outcome if the UK is unsuccessful in securing agreement to ongoing tapeworm controls.

Option 2 –harmonise with the EU controls on rabies, do not maintain tick controls, but seek to maintain tapeworm controls . This is the preferred option as it continues to protect public health from the most serious risks, whilst ensuring we meet legal requirements with respect to rabies controls.

Will the policy be reviewed? It will be reviewed. **If applicable, set review date:** 01/2017

Does implementation go beyond minimum EU requirements?			Yes		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	**Micro** Yes/No	**< 20** Yes/No	**Small** Yes/No	**Medium** Yes/No	**Large** Yes/No

What is the CO_2 equivalent change in greenhouse gas emissions? (Million tonnes CO_2 equivalent)	Traded:	Non-traded:

Summary: Analysis & Evidence Policy Option 1

Description: Full Harmonistion with the EU (bringing the rabies controls into line with the EU and dropping compulsory entry requirements on tapeworm and ticks)

FULL ECONOMIC ASSESSMENT

Price Base Year 2011	PV Base Year 2012	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: £60.8m	**High:** £70.4m	**Best Estimate: £65.6m**

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			£2.67m	**£20.81m**

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

There is a cost (£10,000 a year on average) associated with controlling a rabies incursion. The cost is very small because the risk of a rabies outbreak occurring in the UK is tiny. The costs would accrue mainly to the Government and pet owners. The disease cost of humans tapeworm infection (AE) is estimated to be about £2.66m a year which would accrue mainly to those members of the public who are infected and the NHS. This option is on the whole deregulatory.

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

The costs of discomfort, pain and anxiety associated with human tapeworm infection have not been measured. These would accrue to those who are infected and their families.
The transitional adjustment costs falling to the quarantine sector as it downsizes have not been measured.
Where tick infestations occasionally arise in dwellings etc the costs of eradication have not been included – these costs would probably fall on households.

BENEFITS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional		£9.48m	**£81.60m**
High	Optional		£10.60m	**£91.24m**
Best Estimate			£10.04m	**£86.42m**

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

Benefits would accrue to pet owners returning to the UK and those arriving to reside in the UK with their pets. These would arise from saving the costs of blood tests for their pets (£4.3m a year), tick and tapeworm treatments (£2.8m a year) and quarantine costs (£3m a year). The range in benefits arises from using a range for the cost of tick and tapeworm treatments.

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

Reduction in waiting time following rabies vaccination.

Key assumptions/sensitivities/risks — **Discount rate (%)** 3.5

Key assumptions relate to the risk of a rabies outbreak and the risks of human diseases. The risk of a rabies incursion is well evidenced through a quantitative risk assessment. The risks of the brown dog tick and EM establishing in the UK (and the implications for the human diseases AE and MSF) are assessed through formal qualitative risk assessments.

The analysis assumes that the number of travelling pets will be similar to the numbers recorded in 2010.

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:	In scope of OIOO?	Measure qualifies as

Costs:	Benefits:	Net:	No	NA

Summary: Analysis & Evidence Policy Option 2

Description: Harmonise with EU controls on rabies, drop tick controls but maintain tapeworm controls (albeit with a 1 to 5 day treatment window instead of 24 to 48 hrs).

FULL ECONOMIC ASSESSMENT

Price Base Year 2011	PV Base Year 2012	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: £70.9m	**High:** £75.7m	**Best Estimate: £73.3m**

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			£0.10m	**£0.87m**

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

The cost of controlling a rabies incursion is the same as option 1 (£10,000 a year on average). In addition there is a small cost (£30,000 a year) for tapeworm treatment falling to pet owners for pets arriving from unlisted third countries. The costs of additional veterinary surveillance of £60,000 a year falls to government/taxpayers.

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

There are no human disease costs associated with this option and therefore the costs of pain etc do not arise. As in option 1 the transitional adjustment costs falling on the quarantine sector as it downsizes have not been monetised and neither have the small costs of clearing up tick infestations.

BENEFITS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional		Optional	**£71.78m**
High	Optional		Optional	**£76.61m**
Best Estimate				**£74.20m**

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

As option 1 except that the savings to pet owners for tapeworm treatments (£1.4m a year) would not be realised because the requirement to treat for tapeworm is retained.

The range in benefits arises from using a range for the cost of tick treatments.

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

As option 1.

Key assumptions/sensitivities/risks **Discount rate (%)** 3.5

As option 1 except that the risks of AE are significantly reduced by the retention of the tapeworm controls.

BUSINESS ASSESSMENT (Option 2)

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

Evidence Base (for summary sheets)

The problem and rationale for intervention

1. Compulsory entry conditions for domestic pets are a risk mitigation measure intended to reduce the chances of serious diseases entering the UK which could impact on both human and animal health. The main risks that controls currently mitigate are rabies, tick-borne diseases such as Mediterranean Spotted Fever and Alveolar Echinococcosis (i.e. infection by the tapeworm *Echinococcus multilocularis).*

2. Human and animal health externalities provide the economic rationale for these entry conditions and controls. If introduced into the UK these serious diseases could spread (and even become established) imposing costs on the public and the National Health Service and yet individuals arriving in or returning to the UK with their pets face insufficient incentives to ensure they are disease free - hence compulsory controls are needed. The rationale for the specific measures considered in this Impact Assessment, which on the whole are deregulatory making it easier and less costly for travelling pet owners, is about proportionality – achieving a better balance of costs and benefits taking account of the risks to human and animal health.

3. Rabies is a serious disease which affects all warm-blooded animals, including humans, and is almost invariably fatal once symptoms have developed. Transmission occurs usually through saliva via the bite of an infected animal. Human infection by the *Echinococcus multilocularis* tapeworm results in a serious chronic disease with symptoms similar to those of liver cancer and cirrhosis of the liver. It is treatable but is likely to result in death if left untreated. Mediterranean Spotted Fever is a serious disease in humans causing a variety of non-specific symptoms. Without early treatment it can result in serious complications or even death.

4. Our approach to dealing with the risks of disease incursion has changed as our understanding of the diseases and control measures has increased over recent years. Mandatory 6 month quarantine was introduced in the late 19th century for pets coming into the UK. In 1998 the Government published a report by Professor Ian Kennedy (*Rabies and Quarantine: a Reappraisal*) which recognised improvements in the effectiveness of rabies vaccines and reduction in rabies incidence in a number of countries. The report also considered the risks of *Echinococcus multilocularis* and Mediterranean Spotted Fever. The report made a number of recommendations for a reform of the UK quarantine system and paved the way for the introduction of the UK Pet Travel Scheme (PETS).

6. The Pet Travel Scheme pilot was launched in the UK in February 2000 and allowed cats, dogs (and later ferrets) from Member States and certain Third countries to avoid quarantine if they implemented other disease control

measures. The scheme also included a requirement to treat all animals against ticks and tapeworm. The rules also applied to pets going abroad and coming back into the UK. The Non-Commercial Movement of Pets Regulation (2004) provided the practical, administrative and enforcement provisions to support the regime.

7. In 2003 the EU brought in its own pet travel scheme, which may be considered a simplified version of the UK Pet Travel Scheme. There is no requirement for tick or tapeworm treatment under the EU Scheme. The Non-Commercial Movement of Pet Animals (England) Regulations 2004 provide the practical, administrative and enforcement provisions to apply the regime in England although the UK has two temporary derogations to retain its pre-existing pet movement controls in relation to rabies and also tick and tapeworm. Over the past few years the derogations have been extended but they are now due to expire at the end of December 2011.

8. Over ten years since the introduction of the Pet Travel Scheme would, in any case, be a good time to re-visit our controls, and there are sound legal and administrative arguments for the UK to move towards the harmonised EU regime. Most important is the very significant reduction in the incidence of rabies across EU Member States. It is important that where appropriate we revise our rules to reflect the reality of the disease situation across the EU. The standard EU Pet Travel Scheme has been highly successful in preventing the spread of rabies, with not a single reported case of rabies associated with the legal movement of pets since the EU scheme was introduced in 2003.

9. Whilst the incidence of rabies has dramatically reduced, incidence of the tapeworm *Echinococcus multilocularis* seems to be on the increase in continental Europe, with approximately 300 cases per year reported in humans. Our current entry controls require tapeworm treatment 24-48 hours before embarkation to the UK to mitigate the risk of introducing the tapeworm into the UK. The European Commission has come forward with proposals that would allow the UK to retain additional tapeworm controls by way of a delegated act as provided for in Article 5 of Regulation 998/2003. The proposal would require tapeworm treatment 24-120 hours before embarkation and imposes additional surveillance for the tapeworm in the UK. The proposal of a treatment window of 24-120 hours will ensure that the risk of this tapeworm entering the UK from pets remains low. The slightly wider treatment window balances the need to manage risks in a proportionate way, whilst helping to increase compliance thereby reducing the risk of untreated animals entering the UK. For example, the current 24-48 hour treatment window makes it practically difficult for pet owners travelling over the weekend to comply with these rules. The proposal is currently with the European Parliament and Council for consideration.

10. Under the current UK scheme, tick treatment is also required 24-48 hours before embarkation for the UK to mitigate the risk of a range of tick-borne diseases. The risk of introduction of the brown dog tick under harmonised rules could increase from the current low risk level to medium risk, however the likelihood of these becoming established in the UK environment in the long-term is negligible. We therefore do not intend to continue to require mandatory tick controls beyond 31st December 2011.

Policy Objective

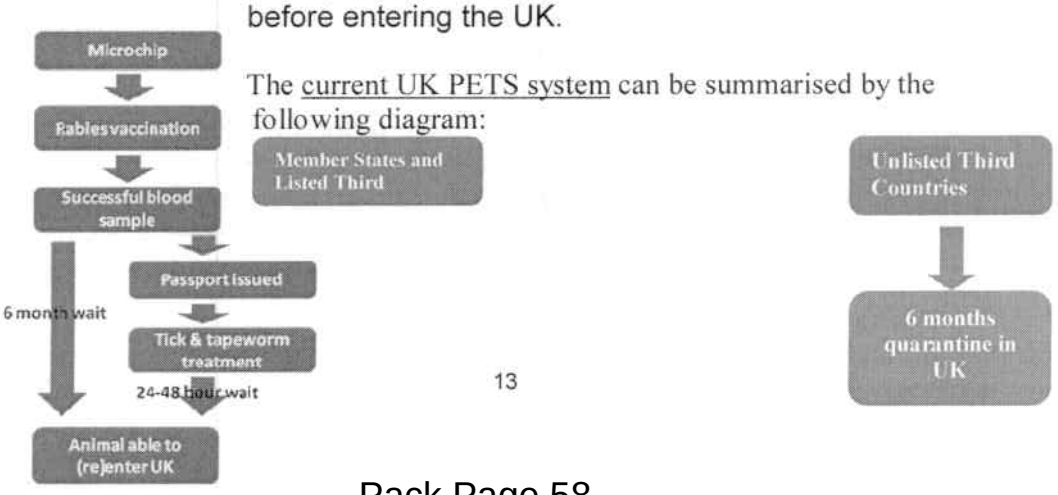
11. The ultimate aim of this policy is to continue to protect public health, whilst ensuring that our domestic legislation will be fully up to date, consistent with EU law, fit for purpose and cost effective. From 1st January 2012 the UK will implement a revised Pet Travel Scheme to align its entry requirements with the standard harmonised pet movement controls for rabies required under Regulation 998/2003 and to avoid the risk of infraction. The Non-Commercial Movement of Pet Animals (England) Regulations 2004 will be amended to reflect the change on a GB basis, notably the enforcement regime, the responsibilities on private sector partners under the new scheme, and additional control measures for other diseases (e.g. Tapeworm)

Comparison of the current UK system and the EU system to be applied from 2012

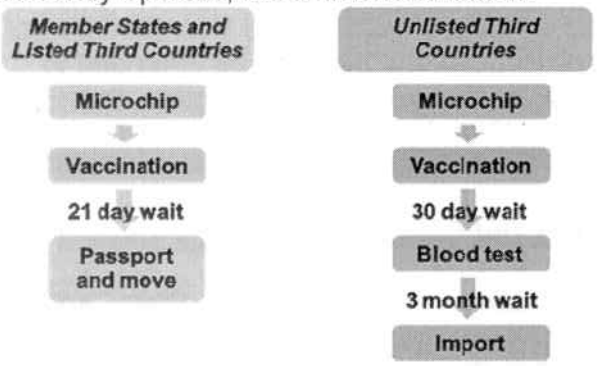
12. Under the UK's current Pet Travel Scheme, pets from Member States and listed third countries (e.g. Australia, Canada) can currently enter (or re-enter) the UK without quarantine provided they meet certain criteria (microchip, rabies vaccine, blood test, and six month waiting period before entering the UK). Tick and tapeworm treatment must be administered 24-48 hours before embarkation to the UK. Pets from unlisted third countries (e.g. India, Sri Lanka) must spend a compulsory six months in quarantine before entry into the UK.

13. The EU scheme requirements do not include a blood test for pets from Member States or listed third countries, and there is a much shorter waiting period after vaccination (21 days). Pets from unlisted third countries may enter the UK without quarantine provided they meet certain criteria (microchip, vaccine, blood test, 3-month waiting period). Moreover, under EU harmonised measures, pets do not require tick and tapeworm treatment before entering the UK.

The current UK PETS system can be summarised by the following diagram:



The UK system from 2012, and that which other European Member States currently operate, is summarised below:



14. The EU Pet Travel Scheme does not provide for additional controls for diseases other than rabies. The UK is seeking to maintain mandatory tapeworm treatment of pets in addition to the standard harmonised EU controls for rabies. We are currently in discussion with the European Commission with regard to the long-term tapeworm treatment requirements for pets entering the UK, and the current working assumption is that this treatment will be required 24 to 120 hours before entry to the UK.

Background on the diseases and their risks

15. Currently approximately 100,000 animals per year travel through the UK PETS scheme. A large majority (60%) have UK pet passports, and another (20%) enter from our nearest neighbours in the European Union (France, Germany, Spain and The Netherlands), which are rabies free.

16. Under the current UK Pet Travel Scheme, around 2,500 animals per year enter into quarantine. This may be a result of a requirement for 6 months quarantine if the pet is entering the UK from an unlisted 3rd country; or if the owner has chosen to put their pet into quarantine rather than meeting the Pet Travel Scheme requirements (e.g. if they have had to relocate

quickly); or if the pet is found to be non-compliant with the entry requirements on entry to the UK, (in which case it may be held in quarantine premises at the owners expense until it is compliant). There are currently 27 centres authorised as quarantines in the UK, most of which also run boarding kennels or provide other pet services.

Rabies

17. Rabies is a serious disease which affects all warm-blooded animals and is invariably fatal once symptoms have developed. It can be passed between species including to humans and it is normally passed on through a bite by an infected animal.

The United Kingdom is officially classified as free from terrestrial rabies, but rabies persists in most continents across the World.

Rabies occurs in two epidemiological cycles, the urban and wildlife cycles. In the urban rabies cycle, dogs are the main reservoir host. This cycle is predominant in much of Africa, Asia, and Central and South America, where the proportion of unvaccinated and semi-owned or stray dogs is high. It has been virtually eliminated in North America and Europe.

18. The sylvatic (or wildlife) cycle is the predominant cycle in Europe and North America. In some EU Member States, the disease is still present in wildlife. Since the 1980's oral vaccination programmes have been used across the EU to control sylvatic rabies.
Incidence levels in EU "equivalents" (e.g. Switzerland, Iceland) and listed third countries are more variable. Most are demonstrably disease-free (e.g. Australia, New Zealand, Norway). Some have quite significant incidence levels in wildlife and some disease in the domestic pet population, but have put vaccination programmes in place, which over time should steadily get the disease under control (e.g. Russia), while a number have low-level rabies incidence in wildlife but very low levels in domestic pets coupled with extremely well-established domestic animal vaccination programmes. (E.g. USA, Canada).

A quantitative risk assessment (QRA) was commissioned in 2010 to consider how the risk of rabies introduction to the UK via travelling pets would change were the UK to apply the current harmonised EU rules for the non-commercial movement of pets.

19. The results of the QRA, assuming 100% compliance with all regulations, suggest that under the harmonised EU scheme the annual risk of rabies introduction from non-UK cats/dogs would increase from an average of 7.79×10^{-5} (90% confidence range: 5.90×10^{-5} to 1.06×10^{-4}) to 4.79×10^{-3} (4.05×10^{-3} to 5.65×10^{-3}). This is equivalent to importing a rabid pet into the UK every 211 years. Under the EU scheme the highest mean risk is

from listed third countries, and there is actually a decrease in the mean risk of rabies entry to the UK from unlisted third countries - largely due to the use of a serological test with a high specificity.

20. This solely reflects the risk of a rabid pet animal entering the UK. The absolute level of risk is extremely low, but the risk of human infection (or longer term disease establishment in the UK) will be much lower still. Defra and the Welsh Government's Rabies Control Strategy outlines the animal control measures that would be taken should an outbreak of rabies occur. This is supported by the Health Protection Agency's Human Health Strategy for Rabies which addresses potential public health issues.

21. Considering information from cases in other parts of Europe (Johnson *et al.* 2011) rabies experts advised that approximately 90% of cases will be "minor". That is to say that the primary case of infection is identified swiftly and its history is known. This means that there are likely to be few, if any cases of humans exposed to rabies, and few control measures may need to be applied. Furthermore, post-exposure vaccines for humans are highly effective and therefore the likelihood of human deaths caused by rabies is very low.

Tapeworm

22. *Echinococcus multilocularis* is a cyclophyllid tapeworm that produces the disease known as echinococcosis in certain mammals. The typical transmission cycle of *E. multilocularis* in Europe is wildlife based, involving red foxes as the main final host, and rodents as intermediate hosts. It is widespread in Europe, and although surveillance is limited, where longitudinal data exist, there appears to be an increase in parasite prevalence over time and there are indications that the parasite is extending its geographic range[1]

23. Domestic cats and dogs can be infected by ingesting infected intermediate hosts, and the increasing numbers of pets moved around the EU presents a major risk pathway for introduction of *E. multilocularis* into free areas. Whilst these risks are difficult to quantify, evidence [2] suggests that without tapeworm treatment, for every 10,000 dogs travelling to Germany and back to the UK, there is greater than 98% chance of at least one animal returning to the UK infected with the tapeworm.

24. As with the risk of rabies discussed in the risk assessment, this reflects the risk of incursion and not of human infection. However once introduced into a clean area the likelihood of *E. multilocularis* becoming established,

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[1] EFSA 2006 Assessment of the risk of rabies introduction into the UK, Ireland, Sweden, Malta, as a consequence of abandoning the serological test measuring protective antibodies to rabies. The EFSA journal, 446, 1-54

[2] Risk assessment of importation of dogs infected with *Echinococcus multilocularis* into the UK, P. R. Torgerson, and P. S. Craig, Sept 2009.

is high. There are no clinical signs of infection by the tapeworm in dogs or foxes, and in humans infection with AE may not produce any symptoms for many years. Options such as mass treatment of urban foxes using anthelmintic bait or culling of foxes are not considered cost effective[3].

25. Humans may become accidentally infected by ingesting eggs excreted by the infected definitive hosts, either foxes or dogs. There are now approximately 300 cases each year in Europe[4]. Human infection by the tapeworm *Echinococcus multilocularis* results in the serious disease called alveolar echinococcosis. Alveolar echinococcosis (AE) is characterised by tumour-like or cyst-like tapeworm larvae growing in the body. Because the cysts are slow-growing, infection with AE may not produce any symptoms for many years. Pain or discomfort in the upper abdominal region, weakness and weight loss may occur as a result of the growing cysts. Symptoms may mimic those of liver cancer and cirrhosis of the liver. It is treatable but is likely to result in death if left untreated.

26. Treatment is long-term and expensive often consisting of surgery and long-term medication. Often, chemotherapy has to be continued for the lifetime of the patient, and without it the 10-year survival rate is around 10 %[5]. It has been estimated that the global burden of AE, in terms of Disability Adjusted Life Years[6] (DALYs) is 666,500 per annum, which is on par with other parasitic infectious diseases. Costs of treatment (based on Swiss, Japanese and French statistics) can be as high as £100,000 per patient (based on average ten year survival).

Tick-borne diseases

27. Ticks are recognised as important reservoirs and potential vectors of numerous diseases of both animal and public health importance. The presence of ticks and most of the diseases they transmit are not notifiable or reportable in most countries in the EU or elsewhere and systematic and comparable surveillance data are lacking. Available information on the spatial distribution of both the diseases and the vectors is limited in many EU member states and prevents an accurate quantification of the increase in risk, however the UK has high quality surveillance evidence indicating the UK remains free of

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[3] Eckert J, Deplazes P. Biological, epidemiological, and clinical aspects of echinococcosis, a zoonosis of increasing concern. *Clin Microbiol Rev.* Jan 2004;17(1):107-35.

[4] Torgerson et al. 2010

[5] Eckert and Deplazes, 1999 Alveolar echinococcosis in humans: the current situation in central Europe and the need for countermeasures.parasitology today 15, 315-319

[6] The disability adjusted life year is a measure of disease burden which expresses the number of years lost due to ill-health, disability or premature death. For a specific disease DALYs are calculated by summing the number of years of life lost with the number of years lived with disability.

the *Rh. sanguineus* except for the occasional report from quarantine kennels.

28. The 'Brown Dog Tick' *Rh. sanguineus* has a global geographic distribution from the Americas, to Africa, Asia and Europe between 35° S and 50° N. It has been implicated as a vector of several human and animal pathogens including *R. conorii*, the causal agent of Mediterranean spotted fever. Mediterranean spotted fever is a serious though treatable disease in humans causing a variety of non-specific symptoms. Without early treatment it can result in serious complications or even death. As the name suggests. Mediterranean Spotted Fever continues to have a limited distribution around the Mediterranean basin, although the epidemiological factors behind this are not fully understood.

29. Defra, DH and HPA have carried out a qualitative risk assessment considering the risk of incursion of tick-borne diseases if the current control measures were abandoned in 2012. It focused in particular on Mediterranean Spotted fever carried by the tick *Rh. sanguineus*. In summary this concluded:

- The risk that *Rh. sanguineus* potentially infected with MSF are being introduced to the UK by travelling pets under the current regime is considered to be low.
- The risk of *Rh sanguineus* being introduced on untreated pets travelling under harmonised EU pet travel rules would increase to medium. A proportion of the *Rh sanguineus* ticks (generally < 15%) could be infected with MSF.
- On establishment of the tick vector in the UK environment the risk of this occurring in current climate conditions is negligible. However the risk that the *Rh. sanguineus* tick, could become established within households, leading to possible dissemination between households and kennels is medium.
- Therefore, the combined risk level for release and exposure (based on introduction and establishment) would be negligible for long-term establishment of the tick in the UK under current conditions, but for short term establishment in UK households and kennels it would be non-negligible and possibly low.

Again this reflects the risk of the disease arriving in the UK, and not the likelihood of human infection.

Consideration of Options

30. In considering the possible options for pet movement controls beyond 31st December 2011, our primary consideration is the continued protection of public health. However we are also bound in part by legislative constraints. The extension of our current derogations until 2012 was an extension of what was considered a "transitional regime". This is to be replaced with harmonised measures under EU regulation 998/2003, which does not provide explicitly for the current rabies controls to be revisited.

However the Regulation does provide for Member States to apply to the Commission for additional controls for "other diseases", which allows us to present a case to maintain our tapeworm controls.

Option 0 – maintain current UK Pet Travel Scheme. This would breach our legal requirements to harmonise with the EU scheme under 998/2003 and lead to risk of infraction and a breakdown of the current scheme on the ground as private sector operators are unlikely to apply current requirements without a sound legal basis to do so. We do not have evidence to justify keeping our current rabies controls as the EU harmonised system for rabies has been shown to be effective, and continued tick treatment is no longer considered to be proportionate to the risks posed. This option is the do nothing baseline for the cost benefit analysis against which other options are compared although for this purpose the likely breakdown of the scheme and infraction proceedings have been ignored.

Option 1 - harmonise fully with the EU scheme (bringing the rabies controls into line with the EU and dropping compulsory controls on tapeworm and ticks). This is the 'legal default' when the UK's current derogations run out. However to abandon controls on tapeworm would put public health at risk so is not the preferred option. However, this may be the final outcome depending on whether UK is successful in securing agreement to ongoing tapeworm controls.

Option 2 –harmonise with the EU controls on rabies, drop tick controls but seek to maintain tapeworm controls (albeit with a 24 to 120 hour window for treatment instead of 24 to 48 hours) This is the preferred option, despite going beyond EU minimum requirements, as it continues to protect public health from the risk of tapeworm, whilst ensuring we meet legal requirements with respect to rabies controls.

Option 1 - Detail

31. This section considers option 1 in detail. The policy changes, benefits, risks and costs of the separate elements of harmonisation (rabies according to origin of pet import, ticks and tapeworm) are summarised in table 1 below to give an overall picture of the changes relative to option 0.

Table 1: Pet Travel Scheme Full Harmonisation : description of costs and benefits

Policy Area	Policy Change	Benefits	Change in Risk	Potential Disease Costs	Comments/distributional effects
RABIES: EU	Blood test no longer required; Wait reduced from 6 months to 21 days	To pet owners: saving cost of blood test. Reduced wait implies greater convenience. To AHVLA: admin savings	Based on VLA Quantitative Risk Assessment (QRA)	To Defra and public: cost based on scenarios of possible disease incursions with associated probabilities	
RABIES: Listed TCs	Blood test no longer required; wait reduced from 6 months to 21 days	As Rabies EU.	VLA QRA	As Rabies EU above.	
RABIES: Unlisted TCs	Microchip, vaccination and blood test required; quarantine not required but 3 month wait before import	To pet owners: net saving on cost of quarantine which is no longer necessary offset by additional costs of microchip and blood test To AHVLA: Saving on inspection of quarantine premises.	VLA QRA	As Rabies EU above	Possible serious consequence for future viability of the private-run quarantine sector although resources released by this sector would be expected to redeploy elsewhere. (Note that many affected businesses are likely to be small or micro.)
TICKS: EU/Listed TCs (1)	Removal of controls (ie treatment 24 to 48 hrs before entry to UK)	To pet owners: saving of treatment cost and inconvenience of treatment window	Increase in risk that exotic ticks introduced to UK but unlikely to become established (Defra Qualitative Risk Assessment)	Ticks may become established in the short term in kennels and households if tick treatment is not habitually applied, so there would be an increase in disease risk to people in such households	There may be a small cost involved for pet owners where ticks become established in the household and furniture requiring treatment. However the number of households and the costs of such treatment are not known.
TAPEWORM: EU/Listed TCs (1)	Removal of controls (ie treatment 24 to 48 hrs before entry to UK)	To pet owners: saving of treatment cost and inconvenience of treatment window	Increase in risk of tapeworm establishing in UK (Torgerson & Craig article suggests that for 10,000 dogs entering from Germany without controls 98% probability of at least one returning infected.)	To NHS and public: Over time it is assumed that tapeworm will become established in UK leading to human disease incidence.	

(1)There is no requirement for unlisted third country pets entering quarantine to undertake treatments for tick and tapeworm.

The following sections consider the benefits, disease risks and costs of harmonisation in more detail.

Benefits

32. The benefits to pet owners from harmonisation are set out in table 2. Pet numbers are based on administrative data for 2010 from the AHVLA database. 2010 is thought to be a reasonably typical year. Pets are recorded according to where their passports have been issued although those entering quarantine from unlisted third countries are recorded separately. The table below shows the benefits to **all pet owners** but only those **who are resident in the UK are relevant to the cost benefit analysis** as shown in the pie chart below.

Table 2: Annual Benefits to Pet Owners from Harmonisation of Pet Travel Scheme

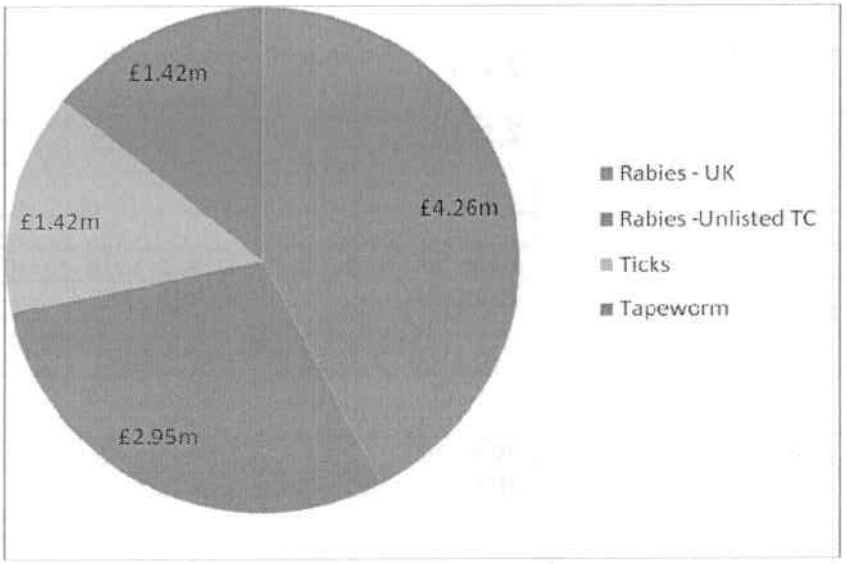
	Pet Numbers (according to origin of passport)	**Unit Benefit (£/pet)**	**Total Benefit (£m pa)**
Rabies controls	(1)	(2)	(1)x(2)
UK	56,769	75	4.26
EU/Equivalents and Listed Third Countries	37,252	75	2.79
Unlisted Third Countries - Dogs	709	2,475	1.75
Unlisted Third Countries – Cats and Ferrets	550	2,175	1.20
Tick Treatment			
UK	56,769	20 to 30	1.14 to 1.70
EU/Equivalents and Listed Third Counties	37,252	20 to 30	0.75 to 1.12
Tapeworm Treatment			
UK	56,769	20 to 30	1.14 to 1.70
EU/Equivalents and Listed Third Countries	37,252	20 to 30	0.75 to 1.12

Notes: unit benefits are the approximate prices (at 2011 levels in the UK) charged by vets for preparing pets for travel (e.g. for blood test and tick and tapeworm treatments) or by quarantine providers for quarantine services. The source for this information has been veterinary advice. Ranges are given for tick and tapeworm treatment prices to reflect the variability in prices charged. UK, EU and Listed Third Country pet numbers are based on origin of pet passports. UK pet passport holders are assumed to reside in the UK as are owners of third country pets entering 6 months quarantine. EU and listed third country passport holders are assumed to be non-resident.

33. The benefits from the changes to the rabies controls arise from cost savings to travelling pet owners. These are the costs of quarantine (net of additional costs for microchip, vaccination and blood test) for those entering from unlisted third countries and the cost of a blood test for those entering from everywhere else. These are estimated to amount to about £10m a year in total with about £7.2m accruing to UK residents (£4.26m to

UK pet passport holders plus £1.75m and £1.20m unlisted third country dogs and cats respectively). Those entering from unlisted third countries are assumed to be intending to reside in the UK because their pets currently spend 6 months in quarantine. The balance (£2.79m) mainly accrues to foreign holidaymakers who will be returning home at the end of their holiday. The reduction in waiting periods is also a benefit to pet owners but this has not been monetised. The benefits from not having to undertake treatments for tick and tapeworm before travelling accrue to pet owners in the form of lower costs and greater convenience. Taking the mid-points from the ranges above the reduction in costs would amount to about £4.7m of which about £2.8m (£1.4m for tick treatments and £1.4m for tapeworm treatments) accrues to UK residents. The breakdown of measured **benefits to UK residents** is shown in the pie chart below.

Chart : Annual Benefits to UK Residents from Harmonised Pet Travel Controls



34. As stated above these benefits are based on the numbers of pets travelling in 2010 (a typical year). AHVLA do not have data for enough years to enable reliable trends to be estimated but obviously if the number of pets travelling in the future were to change then the aggregate benefits to pet owners would also change. The change would be broadly pro rata. For instance if there were a 5% increase across all categories of pets travelling (eg as a result of future economic growth and rising incomes) there would be a 5% increase in UK benefits (about £500k a year). However this would apply only to those pet owners who would have been willing to pay the current costs of preparing their pet for travelling. Some pet owners who would previously have been unwilling to travel with their pets may in the future be induced to travel because it is simpler

and cheaper under the new arrangements. These pet owners would not enjoy the full benefits as measured above (because they were put off travelling under the former regime). On average we assume that such pet owners would enjoy about half the unit benefits measured above in table 2. In this case every additional 1,000 UK pet owners induced to travel with their pets would increase benefits by £63k[7].

Disease Risks

35. The risks associated with changing the border controls on pets entering the UK relate to rabies, certain tick borne diseases and alveolar echinococcosis (tapeworm). These are diseases that can affect humans as well as animals.

36. **Rabies**: As mentioned in the background section the Animal Health and Veterinary Laboratories Agency (formerly the Veterinary Laboratories Agency) undertook a quantitative risk assessment[8]. This measured the risk of a pet entering the UK with rabies under both the current pet travel arrangements and the new harmonised scheme. Although there will be an increase in the risk under the harmonised scheme the absolute level of risk will remain very low. Assuming 100% compliance with the rules one pet with rabies is expected to enter the UK on average every 211 years. Of course the pet's illness may be recognised and identified without it going any further but if it leads to further spreading of the disease there are a range of possibilities (see costs section following)[9].

37. The important question of non-compliance needs to be taken into account. There are two types of non-compliance. Known non-compliance occurs when a pet fails a check and steps are taken to rectify the situation e.g. the pet is not allowed entry to UK or it is taken into quarantine for a period until it can comply. In effect this has no impact on disease risks to the UK. AHVLA records that known non-compliance is about 4%. The other kind of non-compliance is that which is unknown and relates to pets being smuggled into the UK without being detected. By definition we do not know how many of these animals there are but it is thought to be very low. The VLA study did not estimate unknown compliance but it did estimate the risks under various assumptions about compliance with respect to vaccination, serological testing and checking on entry. Simulations were undertaken where the compliance level was 90% and 80% for each of these as shown in the tables below:

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[7] In economic terms the two examples of sensitivity analysis given in this para correspond to a shift in the demand curve for pet travel preparation services (e.g. as a result of an increase in income) and a movement along the curve (as a result of pet travel preparation services becoming cheaper).

[8] A quantitative risk assessment on the change in likelihood of rabies introduction into the UK as a consequence of adopting the existing harmonised Community rules for the non-commercial movement of pet animals (VLA, August 2010)

[9] The chances of a human fatality resulting from the importation of a rabid pet are however vanishingly small. Interpretation and contextualisation of rabies risks by Det Norske Veritas (Interpretation of Risk Assessment – May 2011) shows that, by building on the VLA study and making reasonable assumptions about the transmission of rabies from an infected pet to a human, the risk of an individual in the UK dying from such a rabies infection would be 70,000 times less likely than death from lightning strike or 11 million times less likely than the current average risk of a pedestrian being fatally struck by a road vehicle. In practical terms therefore the chances of a human fatality resulting from the importation of a rabid pet is virtually zero.

Table 3: Option 0: The current scheme of PETS and quarantine: number of years between incursions

Compliance level	Overall	EU MSs	Listed 3rds	Unlisted 3rds*
100%	13272 (9408, 16940)	149129 (62683, 291248)	43942 (21299, 75973)	23302 (20738, 25557)
90%	761 (632, 894)	1928 (1287, 2731)	1362 (1173, 1564)	23301 (20753, 25534)
80%	408 (337, 482)	1008 (671, 1420)	724 (623, 831)	23302 (20757, 25558)

* Entries from unlisted countries are unaffected by compliance in this scenario as it is assumed that these still all go through quarantine

90% confidence intervals in parenthesis

Table 4: Option 1: EU Pet Movement Policy: number of years between incursions

Compliance level	Overall	EU MSs	Listed 3rds	Unlisted 3rds
100%	211 (177, 247)	517 (359, 708)	366 (317, 419)	50440 (19792, 105590)
90%	170 (146, 195)	484 (336, 665)	342 (297, 391)	1200 (1071, 1315)
80%	144 (125, 163)	456 (314, 627)	321 (278, 367)	638 (570, 699)

90% confidence intervals in parenthesis

Source: AHVLA

38. As the regime is becoming less restrictive it is quite possible that the extent of non-compliance could decline as pet owners find compliance easier. For the cost benefit analysis 90% compliance from the VLA study has been assumed as a proxy for all non-compliance including smuggling. The above tables show the level of risk under the existing and the proposed regimes whereas the cost benefit analysis is exploring the change in the regimes and therefore it is the change in risk that is relevant. The change in risk in moving from an incursion every 761 years to one every 170 years is equivalent to an increase in risk of an incursion once every 219 years. Therefore for the cost benefit analysis it has been assumed that there would be an additional rabies incursion every 219 years[10]. The range, derived from the confidence intervals shown in parenthesis in tables 3 and 4, would be an additional outbreak every 190 to 249 years.

39. **Tapeworm:** as mentioned above in the background section a quantitative risk analysis by Torgerson and Craig[11] showed that if tapeworm treatment of dogs on importation into the UK is abandoned then it is almost inevitable that EM will be introduced. The paper also cites the example of Reuben Island (Northern Japan), an island that was previously disease free, where the first human AE cases were diagnosed within 12 years of the introduction in 1924/26 of 24 red foxes from Russia. Although surveillance data of EM is limited, where

[10] VLA estimate that risk would increase from one incursion every 761 to one every 170 years. Therefore, under the new harmonised regime there would be 4.476 incursions every 761 years (761/170).That is an **additional** 3.48 incursions every 761 years since under the former regime there was only one incursion during this period. 3.48 incursions every 761 years is one incursion every 219 years (761/3.48) so the cost analysis is based on one additional incursion every 219 years.

[11] Risk Assessment of importation of dogs infected with Ehinococcus Multilocularis into the UK, P R Torgerson and P S Craig, Veterinary Record, September 26, 2009

longitudinal data exist, there appears to be an increase in parasite prevalence over time and there are indications that the parasite is extending its geographic range[12] Defra has also undertaken a qualitative risk assessment (see annex for reference) which argues that there would be an increase in risk from negligible to low of EM being introduced into the UK by a legal pet movement as a consequence of dropping the current tapeworm controls. The European Food Safety Authority also advised that if national controls (for tapeworm) were abandoned, there would be a greater than negligible risk of introducing EM into free countries through the movement of pets. The current controls require treatment of pets with Praziquantel or Epsiprantel. These drugs have an efficacy near 100% against mature and immature forms of the EM tapeworm in a single administration and therefore treatment of pets in this way is an effective means of ensuring pets are free of tapeworm when entering the UK

40. To undertake a cost benefit analysis the evidence from these sources needs to be translated into the number of human cases of AE that might be expected once controls are lifted. If we were to abandon tapeworm controls the expectation is that we would occasionally import a dog infected with EM and that sooner or later we would end up with EM becoming established in the UK and being spread by small rodents and foxes. The problem is that once established it is very unlikely that we would be able to eliminate EM from the wildlife population. The results of recent studies suggest the role of the dog as a risk factor to the occurrence of human infection is more important than was formerly accepted[13]. Very rarely humans would become infected and at some stage humans would begin to present with AE and health and other costs would be incurred. It is difficult to predict the exact course of events and the possible number of cases of AE that might occur. The incidence of AE in France and Germany is respectively about 0.017 and 0.036 per 100,000 people whereas in Latvia the rate is 0.26 per 100,000. Applied to the UK population size this translates to about 10 to 20 cases a year at the French/German rate but 160 at the Latvian rate. The most recent data (2009) suggest 26 cases in France, 24 in Germany, 14 in Belgium and 10 in Lithuania. Many European countries however record zero incidence.

41. **Ticks:** As described in the background section above the risks of long-term establishment of the tick Rh sanguineus in the UK is negligible but for short term establishment in UK households and kennels it would be non-negligible and possibly low. It should also be noted that many pet owners routinely treat pets for a range of (endemic and exotic) ticks as part of animal welfare best practice, and vets will continue to advise them to do so. This further reduces any risk of ticks establishing in the UK environment long-term. We need to translate this

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[12] EFSA 2006 Assessment of the risk of rabies introduction into the UK, Ireland, Sweden, Malta, as a consequence of abandoning the serological test measuring protective antibodies to rabies. The EFSA journal, 446, 1-54

[13] e.g.. Romig et al., 2005. Kern, P. and others, (2004) Risk factors for alveolar echinococcosis in humans. Emerging Infectious Diseases 10: 2088-2093.
Morgan, E. (2008) Echinococcus multilocularis in veterinary practice in Europe. EJCAP 18: 255-258.

qualitative risk into the number of human cases of Mediterranean spotted fever in order to undertake the cost benefit analysis. It is not expected that the UK would suffer many cases of MSF because the tick that carries the disease is not expected to become properly established although it is possible that there may be an occasional case from time to time.

Disease Costs

42. **Rabies :** the VLA study described above established that a rabies incursion into the UK would be a very rare event. Defra's Rabies National Expert Group[14] has been examining the nature and extent of a possible rabies incursion in the UK. They have identified 4 scenarios for incursion and spread of the disease. These may be characterised as:

> Scenario 1: Localised – a small, probably urban, rabies outbreak affecting a limited number of domestic pets in a localised area;
>
> Scenario 2: Major – a potential widespread scenario with disease having spread to other domestic animals, either within the same locality or more widely across the country;
>
> Scenario 3: Wildlife – as per major outbreak scenario but with the unlikely circumstance that the disease spreads into foxes and other wildlife;
>
> Scenario 4: Minor – Most likely scenario. A single infected pet enters UK, the case is identified swiftly in a domestic pet dog or cat, history of movements is known and no other cases are identified although contacts will be identified and controlled.

More detail including how such outbreaks would be handled can be found in Defra and the Welsh Government's Rabies Disease Control Strategy (see annex for reference)

43. The following table shows the probability of occurrence of these scenarios based on the judgement of the Expert Group and an estimated cost for each scenario. Costs are based on the impact of the disease (including human disease costs) and the costs of controlling and eliminating it and have been estimated by Defra economists. These outbreak cost estimates are broad brush

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[14] The Rabies Experts Group is chaired by the UK Deputy Chief Veterinary Officer and includes: veterinary and epidemiological experts from Defra and the Devolved Administrations; experts from the Animal Health Veterinary Laboratories Agency (which includes the UK's National Reference Laboratory for rabies, and the World Animal Health (OIE) Reference Laboratory for the characterisation of rabies and rabies related viruses); and wildlife experts from the Food and Environment Research Agency (who lead on UK contingency plan for rabies in wildlife).

but changes to them will barely affect the expected annual cost as the risk of a rabies incursion is so small.

Table 5 : Rabies Outbreak Scenarios

	Scenario 1 Localised	Scenario 2 Major	Scenario 3 Wildlife	Scenario 4 Minor
Estimated likelihood of each scenario	9%		1%	90%
Costs associated with outbreak (Provisional)	£10m		£40m	£1m
Mean cost of disease outbreak (1)	£2.2m			
Expected annual cost of rabies incursion in UK (2)	About £10,000			

(1) (0.09x£10m)+(0.01x£40m)+(0.9x£1m)= £2.2m
(2) £2.2m/219years= £10,000

44. The annual expected cost of rabies (including the costs of eliminating rabies from the UK) is about £10,000 a year. This is based on an additional incursion every 219 years combined with the rabies scenarios described by the Expert Group and the estimated costs of those outbreaks. Using the 90% confidence interval at para above 38 above derived from tables 3 and 4 (ie a range of 190 to 249 years) combined with the expected cost from table 5 produces a range of cost from £8,800 to £11,600 a year.

45. . **Ticks and Tapeworm:** in 2008 the Health Protection Agency undertook an analysis of the health costs of Alveolar Echinococcosis and Mediterranean Spotted Fever. Its estimates were based on the formula:

Cost per case = Loss of Earnings + Cost of Hospitalisation + Cost of Long-Term Care + Cost of Fatalities

Where,

1. Median earnings per day is taken as £91.4 for men and women.
2. Cost of hospitalisation with complication taken as £990 per day (adult ICU of low severity from HHS reference costs). For AE the percentage hospitalised and the number of days ill/hospitalised was 60 and 35 respectively. For MSF the percentage hospitalised and number of days ill/hospitalised was 22 and 6.

3. For AE the cost of long-term care per case taken as £95,400. Long-term care was not assumed to be necessary for MSF. 11% of cases of AE were assumed to need long-term care.
4. The fatality rate was assumed to be 2% for MSF and 11% for AE. The cost of a fatality was taken as £1.65m (Department of Transport 2005) inflated to 2008.

The costs of discomfort, pain and anxiety associated with these two diseases were not included. We have used these HPA estimates in this analysis updating them using the RPI so that they broadly reflect 2011 costs. This gives an estimate for MSF of £38,000 per case and for AE of £231,000 per case[15].

Other Costs

46. There are certain other costs that may arise which have not been monetised. For instance the carriers (ferries and airlines that transport pets) undertake documentation checks under the current regime. They will continue to do this under the new harmonised rules although there may be some changes to the detail of what is expected of them. The impact on them however is expected to be broadly cost neutral relative to the current regime. There may be some changes in the way the regime is administered by the AHVLA but the impact is also expected to be broadly cost neutral – there may even be some small savings resulting from not needing to inspect so many quarantine premises and issue licenses. Finally, in the event of occasional infestations of ticks of kennels, domestic properties or other buildings there will be a small cost associated with eradication. The number of infestations is not expected to be large and the total cost is therefore expected to be small.

Bringing the analysis together for Option 1

47. This section draws together the analysis and presents overall costs and benefits and benefit cost ratios for rabies, MSF and AE.

48. **Rabies:** the annual benefits of reduced controls to travelling pet owners are £7.2m (£4.26m for UK passport holders plus £2.95m for pets that would formerly have entered quarantine – see pie chart and table 2 above). The mean cost of a rabies outbreak (taking account of different disease scenarios) would be £2.2m. But compared to the baseline an additional rabies outbreak would be expected to occur only about every 219 years (taking into account an assumed level of non-compliance with the regulations). The expected annual cost of a rabies outbreak would therefore be about £10,000 (£2.2m divided by 219 years). The annual benefit cost ratio would be £7.2m/£10k or 720:1. This is a very favourable benefit cost ratio implying the policy changes are beneficial to the UK. Discounting costs and benefits (at 3.5%) over 10 years gives a net present value benefit of £62m.

[15] The cost of AE at £231,000 is significantly higher than the treatment cost of £100,000 based on Swiss, Japanese and French data described at para 26. The methodology used in the latter costing is not known but it probably excludes the costs of long-term care and the costs of fatalities included in the HPA analysis.

49. **Ticks:** the best estimate of annual benefits to pet owners from not having to undertake tick treatment before arrival in the UK is about £1.4m. We do not know how many cases of MSF will arise in the future. However the disease is extremely rare in other countries at a similar latitude to the UK. Pets move freely across mainland Europe without tick treatment, but the disease itself remains restricted to the Mediterranean basin. Therefore we do not expect Rh sanguineus to become established in the UK and we have assumed there will not be any cases here even if we relax the controls. It might be noted however that the annual breakeven level (above which costs as measured by the HPA will exceed benefits) is about 35 cases. It should also be remembered that the costs of MSF used here do not take any account of the pain, discomfort and anxiety suffered by those who contract the disease. If we were able to monetise such costs the breakeven number of cases would of course be lower.

50. **Tapeworm:** the annual benefits to pet owners from not having to undertake tapeworm treatment before arrival in the UK is about £1.4m. The establishment of EM in the UK and its appearance as AE in people if controls are not maintained is likely to take only a few years but once EM becomes established in the UK it will be irreversible. After a period which appears disease free there could be a gradual build up of the number of cases and hence costs. The annual breakeven number of cases (after which measured costs exceed benefits) is about 6 a year but the recent incidence in France and Germany is well in excess of this (see para 40 above). For the purposes of the cost benefit analysis we have assumed the number of human cases will first occur in 2016 and then build up to 2021 peaking at 30 cases a year at the end of the ten year analysis period. The symptoms of the disease in humans develop slowly so sufferers may not become aware of the problem for some years. As with MSF above it is also the case here that the discomfort, pain and anxiety associated with EM is not monetised but these could be significant. The likelihood of this disease appearing in the UK and the increasing future cost burden it would create mean that discontinuing the tapeworm controls is not thought to be a desirable policy – see option 2 below which retains tapeworm controls.

51. **Option 1 – summary:** measured costs and benefits for the 3 elements of this option (rabies, ticks and tapeworm) show an overall net present benefit of £66m over 10 years. This comprises £62m benefits for the changes to the rabies controls, £13m benefit for ticks and a net cost of £9m for tapeworm.

52. The following table sets out the costs and benefits of this option.

Table 6: Benefits and Costs of Option 1 (£m)

	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	Total
Benefits	10.04	10.04	10.04	10.04	10.04	10.04	10.04	10.04	10.04	10.04	100.4
Costs	0.01	0.01	0.01	0.01	1.17	2.32	4.63	5.79	5.79	6.94	26.6

											7
Net Benefit	10.03	10.03	10.03	10.03	8.87	7.72	5.41	4.25	4.25	3.10	73.72
Present value of net benefit	10.03	9.69	9.36	9.05	7.73	6.50	4.40	3.34	3.23	2.27	65.62

Notes: annual benefits comprise £4.26m (rabies –UK)+ £2.95m(rabies – unlisted third countres)+£1.42m (tapeworm treatments)+ £1.42m (tick treatments) – see pie chart above
Annual costs comprise £0.01m rabies control costs and from 2016 AE health costs start to build up eg 2016: 5 casesx£231k and by 2021: 30 casesx£231k.

Option 2 – Detail

53. Option 2 is the same as option 1 except that the tapeworm control is retained - albeit with a longer treatment window (24 to 120 hours instead of 24 to 48). The costs and benefits with respect to rabies and ticks will be the same as option 1. With respect to tapeworm the control measures are expected to be effective in preventing the introduction of EM into the UK and we would not expect there to be any cases of AE in the human population (for instance we know the current tapeworm controls have kept the UK free of AE). Costs and benefits with respect to tapeworm will be virtually the same as in the baseline (option 0) except that it will be slightly more convenient for pet owners who would have a longer window in which to treat their pets. There is also a very small increase in the cost of tapeworm treatment (of around £30,000 a year) because pets entering from unlisted third countries would be required to have the treatment. This is not required currently for those pets which enter 6 months quarantine in the UK.

54. Tapeworm controls will be maintained through a delegated act as provided for in article 5 of Regulation 998/2003. This new legislation is expected to be agreed by the European Parliament and Council by the end of November 2011and will be in place by 1st January 2012 and apply directly in the UK. In the unlikely event that this legislation is not agreed then option 1 above would apply. In order for the UK to keep the requirement of tapeworm treatment upon entry the EU requires the demonstration of continued freedom from E. multilocularis. This would entail a programme of formal veterinary surveillance carried out on a yearly basis. Definitive hosts of the parasite (foxes in particular) are considered to be the best target in a survey for the early detection of the introduction of EM to a free territory. The requirement is to design the survey with a sample size that is sufficient to detect a true prevalence of not more than 1% at a confidence level of at least 95%. As the UK fox population is estimated to be between 254,000 and 500,000, this requires the sampling of at least 300 foxes annually. Testing of the samples would be carried out at the Food and Environment Research Agency (FERA) by the egg isolation and PCR method. Such surveillance is expected to cost around £60,000 a year.

55. The following table sets out the costs and benefits of this option.

Table 7: Benefits and Costs of Option 2 (£m)

	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	Total
Benefits	8.62	8.62	8.62	8.62	8.62	8.62	8.62	8.62	8.62	8.62	86.2
Costs	0.10	0.10	0.10	0.10	0.10	0.10	0.10	0.10	0.10	0.10	1.00
Net Benefit	8.52	8.52	8.52	8.52	8.52	8.52	8.52	8.52	8.52	8.52	85.2
Present value of net benefit	8.52	8.23	7.95	7.68	7.42	7.17	6.93	6.70	6.47	6.25	73.32

Notes: annual benefits comprise £4.26m (rabies – UK)+£2.95m (rabies – unlisted third countries)+£1.42m(tick treatment)
Annual costs comprise: £0.01m (rabies control costs)+£0.03m(additional tapeworm treatments)+£0.06m(EM surveillance costs)

For option 2 the present value of net benefits from rabies control and ticks are the same as option 1 (£62 and £13m respectively). The benefits of the tapeworm controls are the same as the baseline option 0 ie disease freedom (but no measured benefit) but the costs are slightly higher owing to the additional surveillance costs and additional costs of tapeworm controls on dogs that would formerly have been quarantined. Over 10 years the discounted net benefit therefore comes to £73m.

Preferred Option

56. A comparison of monetised costs and benefits shows option 2 is better than option 1 (a central net present value benefit of £73m compared to £66m) . Option 1 discontinues the tapeworm controls but is likely to result in a costly human disease burden in the UK which outweighs the benefits it confers. Option 2 retains the tapeworm controls and thereby protects the UK from AE. Both options drop the requirement for tick controls and as noted above the reductions in rabies controls are highly beneficial overall - and are also the same for both options. Hence **option 2 is preferred** for the protection it affords against AE.

57. Looking at the range of net benefits the 'low' for option 2 is nearly the same as the 'high' for option 1 (£70.9m compared to £70.4m). (The ranges themselves derive from the different prices for tick and tapeworm treatments (see table 2).) It could be argued therefore that options 1 and 2 nearly overlap. An important point to remember however is that if the EM tapeworm becomes established in the UK it will be irreversible because it will not be possible to eradicate it from the wildlife reservoir (foxes and rodents). Over time cases of AE will appear in people and this will also be ongoing. The analysis in this IA is for convenience truncated after 10 years but given an incidence of AE above the break-even level of 6 cases a year (quite a low number compared to recent incidence in France and Germany for instance) then annual costs will continue

to exceed annual benefits beyond 10 years reducing the overall net present benefit of option 1. This simply reinforces the government's preference for option 2.

Business Costs and Revenues

58. This IA relates to policy changes that are, on the whole, deregulatory. .

59. The measures do however have an indirect impact on businesses (those that provide pet quarantine services and some veterinary practices). The providers of quarantine services will be affected, perhaps severely, not by an increase in regulatory cost but by a reduction in revenues as the requirement for pets from unlisted third country to enter 6 months quarantine will no longer apply. The saving by unlisted third country pet owners of around £3m a year translates to a reduction in revenue for this sector. This is likely to lead to a decline in the size of the sector which currently comprises about 27 businesses. Many of these businesses also run boarding kennels which will not be directly affected by the changes and some may develop this side of their businesses further or adapt completely to this kind of facility in order to compensate for the changes. There will probably also continue to be those pet owners who, for one reason or another, voluntarily place their pets in quarantine In addition as the pet travel rules become more relaxed there is a reasonable expectation that more pets will travel and quarantine facilities will still be required to house any pets that are checked and fail to comply with the new rules. Many of the adversely affected quarantine businesses will be small or micro in size (less than 20 and 10 full time employees respectively).

60. The savings in the cost of blood tests and tick treatment also translates into reduced revenues for veterinary practices (which typically are also small or micro businesses), although vets may see an overall increase in business due to the greater number of pets expected to travel when the rules are relaxed. The decline in revenue from tick treatments will affect overseas vets but the decline in blood tests for UK pet passport holders will usually affect UK veterinary practices.

61. These effects (on the quarantine sector and UK vets) are not counted as costs to society in this cost benefit analysis on the usual assumption that the labour and capital resources affected will redeploy in the long run to more productive uses. In the short term there may be some transitional costs as the quarantine sector adjusts its capacity to the new circumstances (e.g. possible redundancy payments, writing down of capital prematurely and retraining costs for individuals seeking alternative employment) but it has not been possible to measure these costs as the way the sector will actually adapt and the numbers of people affected is not known. It is expected that these transitional costs would however be relatively small and short-lived in comparison to the benefits of deregulation identified above. Many quarantine providers are located in the SE of England including quite a number in a wide circle around London and this ought to provide reasonable opportunities for re-employment (at least in normal

times). The rest are quite widely spread throughout the country so it is not expected that there would be major impacts on local economies following any down-sizing of the sector.

Consultation and Proportionality of Analysis

62. An informal consultation approach was adopted on this policy whereby meetings were held with key stakeholder groups to discuss the changes and the potential impacts. The transport companies were broadly content with the changes and we are continuing to work with them regarding implementation on the ground. The quarantine sector were more obviously concerned about the changes and highlighted that there would be impacts on their businesses. It was also recognised that there was still uncertainty in aspects of the legislation, and it was difficult to predict the future numbers of pets that would enter quarantine from 2012, and more detailed transitional costs for quarantine sector have not been quantified.

63. A rabies outbreak in the UK would be a serious matter and hence considerable effort has been put in to estimating the risk of a rabies incursion under the proposed EU control regime including commissioning a quantitative risk assessment from the VLA. The other public health concerns (MSF and AE) are also important and HPA estimated the costs per case of these diseases and also looked at incidence in other countries. Defra also undertook qualitative analyses of the risks of the brown dog tick and EM becoming established in the UK. However, none of these analyses are able to tell us how many cases of human disease might occur and therefore it has been necessary to use expert judgement and reasonable assumptions in order to complete the cost benefit analysis and draw conclusions on a preferred option.

64. Department for Health and the Health Protection Agency have been engaged in developing our evidence base on cases of AE and MSF, and we have searched international source of evidence and published papers for further information. Data is limited and this was recognised by EFSA who reported that "As there are currently no harmonised rules or recommendations for reporting and monitoring of *Echinococcus* spp., *Trichinella* spp.,(*Cysticercus* spp. and *Sarcocystis* spp.) in the European Union (EU), the data obtained is often difficult to analyse and interpret."[16]

Post Implementation Review

65. The overall aim will be to ensure implementation of a successful scheme which leads to no disease entering the UK as a result of the changes, a high level of understanding and compliance among people travelling to the UK with

[16] Development of harmonised schemes for the monitoring and reporting of *Echinococcus* in animals and foodstuffs in the EU (2010) Franck Boué et al

pets, and effective means of dealing with pets that fail to meet the entry requirements.

66. The new SI stipulates a review 5 years after implementation and then every subsequent 5 years, which is based on the precedent for Directives provided by the BRE. A 1 year review will also explore the implementation of the policy, levels of compliance etc. Longer term review will check that the legislation is tackling the disease concern risks effectively.
Baseline data is available on the current situation, including data on numbers of pets entering under the current scheme and compliance rates, UK's rabies free status and disease information from the rest of Europe, social research on public attitudes to the current scheme and potential changes. Going forwards AHVLA will continue to collect data on numbers of animals entering the UK, country of origin, failure rate etc. This data will be reviewed to assess levels of compliance and consideration will be given as to the appropriate level of compliance checks required in future. The quarantine sector will also be closely monitored and policy with regards to quarantine reviewed if the sector looks to change significantly in future. The disease situation in continental Europe will also be considered

Annex - References

The following publications (many of which are cited above) relate to the relevant legislation and the risk analyses for this impact assessment:

Regulation (EC) Number 998/2003 on the animal health requirements applicable to the non-commercial movement of pet animals – http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:2003R0998:20100618:EN:PDF
Non Commercial Movement of Pet Animals (England) Regulations 2004 - http://www.legislation.gov.uk/uksi/2004/2363/contents/made
European Commission proposal for delegated Regulation on tapeworm – Commission Delegated Regulation of 14.7.2011 supplementing Regulation (EC) Number 998/2003 of the European Parliament and of the Council as regards preventive health measures for the control of Echinococcus multilocularis infection in dogs.
A quantitative risk assessment of the change in likelihood of rabies introduction into the UK as a consequence of adopting the existing harmonised community rules for the non-commercial movement of pet animals (Veterinary Laboratories Agency, August 2010)
The change in likelihood of *Echinococcus multilocularis* (Alveolar Echinococcosis) introduction into the UK as a consequence of adopting harmonised Community rules for the non-commercial movements of pet animals (Defra, November 2010)
Risk of incursion and establishment of certain exotic diseases and tick species to the UK via international pet travel (Defra, March 2011)
Scientific opinion of the scientific panel on animal health and welfare on a request from the Commission regarding the assessment of the risk of echinococcosis introduction into the

UK, Ireland, Sweden, Malta and Finland as a consequence of abandoning national rules. (EFSA, 2007) http://www.efsa.europa.eu/en/scdocs/doc/441.pdf
Rabies Disease Control Strategy (Defra, June 2011) http://www.defra.gov.uk/publications/files/pb13585-rabies-control-strategy-110630.pdf

Constitutional and Legislative Affairs Committee Draft Report

CLA73

Title: The Environmental Permitting (England and Wales) (Amendment) (No.2) Regulations 2011

Procedure: **Negative**

These draft Regulations will apply to both England and Wales.

These Regulations amend the Environmental Permitting (England and Wales) Regulations 2010 so as to include transposition of Directive 2009/126/EC of the European Parliament and of the Council on Stage II petrol vapour recovery during refuelling of motor vehicles at service stations.

Technical Scrutiny

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

1. These Regulations have not been made bilingually.

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

Merits Scrutiny

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

Legal Advisers
Constitutional and Legislative Affairs Committee

December 2011

The government has responded as follows:

The Environmental Permitting (England and Wales) (Amendment) (No.2) Regulations 2011

These composite Regulations amend some of the provisions in the Environmental Permitting (England and Wales) Regulations 2010 S.I. 2010.675 to transpose the Directive on Stage II petrol vapour recovery during refuelling of motor vehicles at service stations (Directive 2009/126/EC). The requirements of the Stage I petrol vapour Directive (Directive 1994/63/EC on the control of volatile organic compound (VOC) emissions resulting from the storage of petrol and its distribution from terminals to service stations) are already contained in the Environmental Permitting (England and Wales) Regulations 2010.

The Environmental Permitting regime streamlines the procedural parts of a raft of highly technical and complex legislation. It has enabled the simplification of the operation of the permitting system that industry and regulators work with without in any way compromising environmental or human health standards. This has brought much needed simplification to the complexity that industry and regulators in England and Wales previously faced .

Securing these changes via composite instruments made with the Secretary of State is consistent with the aim of simplification referred to above. The composite instrument also minimises the inconvenience and potential confusion for those affected by the Regulations, especially as the Environment Agency (a regulator) is a cross border body. **These composite Regulations apply to England and Wales and are subject to approval by the National Assembly for Wales and by Parliament. Accordingly, it is not considered reasonably practicable for this Instrument to be laid in draft, or made, bilingually.**

STATUTORY INSTRUMENTS

2011 No. 2933

ENVIRONMENTAL PROTECTION, ENGLAND AND WALES

The Environmental Permitting (England and Wales) (Amendment) (No. 2) Regulations 2011

Made - - - -	*6th December 2011*
Laid before Parliament	*9th December 2011*
Laid before the National Assembly for Wales	*9 December2011*
Coming into force - -	*1st January 2012*

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

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

(a) the Environment Agency;

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

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

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

Citation and commencement

1. These Regulations—

(a) may be cited as the Environmental Permitting (England and Wales) (Amendment) (No. 2) Regulations 2011;

(b) come into force on 1st January 2012.

Amendments to the Environmental Permitting (England and Wales) Regulations 2010

2.—(1) The Environmental Permitting (England and Wales) Regulations 2010(**b**) are amended as follows.

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

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

(2) In Part B of Section 1.2 of Part 2 of Schedule 1—

(a) for paragraphs (d) and (e) substitute—

"(d) Motor vehicle refuelling activities at an existing service station after the prescribed date, if the throughput of petrol at that service station in any 12 month period is in excess of 3000 m^3.

(e) Motor vehicle refuelling activities at a new service station, if the throughput of petrol at that service station in any 12 month period is, or is intended to be in excess of 500 m^3.";

(b) after paragraph (e) insert—

"(f) Motor vehicle refuelling activities at a new service station if the throughput of petrol at that service station in any 12 month period is, or is likely to be in excess of 100 m^3 and it is situated under permanent living quarters or working areas.

(g) Any service station which undergoes a major refurbishment must be treated as a new service station.".

(3) In Section 1.2 of Part 2 of Schedule 1, in *Interpretation of Part B*—

(a) for the definition of "new service station" substitute—

""new service station" means, in relation to service stations to which paragraph (e) of Part B applies, those which are put into operation on or after 1st January 2010, and in relation to service stations to which paragraph (f) of Part B applies, those which are put into operation on or after 1st January 2012.";

(b) for the definition of "prescribed date" substitute—

""prescribed date" means 31st December 2011 if the throughput is in excess of 3500 m^3 and 31st December 2018 if the throughput is in excess of 3000 m^3.";

(c) in the definition of "service station" insert at the end "but does not include any service station exclusively used in association with the construction and delivery of new motor vehicles".

(d) for paragraph 2 substitute—

"**2.** Any other expressions used in Part B which, in relation to paragraphs (b) and (c), are also used in Directive 94/63/EC on the control of volatile organic compound (VOC) emissions resulting from the storage of petrol and its distribution from terminals to service stations(**a**), or in relation to paragraphs (d) to (g), are also used in Directive 2009/126/EC on Stage II petrol vapour recovery during refuelling of motor vehicles at service stations(**b**) have the same meaning as in those Directives.".

(4) For Schedule 18 substitute—

(**a**) OJ No L 365, 31.12.1994, p 24, as amended by Regulation (EC) No 1882/2003 (OJ No L 284, 31.10.2003, p 1) and by Regulation (EC) No 1137/2008 (OJ No L 311, 21.11.2008) .

(**b**) OJ No L 285, 31.10.2009, p 36.

"SCHEDULE 18

Regulation 35(2)(l)

Petrol Vapour Recovery

PART 1

PVR I

Application

1. This Part applies in relation to every Part B activity falling within paragraphs (b) and (c) of Part B of Section 1.2 of Part 2 of Schedule 1.

Interpretation

2. In this Part, "PVR I" means European Parliament and Council Directive 94/63/EC on the control of volatile organic compound (VOC) emissions resulting from the storage of petrol and its distribution from terminals to service stations.

Exercise of relevant functions

3.—(1) The regulator must exercise its relevant functions so as to ensure compliance with the following provisions of PVR I—

(a) Article 3(1), first paragraph;

(b) Article 4(1), first and last paragraphs, and 4(3);

(c) Article 6(1), first paragraph.

(2) When interpreting PVR I for the purposes of this paragraph—

(a) in point 1 of Annex I, "special landscape areas which have been designated by national authority" includes the Broads, the New Forest and any National Park or Area of Outstanding Natural Beauty; and

(b) ignore points 2.3, 3.2, and 3.5 of Annex IV.

PART 2

PVR II

Application

1. This Part applies in relation to every Part B activity falling within paragraphs (d) to (g) of Part B of Section 1.2 of Part 2 of Schedule 1.

Interpretation

2. In this Part, "PVR II" means Directive 2009/126/EC of the European Parliament and of the Council on Stage II petrol vapour recovery during refuelling of motor vehicles at service stations.

Exercise of relevant functions

3.—(1) The regulator must exercise its relevant functions so as to ensure compliance with the following provisions of PVR II—

(a) Article 3;

(b) Article 4;

(c) Article 5.

(2) But when interpreting PVR II for the purposes of this paragraph—

(a) in Articles 3, 4 and 5, ignore the words "member states shall ensure that" where they occur;

(b) in Article 4, ignore the words "with effect from the date on which Stage II petrol vapour recovery systems become mandatory pursuant to Article 3"."

Taylor of Holbeach
Parliamentary Under Secretary of State
6th December 2011 Department for Environment, Food and Rural Affairs

John Griffiths
Minister of Environment and Sustainable Development
3rd December 2011 one of the Welsh Ministers

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Environmental Permitting (England and Wales) Regulations 2010 (S.I 2010/675) to implement Directive 2009/126/EC of the European Parliament and of the Council on Stage II petrol vapour recovery during refuelling of motor vehicles at service stations (OJ No L285, 31.10.2009, p. 36). Regulation 2 (2) amends Part 2 of Schedule 1 to alter the motor vehicle refuelling activities to which Environmental Permitting requirements are applied. Regulation 2(4) substitutes a new Schedule 18 which includes a new Part 2 requiring regulators to observe the requirements of Directive 2009/126/EC in relation to permits for motor vehicle refuelling activities.

A full impact assessment of the effect that this instrument will have on the costs of business is available on the Defra web site (www.defra.gov.uk) together with a transposition note, and is published with the Explanatory Memorandum alongside the instrument on www.legislation.gov.uk.

EXPLANATORY MEMORANDUM TO

The Environmental Permitting (England and Wales) (Amendment) (No.2) Regulations 2011

2011 No. 2933

This explanatory memorandum has been prepared by the Department for Environment and Sustainable Development and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Environmental Permitting (England and Wales) (Amendment) (No.2) Regulations 2011. I am satisfied that the benefits outweigh any costs.

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

3 December 2011

1. Description

1.1 This instrument amends the Environmental Permitting (England and Wales) Regulations 2010 so as to include transposition of Directive 2009/126/EC of the European Parliament and of the Council on Stage II petrol vapour recovery during refuelling of motor vehicles at service stations.

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

2.1 These Regulations are made on a composite basis to ensure consistency of application in Wales and England.

3. Legislative Background

3.1 Directive 2009/126/EC of the European Parliament and of the Council on Stage II petrol vapour recovery during refuelling of motor vehicles at service stations requires transposition by 1 January 2012.

3.2 Directive 94/63/EC of the European Parliament and Council on the control of volatile organic compound (VOC) emissions resulting from the storage of petrol and its distribution from terminals to service stations has been transposed by means of the Environmental Permitting (England and Wales) Regulations 2010.

3.3 The amending Regulations which are this subject of this Memorandum amend the 2010 Regulations so as to include transposition of the 2009 Directive.

4. Purpose and intended effect of the legislation

4.1 This instrument extends to England and Wales.

4.2 Emissions to the atmosphere of volatile organic compounds (VOCs) are associated with a number of environmental and health problems, due to their effects upon local air quality; formation of ozone and photochemical smog; and atmospheric warming and climate change.

4.3 VOCs are emitted to the atmosphere at various stages during the storage and distribution of petrol. The petrol vapour recovery Stage I Directive (94/63/EC) contains measures to reduce VOC emissions from the unloading of petrol at petrol stations, and its subsequent storage on the premises.

4.4 Stage II petrol vapour recovery involves recovering the petrol vapour displaced from the fuel tank of a motor vehicle during refuelling at a service station and transferring that petrol vapour to an underground storage tank at the service station or back to the petrol dispenser for resale. Directive 2009/126/EC establishes a minimum level of petrol vapour recovery across Member States and introduces requirements for more extensive deployment of Stage II controls than currently exist in the UK.(Under previous amendments to the Environmental Permitting Regulations, a domestic equivalent to Stage II was brought in for some of the petrol stations affected by Directive 2009/126/EC. The Stage II equipment was required to be fitted by 1 January 2010.) The recovered vapour can be converted back into saleable petrol.

4.5 The Stage II Directive was developed by the European Commission to fulfil commitments under the Thematic Strategy on Air Pollution; a proposal to amend European legislation on petrol and diesel quality; and provisions in a new Directive on air quality.

5. Consultation

5.1 Defra, and the Welsh Government consulted key stakeholders on an emerging Impact Assessment during the Directive negotiations in the first quarter of 2010 and subsequently on the attached IA. There were no objections to the proposed Directive or the proposed means of transposition. Defra and the Welsh Government also consulted relevant trade associations and some local authorities on draft of the guidance on the meaning of "major refurbishment".

6. Guidance

6.1 Guidance is already published on the regulation of petrol stations under the Environmental Permitting Regulations. This will be supplemented to include an explanation of the new requirements. In particular, the Stage II Directive specifies that existing petrol stations of specified sizes must be fitted with the relevant equipment where they undergo a "major refurbishment". Guidance has been produced to help regulators decide whether site changes in any case should be regarded as amounting to a major refurbishment, and to minimise impacts on smaller petrol stations, and especially those in rural areas.

Title: **EU Directive to limit Petrol Vapour Emissions from Fuelling of Service Stations** **Lead department or agency:** Defra - Atmosphere and Local Environment **Other departments or agencies:** Welsh Government - Radioactivity and Pollution Prevention	**Impact Assessment (IA)** **IA No:** **Date:** 17/06/2011 **Stage:** Development/Options **Source of intervention:** EU **Type of measure:** Secondary legislation **Contact for enquiries:**

Summary: Intervention and Options

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

UK requirement to transpose a Directive on Stage II petrol vapour recovery during refuelling of motor vehicles at service stations. The UK has previously introduced legislation to require Stage II controls for certain service stations to control emissions of volatile organic compounds (VOCs) to atmosphere and was successful in ensuring that the Directive extends the same standards to relatively few additional service stations. This IA was originally produced during the negotiations to inform the UK position, and an assessment of a range of likely outcomes for the key issues and has been revised to reflect the current position.

What are the policy objectives and the intended effects?

To reduce petrol vapour emissions when refuelling motor vehicles. These emissions contribute to the formation of ground level ozone, contain benzene (a known carcinogen), and have a global warming potential. The Directive must be transposed into national legislation by 1 January 2012 and our aim is to do this in an effective, timely and proportionate manner to achieve the objectives of the Directive whilst minimising the burdens on business.

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

0) Do nothing - this represents the status quo or business as usual situation and includes the Stage II legislation already introduced in the UK.

1) Amend the environmental permitting Regulations to extend domestic Stage II legislation to the extent necessary to comply with the requirements of the 2009 Directive. (preferred option)

The preferred option is option 1 because "do nothing" would represent a failure to comply with EU law and result in infraction proceedings and consequential fines by the European Court of Justice.

Will the policy be reviewed? It will be reviewed. **If applicable, set review date:** n/a **What is the basis for this review?** Not applicable. **If applicable, set sunset clause date:** .n/a	
Are there arrangements in place that will allow a systematic collection of monitoring information for future policy review?	Yes

SELECT SIGNATORY Sign-off For consultation stage Impact Assessments:

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

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

Summary: Analysis and Evidence

Policy Option 1

Description:

EU Directive (extension over 3,000 million litres petrol throughput a year)

Price Base Year 2008	PV Base Year 2005	Time Period Years 14	Net Benefit (Present Value (PV)) (£m)		
			Low: -£43.8m	**High:** -£7.6m	**Best Estimate: -£43.8m**

COSTS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	£38m		£1m	**£53.8m**
High	£56m		£1.3m	**£78.2m**
Best Estimate	£47m		£1.15m	**£66m**

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

Main affected groups - Service station owners/operators: vapour recovery equipment, materials, labour, power, maintenance, compliance checking. Different lifetimes assumed for various equipment. Manufacturers of petrol vapour recovery equipment and monitoring equipment. All net benefits and monetised benefits taken from Entec's report (Annex 3, summarised in evidence base).

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

BENEFITS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	£0m		£3m	**£22.8m**
High	£0m		£6.3m	**£70.6m**
Best Estimate	£0m		£3m	**£22.8m**

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

Avoided damage costs from reduced VOC emissions (interdepartmental group on costs and benefits); avoided greenhouse gas emissions (shadow price of carbon); value of recovered petrol vapours as re-sold fuel (see uncertainties on p9). Estimates of benefits are higher (£50-£75m) if considering CAFE estimates. Due to used model skewing upwards, low estimates are also best estimates, see Annex 3. Differences between the IGCB and CAFE are explained the evidence body under "Sensitivities", p9.

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

Certain health effects. There is high uncertainty around the valuation of health impacts, UK valuation figures are at the low end of the range (see supporting report for both). Benefits for equipment suppliers. By transposing the Directive, the UK avoids failure to comply with EU law resulting in infraction proceedings and maintains it's credibility as a Member State.

Key assumptions/sensitivities/risks — **Discount rate (%)** 3.5%

Estimates for Benefits use IGCB values being HMG best practice. Estimates of benefits are higher (£50-£75m) if considering CAFE estimates (Differences between the IGCB and CAFE explained in evidence body under Sensitivities, page 9). Value of recovered fuel is included in benefits above but discussed in costs section of supporting report (evidence base). Supporting report provides PV and total annualised cost/benefits. Benefits are highly sensitive to reduction in damage costs from VOC emissions and data used may be subject to review at UK level. Net benfit would be positive with EU estimates of damage costs avoided.It must also be noted that during the modelling process the timing changed from 2020 to 2018 but this is not considered to significantly alter the analysis.

Direct impact on business (Equivalent Annual) £m):			In scope of OIOO?	Measure qualifies as
Costs: £10m	**Benefits:** £2m	**Net:** -£8m	No	NA

Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?			United Kingdom		
From what date will the policy be implemented?			01/01/2012		
Which organisation(s) will enforce the policy?			Local authorities/SEPA in Scotland		
What is the annual change in enforcement cost (£m)?			-£0.12 million		
Does enforcement comply with Hampton principles?			Yes		
Does implementation go beyond minimum EU requirements?			No		
What is the CO_2 equivalent change in greenhouse gas emissions? (Million tonnes CO_2 equivalent)			**Traded:**	**Non-traded:** 22k- 35k	
Does the proposal have an impact on competition?			No		
What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?			**Costs:** 100	**Benefits:** 100	
Annual cost (%) per organisation size (excl. Transition) (Constant Price)	**Micro**	**< 20**	**Small**	**Medium**	**Large**
Are any of these organisations exempt?	Yes/No	No	Yes/No	No	No

Specific Impact Tests: Checklist

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

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

Does your policy option/proposal have an impact on...?	Impact	Page ref within IA
Statutory equality duties[1] Statutory Equality Duties Impact Test guidance	No	12
Economic impacts		
Competition Competition Assessment Impact Test guidance	No	12
Small firms Small Firms Impact Test guidance	No	12
Environmental impacts		
Greenhouse gas assessment Greenhouse Gas Assessment Impact Test guidance	Yes	12
Wider environmental issues Wider Environmental Issues Impact Test guidance	Yes	12
Social impacts		
Health and well-being Health and Well-being Impact Test guidance	Yes	12
Human rights Human Rights Impact Test guidance	No	12
Justice system Justice Impact Test guidance	No	12
Rural proofing Rural Proofing Impact Test guidance	No	12
Sustainable development Sustainable Development Impact Test guidance	No	13

[1] Race, disability and gender Impact assessments are statutory requirements for relevant policies. Equality statutory requirements will be expanded 2011, once the Equality Bill comes into force. Statutory equality duties part of the Equality Bill apply to GB only. The Toolkit provides advice on statutory equality duties for public authorities with a remit in Northern Ireland.

Evidence Base (for summary sheets) – Notes

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

References

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

No.	Legislation or publication
1	
2	
3	
4	

+ Add another row

Evidence Base

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

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

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

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

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

Microsoft Office
Excel Worksheet

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

	2011	1212	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022
Transition costs	0	0	0	0	0	0	0	47	0	0	0	0
Annual recurring cost	0	0	0	0	0	0	0	1.2	1.2	1.2	1.2	1.2
Total Annual benefits	0	0	0	0	0	0	0	48.2	1.2	1.2	1.2	1.2
Transition benfits	0	0	0	0	0	0	0	0	0	0	0	0
Annual recuriing benefits	0	0	0	0	0	0	0	3	3	3	3	3
Total Annual benefits	0	0	0	0	0	0	0	3	3	3	3	3

Evidence Base (for summary sheets)

SUMMARY

Impact Assessment for European Commission Directive on Stage II petrol vapour recovery

Background

Petrol stations emit vapour when the petrol arrives in tankers and is unloaded, when it is stored at the petrol station, and when it is dispensed. The first two stages are already regulated under so-called Petrol Vapour Recovery Stage I Directive. The Stage II Directive deals with refuelling, generally at larger existing petrol stations and most new ones. The main obligation is to prevent most of the vapours displaced from vehicle tanks when they are being filled with petrol being emitted into the atmosphere.

The attached report **(Annex 3)** was prepared by Entec for the Department for Environment, Food and Rural Affairs (Defra), on behalf of all four UK administrations, in 2009 as an Impact Assessment of the different options during the negotiations for a new Directive on Stage II petrol vapour recovery. Since it covered what emerged in the adopted Directive, it has been appended to serve as the core of this transposition IA.

Estimates of the impact of this measure have been prepared on a UK basis from the available data. However the impact on petrol stations in Wales of the additional measures required by the Stage II Directive is expected to be minimal and is identified below.

The proposal was first tabled in December 2008. The emerging impact assessment work was used to inform the UK position during the period of rapid negotiations in February and March 2009. The proposal secured first reading agreement at the beginning of May 2009. The options considered relate primarily to the two main variables under consideration: the size of new and existing petrol station to be required to fit Stage II equipment (as measured by petrol throughput in cubic metres) and the date from or by which new and existing petrol stations of these sizes must fit the equipment. These were compared with the 'no change' option of current UK legislation which requires the introduction of Stage II for new petrol stations with a throughput of 500m^3 or more from 2010 or, in Scotland, 2012; and the upgrading of existing petrol stations with a throughput of 3,500m^3 by 1 January 2010 or 2012.

The summary page gives the range of costs and benefits applicable to the option of introducing Stage II for new petrol stations with a throughput of 500m^3 by 2012 (a nil figure because compliance is already required under UK legislation) and for existing installations above 3,000m^3 by no later than 2018. The range of costs and benefits takes account of variables for the lifetime of above-ground petrol dispensers and related equipment, and whether petrol station numbers and petrol sales will be constant or declining. The negotiations were finalised on the same figures, except for bringing forward the 2020 date by two years to 2018, which is not expected to significantly alter the costs or benefits.
While the assessment shows a negative cost-benefit balance, the other options under consideration by the EU Council of Ministers would have been even less favourable. The emerging IA analysis was valuable for UK negotiators in arguing for the proposal to reflect existing UK legislation and, subsequently, conceding only limited extension of petrol station regulation. Given all other considerations, this was the best outcome for the UK.

Evidence used

The report includes assessment of the possible costs and benefits of implementing the proposals. The results and data used in their preparations are based on various assumptions

and are subject to a number of uncertainties. These have been set out in the relevant sections of the report. The data and methods used are based on nationally or internationally agreed approaches (where such agreed approaches are available) and some key assumptions have been reviewed by relevant UK Government (together with the Welsh Government) and industry stakeholders.

Problem definition

Emissions to the atmosphere of volatile organic compounds (VOCs) are associated with a number of environmental and health problems, due to their effects upon local air quality; formation of ozone and photochemical smog; and atmospheric warming and climate change. VOCs are emitted to the atmosphere at various stages during the storage and distribution of petrol. The UK has already taken action to reduce these emissions by implementing a Directive on the control of VOC emissions from the storage of petrol and its distribution from terminals to service stations, so-called Stage I petrol vapour recovery.

Secondly, the UK has introduced legislation to control emissions of VOCs during the refuelling of vehicles from the majority of new service stations and the largest existing service stations (Stage II petrol recovery) as a contribution to achieving compliance with the Emissions Ceilings Directive and the UNECE Gothenburg Protocol. Stage II petrol vapour recovery involves recovering the petrol vapour displaced from the fuel tank of a motor vehicle during refuelling at a service station and transferring that petrol vapour to an underground storage tank at the service station or back to the petrol dispenser for resale.

The European Commission has produced a Directive on Stage II petrol vapour recovery in order to fulfil commitments under the Thematic Strategy on Air Pollution; a proposal to amend European legislation on petrol and diesel quality; and provisions in a new Directive on air quality. This Directive establishes a minimum level of petrol vapour recovery across Member States and introduces requirements for more extensive deployment of Stage II controls than currently exist in the UK. This Impact Assessment details the additional impacts of introducing the more extensive Stage II controls in the UK.

The main reason for implementing the Directive is that, apart from some benefit to the industry in terms of resale of recovered petrol and the opportunity for them to publicise their "green credentials", there is a cost to society in terms of greenhouse gases and air quality in general. Since this is a cost to society, industry are unlikely to act unless there is Government intervention.

The following summarises the key findings of the report:

Businesses affected

The main businesses affected are service stations and owners. They will be required to install, operate, maintain and check the operation of the Stage II petrol vapour recovery equipment.

Businesses producing, supplying and testing Stage II petrol vapour recovery equipment are also affected by the proposals.

The Directive affects the following size of petrol stations:

- existing petrol stations with an annual petrol throughput above 3,000m^3 per year from the end of 2018 (approximately 6% of petrol stations and 8% petrol sales), compared to existing controls for stations with a throughput above 3,500m^3 under current domestic legislation;

- all new petrol stations with a throughput above 500m^3 per year from 2012 (as per current domestic legislation) and all such petrol stations with a throughput above 100m^3 if situated under permanent living quarters or working areas; and

- all petrol stations that undergo major refurbishment from 2012, with the same threshold as for new petrol stations (new requirement - there is no equivalent in current domestic legislation).

It is estimated that 1,200 – 1,800 petrol stations will be required to fit equipment to comply with the Stage II Directive by the end of 2018, in addition to those already required to do so under domestic legislation. It has not been possible to classify service stations according to size by turnover/employees due to the structure of the industry and therefore not possible to ascertain annual cost as a percentage per organisation size.

In Wales it is estimated that this will require an additional 10 to 25 petrol stations to install equipment to comply with the Stage II Directive.

Transposition Options

Policy Options and effects on emissions

0) Do nothing – this represents the status quo or business as usual situation and includes the Stage II legislation already introduced in the UK.

1) Amend the Environmental permitting Regulations to extend domestic Stage II legislation to the extent necessary to comply with the following requirements of the 2009 Directive:

Consideration of options

In considering transposition of the new Directive we have taken full account of the principles set out in the *Transposition guide: how to implement European directives effectively* (http://www.berr.gov.uk/whatwedo/bre/policy/scrutinising-new-regulations/preparing-impact-assessments/toolkit/page44257.html).

The Guide states that it is a requirement of Community law that EU legislation should be implemented in an effective, timely and proportionate manner. Where directives are concerned, the UK Government's policy, shared with the Welsh Government, is to transpose so as to achieve the objectives of the European measure on time and in accordance with other UK policy goals, including minimising the burdens on business. In this Impact Assessment, unless separately indicated, Government refers to the Welsh Government and the UK Government.

Option 0

Option 0 (Do nothing) would represent a failure to comply with EU law and result in infraction proceedings and the consequential imposition of significant fines by the European Court of Justice (ECJ). However, the costs and benefits in this Impact Assessment (IA) are appraised relative to a "do-nothing" option in order to act as a reference point for the comparison of costs and benefits.

Option 1

This is our preferred option to secure basic compliance with the Directive (and no more) while not altering current domestic Stage II requirements. There are, however, some choices involved in these options:

a) we propose to transpose the Directive by means of the Environmental Permitting Regulations in England and Wales. We can find no merit in seeking an alternative legislative vehicle, given that the Stage I Directive and domestic Stage II requirements are already successfully delivered through these Regulations using a simplified permitting approach and risk-based regulation by local authorities. As with Schedule 18 of the Environmental Permitting Regulations, which transposes the Petrol Vapour Recovery Stage II Directive, transposition of the technical requirements of the Stage II Directive will be by reference to the relevant Articles in the Directive (i.e. effectively copy-out);

b) we propose that local authorities should continue as regulators, rather than the Environment Agency which regulates the larger, more complex installations under the Environmental Permitting Regulations; and

c) we propose to provide guidance to local authority regulators on the meaning of the term "major refurbishment", which is key to determining how many existing, smaller petrol stations will be required under the terms of the Regulations to be upgraded to fit Stage II equipment. Any existing petrol station with a throughput of >500m3 (or 100m3 if located under permanent living quarters or working areas) must fit Stage II if they undergo a major refurbishment. The guidance will be issued under regulation 64 of the Environmental Permitting Regulations and, as such, local authorities will be required to have regard to it. If a local authority in Wales were to impose condition in an environmental permit, or issue any form of enforcement notice, requiring upgrading and the petrol station operator considered that a major refurbishment was not being undertaken, the operator would be able to appeal to the Welsh Ministers. In practice, in our experience, local authorities in whose area small petrol stations continue to operate (especially in rural areas) are very well aware of the value to local communities of these stations and will be disinclined to conclude that any refurbishment is "major" without strong justification, because of the potential for such a decision to force closure of the station.

The latest draft of the guidance on "major refurbishment" is at Annex 2a. It is being drawn up with key industry stakeholders, and which has been agreed with the RMI Petroleum Retailers Association (who represent most of the smaller independent petrol stations). The Association has confirmed that the draft minimises the risk of these small stations having to upgrade to Stage II requirements within the scope allowed by the Directive.

NB the European Standards Body, CEN, has received a mandate from the European Commission to produce the harmonised methods and standards referred to in Article 8 of the Directive, and are expected to complete this work by the end of 2011. It is anticipated that the resulting standard will be closely modelled on current German standards which UK stakeholders have advised are acceptable.

Costs of implementing the Directive

Estimates have been made of the additional costs of implementing Stage II Legislation in the UK, both for 'typical' service stations of different sizes and for the UK as a whole.

The main costs that would be incurred relate to: materials, equipment and labour associated with making the service station "Stage II ready" (e.g. underground works); costs of vapour recovery equipment; costs associated with loss of fuel sales during installation; additional maintenance and power costs during operation of Stage II equipment; costs of regular checking for correct operation (compliance); and additional fees and charges under the relevant regulatory regime.

Costs for individual service stations

The typical capital costs of installing Stage II controls are estimated to be around £30,000 for a new service station (or an existing service station installing controls as part of a major

refurbishment) with annual throughput of 3,000 to 3,500m^3. Annualised costs for such service stations are estimated at around £4,000 per year. If existing service stations were to be required to install Stage II controls outside of scheduled refurbishment works (which is not proposed) the costs could be around £130,000 capital, and annualised costs of around £7,500.

Costs for the UK as a whole

It is estimated that 1,200 to 1,800 service stations will be affected by the implementation of the Directive. There will be a total cost for the UK of £50 to £80m, further detail of the calculations can be found in Annex 3, chapter 5.

Benefits of implementing the Directive

There would be health and environmental benefits associated with reductions in VOC emissions, including both:

- Reductions in impacts caused by VOCs, particularly those related to ozone exposure (these have been valued according to two different 'damage cost functions' applied in UK assessments and in European Commission CAFE assessments); and

- Reductions in climate change effects caused by the global warming potential of the VOCs released and also their subsequent degradation to CO2 in the atmosphere. These will be offset slightly by the increased use of electricity use associated with the power demands of the Stage II equipment. These have been valued according to Government guidance on the 'shadow price of carbon'.

In terms of the former, the best estimate of the value of the annualised damage costs avoided is estimated at £0.06 to £0.10 million per year using the UK damage cost functions. The present value estimates of these benefits are £0.7 to £1.07 million. The equivalent values using the EU CAFE damage cost functions are annualised costs avoided of £4.5 to £6.8 million with present value of £50 to £75 million. It is evident that the value of the damage costs avoided is subject to significant uncertainty and is dependent upon which data sources are used. The values using the UK damage cost functions are significantly lower. The annual value of the greenhouse gas emissions avoided is estimated to be £0.7 to £1.0 million (present value of £8 to £13 million). The 1,200 to 1,800 petrol stations subject to the new controls should benefit from the resale of recovered petrol (see table below). The various environmental and health benefits that are not included in the above estimates but are described further in section 6 of the Entec IA report.

Data taken from summary data sheet for all scenarios (Entec Report, Annex B);

Scenario	Low	High
Reduction in costs from value of recovered fuel (£m/yr)	1.74	1.74
Annual benefit from damage costs avoided (£m)	0.10	3.42
Annual benefit from reduced greenhouse gas emissions (£m/yr)	0.98	0.98
Total benefit	2.99	6.31

Sensitivities and uncertainties

The damage cost estimates are higher (£50-£75m) if considering CAFE estimates, in this IA, IGCB estimates are used as being HMG best practice. The price of fuel will likely go up or down which will subsequently affect the benefits estimates. The cost of equipment is likely to fall

as a result of technical advances and availability. Differences between the ICGB and CAFE estimates are due to a number of differences in the scientific modelling underpinning the "impact pathway" of the pollutants, as well as the valuation of health impacts.

The independent petrol station sector, as represented by the RMI Petrol Retailers Association (RMIP), say they do not currently benefit from the recovered petrol to any great extent. The sector is in discussion with HMRC and the National Measurement Office to address this. The typically smaller-scale independent petrol stations are not a growth area, and the guidance on 'major refurbishment' is likely to have the effect of triggering the installation of PVRII equipment on few, if any, sites. Low, medium and high estimates of the number of independent petrol stations affected are: 50, 200 and 400. Since these are generally smaller petrol stations, the potential saving is below the average. The following table assumes an average annual value of £805 per station (75% of the average).

estimated number of independent petrol stations affected	Reduction in costs from value of recovered fuel not secured (£m/yr)
High	322
Medium	161
Low	40

Assuming the medium number of independent petrol stations affected, the low figure for reduced costs from petrol recovery, which is contained in the summary sheet taken from the Entec report and set out in the table above, should be £1.74 instead of £1.91.

Comparison of quantified costs and benefits

Table 8.1 of the IA report provides a summary of the additional quantified costs and benefits in the report for Stage II implementation. Emission reductions and associated benefits comparisons are based on emissions in 2020 and relate to the difference between effects of the new legislation and the current legislation. A threshold of 3,000m^3 is assumed for applicability to all existing service stations and 500m^3 for new service stations and major refurbishment. The ranges given reflect uncertainties in factors including the expected lifetime of Stage II equipment and the expected decline (or not) in petrol station numbers and petrol sales.

Influence of applicable thresholds and implementation dates

The Directive offers no flexibility as to thresholds and implementation.

Annexes

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

Annex 1: Post Implementation Review (PIR) Plan

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

Basis of the review: [The basis of the review could be statutory (forming part of the legislation), i.e. a sunset clause or a duty to review , or there could be a political commitment to review (PIR)];
Duty to review. In addition to the regular oversight already undertaken on the environmental permitting regime under which petrol stations are currently regulated, a policy review will be undertaken in February 2014, which will inform the European Commission's own review scheduled by 31 December 2014.
Review objective: [Is it intended as a proportionate check that regulation is operating as expected to tackle the problem of concern?; or as a wider exploration of the policy approach taken?; or as a link from policy objective to outcome?]
The objective of the review would be to consider any technical or procedural issues arising from the implementation of the requirements, including interpretation of what is meant by a "major refurbishment".
Review approach and rationale: [e.g. describe here the review approach (in-depth evaluation, scope review of monitoring data, scan of stakeholder views, etc.) and the rationale that made choosing such an approach]
Feedback/monitoring data from regulators responsible for regulating/permitting petrol service stations and regular engagement with the main industry representative organisations including twice-yearly participation by the Petroleum Retailers Association at Defra's Industry Forum for pollution control.
Baseline: [The current (baseline) position against which the change introduced by the legislation can be measured]
Current UK legislation applies to service stations with an annual throughput over 3,500m3 of petrol (3,000m3 in the Directive). The Directive additionally applies to substantially-refurbished petrol stations with a throughput above 500 m3.
Success criteria: [Criteria showing achievement of the policy objectives as set out in the final impact assessment; criteria for modifying or replacing the policy if it does not achieve its objectives]
Full compliance by those petrol stations affected by the Directive deadlines. Minimum additional burden for service stations newly required to fit Stage II on top of their existing compliance with Stage I. Guidance provides a clear basis for consistent and proportionate regulation with at least 90% of petrol stations being rated "low risk".
Monitoring information arrangements: [Provide further details of the planned/existing arrangements in place that will allow a systematic collection systematic collection of monitoring information for future policy review]
The Government has established reporting and communication practices with regulators and with relevant trade associations.
Reasons for not planning a review: [If there is no plan to do a PIR please provide reasons here]
n/a

Statutory equality duties

The race equality impact of the proposals has been considered and it is not expected that the proposals will have any impact on race, disability or gender. (section 7.3.1 of the supporting report, page 31)

Economic impacts

From a consideration of the likely impacts of the Directive relative to the requirements already in place in the UK, it is not expected that the proposals will result in any significant competition issues. The impact assessment prepared for the UK domestic Stage II legislation reached a similar conclusion although it was noted that a minor impact on competition would be that new operators would have to install Stage II controls and incur associated costs whereas existing operators below the petrol threshold would not, thus placing them at a slight disadvantage.

Small Firms Impact

Stakeholders have raised concerns about impacts on small service stations and the possibility of some closures if required to install PVRII. Costs for a typical service station in that the annualised costs of installing Stage II controls for a small service station where not done as part of a scheduled major refurbishment are greater than the estimated annual profits from petrol sales. However, the continuing rationalisation of service stations is significantly reducing numbers, with smaller stations often particularly vulnerable. Inasmuch as PVRII slightly lowers the current threshold, transposition could increase pressures; on the other hand, smaller existing petrol stations ((>500m^3, or >100m^3 if located under permanent living quarters or working areas) are exempt from PVRII requirements unless they are subject to major refurbishment. Also any new petrol station with a petrol throughput greater than 500m^3 is covered. (section 7.2 of the supporting report, page 30). The RMIP (whose members include most of the smaller independent petrol stations) have confirmed that the proposed guidance on the meaning of 'major refurbishment' minimises the risk of small petrol stations having to upgrade to Stage II requirements within the scope allowed by the Directive.

Environmental Impacts and Wider Environmental Issues.

The impacts of the proposals on environmental outcomes are covered in this IA under "Benefits of implementing the Directive". In essence, the main impact associated with the proposal would be a reduction in emissions of VOCs to the atmosphere, with associated reductions in environmental and health damage which is the main reason for this policy as monetised in the evidence based. There are no wider impacts on health other than already indentified, more detail on the various environmental and health benefits can be found in section 6 of the Entec report.

Health and Wellbeing

The PVRII Directive will further reduce emission of VOCs with the benefits set out under "problem Definition". The benefits ought broadly to be spread amongst all groups in society, with particular advantage to young and elderly people with greater sensitivity of their lungs or reduced immune system.

Human Rights

The Directive is not expected to impact on any of the rights enshrined in any of the 14 articles of the European Convention on Human Rights, or the 3 articles of the first Protocol thereto. (section 7.3.3 of the supporting report, page 31)

Rural Proofing

It is recognised that most small service stations are located in rural areas and provide a valuable service to local communities. Closure of service stations in rural areas could result in a number of direct and indirect economic (e.g. increased fuel costs from having to drive further for fuel), social (e.g. reduced access to services) and environmental (e.g. increased emissions from travelling further for refuelling) impacts. These impacts could be of particular significance in remote parts of rural Wales. However, as mentioned in the section above "Small Firms Impact" few small petrol stations are likely to be affected and the proposed guidance on 'major refurbishment' which will be made available to local authorities in Wales should also minimise impacts.

Sustainable Development

The Directive represents a sustainable balance having regard to achieving VOC emission reductions from refuelling, and the need to maintain a viable network of service stations.

Legal Aid

The Directive mainly impacts on large operators of petrol stations, supermarket chains etc. It is very unlikely such operators would qualify for legal aid.

13 JUNE 2011 DRAFT GUIDANCE ON THE MEANING OF "MAJOR REFURBISHMENT"

The Directive does not contain a definition of what constitutes a "major refurbishment" which must trigger the installation of PVRII in existing petrol stations with a throughput above 500m^3, or above 100m^3 where petrol stations are located under permanent living quarters or working areas.

It is for regulators to decide, based on the facts of each individual case, whether particular works fall within this term. In doing so, they should have regard to the following:

a) in the Government's view, a major refurbishment will be one which, because of the scale of the works involved, will provide a cost-effective opportunity for installing PVRII equipment at the same time, such as when a forecourt is excavated in order to install replacement pipework and dispensers (typically necessitating temporary closure of the petrol station);

b) the Government can see no reason why rebuilding or refurbishment of a shop which is located on the petrol station site should constitute a major refurbishment if no works are being carried out on the petroleum pipework.or petrol dispensers;

c) subject to e), the following are unlikely to constitute a major refurbishment:

(i) repair of petroleum pipes, without replacing an entire pipe
(ii) replacement of one or more of the petrol dispensers without any other works
(iii) replacement of all the dispensers on a small petrol station with second-hand dispensers which do not have a PVRII capability
(iv) replacement of part of the petroleum pipework on a site without any other works;

d) the Government is not aware of any circumstances where changing all the petroleum pipework and replacing all the dispensers with new ones would not constitute a major refurbishment

e) consideration should be given to the cumulative effect of smaller-scale refurbishments. For example, where a petrol station has undertaken works which were judged not to constitute a major refurbishment and within the next three or so years carries out further significant works, the two (or more) sets of works should be considered together when deciding whether this is a major refurbishment. If the regulator decides that the combined works are, in effect, a staged major refurbishment, PVRII requirements should be installed as part of the second or subsequent set of works. But this should not be used to treat, for example, periodic small-scale repair of pipework or replacement of individual items of failing equipment as cumulatively amounting to major refurbishment;

f) in accordance with a), all decisions by regulators should be proportionate to the circumstances, having regard to what is said in recital 9 of the Directive. It is worth noting in relation to costs for small petrol stations that there can be a very substantial price differential between that of a second-hand dispenser and a new dispenser with PVR2 capability:

Recital 9. *Existing service stations may need to adapt existing infrastructure and it is preferable to install vapour recovery equipment when they undergo major refurbishment of the fuelling system (that is to say, significant alteration or renewal of the station infrastructure, particularly tanks and pipes), since this significantly reduces the cost of the necessary adaptations. However, larger existing stations are better able to adapt and*

should install petrol vapour recovery earlier, given that they make a greater contribution to emissions. New service stations can integrate petrol vapour recovery equipment during the design and construction of the service station and can therefore install such equipment immediately."

Annex 3 – Supporting Entec report

24984CA001i2
Defra Stage II PV...

Defra

Impact assessment for European Commission proposal on Stage II petrol vapour recovery

Supporting Report

April 2009










Entec

Creating the environment for business

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Document Revisions

No.	Details	Date
1	Draft report for client comment	25th March 2009
2	Report taking into account comments from Defra and other stakeholders	7th April 2009

Entec

Creating the environment for business

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Defra

Impact assessment for European Commission proposal on Stage II petrol vapour recovery

Supporting Report

April 2009

Entec UK Limited

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Contents

1. Introduction

1.1 Purpose of this report

This supporting report has been prepared by Entec for the Department for Environment, Food and Rural Affairs (Defra) under a framework contract on preparation of evidence to inform consideration of policy and legislative proposals in relation to air quality, pollution control and industrial emissions[1]. It relates to provision of information in the form of an Impact Assessment to support Defra in understanding the likely implications of proposals for a new Directive on Stage II petrol vapour recovery.

We understand that Defra will use the information in this report to understand the implications of the proposals for the UK, including possible changes to the technical provisions of the proposals arising through negotiations during the Codecision process. The report will also be used, if applicable, in support of an Impact Assessment following the adoption of the proposed Directive. The report does not constitute advice to any third party.

The report includes assessment of the possible costs and benefits of implementing the proposals. The results and data used in their preparation are based on various assumptions and are subject to a number of uncertainties. These are set out in the relevant parts of this report. The data and methods used are based on nationally or internationally agreed approaches (where such agreed approaches are available) and some key assumptions[2] have been reviewed by relevant UK Government and industry stakeholders. However, given the relatively short time available – due to the speed at which EU negotiations have taken place – we have relied upon data from a range of existing sources in some cases.

1.2 Problem definition

Emissions to the atmosphere of volatile organic compounds (VOCs) are associated with a number of environmental and health problems, due to their effects upon local air quality; formation of ozone and photochemical smog; and atmospheric warming and climate change.

VOCs are emitted to the atmosphere at various stages during the storage and distribution of petrol. The UK has already taken actions to reduce these emissions. Firstly, the UK has implemented a Directive on the control of

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1 Contract number RMP 5161.

2 Assumptions regarding the UK petrol distribution market and costs of implementation.

VOC emissions resulting from the storage of petrol and its distribution from terminals to service stations[3], so-called "Stage I" petrol vapour recovery.

Secondly, the UK has introduced legislation to control emissions of VOCs during the refuelling of vehicles from the majority of new service stations and the largest existing service stations ("Stage II" petrol vapour recovery). This legislation[4] was implemented to fulfil an obligation arising under the 1991 Geneva Protocol[5].

Stage II petrol vapour recovery involves recovering the petrol vapour displaced from the fuel tank of a motor vehicle during refuelling at a service station and transferring that petrol vapour to an underground storage tank at the service station or back to the petrol dispenser for resale.

In order to fulfil commitments under the Thematic Strategy on Air Pollution[6]; a proposal to amend European legislation on petrol and diesel quality[7]; and provisions in a new Directive on air quality[8], the European Commission has produced a proposal[9] for a Directive on Stage II petrol vapour recovery. This would establish a minimum level of petrol vapour recovery across the Member States (several other Member States also have existing legislation in this area).

The Commission's proposal would introduce requirements for more extensive deployment of Stage II controls than currently exist in the UK. If adopted, the provisions of the Directive would need to be transposed into national legislation. This report therefore includes details of an assessment of the additional impacts of introducing more extensive Stage II controls in the UK.

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3 Directive 94/63/EC, OJ L 365, 31.12.1994.

4 The Pollution Prevention and Control (England and Wales) (Amendment) (England) Regulations 2006, SI 2006 No. 2311; The Pollution Prevention and Control (Scotland) Amendment Regulations 2008, SSI 2008 No. 410; The Pollution Prevention and Control (England and Wales) (Amendment) (Wales) Regulations 2006, SI 2006 No. 2802 (W.241); The Pollution Prevention and Control (Amendment) Regulations (Northern Ireland) 2007, SRNI 2007 No. 245.

5 UN Economic Committee for Europe Geneva Protocol to the 1979 Convention on Long-Range Transboundary Air Pollution Concerning the Control of Emissions of Volatile Organic Compounds or their Transboundary Fluxes.

6 COM(2005) 446 final, 21.9.2005.

7 Directive 98/70/EC. The proposals would relax the vapour pressure requirements on petrol to allow use greater uptake of bioethanol, which could lead to greater emissions of VOCs.

8 Directive 2008/50/EC.

9 Proposal for a Directive of the European Parliament and of the Council on Stage II petrol vapour recovery during refuelling of passenger cars at service stations, COM(2008) 812 final, 4.12.2008.

At the time of writing (March 2009), negotiations are ongoing as part of the Co-decision process. A number of possible changes to the technical provisions of the proposed Directive are therefore included.

1.3 Policy objectives and intended effects

The current UK legislation on Stage II petrol vapour recovery applies to the following activities:

- Motor vehicle refuelling activities at an existing service station, if the petrol refuelling throughput at the existing service station in any period of 12 months is, or is likely to be 3500m^3 or more; and
- Motor vehicle refuelling activities at new service stations, if the petrol refuelling throughput at the service station in any period of 12 months is likely to be 500m^3 or more.

In England and Wales, these activities are regulated by local authorities under the Environmental Permitting Regulations 2007, with statutory guidance provided through Process Guidance Note PG1/14(06) (as well as General Guidance and additional guidance, such as through Air Quality Notes). Similar regimes exist in the other UK constituent countries. The requirements in the UK apply as of 1 January 2010 (2012 in Scotland).

The European Commission's proposal includes the following main elements:

- A requirement to apply Stage II petrol vapour recovery to:
  - New service stations (and those undergoing a major refurbishment) if actual or intended throughput is greater than 500m^3 per annum (from 1 July 2012, provisionally);
  - All new service stations regardless of throughput if situated under permanent living quarters or working areas (from 1 July 2012, provisionally); and
  - Existing service stations with a throughput in excess of 3,000m^3 (by 31 December 2020).
- A requirement to ensure a hydrocarbon capture efficiency[10] of at least 85% and, where the recovered petrol vapour is transferred to an underground storage tank at the service station, a vapour/petrol ratio[11] of 0.95 to 1.05;
- Testing of hydrocarbon capture efficiency at least once per year, unless an automatic monitoring system is installed (in which case, testing must be done at least every three years and the system is

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[10] This relates to the amount of petrol vapour captured by the Stage II petrol vapour recovery system compared to the amount of petrol vapour that would otherwise be emitted to the atmosphere in the absence of such a system.

[11] The ratio between the volume of petrol vapour passing through the Stage II petrol vapour recovery system and the volume of petrol dispensed.

required to indicate faults to the operator and automatically stop the flow of petrol within seven days if the fault is not rectified); and

- A requirement to lay down effective, proportionate and dissuasive penalties applicable to infringements (and to notify the provisions for these penalties and the main provisions of national law to the European Commission).

If adopted as currently drafted, legislation would need to be adopted to implement the provisions of the proposed Directive by 1 July 2012.

As part of the Co-decision negotiations, a number of possible amendments to the text of the proposed Directive have been produced. These include a draft report produced by the rapporteur of the European Parliament's Committee on the Environment, Public Health and Food Safety (26 January 2009) and modifications suggested by the Council Presidency (11 March 2009). These possible amendments have also been taken into account.

2. Policy Options

The following policy options have been considered for this impact assessment:

- Option 1: Do nothing – this represents the status quo or business as usual situation and includes the Stage II legislation already introduced in the UK;
- Option 2: Implement the proposed Directive based on current assumptions[12] regarding the likely provisions. This would require application of Stage II controls as follows:
  - New service stations: those with throughput above 100m^3 and all service stations below permanent living quarters or working areas from 2012.
  - Existing service stations undergoing a major refurbishment: those with throughput above 100m^3 from 2012.
  - All existing service stations: those with throughput above 3,000m^3 from 2020.
  - The potential to apply a derogation[13] for service stations with throughput 100-500m^3, as is the case in the existing Stage I Directive.

In addition, a number of possible sensitivities regarding the technical provisions of the proposed Directive have been explored, given that negotiations are currently (March 2009) ongoing. These include setting a different timescale for implementation of the requirements for all existing service stations (either 2015 or 2025 as an alternative to 2020 in Option 2) and applying the requirements for existing service stations to stations of different sizes (those with 1,000m^3 and 2,000m^3 annual petrol throughput compared to 3,000m^3 in Option 2). These sensitivities are described in Appendix B.

The table below provides a summary of the key provisions of the current UK legislation (Option 1) as compared to the proposed Directive considered under Option 2.

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[12] Personal communication, Defra, 19 March 2009. This is based on the Commission's proposal and subsequent amendments proposed by the Council Presidency.

[13] Where the service station is located in a geographical area or on a site where vapour emissions are unlikely to contribute significantly to environmental or health problems.

Table 2.1 Summary of key provisions of current UK Stage II controls and 'Option 2'

		Option 1 (current UK legislation)	Option 2 (proposed Directive)
Application to new service stations (Note 1)		>500m^3 from 2010	>100m^3 from 2012 (Notes 2,3)
Application to all existing service stations (Note 1)		>3500m^3 by 2010	>3,000m^3 by 2020
Application to existing service stations undergoing major refurbishment		Not applicable	>100m^3 from 2012 (Note 2)
Petrol vapour capture efficiency (Note 4)		85%	85%
Functionality tests: (Note 5)	V/L ratio with no automatic monitoring system	Every year	Every year
	V/L ratio with automatic monitoring system	Every 3 years	Every 3 years
	Checking vapour containment integrity	Every 3 years	Not specified

Notes:

1) New stations are those licensed after 2010 under UK legislation (2012 in Scotland) and assumed to be those licensed after July 2012 under Option 2. Existing stations are those licensed before these dates.

2) It is assumed that there is the potential to apply a derogation for service stations with throughput 100-500m^3, as is the case in the UK for the existing Stage I Directive, where the service station is located in a geographical area or on a site where vapour emissions are unlikely to contribute significantly to environmental or health problems. It is assumed that the UK would apply for such a derogation.

3) Under the proposed Directive, Stage II controls would also be required for all new service stations situated under permanent living quarters or working areas irrespective of their actual or intended throughput.

4) Requirements on petrol vapour capture efficiency and monitoring/testing are set out in statutory guidance under the UK's legislation and in the text of the proposed Directive under Option 2.

5) Under both scenarios it is assumed that there would be type approval requirements for the Stage II equipment with in-situ testing at service stations done by testing vapour/liquid (V/L) ratio – under both regimes this ratio should be in the range 0.95 to 1.05.

3. Sectors and groups affected

3.1 Geographic coverage

The proposed Directive would apply to the United Kingdom.

3.2 Businesses affected

The main businesses affected would be service station operators and owners. They would be required to install, operate, maintain and check the operation of the Stage II petrol vapour recovery equipment. The numbers and sizes of service stations affected will depend upon the level of throughput of those service stations.

Businesses producing, supplying and testing Stage II petrol vapour recovery equipment would also be affected by the proposals as there would be a need for additional Stage II equipment (their markets would therefore increase). The capacity of the equipment supply market may have an implication for whether the requirements of the legislation can be achieved, depending upon the timescales set for implementation.

It is expected that the requirements would be regulated under the same regimes that currently apply in the UK for Stage I and Stage II controls (see below). In particular, service stations covered by the proposed Directive and not currently required to apply Stage II controls according to UK legislation would be expected to be regulated so as to require Stage II controls. These service stations would all be expected to already apply Stage I controls (related to the unloading of petrol into storage at service stations).

Some of the main effects upon these businesses in terms of the practical changes that would need to be made include:

- Purchase of materials and equipment associated with preparing the service station site such as underground vapour recovery pipework, connections to underground storage tanks[14] and shear valves[15];
- Labour including excavation for ground excavation for pipework and installation of equipment;

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[14] Note that where the Stage II equipment involves transfer of the petrol vapour back to the dispenser for resale (rather than to the underground storage tank), these elements will not be required.

[15] A device fitted at the dispenser base that seals the vapour return pipe in the event of the dispenser being severely damaged (Code of Practice – Design, Installation, Commissioning, Operation and Maintenance of Stage II Vapour Recovery Systems, Forecourt Equipment Federation, Issue 1.2, March 2008).

- Purchase of new or replacement petrol dispensers (or retrofitting existing dispensers) suitable for vapour recovery, as well as vapour recovery equipment which may include some or all of: vapour recovery pumps, proportional valves, co-axial hoses and vapour recovery type dispensing nozzles;
- Part or full closure of the site in order to install the equipment, with the associated loss of revenue / sales (in the case of existing sites);
- Additional power (electricity) requirements to operate the Stage II equipment;
- Additional maintenance requirements for the Stage II equipment;
- Checks on operational compliance of the Stage II system;
- Additional requirements related to the regulatory system (see below).

3.3 Enforcement

The existing Stage I and Stage II petrol vapour recovery legislation in the UK is enforced by local authorities in England, Wales and Northern Ireland and by SEPA in Scotland.

All new service stations with an annual throughput above 500m^3 would be required to apply for a permit to cover Stage II controls. This is already the case under UK legislation so there would be expected to be no change for these installations.

All existing service stations above the defined annual throughput threshold (3,000m^3 according to the Commission's proposal) but below the current UK threshold (3,500m^3) would be regulated for Stage II controls; they are currently regulated only for Stage I controls. They would be expected to apply for a variation to their permit to cover this, with an associated cost, as well as paying an increased subsistence charge to reflect the level of regulatory effort associated with enforcement of the legislation[16].

In addition, all existing service stations with an annual throughput above 500m^3 would, when undergoing a major refurbishment, be required to apply for a variation to their permit to cover Stage II controls (if these are not already covered), as well as the existing requirement for Stage I controls. They would also pay an increased annual subsistence charge.

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[16] The operator of an installation must apply for a permit (or variation thereto) and must pay a fee for doing so, which is to cover the local authority's costs. They must also pay an annual subsistence charge to cover local authorities' continuing regulatory costs once a permit has been issued. The subsistence charge is greater for those service stations covered by both Stages I and II than for those covered by Stage I only.

4. Baseline definition and review of new provisions

4.1 Overview

This section provides a brief review of key factors related to UK service stations, petrol sales and current emissions controls, as well as reviewing some of the key provisions of the proposed Directive that have the potential to create impacts for the UK.

In particular, consideration is given to: numbers of service stations in the UK and sales of petrol; potential additional coverage of these by Stage II controls under the proposed Directive; provisions on petrol vapour capture efficiency and monitoring/testing; and to levels of VOC emissions from service stations.

4.2 Service station numbers and petrol sales

Data have been provided for this assessment by Experian Catalist on the numbers of petrol stations and estimated petrol sales associated with those petrol stations. These data are set out in detail in Appendix A to this report and suggest that there were around 9,250 service stations in the UK, with annual petrol sales of around 21.7 million m^3, in 2008[17]. There has been a recent decline in the number of service stations in the UK; the number in 1967 was around 40,000 and the number in 2000 around 13,000 (there has been a trend towards fewer but larger service stations). In 2007, around 77% of petrol outlets were located in England, 10% in Scotland, 6% in Wales and 5% in Northern Ireland[18].

A large service station – one selling around 5,000m^3 fuel per year – is currently understood to cost around £2 million to build (UKPIA, 2009a)[19]. Petrol margins are relatively small, assumed herein to be around 5-6p per litre gross margin and around 2p per litre profit.

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17 The latest Government figures suggest that *retail* petrol sales were 16.8 million tonnes or around 22.9 million m^3 in 2007 and 15.9 million tonnes or around 21.6 million m^3 in 2008 (plus 0.8 million m^3 commercial sales), (DECC Digest of UK Energy Statistics, demand for key petroleum products, 23 December 2008 and 26 March 2009). These figures are in sufficient agreement for the purposes of the current analysis, which is based on retail petrol sales.

18 Energy Institute (2008). Around 1% were located in the Channel Islands, Isle of Man and Isle of Wight. Figures have been rounded.

19 UKPIA (2009a): Industry information – Marketing & retailing, UK Petroleum Industry Association website, accessed 4 March 2009.

4.3 Applicability of current and possible future Stage II controls

The current UK Stage II legislation applies to existing service stations with an annual petrol throughput above 3,500m^3 from 2010[20]. Based on the Catalist data, this covers around 1,750 service stations or just under 20% of the total number. However, these service stations were responsible for around 10.5 million m^3 throughput, just under 50% of the UK total, and hence an equivalent proportion of potential VOC emissions from vehicle refuelling.

In addition, the current UK legislation applies to new service stations with an annual throughput above 500m^3 from 2010. Therefore, as older stations are replaced with new ones (at a different location), there will be a progressive uptake of additional Stage II controls. The number of service stations within the range 500-3500m^3 is around 5,850 or 63% of the total number. These service stations were responsible for a further 10.7 million m^3 throughput, again just under 50% of the UK total throughput and hence potential VOC emissions from vehicle refuelling.

Service stations in the range 0-500m^3 accounted for a further 0.4 million m^3 throughput, giving a total of 21.7 million m^3 in 2008[21].

The proposed Directive would require more existing service stations to introduce Stage II controls. In particular, all existing service stations with an annual throughput above 500m^3 would, *when undergoing a major refurbishment*, be required to introduce Stage II controls from 2012 and all existing service stations with throughput above 3,000m^3, regardless of whether refurbished, would be required to install such controls. Note that there would not be any additional implications for new service stations, as these are already required to introduce Stage II controls under current UK legislation[22].

The table below provides an indication of the potential numbers of service stations and petrol sales that could be affected by the proposed legislation. These are total numbers and no distinction is made between new, existing and refurbished stations.

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20 Specifically, if the annual throughput exceeds the relevant threshold in any of the three years preceding the relevant date.

21 This figure is slightly lower than the most recent data for 2008 (since provisional data for petrol and diesel sales were used), as described above.

22 The analysis included assumptions regarding (a) replacement of existing service stations with new ones e.g. in a different location as some are closed and new ones opened; (b) major refurbishments. Only the former has been assumed to be relevant for the current UK Stage II legislation (i.e. major refurbishments are not assumed to require Stage II under current UK legislation).

Table 4.1 Potential numbers of service stations and petrol sales affected in different size ranges

Petrol throughput range (m^3)	Number of service stations	Petrol throughput (million m^3)
3,000-3,500	532 (6%)	1.7 (8%)
2,000-3,500	2280 (25%)	6.1 (28%)
1,000-3,500	4789 (52%)	10.0 (46%)

Figures in parentheses indicate the percentage of the UK total. Based on data from Experian Catalist.

The above sets out the likely size of the markets that would be affected by the proposed legislation depending upon the threshold set for applicability above certain annual throughputs. There are also other provisions in the proposed Directive that would mean additional service stations would be required to implement Stage II controls, these are as follows:

- Under the current UK legislation, all new service stations with a throughput above $500m^3$ are required to be equipped with Stage II controls from 2010. The Commission's proposal would additionally require all new stations, irrespective of throughput, to install Stage II controls where they are situated under permanent living quarters or working areas[23]. The Council Presidency's suggested amendments would apply to new service stations above $100m^3$ throughput;
- The current UK legislation does not require the installation of Stage II controls at existing service stations with a throughput below $3500m^3$. The Commission's proposal would imply installation Stage II controls at any service station with a throughput above $500m^3$ when undergoing a major refurbishment. The Council Presidency's suggested amendments would apply this at a threshold of $100m^3$ and to all such service stations situated under permanent living quarters or working areas.

In relation to the Council Presidency suggestions that certain provisions be applied to service stations with throughput between 100 and $500m^3$, it is of note that the UK has a derogation from the requirements of the Directive on Stage I petrol vapour recovery for service stations which unload into stationary storage tanks $100m^3$ to $500m^3$ of petrol in any 12-month period[24]. Assuming that this derogation will be continued, it may be appropriate for the UK to also apply a similar derogation for Stage II controls, since the benefits of Stage II controls are typically foregone if no Stage I controls exist[25].

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23 The number of such service stations in the UK is not known, though it is believed to be relatively small.

24 As allowed for under Article 6(4) of Directive 94/63/EC.

25 Since petrol vapours returned to the underground storage tank by Stage II controls would not be recovered during unloading of petrol into storage tanks. However, if an "at-pump" system were to be used, with petrol vapours recovered above ground and returned direct to the dispenser for refuelling of vehicles, these VOC benefits would not be foregone.

4.4 Petrol vapour capture efficiency

In the UK, requirements for the petrol vapour capture efficiency of Stage II systems (amount of petrol vapour captured compared to the amount that would otherwise be emitted to the atmosphere in the absence of a Stage II system) are set out in statutory guidance, namely PG1/14(06). This guidance states that the Stage II system should be designed to ensure recovery of at least 85% of the displaced petrol vapours. In order to achieve this, the equipment used should be approved for use under the regulatory regime of at least one EU or EFTA country and certified to achieve at least this efficiency level ("type approval").

The Commission's proposed Directive specifies a capture efficiency of 85% of more, which is in line with the current position in the UK[26,27].

4.5 Monitoring and testing

Testing of petrol vapour capture efficiency post-commissioning is not generally practicable. Therefore, once a Stage II system has been "type approved", in-situ testing generally relates to ensuring that the ratio of the volume of petrol vapour recovered (this will include air as well as petrol vapour) to the volume of petrol dispensed is at least 0.95 and no more than 1.05 – this is described in PG1/14/(06)[28]. The lower end of this range effectively ensures that an appropriate volume of vapour is being drawn back through the Stage II system to achieve a high level of vapour recovery; the upper end ensures that this volume is not so high as to cause excessive over-pressurisation in the underground storage tank, which could lead to release of vapours through the service stations pressure-relief valve. This test is usually performed as a "dry" test, with petrol dispensing simulated rather than actually dispensing petrol.

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26 The Council Presidency's proposed amendments suggest further clarification that the efficiency should be certified by the manufacture in accordance with relevant national or European technical standards or type approval procedures. The European Parliament rapporteur's draft report suggested a minimum efficiency of 95%, citing application of such levels in legislation in other countries. In California, efficiency is required to be 95% (Vapor Recovery Certification Procedure CP - 201, Certification Procedure for Vapor Recovery Systems at Gasoline Dispensing Facilities, California Air Resources Board). However, it is understood that there are requirements for standardised filling necks in cars in the US (which there is not in the EU) which will tend to make achieving such high efficiencies difficult for the EU.

27 The Council Presidency's proposed amendments would also allow the non-essential elements of the Directive to be adapted to technical progress (by the Commission, with scrutiny of the European Parliament and Council), in particular to ensure consistency with any relevant CEN standards that may be drawn up in relation to the provisions on vapour capture efficiency and checks/monitoring.

28 This is an indirect way of checking that the Stage II equipment is functioning correctly and hence that the "type approved" vapour capture efficiency is being achieved.

As set out in PG1/14(06), such testing should be undertaken every year, unless a system is in place for automatic monitoring of vapour recovery effectiveness, in which case the frequency should be once every three years[29]. In addition, a check on vapour containment integrity should be tested at least once every three years (in all cases).

The Commission's proposal essentially places comparable requirements upon monitoring and testing to those in place in the UK. Therefore, it is not expected that any additional monitoring and testing requirements would be associated with the proposed Directive for service stations already required to implement Stage II controls in the UK. Additional service stations required to implement State II under the proposed Directive[30] would thus need to apply the same monitoring and testing as is already expected of UK service stations with Stage II.

4.6 VOC emissions from service stations

As Stage II controls are progressively taken up in the UK – for existing service stations with throughput above 3500m^3 per year and new service stations above 500m^3 per year – there will be a reduction in VOC emissions over time.

Based on the approach set out in Appendix A, VOC emissions in 2008 from refuelling at service stations were estimated to be around 24,000 tonnes. With the expected additional uptake of Stage II controls, these are predicted to decline to between 7,000 and 12,000 tonnes in 2020[31]. The table 4.2 provides details of estimated emissions of VOCs under current UK legislation from the various sources at service stations including a comparison with 'uncontrolled' emissions, those that would occur with no controls (either Stage I or Stage II) in place.

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29 Such a system should automatically shut off the system if any fault is not rectified within one week.

30 See Section 4 for details of the numbers of service stations expected to be affected.

31 The range represents uncertainty regarding whether there will be a decline in UK petrol sales. These figures are lower than data included in the UK national atmospheric emissions inventory and associated emissions projections (AEA Energy & Environment, National atmospheric emissions inventory – historical emissions and projections, data provided by AEA Energy & Environment, 17 March 2009), which project emissions from refuelling of around 13,500 tonnes in 2020 (and around 27,000t in 2007). The differences are expected to be due to use of different data sets on the numbers of service stations and the distribution of total petrol sales between service stations of different sizes (with associated implications for the predicted uptake of Stage II controls). Other differences may arise as a result of assumptions regarding the vapour pressure of petrol and average temperature, which both affect the emissions estimation model.

Table 4.2 Projected VOC emissions in 2020 under UK legislation compared to uncontrolled emissions (tonnes)

Emission source	2020 Uncontrolled	2020 UK legislation
Filling underground storage tanks	10,200 – 16,200	600 – 1,000
Storage tank breathing losses	1,400 – 2,200	1,400 – 2,200
Dispensing to automobiles	15,400 – 24,300	7,200 – 11,400
Drips and spillage	900 – 1,500	900 – 1,500
Total emissions	27,900 – 44,100	10,100 – 16,000

Notes: "Uncontrolled" emissions refers to a hypothetical situation with no Stage I or Stage II controls in place. Stage I vapour recovery applies to filling underground storage tanks; Stage II vapour recovery applies to dispensing to automobiles.

If the Commission's proposed Directive were to be adopted, it is estimated that emissions from dispensing to automobiles could be reduced to between 5,000-7,900 tonnes by 2020, an additional reduction of between 2,200-3,500 tonnes per year[32].

If the requirements to apply Stage II controls were also to apply to service stations (new stations and those undergoing a major refurbishment) with a throughput of 100-500m^3, the additional reduction in emissions from refuelling could be between 100-200 tonnes per year in 2020[33]. Note, however, that these service stations are currently subject to a derogation for Stage I controls so installation of Stage II controls could be questionable[34].

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32 The range reflects different assumptions on whether and how petrol sales will decline in the future. The higher values assumes constant petrol sales from 2008-2020 while the lower values assume that petrol sales continue to decline according to the historical trend.

33 These data have been calculated assuming application to all service stations with a throughput below 500m^3, not excluding those below 100m^3 due to data availability. However, the number of service stations and associated throughput of those below 100m^3 is relatively small: around 20% of the number of stations below 500m^3 and 2% of total numbers and around 3% of petrol sales for stations below 500m^3 and 0.05% based on previous projections for 2010 (Defra 2005 Impact Assessment).

34 There would only be a benefit in terms of reduced VOC emissions if vapours were to be recovered at the pump. If vapours were to be returned to the underground storage tank and no Stage I controls are in place, the emissions would not be captured during unloading from vehicles into the underground storage tank.

5. Costs

5.1 Compliance costs

5.1.1 Approach

The approach taken to estimation of costs of compliance is set out in Appendix A. In broad terms, the following approach has been adopted.

A baseline has been developed, including estimated uptake of Stage II controls from 2010 according to UK legislation. This assumes uptake at existing and new service stations with throughput above the relevant thresholds. The baseline calculations also include replacement of existing service stations with new stations and major refurbishments (only new stations are subject to Stage II requirements under current UK legislation). It includes estimates of the numbers of service stations and associated petrol sales within a range of sizes (throughput intervals of 500m^3).

The implications of the proposed Directive for *additional* uptake of Stage II controls have been estimated, including the differing requirements for new service stations, existing refurbished service stations and non-refurbished service stations.

In general, no additional cost implications have been assumed for new service stations, as these are already covered under existing UK legislation[35].

For existing service stations above the relevant throughput threshold (3,000m^3 under Option 2), the costs of installing Stage II controls have been estimated, assuming implementation by the relevant deadline (2020 for Option 2). There are various one-off and ongoing costs associated with implementing Stage II controls and costs have been assumed to be higher for those service stations that are not predicted to have undergone a (scheduled) major refurbishment by the relevant deadline – such costs are associated with, for example, additional work in underground works and installation of underground pipework.

For other existing service stations (those below 3,000m^3 throughput but above 100m^3 for option 2), it has been assumed that the costs of installing Stage II controls will be incurred if the service station undergoes a major refurbishment.

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35 With the exception of those with annual throughput less than 500m^3.

Sensitivities regarding the expected future changes in service station numbers and total petrol sales have been included (either assuming constant values from 2008 or a continuation of historical declines in service station numbers and projected changes in future petrol sales based on data from DfT).

The cost elements included are: materials, equipment and labour associated with making the service station "Stage II ready" (e.g. underground works); costs of vapour recovery equipment; costs associated with loss of fuel sales during installation; additional maintenance and power costs during operation of the Stage II equipment; costs of regular checking for correct operation (compliance); and additional fees and charges under the relevant regulatory regime.

The costs are those that are additional to those that would otherwise be incurred, either through existing UK legislation on Stage II controls or through continued operation without Stage II controls (the latter for service stations that are currently exempt).

All costs are quoted in 2008 prices. The reference year for presentation of emissions (and comparison with costs incurred) is 2020. The assessment period for calculation of present value and annualised costs is 14 years[36].

5.1.2 Costs for a 'typical' service station

The estimated costs of installing Stage II controls for a typical service station are set out in the table below, with typical service stations taken in each of the 500m^3 petrol throughput ranges considered (these stations will also sell diesel which is not considered here). These figures compare reasonably well with estimates from industry that typical costs being incurred for service stations currently installing Stage II controls in the UK are around £25-30,000 for service stations with throughput between 3,000 and 3,500m^3.

The recovered fuel may be re-sold. If the petrol vapour is recovered at the pump, the retailer will accrue the benefits associated with sale of this petrol. If it is returned to the underground storage tank, the petrol vapours may be returned to the petrol terminal/refinery, in which case the additional benefits would occur for the petrol suppliers[37]. The value of the recovered fuel has been taken into account based on the average petrol value excluding VAT and duty in 2008, as described in Appendix A.

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[36] The amortisation period assumed for certain cost elements varies and the results are presented in ranges where sensitivity analysis has been undertaken. For example, an assumed lifetime of 5 years has been assumed for vapour recovery nozzles, with sensitivity analysis undertaken assuming 14 years.

[37] In practice, the extent to which any additional vapour (over and above that otherwise collected through Stage I controls) will be returned to the terminal as a result of displacement and collection during unloading of petrol into storage tanks will depend upon the extent of vapour/liquid equilibration in the storage tank (amongst other factors).

It can be seen from the data below that the costs of installing Stage II controls represent a significantly greater proportion of profit and gross margin associated with petrol sales for smaller service stations. This has implications for the extent to which service stations will be able to bear the additional costs of implementing Stage II controls. Whilst the annualised costs are a relatively small percentage (around 6%) of profits from petrol for a service station with petrol throughput between 3,000m^3 and 3,500m^3 where controls can be introduced as part of a planned refurbishment, the costs for a service station with 2,000-2,500m^3 throughput if required to introduce Stage II controls where it would not otherwise be refurbished by the implementation deadline could be significantly higher (perhaps 17% of annual profits from petrol).

There are thus implications for the viability of petrol stations depending upon the timescales for introduction of Stage II controls (affecting whether installation can take place as part of planned refurbishments) as well as for the throughput threshold that applies. It is possible that some service stations would close rather than incur the costs of implementing Stage II controls, as highlighted by UK industry stakeholders.

Table 5.1 Summary of estimated costs for a typical service station

Service station throughput (m^3)	0-500	501-1000	1001-1500	1501-2000	2001-2500	2501-3000	3001-3500
Emissions reductions (t/yr)	0.2	0.7	1.2	1.7	2.1	2.6	3.1
Retail value of recovered fuel (excluding taxes) (£/year)	130	400	660	930	1190	1460	1720
New/refurbished stations							
Capital costs (£)	18,000	19,000	26,000	27,000	28,000	29,000	30,000
PV costs (£)	29,000	30,000	38,000	39,000	40,000	41,000	42,000
Total annualised costs average (£/year)	2,900	2,900	3,700	3,800	3,900	3,900	4,000
£/t abated	12,000	4,100	3,100	2,300	1,800	1,500	1,300
£/t abated inc value of recovered petrol	11,400	3,500	2,600	1,700	1,200	900	700
Non-refurbished stations							
Capital costs (£)	56,000	65,000	90,000	100,000	109,000	119,000	129,000
PV costs (£)	63,000	64,000	81,000	82,000	83,000	84,000	85,000
Total annualised costs average (£/year)	5,600	5,700	7,300	7,400	7,500	7,500	7,600
£/t abated	23,500	7,900	6,100	4,400	3,500	2,900	2,400
£/t abated inc value of recovered petrol	22,900	7,300	5,600	3,900	2,900	2,300	1,900
Estimated petrol margins and profit for comparison							
Estimated profit from petrol sales (£/year)	5,000	15,000	25,000	35,000	45,000	55,000	65,000
Estimated gross margin from petrol sales (£/year)	15,000	45,000	75,000	105,000	135,000	165,000	195,000

All average cost values are averages of the high and low costs for the conventional system (not at-pump system). Emissions reductions and associated value of recovered fuel based on throughput at the mid-point of the range. Annualised and PV costs calculated using a discount rate of 3.5% and an assessment period of 14 years. Annual profit and gross margin from petrol sales based on an assumed 2p per litre profit and 6p per litre gross margin. All data have been rounded. Service stations with throughput >3500m^3 are not included as these are required to install Stage II controls by 2010 under existing UK legislation.

5.1.3 UK costs (Option 2)

Based on the approach to estimation of costs set out above and in Appendix A, estimates have been made for the costs for all UK service stations of implementing Stage II legislation as set out in Section 2 of this report.

The table below provides a summary of the estimated costs, both including and excluding the value of the recovered fuel. The latter provides an indication of the costs faced by service stations (assuming use of a conventional Stage II system) whereas the former represents the net costs for the petrol distribution and retail sector.

The ranges of values presented reflect uncertainties regarding the assumed lifetimes of the various Stage II equipment and whether or not the historical declines in service station numbers and petrol sales will continue in the future. Further details of these sensitivities are provided in Appendices A and B of this report.

The values in Table 5.2 will tend to somewhat overestimate the costs because, for existing service stations that have not undergone a major refurbishment by the compliance deadline (2020), the costs have not been weighted according to the number of years before a planned refurbishment for each of the service stations. The differential in costs between fitting Stage II controls during a planned major refurbishment and when not planned will tend to be lower the closer a service station is in time to a planned major refurbishment. For Option 2, taking this into account would reduce the overall costs by around 7%[38].

Table 5.2 Summary of estimated costs for Option 2

Cost element	Details
Numbers of service stations affected and reductions in emissions	
Number of additional service stations applying Stage II controls	1,260 – 1,770
Total reduction in emissions from refuelling under this option (tonnes VOC per year)	2,200 – 3,500
Costs excluding the value of recovered petrol	
Total annualised costs, including one-off and ongoing costs (£m per year)	4.0 – 7.4
Present value costs (£m)	54 – 78

[38] The *additional* costs for existing service stations not having already undergone a major refurbishment would be reduced significantly, by around 75% for a 2020 deadline (compared to the costs for installing Stage II during a major refurbishment). However, as these only represent just over 20% of the total costs – the remainder related to costs for installation of Stage II during planned major refurbishments for service stations 500-3,000m^3 – the effect on the overall costs is relatively small. This effect will tend to further reduce the costs for later deadlines and increase the costs if a lower throughput threshold for existing service stations is applied.

Cost element	Details
Cost effectiveness (£/t VOC abated)	1,600 – 2,300
Costs including the value of recovered petrol	
Retail value of recovered petrol, excluding taxes (£m per year)	1.2 – 1.9
Total annualised costs, including one-off and ongoing costs (£m per year)	2.7 – 5.5
Present value costs (£m)	40 – 58
Cost effectiveness (£/t VOC abated)	1,100 – 1,700

Emissions reductions and associated costs comparisons are based on emissions in 2020 and relate to the difference between effects of the proposed legislation and the current UK legislation. The ranges given reflect uncertainties in factors including: the expected lifetimes of Stage II equipment; and the expected decline (or not) in petrol station numbers and petrol sales. Costs represent an average of Stage II equipment costs for the conventional system (see Appendix A). Costs are expressed in 2008 prices. Figures have been rounded.

5.1.4 Costs under different possible implementation scenarios

In order to explore the implications of potential changes to the current proposals, the costs associated with setting certain key parameters differently in the proposed legislation have been estimated. In particular, the following scenarios have been considered:

- Timescale for implementation at existing service stations: 2015 and 2025 as well as 2020;
- Throughput threshold for existing service stations: 1,000m^3 and 2,000m^3 as well as 3,000m^3; and
- The various combinations of the above.

These have been assessed using a single set of assumptions regarding expected changes in the petrol retail market and assumed lifetime of Stage II equipment. The table below provides a summary of the results.

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As can be seen from the data in this table, the throughput threshold at which the Stage II legislation is set for existing service stations makes a difference to the overall level of costs, particularly when the timescale for compliance is relatively short (e.g. 2015).

The overall costs decrease and cost-effectiveness increases with longer timescales allowed, as more service stations would be able to install Stage II controls as part of planned maintenance activities.

There is a relatively small difference in overall costs between assumed implementation by 2015 and implementation by 2020 at all existing service stations. The *total* number of service stations applying Stage II controls by 2020 is the same in 2020 as that for implementation in 2015. However, there is a lower proportion of service stations that will have undergone a scheduled major refurbishment (and will hence incur greater costs) if the timescale is 2015. The costs per service station for these stations will be substantially higher, while not necessarily affecting the overall costs or cost-effectiveness to a great extent.

If the timescale for implementation for existing service stations is set to 2025, there is no variation in costs – in the model used for this assessment – if the throughput threshold is set at different levels. This is because it is assumed that all service stations will have undergone a major refurbishment or been replaced with a new service station[39]. Therefore, the costs presented represent the additional costs, compared to the situation under current UK legislation, associated with the installation of Stage II controls at existing service stations when they are refurbished.

5.2 Administrative costs

There would be additional administrative costs associated with bringing additional service stations under Stage II controls, both for service station operators and for the regulators.

For the purposes of this assessment, it has been assumed that the additional permit application fee and ongoing additional subsistence charge payable by service stations to the regulators reflect the additional regulatory burden upon the **authorities**.

Under the main proposal (Option 2), an additional 1,770 service stations would be brought under Stage II control (by 2020). Assuming an additional £97 fee for variation to the site's permit and an increase in the annual subsistence charge from £149 to £214, the total additional one-off costs would be around £170,000. The additional ongoing (annual) costs would be around £115,000. The total present value costs would be around £1.4 million[40].

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[39] In practice, it is likely/possible that there will be some service stations that have not been refurbished by 2025, though it is assumed that the number is likely to be relatively small.

[40] Including ongoing costs plus capital costs annualised over a period of 14 years with a discount rate of 3.5%.

If the throughput threshold were changed, there would be differences in the additional administrative costs. Based on the same assumptions as above:

- At a threshold of 1,000m^3 for existing service stations, an additional 3,700 service stations would be affected compared to the current UK legislation. Additional one-off costs would be around £360,000 with additional annual costs of around £240,000 and total present value costs of around £3.0 million;
- At a threshold of 2,000m^3 for existing service stations, an additional 2,560 service stations would be affected compared to the current UK legislation. Additional one-off costs would be around £250,000 with additional annual costs of around £165,000 and total present value costs of around £2.1 million.

Additional administrative costs for the service station **operators** have been estimated assuming that ten hours is required to produce and submit an application for variation of the permit and that five hours is required each year for ongoing reporting. The associated costs for the UK would be as follows[41]:

- At a threshold of 1,000m^3 for existing service stations, additional one-off costs of around £580,000, with additional annual costs of around £290,000 and total present value costs of around £3.7 million;
- At a threshold of 2,000m^3 for existing service stations, additional one-off costs of around £400,000, with additional annual costs of around £200,000 and total present value costs of around £2.6 million; and
- At a threshold of 3,000m^3 for existing service stations (Option 2), additional one-off costs of around £280,000, with additional annual costs of around £140,000 and total present value costs of around £1.8 million.

[41] Estimated assuming data from the Standard Cost Model for "managers and proprietors - garage managers", with hourly pay costs of £10.72 plus 30% overhead (converted from 2005 to 2008 prices using a factor of 1.118 based on the Retail Price Index).

6. Benefits

6.1 Approach

Emissions of VOCs at service stations and the reductions associated with the application of Stage II controls have been estimated using an approach set out in a report by the Institute of Petroleum (2000)[42]. This is described in greater detail in Appendix A and the results summarised in Sections 5.1.3 and 5.1.4.

Due to the tight timescales involved for the preparation of this impact assessment it has not been possible to undertake detailed environmental and health impacts modelling. Therefore the potential benefits (damage costs avoided) that may be realised if the estimated VOC emission reductions are achieved have been estimated through the application of the damage cost functions developed by the Interdepartmental Group on Costs and Benefits (IGCB)[43,44].

For comparison with the European Commission's EU-wide impact assessment, potential benefits have also been estimated using the cost-benefit analysis developed under the Clean Air for Europe (CAFE) programme[45]. A range of values have been calculated under the CAFE programme to take account of variation in the methodologies used to value mortality; this reflects the use of the median and mean estimates for the value of a life year (VOLY) and statistical life (VSL).

The IGCB and CAFE damage cost functions vary quite significantly for many pollutants. The main differences relate to:

- The use of different pollution metrics (IGCB use $PM_{2.5}$ and CAFE uses PM_{10});
- A 6.5% higher UK population estimate is used in CAFE compared to IGCB;
- IGCB only uses YOLL (years of life lost) whereas CAFE uses YLL (years life lost) and VSL (value of a statistical life);

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42 Protocol for the estimation of VOC emissions from petroleum refineries and gasoline marketing operations, Institute of Petroleum, 2000.

43 AEAT (2006): Damage costs for air pollution. Final report to Defra, March 2006. Available from: http://www.defra.gov.uk/environment/airquality/publications/stratreview-analysis/damagecosts.pdf.

44 IGCB (2007): Economic analysis to inform the Air Quality Strategy. Final report, July 2007. Available from: http://www.defra.gov.uk/environment/airquality/publications/stratreview-analysis/index.htm.

45 Available from: http://www.cafe-cba.org/assets/marginal_damage_03-05.pdf.

- The impact matrix used;
- CAFE places much higher values on health endpoints, with the high value 2.75 times higher than the IGCB value;
- The IGCB figures discount (at 3.5% p.a) and uplift (at 2% p.a.) values in accordance with the Green Book whereas CAFE does not; and
- CAFE includes a much wider range of morbidity effects equating to approximately 10% of the total impact value.

The damage cost functions applied to calculate the indicative benefits are presented in Table 6.1. The IGCB damage cost estimates are the UK's currently preferred measure. It is evident that there is a significant difference between the two approaches.

Table 6.1 Damage cost functions for VOCs (£ per tonne of pollutant reduced) (Note 1)

	£/tonne abated		
UK IGCB	**Low**	**Best**	**High**
	28	28 (Note 2)	995
EC CAFE (Note 3)	**Low**	**Best**	**High**
	876	1,991 (Note 4)	2,548

Notes:

1) IGCB figures were provided by Defra (18 February 2008), presented in 2008 prices. VOC damage cost functions have been estimated based on the original Final RIA on the implementation of the Paints Directive (2004/42/CE), presented in 2008 prices.

2) Best estimate assumed to be at the lower end of the range based on discussion with Defra (2 April 2009). This is subject to significant uncertainty.

3) Exchange rate of €1=£0.8.

4) Best estimate is €2,500.

The IGCB VOC damage cost functions have been estimated based on the transfer of values from the original Final RIA on the implementation of the Paints Directive (2004/42/CE)[46]. The low end of the range has been taken as the current best estimate following discussion with Defra. Monetised estimates of the benefit of a reduction in VOC emissions were originally estimated in the Paints Directive RIA for the following:

[46] See Annex C - http://www.opsi.gov.uk/si/em2005/uksiem_20052773_en.pdf

- Acute health effects to population due to ozone exposure – deaths brought forward and respiratory hospital admissions (additional or brought forward);
- Effects on materials due to ozone exposure;
- Effects on crop production due to ozone exposure;

However, the following effects were not quantified in the original RIA:

- Physical injury to crops from ozone exposure (affecting value) – this effect was thought to be small relative to the effect on crop yield above;
- Change in exposure to odour "likely to cause annoyance" – this effect was thought to be small;
- Effects upon forest and natural ecosystems due to ozone exposure – quantification was not possible but the effects are potentially important;
- Chronic health effects to population due to ozone exposure – quantification was not possible but the effects are potentially important; and
- Direct effects of VOCs.

Therefore, the benefits estimated through the application of damage cost functions may be underestimated[47].

In addition, the benefits presented based on the IGCB damage cost functions only relate to those that may be realised in the UK if the UK were to implement these measures. They do not take into account the additional benefits that may be achieved in the EU from the UK implementing these measures (i.e. transboundary impacts)[48].

As the damage cost functions address the health and environmental impacts of VOC emissions and do not take into account benefits due to reductions in greenhouse gas emissions, these have been estimated separately taking into account the following factors:

- Increases in CO_2 emissions occurring as a result of increased electricity consumption required to power the Stage II petrol vapour recovery equipment;

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[47] For the CAFE damage cost functions a number of effects are also excluded from quantification, including impacts on ecosystems and cultural heritage.

[48] Furthermore, recent work funded by the US Health Effects Institute suggests that longer term exposure to ozone air pollution may be associated with premature respiratory mortality and this is not taken into account in the IGCB data. This work would need to be reviewed by relevant expert groups (such as COMEAP) before any changes are made to the damage cost functions.

- Reductions in climate change impacts associated with the reduction in VOC emissions, due both to the chemical effect of the VOC on the atmosphere and due to the CO_2 arising from the degradation of the VOC in the atmosphere. It is noted that these emissions do not form part of the 'basket of six' greenhouse gases covered by the Kyoto Protocol.

The value of the decrease in greenhouse gas emissions has been estimated using Government guidance on the shadow price of carbon (SPC). This is described further in Appendix A.

6.2 Results

6.2.1 UK benefits (Option 2)

Based on the approach to estimation of emission reductions and associated damage costs avoided set out above and in Appendix A, estimates have been made for the additional benefits associated with the Commission's proposals relative to current UK legislation. Further details are provided in Appendix B of this report.

Table 6.2 Summary of estimated benefits for Option 2

Element	Details
Emission reductions	
Total reduction in VOC emissions from refuelling under this option (tonnes VOC per year)	2,200 – 3,500
Net CO_2 emissions reductions (tCO_2e per year)	22,000 – 35,000
Damage costs avoided	
Damage costs avoided (£m per year)	IGCB: 0.06 – 0.10 (0.06 – 3.4) CAFE: 4.5 – 6.8 (2.0 – 8.8)
Present value of damage costs avoided (£m)	IGCB: 0.7 – 1.0 (0.7 – 37) CAFE: 50 – 75 (22 – 96)
CO_2 emission reductions	
Value of greenhouse gas emissions avoided (£m per year)	0.7 – 1.0
Net present value of greenhouse gas emissions avoided (£m)	8 – 13
Total environmental and health benefits (quantifiable)	
Annual benefits (£m per year)	IGCB: 0.7 – 1.1 (0.7 – 4.4) CAFE: 5.1 – 7.8 (2.6 – 9.7)
Net present value (£m)	IGCB: 9 – 13 (9 – 50) CAFE: 58 – 87 (30 – 108)

Emissions reductions and associated benefits comparisons are based on emissions in 2020 and relate to the difference between effects of the proposed legislation and the current UK legislation. The ranges given reflect uncertainties in factors including the expected decline (or not) in petrol station numbers and petrol sales, plus the range in the damage cost functions used (the latter figures are in brackets in the above). Benefits are expressed in 2008 prices. Figures have been rounded.

6.2.2 Benefits under different possible implementation scenarios

As discussed in previous sections, in order to explore the implications of potential changes to the current proposals, a number of variations around certain key parameters have been investigated. In particular, the following scenarios have been considered:

- Timescale for implementation at existing service stations: 2015 and 2025 as well as 2020;
- Throughput threshold for existing service stations: 1,000m^3 and 2,000m^3 as well as 3,000m^3; and
- The various combinations of the above.

These have been assessed using a single set of assumptions regarding expected changes in the petrol retail market and assumed lifetime of Stage II equipment. The table on the following page provides a summary of the results.

6.2.3 Benefits to the UK of EU-wide implementation

In addition to the benefits expected to be realised as a result of the implementation of the Commission's proposals in the UK, there may also be some benefits to the UK arising from a consistent implementation of Stage II controls across the EU. As highlighted in the Commission's impact assessment supporting the legislative proposal, at least seventeen of the EU's twenty-seven Member States have national legislation requiring Stage II controls to be fitted at service stations. Therefore, a consistent EU-wide application should bring about fairly significant reductions in VOC emissions from refuelling (estimated to be approximately 12-18kt reduction per year for the EU as a whole). Application of Stage II controls in those Member States which do not have any national requirements should result in health and environmental benefits for neighbouring countries. Although the majority of the UK's closest neighbours (including Belgium, France, Germany and the Netherlands) already have national legislation in place, some are yet to require the installation of Stage II controls (including Ireland and Spain). However, these benefits are expected to be minimal and have therefore not been quantified and included in the analysis.

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7. Specific impact tests

7.1 Competition assessment

The competition guidelines (August 2007)[49] set out four main questions. These require considering whether the proposed Stage II PVR Directive would affect the market by:

1. Directly limiting the number or range of suppliers.
2. Indirectly limiting the number or range of suppliers.
3. Limiting the ability of suppliers to compete.
4. Reducing suppliers' incentives to compete vigorously.

From a consideration of the likely impacts of the proposed Directive relative to the requirements already in place in the UK, it appears that the proposals are unlikely to result in any significant competition issues.

The impact assessment prepared for the UK national Stage II legislation[50] reached a similar conclusion although it was noted that a minor impact on competition would be that new operators (with a throughput >500m^3) would have to install Stage II controls and incur associated costs whereas existing operators (between 500-3,500m^3) would not, thus placing them at a slight advantage (although it was also noted that costs for new build are lower and most new service stations have throughputs >3,500m^3). The Commission's proposals would require all existing service stations with a throughput >100m^3 (with a possible derogation for 100-500m^3 sites) to install Stage II controls when they undergo a major refurbishment. This would therefore place them on a more level standing with new service stations which have to install Stage II controls when they are constructed.

As detailed in Section 5.1.2 of this report, the costs of implementation for individual service stations may, in some cases, be sufficient to make continued operation not viable. This is particularly true if the throughput threshold for existing service stations, irrespective of throughput threshold, is set at a low level (since the costs will be a greater proportion of petrol profits/margins for smaller service stations) or if the timescale for implementation are relatively short (meaning that service stations above the threshold would be less likely to undergo a planned major refurbishment before the deadline and would hence incur greater costs). In addition, some service stations (in particular, independent operators) may have limited access to finance in order to cover the up front capital costs of installation.

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[49] Completing competition assessments in Impact Assessments – guideline for policy makers, Office of Fair Trading, August 2007, http://www.oft.gov.uk/shared_oft/reports/comp_policy/oft876.pdf.

[50] Defra (2005): Final regulatory impact assessment on petrol vapour recovery stage II controls (PVR II).

Therefore, there exists some potential for the legislation to indirectly limit the number of suppliers by forcing closure of some service stations due to the costs of compliance. It has not been practicable to estimate the additional number of service stations that might close as a result of this proposed legislation and it should be noted there is already a trend towards reducing numbers of service stations in the UK.

7.2 Distributional effects on different size firms

Section 5.1.2 presents the approximate costs of installing Stage II controls for a 'typical' service station broken down by annual petrol throughput. This demonstrated that the costs of installing Stage II controls represent a significantly greater proportion of profit and gross margin associated with petrol sales for smaller service stations. This has implications for the extent to which service stations will be able to bear the additional costs of implementing Stage II controls. Whilst the annualised costs are a relatively small percentage (around 6%) of profits from petrol for a service station with petrol throughput between 3,000m^3 and 3,500m^3 where controls can be introduced as part of a planned refurbishment, the costs for a service station with 2,000-2,500m^3 throughput if required to introduce Stage II controls where it would not otherwise be refurbished by the implementation deadline could be significantly higher (perhaps 17% of annual profits from petrol)[51]. This is even higher for smaller service stations. It is unlikely that some or all of the costs of compliance could be offset by higher petrol prices; this will be primarily dependent upon the location of the service station and its proximity to other competitors.

Concerns have been raised by some stakeholders during consultation in relation to possible impacts on small service stations. As outlined above, the costs associated with the installation of Stage II controls could have an effect on the viability of smaller service stations. Although this is particularly relevant for those with the lowest throughputs (<500m^3), it may also apply to those with higher throughput (e.g. 2,000-3,000m^3). However, it is worth noting that the UK has a derogation from the requirements of the Directive on Stage I petrol vapour recovery for service stations which unload into stationary storage tanks 100m^3 to 500m^3 of petrol in any 12-month period[52]. Assuming that this derogation will be continued, it may be appropriate for the UK to also apply a similar derogation for Stage II controls, since the benefits of Stage II controls are typically foregone if no Stage I controls exist[53].

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51 UKPIA has highlighted (April 2009) that margins from petrol sales are lower in the UK than in some other Member States.

52 As allowed for under Article 6(4) of Directive 94/63/EC.

53 Since petrol vapours returned to the underground storage tank by Stage II controls would not be recovered during unloading of petrol into storage tanks. However, if an "at-pump" system were to be used, with petrol vapours recovered above ground and returned direct to the dispenser for refuelling of vehicles, these VOC benefits would not be foregone.

7.3 Social Impact Assessments

7.3.1 Race equality

The race equality impact of the proposals has been considered and it is not expected that the proposals will have any impact on race equality.

7.3.2 Rural communities

As discussed in Section 7.2, stakeholders have raised concerns about possible impacts on small service stations, most of which are located in rural areas and provide a valuable service to local communities. Stakeholders expect some of these to close if required to install Stage II controls. Section 5.1.2 presents the costs for a 'typical' service station which appear to confirm these concerns in that the annualised costs of installing Stage II controls for a small service station (100-500m^3) where not done as part of a scheduled major refurbishment are greater than the estimated annual profits from petrol sales, thus making it uneconomical to stay open. However, the UK already has a derogation from the requirements of the Directive on Stage I petrol vapour recovery for these sized service stations and it is expected that the UK would be able to apply a similar derogation for Stage II controls.

If a higher throughput threshold for existing service stations (say 1,000m^3 or 2,000m^3 compared to 3,000m^3 under Option 2) were applied, it is again possible that some service stations could close as a result of the requirement to implement Stage II controls (see also Section 7.1).

Closure of service stations in rural areas could result in a number of direct and indirect economic (e.g. increased fuel costs from having to drive further for fuel), social (e.g. reduced access to services) and environmental (e.g. increased emissions from travelling further for refuelling) impacts.

7.3.3 Human rights

The Commission's proposals are not expected to impact on any of the rights enshrined in any of the 14 articles of the European Convention on Human Rights, or of the 3 articles of the first Protocol thereto.

7.3.4 Ethnic minorities

The Commission's proposals are not expected to have a particular impact on ethnic minorities.

7.3.5 Gender equality

The Commission's proposals are not expected to impact on one gender more heavily than the other.

7.3.6 Disabled people

Air pollution will impact more significantly on those with certain disabilities than other healthy adults and the impact on disabled children will be greater than for non-disabled children. However, the Commission's proposals will lead to an improvement in air quality.

7.3.7 Children and young people

There is greater susceptibility of children and young people to air pollution due to greater sensitivity of their lungs as their lungs are growing and developing. However, the Commission's proposals will lead to an improvement in air quality.

7.3.8 Older people

There is greater susceptibility of older people to air pollution due to greater sensitivity of their lungs and reduced immune system. However, the Commission's proposals will lead to an improvement in air quality.

7.3.9 Income groups

The Commission's proposals are not expected to impact on any particular income groups more than any others.

7.3.10 Devolved countries

A key driver for the UK's application of the derogation for Stage I controls for service stations with a throughput of 100-500m^3 was the location and value to local communities of a number of these sized stations in rural areas in Scotland (see Section 7.3.2). Application of a similar derogation for Stage II controls would prevent the possible closure of these sites due to the costs associated with installing Stage II controls.

7.3.11 Particular regions of the UK

See Sections 7.3.2 and 7.3.10 of this report.

8. Summary

8.1 Policy options and effects on emissions

This report has considered the impacts for the UK of implementing a proposed Directive to require more widespread implementation of Stage II petrol vapour recovery controls. The key changes that would be required under the proposal (Option 2) as compared to the continued uptake under existing UK legislation (Option 1) are:

- Extension of controls to all existing service stations with an annual throughput above 3,000m^3 from 2020 (compared to 3,500m^3 by 2010 at present);
- Extension to all new and refurbished service stations with a throughput above 100m^3 from 2012 (with a potential derogation for those above 500m^3); and
- Extension to new service stations irrespective of throughput where these are situated below permanent living quarters or working areas from 2012.

Given that negotiations on the text of the proposed Directive are ongoing, a number of sensitivities have been explored regarding the timescales for implementation and the throughput thresholds to which the legislation will apply.

These proposals would affect operators of service stations who would be required to install and operate Stage II controls, as well as the relevant regulatory authorities and businesses involved in providing, installing and maintaining the petrol vapour recovery equipment.

The main benefit associated with the proposals would be a reduction in emissions of VOCs to the atmosphere, with associated reductions in environmental and health damage. If the proposed Directive were to be adopted, it is estimated that emissions from dispensing of petrol to automobiles could be reduced to around 5,000-7,900 tonnes by 2020, an additional reduction of around 2,200-3,500 tonnes per year. This reduction represents around 0.3% to 0.5% of the total projected VOC emissions in 2020[54].

8.2 Costs of implementing the proposed Directive

Estimates have been made of the additional costs of implementing Stage II legislation in the UK, both for 'typical' service stations of different sizes and for the UK as a whole.

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[54] Total UK VOC emissions in 2020 are projected to be just over 700,000 tonnes (AEA, 2009).

The main costs that would be incurred relate to: materials, equipment and labour associated with making the service station "Stage II ready" (e.g. underground works); costs of vapour recovery equipment; costs associated with loss of fuel sales during installation; additional maintenance and power costs during operation of the Stage II equipment; costs of regular checking for correct operation (compliance); and additional fees and charges under the relevant regulatory regime.

In terms of costs for **individual service stations**, the typical capital costs of installing Stage II controls are estimated to be around £30,000 for a new service station (or an existing station installing Stage II controls as part of a major refurbishment) with annual throughput of 3,000 to 3,500m^3. Annualised costs for such service stations are estimated at around £4,000 per year, giving a cost per tonne of VOC emissions abated of £700 to £1,300 per tonne (depending upon whether the value of the recovered fuel is included). Costs for existing service stations required to install Stage II controls outside of scheduled refurbishment works could be much higher (capital costs of around £130,000; annualised costs of around £7,500; and cost per tonne of VOC abated of £1,900 to £2,400 per tonne), though in practice the differential in costs is dependent upon how long before a planned major refurbishment a service station is required to install Stage II controls. The costs for smaller service stations would be lower.

Whilst annualised costs are a *relatively* small percentage (around 6%) of profits from petrol for a service station with petrol throughput between 3,000m^3 and 3,500m^3 where controls can be introduced as part of a planned refurbishment, the costs for a service station with 2,000-2,500m3 throughput if required to introduce Stage II controls where it would not otherwise be refurbished by the implementation deadline could be significantly higher (perhaps 17% of annual profits from petrol). Costs as a percentage of profit would be higher still for smaller service stations.

In terms of costs for the **UK as a whole**, it is estimated that the additional number of service stations affected would be around 1,200 to 1,800. Annualised costs are estimated at £4.0 to £7.4 million (£2.7 to £5.5 million if the value of the recovered fuel is deducted). Present value costs are estimated to be around £50 to £80 million (£40 to £60 million) and costs per tonne of VOC emissions reduced around £1,600 to £2,300 per tonne (£1,100 to £1,700 per tonne).

In terms of possible changes to the proposed Directive, the overall costs would be significantly higher if the annual throughput for the requirement to install Stage II controls at all existing stations is reduced: the estimates set out in Section 5 of this report suggest that annualised and present value costs would approximately double if the throughput threshold were 2,000m^3 instead of 3,000m^3 and would approximately treble if the threshold were 1,000m^3 (assuming the deadline of 2020 is retained and not including the value of the recovered petrol).

The timescale for implementation for all existing service stations also has implications for the overall costs, with higher costs expected to be incurred if the timescale is brought forward (say to 2015). Whilst the overall cost effect of this is expected to be moderate, the costs per service station for those that cannot install Stage II controls as part of a scheduled major refurbishment (due to the shorter timescales allowed) would be significantly higher.

If the timescales for introduction of additional Stage II controls is relatively short or the throughput thresholds relatively low, industry has highlighted there could be implications for the ability of equipment suppliers to meet the increased demand for Stage II controls. It was not feasible to quantitatively estimate the potential implications of this for the current study.

There would also be administrative costs for both operators and regulators associated with implementation of Stage II controls at additional service stations. Under the main option considered (Option 2), the additional one-off costs (to both operators and regulators combined) are estimated to be around £450,000, with ongoing (annual) costs of around £250,000 and present value costs of around £3.2 million.

8.3 Benefits of implementing the proposed Directive

There would be health and environmental benefits associated with reductions in VOC emissions, including both:

- Reductions in impacts caused by VOCs, particularly those related to ozone exposure (these have been valued according to two different 'damage cost functions' applied in UK assessments and in European Commission CAFE assessments); and
- Reductions in climate change effects caused by the global warming potential of the VOCs released and also their subsequent degradation to CO_2 in the atmosphere. These will be offset slightly by the increased electricity use associated with the power demands of the Stage II equipment These have been valued according to Government guidance on the 'shadow price of carbon'.

In terms of the former, the best estimate of the value of the annualised damage costs avoided is estimated at £0.06 to £0.10 million per year using the UK damage cost functions (with a range of £0.06 to £3.4 million taking into account the upper and lower range of these damage cost functions). The present value estimates of these benefits are £0.7 to £1.1 million (£0.7 to £37 million). The equivalent values using the EU CAFE damage cost functions are annualised costs avoided of £4.5 to £6.8 million (£2.0 to £8.8 million) with present value of £50 to £75 million (£22 to £96 million). It is evident that the value of the damage costs avoided is subject to significant uncertainty and is dependent upon which data sources are used: the values using the UK damage cost functions are significantly lower.

With respect to the latter, the annual value of the greenhouse gas emissions avoided is estimated to be £0.7 to £1.0 million (present value of £8 to £13 million).

There are various environmental and health benefits that are not included in the quantified estimates, as described in Section 6 of this report.

8.4 Comparison of quantified costs and benefits

The table below provides a summary of the additional quantified costs and benefits presented in this report for Option 2 as compared to Option 1. Costs and benefits are presented in 2008 prices with a reference year for

emissions reductions of 2020. There are various sensitivities and uncertainties regarding these estimates, as highlighted elsewhere within this report.

Table 8.1 Summary of monetised costs and benefits associated with implementation of Option 2

Element	Details
Emission reductions	
Number of additional service stations applying Stage II controls	1,260 – 1,770
Total reduction in VOC emissions from refuelling under this option (tonnes VOC per year)	2,200 – 3,500
Net CO_2 emissions reductions (tCO_2e per year)	22,000 – 35,000
Costs excluding the value of recovered petrol	
Total annualised costs, including one-off and ongoing costs (£m per year)	4.0 – 7.4
Present value costs (£m)	54 – 78
Cost effectiveness (£/t VOC abated)	1,600 – 2,300
Costs including the value of recovered petrol	
Retail value of recovered petrol, excluding taxes (£m per year)	1.2 – 1.9
Total annualised costs, including one-off and ongoing costs (£m per year)	2.7 – 5.5
Present value costs (£m)	40 – 58
Cost effectiveness (£/t VOC abated)	1,100 – 1,700
Damage costs avoided	
Damage costs avoided (£m per year)	IGCB: 0.06 – 0.10 (0.06 – 3.4) CAFE: 4.5 – 6.8 (2.0 – 8.8)
Present value of damage costs avoided (£m)	IGCB: 0.7 – 1.0 (0.7 – 37) CAFE: 50 – 75 (22 – 96)
CO_2 emission reductions	
Value of greenhouse gas emissions avoided (£m per year)	0.7 – 1.0
Net present value of greenhouse gas emissions avoided (£m)	8 – 13
Total environmental and health benefits	
Annual benefits (£m per year)	IGCB: 0.7 – 1.1 (0.7 – 4.4) CAFE: 5.1 – 7.8 (2.6 – 9.7)
Net present value (£m)	IGCB: 9 – 13 (9 – 50) CAFE: 58 – 87 (30 – 108)

Emissions reductions and associated benefits comparisons are based on emissions in 2020 and relate to the difference between effects of the proposed legislation and the current UK legislation. A threshold of 3,000m^3 is assumed for applicability to all existing service stations and 500m^3 for new service stations and major refurbishments. The ranges given reflect uncertainties in factors including: the expected lifetimes of Stage II equipment; and the expected decline (or not) in petrol station numbers and petrol sales (for the benefits, the ranges in brackets reflect the range in damage cost functions). Costs and benefits are expressed in 2008 prices. A discount rate of 3.5% has been applied. Costs represent an average of Stage II equipment costs for the conventional system (see Appendix A). Figures have been rounded.

8.5 Influence of applicable thresholds and implementation dates

The figure below provides a summary of the annualised costs and benefits associated with implementation of additional Stage II controls, with the requirements for existing service stations applying from 2020. It can be seen that the scale of the quantified costs as compared to quantified benefits varies significantly depending upon the throughput threshold applied.

Figure 8.1 Comparison of compliance costs with health and environmental benefits at different throughput thresholds

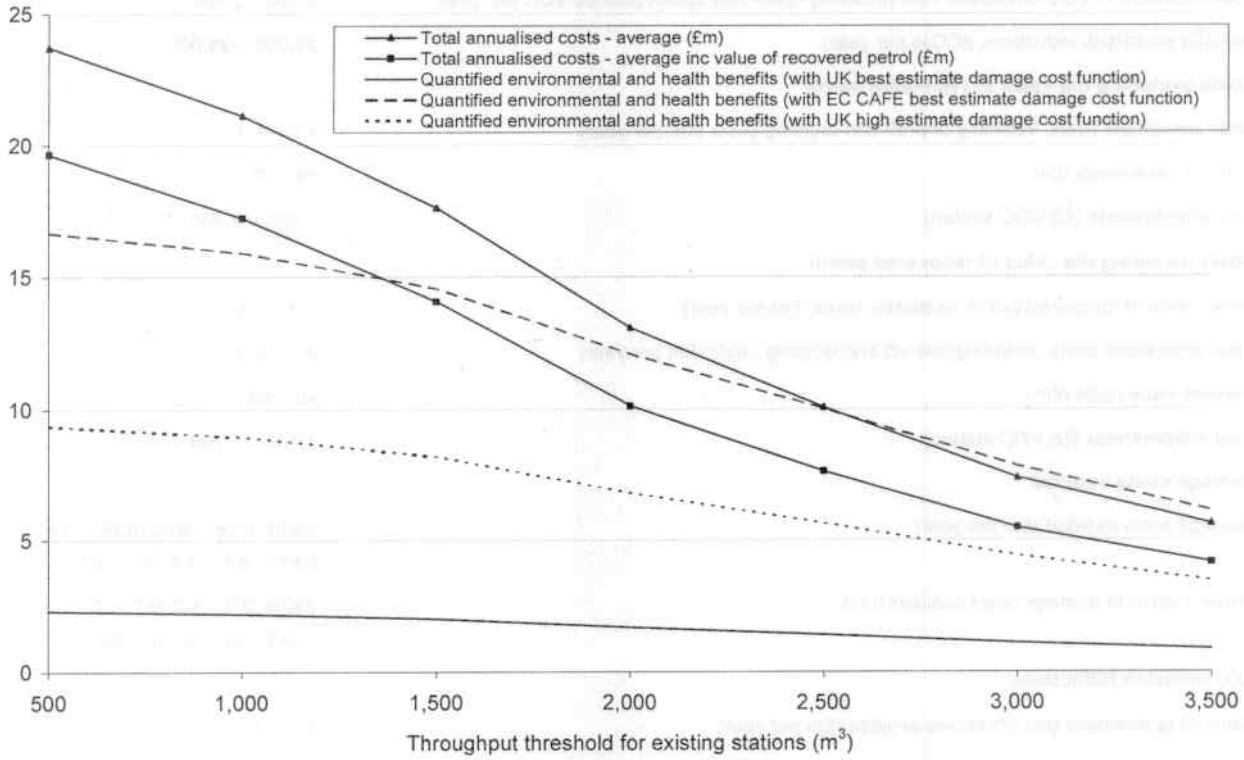


Figure notes: Assumes controls apply to existing stations from 2020 and to new/refurbished stations at >500m^3 throughput from 2012; constant petrol station numbers and petrol sales from 2008; and lifetime of VR nozzles 5 years (14 years other equipment). Quantified environmental and health benefits include benefits associated with reduced VOC emissions (using UK best and high estimate and CAFÉ best estimate damage cost functions) plus annualised benefits through reduced CO_2 emissions. There are various uncertainties and sensitivities in the underlying data that would affect the absolute values presented here, as well as the relative magnitude of costs and benefits.

Appendix A
Details of data sources and calculations

Service station numbers and petrol throughput

Current service stations and petrol sales

Data were provided on numbers of service stations and annual fuel throughput by Experian Catalist. The following data were provided:

- Total motor fuel sales, including a breakdown of numbers of service stations and total fuel sales within 11 throughput categories (at 500m^3 intervals), as well as average numbers of pumps and filling positions;
- Total retail petrol sales, including similar breakdowns to those above[55].

These data are provided in the tables below.

Experian Catalist data on UK motor fuel sales by throughput band

Motorfuel volume range (m^3/year)	Number of sites	Total MF volume (m^3/year)	Average number of pumps
0-500	1,152	337,667	2.5
501-1000	802	637,191	3.0
1001-1500	565	752,516	3.3
1501-2000	637	1,180,820	3.5
2001-2500	583	1,370,838	3.7
2501-3000	841	2,432,796	4.0
3001-3500	646	2,193,695	4.1
3501-4000	689	2,677,680	4.3
4001-4500	533	2,333,264	4.3
4501-5000	482	2,363,900	4.5

[55] Total retail petrol sales were estimated by applying a national-level factor for the split between petrol and diesel sales to the throughput at each service station (approximately 57% sales were petrol in 2008 according to data from DUKES). It is recognised that this estimation method is subject to uncertainty.

Motorfuel volume range (m^3/year)	Number of sites	Total MF volume (m^3/year)	Average number of pumps
5000+	2,322	21,717,689	5.3
Total UK	**9,252**	**37,998,056**	**4.0**

Motorfuel includes both petrol and diesel retail sales. Excludes 12 sites with null volume.

Experian Catalist data on UK petrol sales by throughput band

Petrol volume range (m^3/year)	Number of sites	Total petrol volume (m^3/year)	Average number of pumps
0-500	1,664	395,528	2.6
501-1000	1,053	776,851	3.2
1001-1500	1,097	1,377,677	3.7
1501-2000	1,412	2,526,092	4.1
2001-2500	925	2,095,459	4.3
2501-3000	823	2,239,245	4.4
3001-3500	532	1,739,083	4.4
3501-4000	283	1,083,198	4.6
4001-4500	86	366,267	4.6
4501-5000	193	896,514	4.8
5000+	1,184	8,162,979	6.1
Total UK	**9,252**	**21,658,892**	**4.0**

Petrol volumes calculated (at the site level) assuming petrol is 57% of motorfuel volume. Excludes 12 sites with null volume.

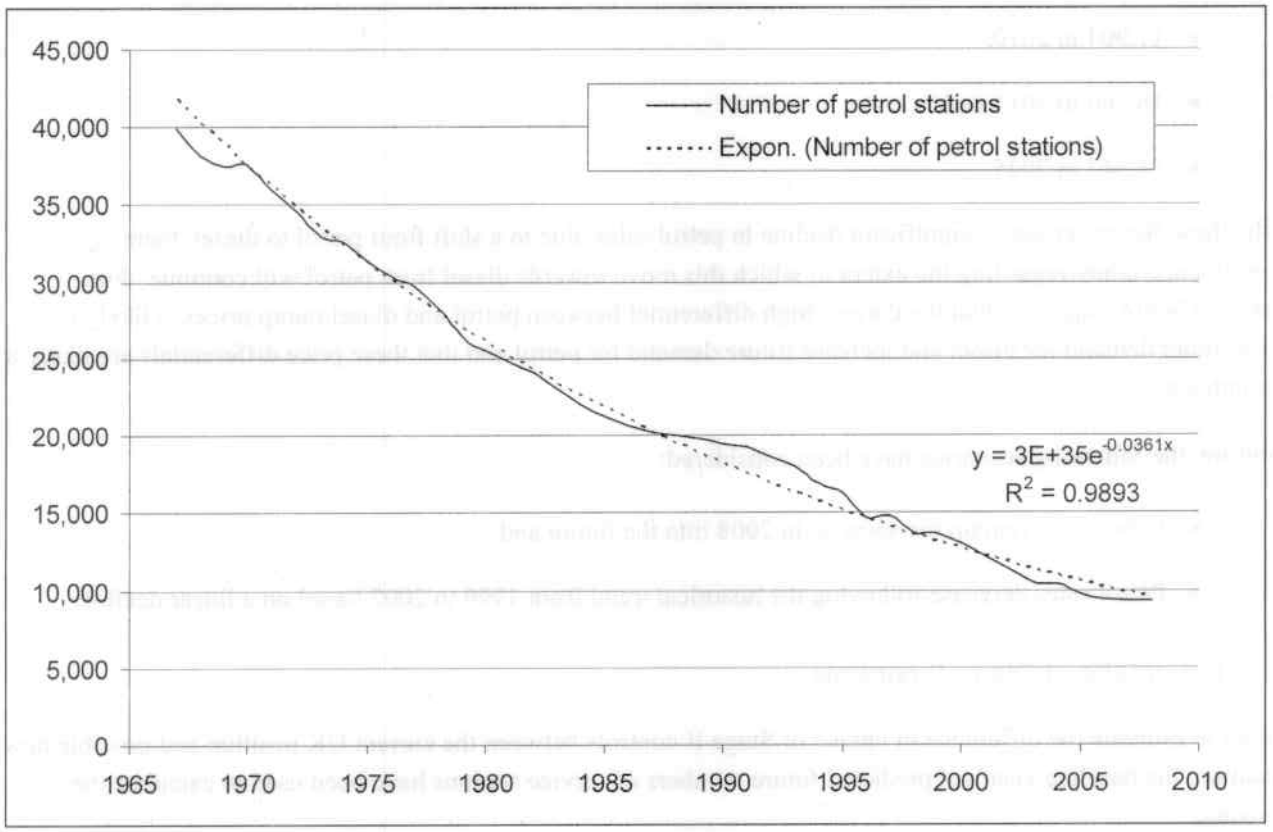
Predicted future service station numbers and petrol sales

Service station numbers

There has been a significant decline in the number of service stations in the UK over recent years. However, it is unclear whether and how numbers will decline in the future. According to data from Experian Catalist, there were 9,252 service stations in 2008.

The chart below provides details of the numbers of service stations, illustrating the historical decline in numbers based on data from the Energy Institute[56].

Historical data on numbers of service stations (based on Energy Institute, 2008)



The following scenarios have been considered:

- Service station numbers remain the same as in 2008 into the future.
- Numbers decline following the historical trend between 1997 and 2008 based on an exponential decline, fitted to the historical curve[57].

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[56] Energy Institute (2008): Retail marketing survey 2008, April 2008.

[57] An exponential curve gives the best fit for the whole dataset (from 1967). Depending upon the start year for the historical trend, a linear decline in petrol station numbers may give a better fit than an exponential decline. However, a linear decline has not been used as this would imply a reduction in service station numbers to zero by just after 2020.

Petrol sales/throughput

Department for Transport[58] has provided forecasts of petrol sales in Great Britain based on the National Traffic Model. The values for petrol use are as follows (in million litres):

- 26,533 in 2003;
- 17,904 in 2010;
- 16,160 in 2015 and
- 11,347 in 2025.

Whilst these figures project a significant decline in petrol sales, due to a shift from petrol to diesel, there is currently uncertainty regarding the extent to which this move towards diesel from petrol will continue. For example, UKPIA suggest[59] that the current high differential between petrol and diesel pump prices is likely to reduce future demand for diesel and increase future demand for petrol and that these price differentials are likely to be maintained.

Therefore, the following scenarios have been considered:

- Petrol sales remain the same as in 2008 into the future and
- Petrol sales decrease following the historical trend from 1999 to 2007 based on a linear decline.

Predicted uptake of Stage II controls

In order to estimate the difference in uptake of Stage II controls between the current UK position and possible new legislation, the baseline year and predicted future numbers of service stations have been used to calculate the following:

- Replacement of existing service stations with new stations at an assumed rate of 1/35 per year. This applies to both the UK legislation scenario and the proposals for a new Directive;
- The numbers of new service stations required to introduce Stage II controls have been calculated for each scenario, noting that the definition of what constitutes a "new" service station may differ from the UK legislation scenario to the proposals (due to different definitions). In practice, there is little if any difference between the two scenarios because new service stations are already required to implement Stage II controls in the UK;

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58 Personal communication, 5 March 2009.

59 Personal communication, 4 March 2009.

- The numbers of existing service stations having installed Stage II controls have been calculated for the year for which emissions, costs and benefits have been calculated;
- In the case of the proposed Directive, the numbers of refurbished and non-refurbished service stations has been calculated, assuming a rate for major refurbishment of 1/25 years for smaller stations (<3,500m^3) and 1/14 years for larger stations (>3,500m^3). This allows the number of existing service stations required to implement Stage II to be calculated, differentiated according to whether they will be able to install the required below ground equipment (e.g. pipework) during planned major refurbishments, significantly reducing the costs of compliance;
- Based on the above, the additional numbers of service stations with Stage II controls under the proposed Directive scenario(s) has been calculated broken down as follows:
  - Total additional numbers of service stations in each throughput range with Stage II controls in place under the proposed Directive scenario(s). This has been used in calculation of emission reductions and associated benefits that would be achieved.
  - Additional numbers of new, existing refurbished and existing non-refurbished stations in each throughput range with Stage II controls in place. These data have been used in calculation of the compliance costs for businesses. These numbers obviously vary according to the throughput thresholds and timescales for implementation under the different scenarios.

Estimation of emissions

Overview of approach

Emissions at service have been estimated for a number of different sources in the petrol distribution chain, including: filling of underground storage tanks; tank breathing; dispensing to automobiles; and drips and spillage. The main source that is of interest in relation to Stage II controls is dispensing to automobiles.

Emissions have been estimated using an approach set out in a report by the Institute of Petroleum (2000)[60]. The relationships used are set out below[61].

Filling of tanks without vapour balancing in operation: $E \quad 2.44 \quad V \quad TVP$

Filling of tanks with vapour balancing in operation: $E \quad 0.11 \quad V \quad TVP$

Tank breathing: $E \quad 0.33 \quad V \quad TVP$

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60 Protocol for the estimation of VOC emissions from petroleum refineries and gasoline marketing operations, Institute of Petroleum, 2000.

61 These are also now incorporated into the 2007 EMEP/CORINAIR Emission Inventory Guidebook, European Environment Agency Technical report No 16/2007.

Dispensing to automobiles without Stage II PVR in place: $E \quad 3.67 \quad V \quad TVP$

Drips and spillage during dispensing: $E \quad 0.22 \quad V \quad TVP$

Where:

E = emissions (t/yr)

V = volume dispensed per year ('000m^3)

TVP = true vapour pressure of petrol (bar)

$$TVP \quad 0.01 \quad RVP \quad 10^{\,0.000007047 \; RVP \quad 0.01392 \; T \quad 0.0002311 \; RVP \quad 0.5236}$$

T = product temperature in °C

RVP = Reid vapour pressure of petrol (kPa)

Note that the above equations imply an abatement efficiency of around 95% for Stage IB controls when filling of storage tanks at service stations. An abatement efficiency of 85% has been used as a default assumption for the effects of introducing Stage II controls.

Data used in estimation of emissions

The table below summarises the data that have been used as inputs to the above in estimating emissions.

Summary of data used in estimating emissions

Parameter	Data used
V – volume of petrol dispensed per year	Based on total throughput within each throughput band for UK figures and mid-point of throughput range for typical individual service station emissions.
T – product temperature	Average ambient temperatures have been assumed to be 12.3°C during summer months and 5.4°C in non-summer months (see also below). It has been assumed that the product temperature is the same as the ambient temperature.
RVP – Reid vapour pressure of petrol	Maximum RVP during summer period (1 June to 31 August) of 70kPa; minimum of 45 kPa. Maximum RVP during winter (16 October to 15 April) of 100kPa; minimum of 70 kPa. Wider ranges apply during transitions between summer/winter. Mid-points of the ranges have been applied (Note 1).

Notes:

1) Mid-point of RVP ranges has been applied as it is understood that refineries will tend to blend towards the middle of the specification range in order to avoid exceeding the minimum or maximum values.

Annual emissions have been calculated by adding together the emissions during the summer and non-summer periods (based on temperature, RVP and length of the relevant periods).

In estimating total emissions for the UK, the following have been calculated:

- "Uncontrolled" emissions predicted for the year of interest with no Stage IB or Stage II controls in place;
- Status quo or business as usual emissions predicted for the year of interest based on the percentage uptake of Stage IB and Stage II controls within each throughput size band (based on existing UK legislation) and
- Emissions predicted for the scenario (proposed Directive) under consideration for the year of interest with additional uptake of Stage II controls.

The above allows the reduction in emissions from implementation of the proposed Directive to be calculated as compared to the business as usual emissions in the year of interest (emissions reductions and costs/benefits are presented for the year 2020).

Costs of introducing Stage II controls

Overview

The capital costs of implementing Stage II controls vary significantly according to whether installation is undertaken during part of a "major refurbishment" (in this case taken to be essentially a knock-down and rebuild of the service station) or as part of a non-scheduled upgrade in order to meet the requirements of new legislation. Costs for new service stations are assumed to be essentially the same for "new" stations as for existing service stations undergoing a planned major refurbishment.

Some of the data used are relatively old (the timescales for undertaking this work were relatively short, precluding collection of significant amounts of new information) and may thus not fully reflect the current costs.

Details of the cost estimates applied in this assessment are provided in the sections below for the following key elements:

- Materials, equipment and labour. This includes:
  - Materials and equipment including: installation of underground pipework; surround to pipework; tank-connection and shear valves;
  - Labour including trench excavation for vapour recovery pipework; removal of pumps for connections and replacement; and installation equipment.

- Costs of vapour recovery equipment, including: vapour recovery equipment (pumps, proportional valves, etc.); vapour recovery nozzles; and additional costs for dispensers (the latter if dispensers need to be replaced earlier than usual to comply with legislation);
- Costs associated with loss of fuel sales during installation of equipment (both petrol and diesel sales will be foregone);
- Additional costs of maintenance and power for the Stage II vapour recovery equipment;
- Costs of compliance checking (assumed to be a "dry test" of vapour / liquid ratio) and
- Additional UK fees and charges under the Environmental Permitting Regulations.

There may also be costs associated with undertaking any type approval tests for the Stage II equipment to be used. However, these have not been included in the assessment as suitable type approval is already understood to be achieved for those installations having already installed Stage II in the UK; no additional type approval testing is therefore assumed to be required.

Costs of developing and implementing legislation have not been included in the assessment.

The data presented below have been taken from a variety of sources. All cost data have been converted into Sterling using ECB reference exchange rates[62] (where applicable) and uplifted to Sterling prices for 2008 based on the Retail Price Index[63].

Various stakeholders in the UK (Government and industry) have been given the opportunity to comment on the cost data used in the assessment.

Materials, equipment and labour

The table below provides details of the costs of materials, equipment and labour for installation of Stage II pipework and equipment. They are based on data from Entec's 1998 report on Stage II PVR[64]. These data have

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62 http://sdw.ecb.europa.eu/browseSelection.do?DATASET=0&FREQ=M&CURRENCY=GBP&node=2018794 (accessed 13 February 2009).

63 RPIX, CHAW from www.statistics.gov.uk (accessed 13 February 2009).

64 Design of a scheme to control evaporative emissions for petrol vehicle refuelling. Report for the Department of Environment Transport & Regions. Entec UK Limited, Pieda and Catalist. 27 March 1998.

also been used in the Commission's Impact Assessment[65] and were used in the 2005 UK Impact Assessment for the existing Stage II legislation.

[65] Commission staff working document – Accompanying document to the Proposal from the Commission to the European Parliament and Council for a directive proposal for stage II petrol vapour recovery during the refuelling of petrol cars at service stations – Impact Assessment, SEC(2008) 2937, 4.12.2008.

Entec

Costs of Stage II PVR equipment

The costs of additional vapour recovery equipment have been based on data from the 2005 Impact Assessment supporting the UK's Stage II legislation. These are consistent with the data used in the Commission's Impact Assessment and with other data supporting the Commission's Impact Assessment[66].

The following sets of figures are presented in the table below: high and low end costs for 'conventional' Stage II systems (involving passing recovered petrol vapours back to the underground storage tank; and costs for the "at-pump" system. In practice, the overall figures presented in this Impact Assessment are based on an average of the high and low values for the conventional system as it appears that uptake of the "at pump" system has so far been minimal, at least amongst the major oil company retailers (though uptake may have been greater amongst supermarkets and independent retailers).

B) Costs of Stage II equipment (per dispenser)

1) Conventional - high estimate

	Retrofit	New (unscheduled)	New (scheduled)
Additional cost for dispenser	£0	£7,930	£0
VR equipment excluding nozzle	£3,420	£2,520	£2,520
VR nozzle	£1,770	£1,760	£1,760

2) Conventional - low estimate

	Retrofit	New (unscheduled)	New (scheduled)
Additional cost for dispenser	£0	£7,930	£0
VR equipment excluding nozzle	£2,740	£2,010	£2,010
VR nozzle	£1,770	£1,760	£1,760

3) At-pump system

	Retrofit	New (unscheduled)	New (scheduled)
Additional cost for dispenser	£0	£7,930	£0
VR equipment excluding nozzle	£3,360	£2,240	£2,240
VR nozzle	£1,770	£1,760	£1,760

It has been assumed that there is an average of four petrol vapour recovery nozzles per dispenser.

Costs of loss of fuel sales

It has been assumed that there will be a cost to the service station operator associated with a loss of sales of fuel during installation of Stage II equipment. It has been assumed that a service station will need to close for one week

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66 Data used in Entec's 2005 report for the European Commission have not been used in this case as these were based on representative values for the EU as a whole. The data used herein are considered to be representative for the UK.

for installation and that, during this period, the income foregone would be approximately £2 per m^3 of annual throughput[67].

Maintenance and power costs

It has been assumed that the incremental (additional) costs for maintenance and power of Stage II equipment, per dispenser, are as follows:

- Incremental maintenance cost per dispenser: £80
- Incremental power cost per dispenser: £7

These values are based on Entec's 1998 report (see above) and were also used in the Commission's Impact Assessment and Defra's 2005 Impact Assessment.

Note that there will be additional power costs associated with use of the "at pump" system. These have not been considered directly in the Impact Assessment as they are not expected to be much higher than the power costs for conventional Stage II systems and relatively small in the context of overall costs[68].

Compliance checks

The cost of undertaking a routine check on vapour / liquid ratio to confirm correct operation of the Stage II equipment has been estimated as £360 per site. This is based on Defra's 2005 Impact Assessment for the UK's Stage II legislation.

Under the current UK legislation, it is assumed that such a check is required each year, except where an automatic monitoring system is in place. The Commission's proposal includes requirements similar to those in the UK.

Fees and charges

Under the local authority pollution prevention and control (LAPPC) regime, service stations are subject to one-off fees related to permit applications/variations and an annual subsistence charge. Under the proposals, certain service stations would have to install Stage II as well as the existing Stage I controls. It is assumed that there

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67 This is calculated assuming a gross retail margin on petrol sales of 6p per litre; that the site needs to close for one week to install Stage II equipment; and that sales of both petrol and diesel are foregone (with petrol assumed to account for 57% of total retail fuel sales).

68 Power costs for the "at pump" system are understood to be around 2p per 1000l of petrol sales. Assuming petrol sales per unit (dispenser) of, say, 300 to 600 thousand litres per dispenser, this equates to additional power costs of £6 to £12 per dispenser per year, compared to an estimated average of £7 for conventional Stage II equipment.

would be a fee for a variation to the permit (£97 for reduced fee activities based on the 2009/10 scheme) as well as an increase in the annual subsistence charge (assumed to be from £149 to £214)[69].

Assumed lifetimes of equipment

In calculating annualised costs and present value costs, the following assumptions have been used regarding equipment lifetimes (in addition to the figures given earlier in this section on assumed refurbishment rates):

- Average lifetime of above-ground internal equipment = 14 years;
- Average lifetime of above-ground external equipment = 5 years (e.g. vapour recovery nozzles). An assumed lifetime of 14 years has also been used for sensitivity purposes.

Estimated value of recovered fuel

Implementation of Stage II controls allows for recovery of a proportion (i.e. 85%) of the fuel that would otherwise be lost during refuelling. This is likely to be the more volatile than the average petrol sold as it will include mainly butane.

Depending on the type of system used, the recovered petrol vapour can be resold by the petrol supplier[70] (conventional system) or the service station retailer ("at pump" system).

The volume of recovered petrol has been calculated from the level of emission reduction in tonnes converted assuming a petrol density of 0.735t/m^3. The value of this recovered petrol has been assumed to be £0.41 per litre[71].

Summary of costs and emission reductions for 'typical' service stations

The table below provides estimates of costs and reductions in emissions for a "typical" service station within each throughput category for the implementation of Stage II controls. It includes expected capital costs; present value costs; total annualised costs; and cost-effectiveness in £/t VOC abated. Data are also presented on the cost-

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69 These values are based on the 'local authority permits for part B installations and mobile plant (fees and charges) (England) scheme 2009". It has been assumed that service stations will be medium risk for the first year following extension of the risk-based approach to charging which has been introduced for reduced fee activities such as service stations as of April 2009.

70 Simplistically, when the vapours returned to the underground storage tank are collected by the road tanker during petrol delivery and returned to the terminal vapour recovery unit.

71 Based on an average retail price of 107.09p per litre in 2008 using DECC's quarterly energy prices data (National Statistics, December 2008); a VAT rate applicable for the majority of 2008 of 17.5%; and a duty rate of 50.35p per litre.

effectiveness taking into account the value of the recovered petrol. Separate values are given for installation of Stage II controls at non-refurbished service stations and refurbished/new service stations.

The capital costs presented below are comparable to "actual" costs reported by UKPIA (personal communication, 9 March 2009) of £25,000 to £30,000 per site for sites with a throughput of around 3 million litres per annum.

0.24	0.72	1.19	1.67	2.15	2.62	3.10	3.58	4.05	4.53	5.25
18,200	19,195	25,626	26,622	27,617	28,613	29,608	36,339	37,335	38,330	45,259
55,670	65,285	90,255	99,871	109,486	119,102	128,717	154,287	163,903	173,518	203,596
29,506	30,502	38,366	39,362	40,357	41,353	42,349	45,731	46,726	47,722	55,600
62,666	63,662	81,446	82,442	83,437	84,433	85,429	99,031	100,026	101,022	119,120
2854	2914	3746	3807	3867	3927	3988	5337	5428	5520	6471
5,596	5,657	7,334	7,394	7,455	7,515	7,575	10,212	10,303	10,394	12,280
11,968	4,074	3,142	2,280	1,802	1,497	1,286	1,492	1,339	1,218	1,233
23,467	7,907	6,151	4,429	3,473	2,865	2,444	2,855	2,541	2,294	2,341
132	397	662	927	1,192	1,456	1,721	1,986	2,251	2,515	2,913
11,413	3,519	2,587	1,725	1,247	942	731	937	784	663	678
22,912	7,352	5,595	3,874	2,918	2,310	1,888	2,300	1,986	1,739	1,785

Benefits

Greenhouse gas emission reductions

There are benefits in terms of reduced impacts on climate change associated with reductions in VOC emissions. These benefits have been estimated based on the reductions in VOC emissions under each of the scenarios considered.

Firstly, there will be an increase in CO_2 emissions associated with the increased electricity consumption needed for Stage II petrol vapour recovery equipment. As highlighted in the above section on costs, the additional cost of power associated with Stage II equipment is estimated to be £7 per dispenser. Electricity consumption will vary amongst Stage II techniques/equipment and so this figure has been used to back-calculate an assumed electricity consumption per dispenser of 100kWh per year[72]. A fuel factor of 0.523 tonnes CO_2 per MWh has been applied[73], giving an assumed 0.052 tonnes CO_2 per dispenser per year. This has been scaled up to a UK level using the assumed number of additional service stations and associated dispensers required to implement Stage II controls.

Secondly, there will be a reduction in climate change impacts associated with the reduction in VOC emissions. There are two relevant elements: those due to the chemical effect of the VOC on the atmosphere (primary emissions) and those due to the CO_2 arising from the degradation of the VOC in the atmosphere (secondary emissions).

Primary emissions are the climate change impacts arising as a result of the global warming potential of the VOCs themselves. These have been estimated by multiplying the mass of VOC emitted under each scenario by the global warming potential of butane[74]. This gives an estimate of the emissions in CO_2 equivalent.

Secondary CO_2 emissions have been estimated by calculating the carbon content of the mass of VOC released, assuming that it is all comprised of butane. The carbon content has then been used to estimate the equivalent value of CO_2 released per tonne of VOC released[75], allowing the UK total CO_2 equivalent emissions to be calculated.

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72 Using an assumed electricity price of £0.07 per kWh, taken as broadly representative of values in DECC's quarterly energy prices data (National Statistics, December 2008).

73 Based on AEA (2007): Climate change consequences of VOC emission controls, Report to The Department for Environment, Food and Rural Affairs, Welsh Assembly Government, the Scottish Executive and the Department of the Environment for Northern Ireland, Issue 3, AEA Energy & Environment, September 2007.

74 The 100 year GWP of butane is taken to be 7.0. Much of the VOC captured by Stage II vapour recovery systems is assumed to be butane.

75 One tonne of butane comprises 0.828t carbon, equating to 3.03t CO_2e.

The value of the reductions in greenhouse gas emissions has been calculated using Defra guidance[76] on the 'shadow price of carbon' (SPC). Values have been calculated assuming that the policy takes effect in 2012 and the SPC has been assumed to increase by 2% per year to account for rising damage costs for higher greenhouse gas concentrations. All values are expressed in 2008 prices and a discount rate of 3.5% has been used in calculating the present value of the greenhouse gas emissions avoided over a period of 14 years.

[76] How to use the Shadow Price of Carbon in policy appraisal, Defra website (http://www.defra.gov.uk/environment/climatechange/research/carboncost/index.htm), accessed 16 March 2009.

Appendix B
Detailed information on costs and benefits

This appendix provides information on the estimates of costs and benefits for the various scenarios and sensitivities considered (as described in the main report). The table below provides details of the scenarios and sensitivities considered and the table overleaf includes details of the calculated cost and benefit estimates.

Summary of scenarios and sensitivities considered

Scenario description		Scenario variants		Sensitivities	
		Implementation year for existing stations (Note 1)	Throughput thresholds for existing (m^3) (Note 2)	Lifetime of above-ground equipment	Station numbers and petrol sales (Note 3)
1. Status quo		2010 (2012 for Scotland)	3500	N/A	N/A
2. Implement according to Commission proposal (Note 4)		2020	3000	5 years 14 years	Constant Declining
3. Possible sensitivities in implementation – negotiations	3a	2015	3000	5 years	Constant
	3b	2025	3000	5 years	Constant
	3c	2020	2000	5 years	Constant
	3d	2015	2000	5 years	Constant
	3e	2025	2000	5 years	Constant
	3f	2020	1000	5 years	Constant
	3g	2015	1000	5 years	Constant
	3h	2025	1000	5 years	Constant
	3i	2020	500	5 years	Constant
	3j	2020	1500	5 years	Constant
	3k	2020	2500	5 years	Constant
	3l	2020	3500	5 years	Constant

Notes:

1) Implementation year for new stations assumed to be 2012.

2) Throughput thresholds for new/refurbished stations assumed to be 100m3 (or 500m3 with derogation – which UK would be expected to take up).

3) Service station numbers either assumed to remain constant over time.

4) Results produced are 2i (5 years, constant); 2ii (5 years, declining); 2iii (14 years, constant); 2iv (14 years, declining).

Agenda Item 3.5

Constitutional and Legislative Affairs Committee

(CLA(4)-01-12

CLA74

Constitutional and Legislative Affairs Committee Draft Report

Title: The Eels (England and Wales) (Amendment) Regulations 2011

Procedure: Negative

These Regulations amend regulations 6 and 7 of the Eels (England and Wales) Regulations 2009 ('the principal Regulations'), which implement Council Regulation (EC) No 1100/2007 establishing measures for the recovery of the stock of European eel.
The amendments correct defects in the principal Regulations identified by the Joint Committee on Statutory Instruments in its scrutiny of those Regulations. At that time, statutory instruments subject to a procedure at Westminster were not scrutinised by the corresponding National Assembly committee.

Technical Scrutiny

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

(1) These Regulations are made in English only, being combined regulations for England and Wales that are subject to a negative procedure at Westminster.
[Standing Order 21.2(ix) – that the regulations are not made in both English and Welsh]

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

December 2011

This Statutory Instrument has been made in consequence of a defect in S.I. 2009/3344 and is being issued free of charge to all known recipients of that Statutory Instrument.

STATUTORY INSTRUMENTS

2011 No. 2976

FISHERIES, ENGLAND AND WALES

RIVER, ENGLAND AND WALES

The Eels (England and Wales) (Amendment) Regulations 2011

Made - - - -	*12th December 2011*
Laid before Parliament	*13th December 2011*
Laid before the National Assembly for Wales	*13th December 2011*
Coming into force - -	*3rd January 2012*

The Secretary of State and the Welsh Ministers are each designated(**a**) for the purposes of section 2(2) of the European Communities Act 1972(**b**) in relation to the common agricultural policy.

The Secretary of State in relation to England and the Welsh Ministers in relation to Wales make these Regulations under the power conferred by that section.

Title and commencement

1. These Regulations—

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

(b) come into force on 3rd January 2012.

Amendment to the Eels (England and Wales) Regulations 2009

2.—(1) The Eels (England and Wales) Regulations 2009(**c**) are amended as follows.

(2) In paragraph (1) of regulation 6 (exports)—

(a) omit "and" immediately preceding sub-paragraph (c);

(b) at the end, add—

";

(d) ensure that the eels they export are accompanied by a copy of the certificate prepared under sub-paragraph (c); and

(**a**) S.I. 1972/1811 in relation to the Secretary of State and S.I. 2010/2690 in relation to the Welsh Ministers.

(**b**) 1972 c. 68; section 2(2) was amended by section 27(1)(a) of the Legislative and Regulatory Reform Act 2006 (c. 51) and by section 3(3) of, and Part 1 of the Schedule to, the European Union (Amendment) Act 2008 (c. 7). The function of the Minister of Agriculture, Fisheries and Food of making regulations under section 2(2) was transferred to the Secretary of State by the Ministry of Agriculture, Fisheries and Food (Dissolution) Order 2002 (S.I. 2002/794).

(**c**) S.I. 2009/3344.

(e) retain all certificates prepared under this paragraph for 12 months from the date of the certificate and allow the Agency to inspect those certificates at any reasonable time".

(3) In paragraph (2) of regulation 6, for "October 2009", substitute "March 2010".

(4) For regulation 7 (duties on consignees), substitute—

"**Duties on consignees**

7.—(1) A person must not accept a consignment of live eels that has been imported into England and Wales unless the consignment is accompanied by—

(a) a certificate prepared under regulation 5; and

(b) where live eels from another imported consignment have been added to the consignment, a copy of the certificate prepared under regulation 5 in relation to that other consignment.

(2) The consignee must retain all certificates and (where applicable) copies of certificates for 12 months from the date of the document and allow the Agency to inspect those documents at any reasonable time.

(3) Failure to comply with paragraph (1) or (2) is an offence.".

Richard Benyon
Parliamentary Under Secretary of State
12th December 2011 Department for Environment, Food and Rural Affairs

Carwyn Jones
First Minister of Wales.

9th December 2011

EXPLANATORY NOTE

(This note is not part of these Regulations)

These Regulations amend regulations 6 and 7 of the Eels (England and Wales) Regulations 2009, which implement Council Regulation (EC) No 1100/2007 (OJ No L 248, 22.9.2007, p 17) establishing measures for the recovery of the stock of European eel.

The amendments to regulation 6 require exporters to ensure that consignments of live eels exported from England or Wales are accompanied by a copy of the certificate prepared under that regulation and to retain the original certificate for inspection; they also change the date of the eel management plans referred to in that regulation.

The amendment to regulation 7 limits the obligation under that regulation to consignees accepting consignments of live eels that have been imported into England and Wales.

No impact assessment has been produced for this instrument as no impact on the costs of business or charities is foreseen.

EXPLANATORY MEMORANDUM TO

THE EELS (ENGLAND AND WALES) (AMENDMENT) REGULATIONS 2011

2011/2976

This explanatory memorandum has been prepared by the Welsh Government and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Eels (England and Wales) (Amendment) Regulations 2011.

Carwyn Jones

First Minister of Wales

9 December 2011

1. Description

The purpose of this instrument is to correct a defect in the Eels (England and Wales) Regulations 2009.

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

The Joint Committee on Statutory Instruments, in its seventh report for the 2009/2010 session, reported a defect in regulation 7(1) (a) of the Eels (England and Wales) Regulations 2009. Regulation 7 relates to duties on those who receive consignments of eels.

The Committee identified that the Regulation 7(1) did not specify that the provisions only applied to consignments of live eels – while Regulation 5 (imports) and Regulation 6 (exports), to which Regulation 7 refers, did only apply to live eels. Furthermore the cross reference in Regulation 7 to Regulation 6 (exports) applied the duty on consignees to people outside UK jurisdiction receiving eels exported from England and Wales.

The Department for Environment, Food and Rural Affairs acknowledged the error and undertook to correct regulation 7(1).

The 2009 Regulations were made on a composite basis because they implement Council Regulation (EC) No 1100/2007 (establishing measures for the recovery of the stock of European eel) and there were no policy differences in the intended method of implementation throughout England and Wales. In addition, the use of one instrument imposing one regulatory regime across England and Wales has the benefit of

simplicity for those required to comply with the various provisions. It is for this reason that the amending Regulations are also being made on a composite basis by both the Secretary of State and Welsh Ministers.

This instrument is made under the power conferred by section 2(2) of the European Communities Act 1972 and as such could be subject to either the affirmative or negative resolution procedure. This instrument is made subject to the negative resolution procedure as there was no factor indicating the use of affirmative procedure (for instance, the instrument does not substantially affect primary legislation).

3. Legislative Background

The Eels (England and Wales) Regulations 2009 implemented Council Regulation (EC No. 1100/2007 of 18 September 2007 establishing measures for the recovery of the stock of European Eel). The Council Regulation requires Member States to implement a number of short and long-term measures to achieve a target of ensuring that at least 40% of the potential production of adult eel's returns to the sea to spawn on an annual basis.

Subject to an exception for the River Tweed, this instrument applies to England and Wales.

4. Purpose and intended effect of the legislation

The International Council for the Exploration of the Sea (ICES) advised in 2006 that the stock of the European eel (*Anguilla anguilla*) was outside safe biological limits across European waters. The population level was only about 5% of the stock levels in the 1980s. Following this advice, the EU regulated in Council Regulation (EC) No. 1100/2007 establishing measures for the recovery of the stock of the common eel.

5. Consultation

There has been no public consultation on the new instrument.

6. Regulatory Impact Assessment

An Impact Assessment was produced in respect of the original instrument and is available with the Explanatory Memorandum on www.legislation.gov.uk. No Regulatory Impact Assessment has been conducted in respect of these Regulations as they simply correct an error identified in the 2009 Regulations

ACCOMPANYING DOCUMENTS
Explanatory Notes and an Explanatory Memorandum are printed separately.

Local Government Byelaws (Wales) Bill

[AS INTRODUCED]

CONTENTS

Local Government Byelaws (Wales) Bill

[AS INTRODUCED]

A Bill of the National Assembly for Wales to make provision for the powers of county councils, county borough councils, community councils and other public bodies to make byelaws; the procedure for making byelaws; the enforcement of byelaws; and for connected purposes.

Having been passed by the National Assembly for Wales and having received the assent of Her Majesty, it is enacted as follows:

Introduction

1 Overview

This Act—

(a) reforms procedures for making byelaws in Wales, including removing a requirement for confirmation of byelaws by the Welsh Ministers;

(b) enables certain byelaws to be enforced by fixed penalty notices;

(c) requires authorities that make byelaws to have regard to any guidance given by the Welsh Ministers on procedure;

(d) restates for Wales a general power to make byelaws.

Power to make byelaws

2 Byelaws for good rule and government and suppression of nuisances

(1) A council in Wales may make byelaws—

(a) for the good rule and government of the whole or any part of its area;

(b) for the prevention and suppression of nuisances in its area.

(2) But byelaws may not make provision which—

(a) is made by an Act of Parliament, Assembly Measure or Act of the Assembly;

(b) is made, or could be made, by subordinate legislation (which means legislation made by statutory instrument).

(3) This section applies to—

(a) a county borough council;

(b) a county council.

Interpretation

3 Meaning of "legislating authority"

Each of the following is a legislating authority in Wales for the purposes of this Act—

(a) a county borough council;

(b) a county council;

(c) a community council;

(d) a National Park authority;

(e) the Countryside Council for Wales.

Revocation or amendment of byelaws

4 Revocation or amendment by a legislating authority

(1) A legislating authority may make a byelaw to revoke or amend a byelaw previously made by it.

(2) But this power may be exercised only where the authority has no other power to revoke or amend the byelaw.

(3) A power to revoke or amend a byelaw is exercisable in the same manner and subject to the same conditions or limitations as the power to make the byelaw.

5 Revocation by the Welsh Ministers

(1) The Welsh Ministers may by order revoke any byelaw made by a legislating authority which they think is obsolete.

(2) An order may make different provision for different areas, including different provision for different localities and for different authorities.

Procedure for byelaws

6 Byelaws not requiring confirmation

(1) This section applies to byelaws made by a legislating authority under the enactments listed in Part 1 of Schedule 1.

(2) Before it makes a byelaw, an authority must—

(a) publish on the authority's website an initial written statement which describes the issue which the authority thinks may be addressed by making a byelaw;

(b) consult persons who the authority thinks are likely to be interested in, or affected by, the issue.

(3) Following the consultation, the authority must consider the responses and decide whether making a byelaw is the most appropriate way of addressing the issue.

(4) The authority must then publish on its website a second written statement which contains—

(a) the initial written statement;

(b) a summary of the consultation and the responses;

(c) its decision;

(d) the reasons for that decision.

(5) At least one month before the byelaw is made, notice of the intention to make the byelaw must be published—

(a) in one or more local newspapers circulating in the area to which the byelaw is to apply;

(b) on the authority's website.

(6) For at least one month before making the byelaw, the authority must ensure that—

(a) a draft of the byelaw is published on the authority's website;

(b) a copy of the draft is deposited at its principal office;

(c) a copy is open to public inspection at all reasonable hours without payment.

(7) The authority must give a copy of the draft byelaw to any person who applies for it, subject to that person paying such reasonable fee charged by the authority (if any).

(8) An authority may not make a byelaw later than six months after the date of the notice under subsection (5).

7 Byelaws requiring confirmation

(1) This section applies to byelaws made by a legislating authority under any enactment other than those listed in Part 1 of Schedule 1.

(2) But this section does not apply to the extent that the enactment conferring the power to make a byelaw makes different provision in relation to one or more of the following—

(a) a requirement to submit byelaws for confirmation;

(b) publication of a notice of intent to make the byelaw;

(c) publication of the byelaw;

(d) making copies of the byelaw available.

(3) Byelaws made by the legislating authority must be submitted to the confirming authority and do not have effect unless and until they are confirmed by the confirming authority.

(4) At least one month before the byelaw is submitted for confirmation, notice of the legislating authority's intention to to do so must be published—

(a) in one or more local newspapers circulating in the area to which the byelaw is to apply;

(b) on the authority's website.

(5) For at least one month before the byelaw is submitted for confirmation, the legislating authority must ensure that—

(a) the byelaw is published on the authority's website;

(b) a copy of the byelaw is deposited at its principal office (and, in the case of a byelaw made by the Countryside Council for Wales under the National Parks and Access to the Countryside Act 1949, at the principal office of each council of a county or county borough to whose area the byelaw applies);

(c) a copy is open to public inspection at all reasonable hours without payment.

(6) The legislating authority must give a copy of the byelaw to any person who applies for it, subject to that person paying such reasonable fee charged by the authority (if any).

(7) The confirming authority may confirm, or refuse to confirm, any byelaw submitted to it under this section.

(8) For the purposes of this Act, the confirming authority is—

(a) the person specified in the enactment under which the byelaws are made as the person who is to confirm the byelaws, or

(b) if no person is specified, the Welsh Ministers.

(9) The functions of the Welsh Ministers under subsection (8)(b) are exercisable concurrently with the Secretary of State.

8 Formalities, commencement and publication of byelaws

(1) This section applies to byelaws made by a legislating authority under any enactment.

(2) But this section does not apply to the extent that the enactment conferring the power to make the byelaw makes different provision in relation to one or more of the following—

(a) signature or sealing of the byelaw;

(b) publication of the byelaw;

(c) making copies of the byelaw available.

(3) Byelaws made by a legislating authority must be made under the common seal of the authority, or, in the case of byelaws made by a community council not having a seal, signed by two members of the council.

(4) Byelaws come into effect on the date fixed by the legislating authority, or if they require confirmation, by the confirming authority. If no date is fixed, they come into effect at the end of one month from the date they are made (or confirmed, as applicable).

(5) The legislating authority which makes the byelaw must—

(a) publish the byelaw on the authority's website when made, or if it requires confirmation, when confirmed;

(b) deposit a copy of the byelaw at its principal office;

(c) ensure that the copy is open to public inspection at all reasonable hours without payment;

(d) give a copy of the byelaw to a person who requests it, subject to that person paying a such reasonable fee charged by the authority (if any).

(6) The proper officer of a county borough council or county council must send a copy of a byelaw once made, or where required once confirmed, to the proper officer of the council of every community to which the byelaw applies.

(7) In the case of byelaws made by a National Park authority, the proper officer of the authority must send a copy of a byelaw once made, or where required once confirmed, to the proper officer of—

(a) the council for every county borough or county whose area includes the whole or part of the National Park;

(b) the council of every community whose area includes the whole or part of the National Park.

(8) In the case of byelaws made by the Countryside Council for Wales under the National Parks and Access to the Countryside Act 1949, the Council must ensure that it sends a copy of a byelaw once made, or where required once confirmed, to the proper officer of—

(a) the council of every county borough or county to whose area the byelaw applies;

(b) the council of every community to whose area the byelaw applies.

(9) The proper officer of the community council must—

(a) arrange for a copy of a byelaw sent to the officer to be deposited with the public documents of the community;

(b) ensure that the copy is open to public inspection at all reasonable hours without payment.

(10) In subsections (6) to (9) the "proper officer" is the officer duly authorised for that purpose by that body.

9 Power to amend Part 1 of Schedule 1

The Welsh Ministers may by order amend Part 1 of Schedule 1 (Byelaws not requiring confirmation) by adding to or subtracting from the list of enactments, or by amending the type of authority that may make byelaws without confirmation.

Enforcement of byelaws

10 Offences against byelaws

(1) Byelaws made by a legislating authority under any enactment may provide that persons contravening the byelaws are liable on summary conviction to a fine.

(2) The fine must not exceed either—

(a) the sum fixed by the enactment which confers the power to make the byelaws; or

(b) if no sum is so fixed, level 2 on the standard scale.

(3) In the case of a continuing offence, the byelaws may provide that the offender is liable on summary conviction to a further fine.

(4) The further fine must not exceed either—

(a) the sum fixed by the enactment which confers the power to make the byelaws, or

(b) if no sum is so fixed, the sum of £5 for each day during which the offence continues after conviction for that offence.

11 Section 2 byelaws; powers of seizure etc

A byelaw made under section 2 may include provision for or in connection with—

(a) the seizure and retention of any property in connection with any contravention of the byelaw, and

(b) the forfeiture of any such property on a person's conviction of an offence of contravention of the byelaw.

Fixed penalty notices

12 Power to offer fixed penalties for offences against certain byelaws

(1) This section applies to byelaws made by a legislating authority under the enactments listed in Part 2 of Schedule 1 (Byelaws in relation to which fixed penalties may be issued).

(2) If an authorised officer of a legislating authority has reason to believe that a person has committed an offence against a byelaw made by that authority, the officer may give a notice to the person offering the opportunity of discharging any liability to conviction for the offence by payment of a fixed penalty.

(3) If an authorised officer of a community council has reason to believe that a person has committed an offence in its area against a byelaw made by a legislating authority other than the community council, the officer may give that person a notice offering the person the opportunity of discharging any liability to conviction for the offence by payment of a fixed penalty.

(4) A fixed penalty under this section is payable to the authority whose officer gave the notice.

(5) Where a person is given a notice under this section in respect of an offence—

(a) no proceedings may be instituted for the offence before the end of the period of 14 days following the date of the notice, and

(b) the person may not be convicted of the offence if the person pays the fixed penalty before the end of that period.

(6) A notice under this section must give such particulars of the circumstances alleged to constitute the offence as are necessary to explain why an offence has occurred.

(7) A notice under this section must also state—

(a) the period under subsection (5) during which proceedings will not be taken for the offence;

(b) the amount of the fixed penalty;

(c) the person to whom and the address at which the fixed penalty may be paid.

(8) Without prejudice to payment by any other method, payment of the fixed penalty may be made by pre-paying and posting a letter containing the amount of the penalty (in cash or otherwise) to the person referred to, at the address provided, in the notice.

(9) If a letter is sent, payment is to be regarded as having been made at the time at which that letter would be delivered in the ordinary course of post.

(10) The Welsh Ministers may by regulations specify the form of a notice under this section.

(11) In any proceedings a certificate which—

(a) purports to be signed on behalf of the chief finance officer of an authority, and

(b) states that payment of a fixed penalty was or was not received by a date specified in the certificate,

is evidence of the facts stated.

(12) In this section—

"authorised officer", in relation to an authority, means—

(a) an employee of the authority who is authorised in writing by the authority for the purpose of giving notices under this section,

(b) any person who, in pursuance of arrangements made with the authority, has the function of giving such notices and is authorised in writing by the authority to perform the function, and

(c) any employee of such a person who is authorised in writing by the authority for the purpose of giving such notices;

"chief finance officer", in relation to an authority, means the person having responsibility for the financial affairs of the authority.

(13) The Welsh Ministers may by regulations prescribe conditions to be satisfied by a person before a community council may authorise the person in writing for the purpose of giving notices under this section.

13 Amount of fixed penalty

(1) A legislating authority may—

(a) specify the amount of a fixed penalty payable in pursuance of a notice under section 12;

(b) specify different amounts in relation to different byelaws.

(2) If no amount is so specified, the amount of the fixed penalty is £75.

(3) The Welsh Ministers may by regulations make provision in connection with the powers under subsection (1).

(4) Regulations under subsection (3) may, in particular—

(a) require an amount specified under subsection (1)(a) to fall within a range prescribed in the regulations,

(b) restrict the extent to which, and the circumstances in which, an authority can make provision under subsection (1)(b).

(5) The Welsh Ministers may by order substitute a different amount for the amount for the time being specified in subsection (2).

14 Power to require name and address in connection with fixed penalty

(1) If an authorised officer proposes to give a person a notice under section 12, the officer may require the person to give his or her name and address.

(2) A person commits an offence if that person—

(a) without reasonable excuse, fails to give his or her name and address when required to do so, or

(b) gives a false or inaccurate name or address in response to a requirement under that subsection.

(3) A person guilty of an offence under subsection (2) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(4) In this section, "authorised officer" has the same meaning as in section 12.

15 Use of fixed penalty receipts

(1) The authority must have regard to the desirability of using its fixed penalty receipts for the purpose of combating a nuisance for the prevention of which a byelaw was made by the authority.

(2) "Fixed penalty receipts" means amounts paid to an authority in pursuance of notices under section 12.

16 Power to amend Part 2 of Schedule 1

The Welsh Ministers may by order amend Part 2 of Schedule 1 (Byelaws in relation to which fixed penalty notices may be issued) by adding to or subtracting from the list of enactments, or by amending the type of authority that may offer fixed penalty notices.

17 Community Support Officers etc

(1) The Police Reform Act 2002 is amended as follows.

(2) In Schedule 4 (powers exercised by police civilians)—

(a) in paragraph 1ZA(3) after "1972" insert "or under section 12 of the Local Government Byelaws (Wales) Act 2012";

(b) in paragraph 1ZA(5)(a) after "1972" insert "or to which section 12 of the Local Government Byelaws (Wales) Act 2012 applies".

(3) In Schedule 5 (powers exercised by accredited persons)—

(a) in paragraph 1A(3) after "1972" insert "or under section 12 of the Local Government Byelaws (Wales) Act 2012";

(b) in paragraph 1A(5)(a) after "1972" insert "or to which section 12 of the Local Government Byelaws (Wales) Act 2012 applies".

Miscellaneous and general

18 Guidance

(1) The Welsh Ministers may give guidance to legislating authorities about—

(a) the procedure for making the byelaws to which section 6 or 7 applies;

(b) the enforcement of byelaws;

(c) anything related to these matters including—

(i) consultation and publication requirements;

(ii) the use of fixed penalties.

(2) A legislating authority must have regard to the guidance when making or enforcing byelaws.

19 Evidence of byelaws

(1) The production of a certified copy of a byelaw purporting to be made by a legislating authority is, until the contrary is proved, sufficient evidence of the facts stated in the certificate.

(2) For the purposes of this section, a certified copy of a byelaw is a printed copy of the byelaw that is endorsed with a certificate purporting to be signed by the proper officer of a legislating authority stating—

(a) that the byelaw was made by the authority;

(b) that the copy is a true copy of the byelaw;

(c) that on a specified date the byelaw was confirmed by the authority named in the certificate or, as the case may be, was sent to the confirming authority and has not been disallowed;

(d) the date, if any, fixed by the confirming authority for the coming into effect of the byelaw.

(3) The requirements in paragraphs (c) and (d) of subsection (2) do not apply if the byelaw was not subject to confirmation after it was made.

20 Consequential amendments

Schedule 2 (minor and consequential amendments) has effect.

21 Orders and regulations

(1) A power to make an order or regulations under this Act includes power to make such incidental, consequential, transitional or supplemental provision as the Welsh Ministers consider appropriate.

(2) In the case of the power under sections 9 and 16, this provision includes provision amending, repealing or revoking enactments.

(3) Any power of the Welsh Ministers to make an order or regulations under this Act is exercisable by statutory instrument.

(4) A statutory instrument containing an order under section 9, 13(5) or 16 may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, the National Assembly for Wales.

(5) Any other statutory instrument containing an order or regulations under this Act, apart from an instrument containing only an order under section 22 (commencement), is subject to annulment in pursuance of a resolution of the National Assembly for Wales.

22 Commencement

(1) This Act comes into force in accordance with provision made by the Welsh Ministers by order.

(2) An order under this section—

(a) may appoint different days for different purposes;

(b) may include transitional, saving or transitory provision.

23 Short title

The short title of this Act is the Local Government Byelaws (Wales) Act 2012.

SCHEDULE 1
(Sections 6 and 12)

LISTS OF BYELAW MAKING POWERS

PART 1

BYELAWS NOT REQUIRING CONFIRMATION

1 Section 6 applies to byelaws made—

(a) under the enactments listed in the first column of the table below,

(b) in relation to the subject matter listed in the second column of the table,

(c) by the type of authority listed in the third column of the table.

PART 1 TABLE

Enactment under which byelaws are made	**Subject- matter of byelaws**	**Type of authority by whom the byelaws are made**
Section 68 of the Town Police Clauses Act 1847	Regulation of hackney carriages	County council and county borough council
Section 164 of the Public Health Act 1875	Public walks and pleasure grounds	County council, county borough council and community council
Section 6 of the Town Police Clauses Act 1889	Regulation of horse drawn omnibuses	County council and county borough council
Sections 12 and 15 of the Open Spaces Act 1906	Open spaces and burial grounds	County council, county borough council and community council
Section 82 of the Public Health Acts Amendment Act 1907	Sea-shore	County council and county borough council
Section 83 of the Public Health Acts Amendment Act 1907	Promenades	County council and county borough council
Section 81 of the Public Health Act 1936	Prevention of certain nuisances	County council and county borough council
Section 82 of the Public Health Act 1936	Removal through streets of offensive matter or liquid	County council and county borough council
Section 87 of the Public Health Act 1936	Provision of public conveniences	County council, county borough council and community council

Section 198 of the Public Health Act 1936	Provision of mortuaries and post-mortem rooms	County council, county borough council and community council
Section 223 of the Public Health Act 1936	Regulation of baths, washhouses, swimming baths etc	County council, county borough council and community council
Section 231 of the Public Health Act 1936	Public bathing	County council, county borough council and community council
Section 233 of the Public Health Act 1936	With respect to swimming baths and bathing pools not under the management of a local authority	County council, county borough council and community council
Section 268 of the Public Health Act 1936	Prevention of nuisances in connection with the use of tents, vans etc	County council and county borough council
Section 270 of the Public Health Act 1936	Accommodation of hop-pickers and persons engaged in similar work	County council and county borough council
Section 75 of the Public Health Act 1961	Pleasure fairs and roller skating rinks	County council and county borough council
Section 76 of the Public Health Act 1961	Seaside pleasure boats	County council and county borough council
Section 77 of the Public Health Act 1961	Hairdressers and barbers	County council and county borough council
Section 19 of the Public Libraries and Museums Act 1964	Regulating the conduct of persons in libraries and museums and the use of those facilities	County council and county borough council
Section 35 of the Highways Act 1980	Regulation of walkways	County council and county borough council
Section 114 of the Highways Act 1980	Conduct of persons using or entering public conveniences provided by highway authorities	County council and county borough council
Section 14 of the Local Government (Miscellaneous Provisions) Act 1982	Acupuncture	County council and county borough council

Section 15 of the Local Government (Miscellaneous Provisions) Act 1982	Tattooing, semi-permanent skin colouring, cosmetic piercing and electrolysis	County council and county borough council
Section 60 of the Food Act 1984	Regulation and prevention of nuisances in market places	County council, county borough council and community council
Section 57(7) of the Road Traffic Regulation Act 1984	Use of parking places	Community council
Section 23 of the Housing Act 1985	Management, use and regulation of local authority houses, the use of land provided in connection with housing and as respects local authority lodging houses	County council and county borough council
Section 16 of the Cardiff Bay Barrage Act 1993	Good rule and government of inland bay and harbour	County Council (Cardiff)
Section 2 of this Act	Good rule and government	County council and county borough council
Section 4(1) of this Act	Power to revoke byelaws	Legislating authority

PART 2

BYELAWS IN RELATION TO WHICH FIXED PENALTIES MAY BE ISSUED

2 Section 12 applies to byelaws made—

(a) under the enactments listed in the first column of the table below,

(b) in relation to the subject matter listed in the second column of the table,

(c) by the type of authority listed in the third column of the table.

PART 2 TABLE

Enactment under which byelaws are made	**Subject- matter of byelaws**	**Type of authority by whom the byelaws are made**
Section 68 of the Town Police Clauses Act 1847	Regulation of hackney carriages	County council and county borough council
Section 164 of the Public Health Act 1875	Public walks and pleasure grounds	County council, county borough council and community council
Section 6 of the Town Police Clauses Act 1889	Regulation of horse drawn omnibuses	County council and county borough council

Sections 12 and 15 of the Open Spaces Act 1906	Open spaces and burial grounds	County council, county borough council and community council
Section 82 of the Public Health Acts Amendment Act 1907	Sea-shore	County council and county borough council
Section 83 of the Public Health Acts Amendment Act 1907	Promenades	County council and county borough council
Section 18 of the Children and Young Persons Act 1933	Restrictions on employment of children	County council and county borough council
Section 20 of the Children and Young Persons Act 1933	Restrictions on the engagement or employment of children in street trading	County council and county borough council
Section 81 of the Public Health Act 1936	Prevention of certain nuisances	County council and county borough council
Section 82 of the Public Health Act 1936	Removal through streets of offensive matter or liquid	County council and county borough council
Section 87 of the Public Health Act 1936	Provision of public conveniences	County council, county borough council and community council
Section 198 of the Public Health Act 1936	Provision of mortuaries and post-mortem rooms	County council, county borough council and community council
Section 223 of the Public Health Act 1936	Regulation of baths, washhouses, swimming baths etc	County council, county borough council and community council
Section 231 of the Public Health Act 1936	Public bathing	County council, county borough council and community council
Section 233 of the Public Health Act 1936	With respect to swimming baths and bathing pools not under the management of a local authority	County council, county borough council and community council
Section 268 of the Public Health Act 1936	Prevention of nuisances in connection with the use of tents, vans etc	County council and county borough council
Section 270 of the Public Health Act 1936	Accommodation of hop-pickers and persons engaged in similar work	County council and county borough council
Section 75 of the Public Health Act 1961	Pleasure fairs and roller skating rinks	County council and county borough council

Section 76 of the Public Health Act 1961	Seaside pleasure boats	County council and county borough council
Section 77 of the Public Health Act 1961	Hairdressers and barbers	County council and county borough council
Section 19 of the Public Libraries and Museums Act 1964	Regulating the conduct of persons in libraries and museums and the use of those facilities	County council and county borough council
Section 35 of the Highways Act 1980	Regulation of walkways	County council and county borough council
Section 114 of the Highways Act 1980	Conduct of persons using or entering public conveniences provided by highway authorities	County council and county borough council
Section 14 of the Local Government (Miscellaneous Provisions) Act 1982	Acupuncture	County council and county borough council
Section 15 of the Local Government (Miscellaneous Provisions) Act 1982	Tattooing, semi-permanent skin colouring, cosmetic piercing and electrolysis	County council and county borough council
Section 60 of the Food Act 1984	Regulation and prevention of nuisances in market places	County council, county borough council and community council
Section 57(7) of the Road Traffic Regulation Act 1984	Use of parking places	Community council
Section 23 of the Housing Act 1985	Management, use and regulation of local authority houses, the use of land provided in connection with housing and as respects local authority lodging houses	County council and county borough council
Section 16 of the Cardiff Bay Barrage Act 1993	Good rule and government of inland bay and harbour	County Council (Cardiff)
Section 2 of this Act	Good rule and government	County council and county borough council

SCHEDULE 2
(introduced by section 20)

MINOR AND CONSEQUENTIAL AMENDMENTS

Public Health Act 1875

1 In section 184 of the Public Health Act 1875 (confirmation of byelaws) after "local authority" insert "in England".

Open Spaces Act 1906

2 In section 15(2) of the Open Spaces Act 1906 (byelaws) after "any local authority" insert "in England".

Public Health Acts Amendment Act 1907

3 (1) The Public Health Acts Amendment Act 1907 is amended as follows.

(2) In section 9 (byelaws) after "byelaws made" insert "by a local authority in England".

(3) In section 82 (byelaws as to sea-shore), after the words "Provided that" insert ", in the case of byelaws made by a local authority in England,".

National Parks and Access to the Countryside Act 1949

4 (1) The National Parks and Access to the Countryside Act 1949 is amended as follows.

(2) In section 106 (supplementary provisions as to byelaws) after subsection (4) insert—

"(5) This section does not apply to byelaws made under this Act by the Countryside Council for Wales."

(3) After section 106 insert—

"106A Supplementary provisions as to byelaws made by the Countryside Council for Wales

(1) Sections 3 to 19 of the Local Government Byelaws (Wales) Act 2012 shall apply to all byelaws made the Countryside Council for Wales under this Act.

(2) The confirming authority for the purposes of section 7 of the 2012 Act is the Welsh Ministers.".

Public Health Act 1961

5 (1) The Public Health Act 1961 is amended as follows.

(2) In section 75 (byelaws as to pleasure fairs and roller skating rinks)—

(a) in subsection (8) after the words "as respects byelaws" insert "made by a local authority in England".

(b) after subsection (8) insert—

"(9) A local authority in Wales which proposes to make a byelaw under this section must consult the appropriate representative bodies on the matters dealt with by the proposed byelaw.

(10) For the purposes of subsection (9), "the appropriate representative bodies" are those bodies which appear to the authority to be representative of the interests of those who carry on pleasure fairs and entertainments to which this section applies.

(11) A local authority in Wales making a byelaw in pursuance of subsection (1)(d) of this section must consult the relevant fire and rescue authority on the matters dealt with by the proposed byelaw.

(12) For the purposes of subsection (11) "relevant fire and rescue authority" is the fire and rescue authority under the Fire and Rescue Services Act 2004 for the area to which the byelaw applies.".

(3) In section 76(2) (byelaws as to seaside pleasure boats) after the words "byelaws made" insert "by a local authority in England".

(4) In section 77(3) (byelaws as to hairdressers and barbers) after "byelaws" insert "made by a local authority in England".

Public Libraries and Museums Act 1964

6 In section 19(1) of the Public Libraries and Museums Act 1964 (byelaws in relation to libraries and museums) after the words "so made" insert "by a local authority in England".

Local Government Act 1972

7 (1) The Local Government Act 1972 is amended as follows.

(2) In section 235(1) (powers of councils to make byelaws for good rule and government etc) —

(a) omit "the council of a principal area in Wales";

(b) after the second "district" omit "principal area".

(3) In section 236 (procedure etc for byelaws)—

(a) in subsection (1) after "local authority" in each case insert "in England";

(b) in subsection (3), omit "or community";

(c) in subsection (9)—

(i) omit "or in Wales of a principal council";

(ii) omit the words "or community" in each case where they appear;

(d) omit subsection (10A).

(4) In section 236B (alternative procedure for certain byelaws)—

(a) in subsection (1)(a) after "local authority" insert "in England";

(b) in subsection (4)—

(i) omit paragraph (a);

(ii) in paragraph (b), omit "in relation to any other byelaw,";

(c) omit subsections (6), (10) and (11).

(5) In section 238 (evidence of byelaws) after "local authority" insert "in England".

Wildlife and Countryside Act 1981

8 (1) Section 37 of the Wildlife and Countryside Act 1981 (byelaws for protection of marine nature reserves) is amended as follows.

(2) In subsection (5) after "byelaws under this section" insert ", other than byelaws made by the Countryside Council for Wales".

(3) After subsection (5) insert—

"(5A) Sections 3 to 19 of the Local Government Byelaws (Wales) Act 2012 apply to byelaws made by the Countryside Council for Wales under this section, subject to such modifications (including modifications increasing the maximum fines which the byelaws may impose) as may be prescribed by regulations made by the Welsh Ministers.

(5B) Regulations under subsection (5A) shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of the National Assembly for Wales."

Food Act 1984

9 In section 121(1) of the Food Act 1984 (byelaws) after "Act" insert by a local authority in England".

Road Traffic Regulation Act 1984

10 In section 57(7) of the Road Traffic Regulation Act 1984 (byelaws as to the use of parking places) after the words "Secretary of State" insert ", in the case of byelaws made by a parish council".

Cardiff Bay Barrage Act 1993

11 In section 16 of the Cardiff Barrage Act 1993 (byelaws) omit subsections (8), (9) and (10).

Environment Act 1995

12 (1) Paragraph 17 of Schedule 17 to the Environment Act 1995 (documents, notices, records, byelaws etc) is amended as follows.

(2) In sub-sub-paragraph (e) after "Act," insert "in the case of National Park authorities in England,"

(3) In sub-paragraph (5) after "National Park authority" insert "in England".

National Assembly for Wales (Transfer of Functions) Order 1999 (SI 1999/672)

13 (1) Schedule 1 to the National Assembly for Wales (Transfer of Functions) Order 1999 (SI 1999/672) (enactments conferring functions transferred by article 2) is amended as follows.

(2) Under the heading "Local Government Act 1972" —

(a) omit the words "It is directed that the functions of the Secretary of State under section 236(11) and paragraph 25 of Schedule 14 shall be exercisable by the Assembly concurrently with the Secretary of State";

(b) omit the words "Section 238 shall have effect as if after "the Secretary of State" there were inserted "or, as the case may be, the National Assembly for Wales"".

LOCAL GOVERNMENT BYELAWS (WALES) BILL

Explanatory Memorandum to Local Government Byelaws (Wales) Bill

This Explanatory Memorandum has been prepared by the Local Government and Communities Department of the Welsh Government and is laid before the National Assembly for Wales.

Member's Declaration

In my view the provisions of the Local Government Byelaws (Wales) Bill, introduced by me on the 28 November 2011, would be within the legislative competence of the National Assembly for Wales.

Carl Sargeant AM

Minister for Local Government and Communities
Assembly Member in charge of the Bill

28 November 2011

Contents Page

1. Description

1.1 The proposed Local Government Byelaws (Wales) Bill gives effect to the Welsh Government's proposals to simplify procedures for making and enforcing local authority byelaws. The Bill introduces an alternative procedure for local authorities to follow in making a number of byelaws. For these byelaws, the Bill requires authorities to consult locally before making a byelaw and removes the requirement for confirmation by the Welsh Ministers. The proposed Bill also provides an optional alternative, and more efficient, means of enforcement through fixed penalty notices. Finally, the Bill also recasts and consolidates existing byelaw provisions in sections 235 to 238 of the Local Government Act 1972. This is a step towards the development of a Welsh Statute Book and makes the key legislative provisions relating to making, confirming and enforcing byelaws in Wales accessible in a single enactment.

2. Legislative background

Subject in Schedule 7 of GOWA 2006

2.1. The National Assembly for Wales has the legislative competence to make provision for and in connection with byelaws by virtue of the subject which relates to powers and duties of local authorities and their members and officers under the heading of local government in Schedule 7, subject 12 of the Government of Wales Act 2006 ("GOWA 2006"). The National Assembly for Wales also has the legislative competence to make these provisions pursuant to section 108(4), (5) and (7) of GOWA 2006. In addition, the National Assembly for Wales also has the legislative competence to make provision for the procedure for making and enforcing byelaws by National Park authorities in Wales and the Countryside Council for Wales by virtue of the subjects which relate to countryside and open spaces (including the designation and regulation of national parks and areas of outstanding natural beauty), nature conservation and sites of special scientific interest under the heading of environment in Schedule 7, subject 6 of GOWA 2006.

2.2. Schedule 7, subject 12 of GOWA is reproduced below:

Local Government

12

Constitution, structure and areas of local authorities. Electoral arrangements for local authorities. Powers and duties of local authorities and their members and officers. Local government finance.

"Local authorities" does not include police authorities.

Exceptions—
Local government franchise.
Electoral registration and administration.
Registration of births, marriages, civil partnerships and deaths.
Licensing of sale and supply of alcohol, provision of entertainment and late night refreshment.
Anti-social behaviour orders.
Local land charges, apart from fees.
Sunday trading.
Provisions of advice and assistance overseas by local authorities in connection with carrying on there local government activities.

2.3 Section 108 of GOWA is reproduced below:

Legislative Competence

(1) Subject to the provisions of this Part, an Act of the Assembly may make any provision that could be made by an Act of Parliament.

(2) An Act of the Assembly is not law so far as any provision of the Act is outside of the Assembly's legislative competence.

(3) A provision of an Act of the Assembly is within the Assembly's legislative competence only if it falls within subsection (4) or (5).

(4) A provision of an Act of the Assembly falls within this subsection if –
(a) it relates to one or more of the subjects listed under any of the headings in Part 1 of Schedule 7 and does not fall within any of the exceptions specified in that Part of that Schedule (whether or not under that heading or any of those headings),
and
(b) it neither applies otherwise than in relation Wales.

(5) A provision of an Act of the Assembly falls within this subsection if—
(a) it provides for the enforcement of a provision (of that or any other Act of the Assembly) which falls within subsection (4) or a provision of an Assembly Measure or it is otherwise appropriate for making such a provision effective,
or
(b) is otherwise incidental to, or consequential on, such a provision.

(6) But a provision which falls within subsection (4) or (5) is outside the Assembly's legislative competence if—
(a) it breaches any of the restrictions in Part 2 of Schedule 7, having regard to any exception in Part 3 of that Schedule from those restrictions,
(b) it extends otherwise than in only to England and Wales,
or
(c) it is incompatible with the Convention rights of Community law.

(7) For the purposes of this section the question whether a provision of an Act of the Assembly relates to one or more of the subjects listed in Part 1 of Schedule 7 (or falls within any of the exceptions specified in that Part of that Schedule) is to be determined by reference to the purpose of the provision, having regard (amongst other things) to its effect in all the circumstances.

2.4 Schedule 7, subject 6 of GOWA is reproduced below:

Environment

Environmental protection, including pollution, nuisances and hazardous substances. Collection, management and disposal of waste. Land drainage and land improvement. Countryside and open spaces (including the designation and regulation of national parks and areas of outstanding natural beauty). Nature conservation and sites of special scientific interest. Protection of natural habitats, coast and marine environment (including seabed). Biodiversity. Genetically modified organisms. Small holdings and allotments. Common land. Town and village greens. Burial and cremation [except coroners' functions].

3. Purpose and intended effect of the legislation

Policy objectives and why government intervention is considered necessary

Problem or issue

3.1. The Local Government Policy Statement 'A Shared Responsibility', March 2007, made a commitment under the heading of "bureaucracy reduction" to consider and consult on potential changes to simplify the process for making local government byelaws in Wales. This acknowledged that the current system of making, confirming and enforcing most byelaws was overly bureaucratic, outdated and cumbersome.

3.2. In June 2010, the Welsh Government carried out a consultation into the procedures for making, confirming and enforcing local authority byelaws. This was an opportunity to find out views on simplifying the byelaw process and also to get feedback on how the process works currently.

3.3. The response to the consultation is covered in Section 4 and Appendix A of this document and provides a useful insight into the byelaw process in Wales. Whilst definitive figures are not available, it is estimated that an average 4 - 5 new byelaws per year have been confirmed by the Welsh Ministers over the past five years. Many authorities still have byelaws in operation which have been in place for decades. In one recent example, an authority was undertaking a review of parks byelaws introduced before 1976.

3.4. The need for byelaws has changed over the years. There is legislation now such as dog control orders under the Clean Neighbourhoods and Environment Act 2005 which have superseded the use of byelaws in this area. However, there are still a large number of byelaw powers which continue to provide an effective and flexible method of addressing a variety of local problems. This is one of the reasons why the Welsh Government is bringing forward this Bill so that the process for making, revoking and enforcing byelaws may be less onerous. Although the number of byelaws made each year is not expected to change materially as a result of the proposed changes, the previous process may have well deterred local authorities from making new byelaws in the past.

3.5. The Bill seeks to streamline the procedure for making byelaws primarily by removing the requirement for confirmation by the Welsh Ministers of specified new byelaws. The Welsh Government's view, endorsed during consultation, is that the process leading up to the Welsh Ministers confirmation adds little, if any, value to what are properly local considerations and decisions. It simply adds another level of administration and causes delay. However, although this applies to many byelaws which address very localised and specific issues, some byelaws such as the environment byelaws and the employment of children byelaws can be controversial and have wider implications. Response to the consultation agreed that it was advisable to retain the Welsh Ministers' role in these cases. For this reason there will be a dual process for the making and coming into force of byelaws in Wales as the Bill also preserves the current

confirmation procedure which works well in respect of those byelaws where confirmation is deemed necessary.

3.6. The Bill also provides an alternative form of enforcement through fixed penalty notices, which aims to be a more effective and efficient form of enforcement action than through the Magistrates Courts. Whilst the benefits of fixed penalty notices were acknowledged in the consultation exercise, respondees made clear that enforcement through the existing Magistrates Courts procedure should be retained. The Bill therefore provides fixed penalty notices as an optional means of enforcement by local authorities for those byelaws listed in the Bill as subject to enforcement by fixed penalty notices. Implementation of the Clean Neighbourhoods and Environment Act 2005 has shown that many unitary authorities have embraced the power to issue fixed penalty notices and are using them successfully. Importantly, they are demonstrating responsibility in using the powers correctly, proportionately and legally.

Who is affected?

3.7. Unitary authorities, national park authorities and community and town councils will be affected by this legislation and will benefit from a less bureaucratic and more proportionate approach to making and enforcing certain byelaws. The communities affected by byelaws will benefit from potentially speedier action to tackle local issues and problems requiring byelaws and a more consistent approach to consultation before a decision is taken to introduce a byelaw. The Welsh Government will benefit from a marginal reduction in administrative work associated with the confirmation of byelaws.

Objectives

3.8. One of the primary policy objectives is to empower local authorities to take ownership for local laws which they are best placed to make. It will be a local authority's responsibility to make sure that it is acting within its powers and that byelaws are properly drafted and made. Local authorities will be required to consult groups which may be affected by the byelaw as well as their community where relevant at an early stage. This is in keeping with the local authority's community leadership role and increases awareness of their communities' needs. As is currently the case, any challenge to the legality of byelaws made under the alternative procedure will ultimately be a matter for the courts.

3.9. The consultation in 2010 confirmed that enforcement of byelaws has not been very effective in the past. An important policy objective of this legislation is to provide a more direct means of enforcement through the use of fixed penalty notices. An authority will also be able to determine fixed penalty notices as the preferred method of enforcement in respect of those byelaws listed in the Bill as subject to fixed penalty notice enforcement. Fixed penalty notices have been proven to be both an efficient method of enforcement for many minor offences and an effective means of changing behaviour. This is in contrast to the current situation where local authorities have indicated that byelaws are

generally not enforced because of the disproportionate time and effort involved in taking offenders to court.

3.10. Currently, nineteen of the twenty-two local authorities operate fixed penalty notice processes in respect of nuisance activity, such as litter, dog fouling, graffiti, fly-posting and noise. Therefore any additional costs to local authorities of adopting fixed penalty notices for this purpose are likely to be small.

3.11. Fixed penalty notices will also relieve pressure on Magistrates Courts and any funds generated will be available for local authorities to improve byelaw administration and enforcement. Returns collected every year by the Welsh Government show that a total of £116,075 was collected by Welsh Local Authorities in 2010-11 via fixed penalty notices for offences against environmental byelaws which includes littering.

3.12. The proposed Bill also seeks to ensure that, before a byelaw is made, the authority undertakes an initial consultation with those potentially affected in order to explore whether a byelaw is the most appropriate solution. This will result in a statement which scopes the problem, provides a summary of community views, the decision reached and the rationale for that decision.

Detailed implementation and delivery plan

3.13. The main elements of this legislation are on the face of the Bill. There is provision for the Welsh Ministers to issue statutory guidance to support implementation of the proposals. The Welsh Ministers intend to issue guidance to assist authorities in meeting the requirements of the Bill. Local authorities will be under a statutory duty to have regard to the guidance issued by the Welsh Ministers. The guidance, will for example, assist local authorities in seeking to undertake proper and effective consultation prior to a decision to make a byelaw, and on the use of fixed penalty notices.

Government Intervention

3.14. Byelaws are designed to regulate activities and behaviour that are deemed unacceptable to the extent that they warrant the creation of a criminal offence. Local authorities have indicated that often byelaws are not enforced due to the disproportionate time and effort involved in taking the offender to court. The introduction of a fixed penalty notice scheme, in respect of those byelaws listed in the Bill as subject to enforcement, seeks to provide a mechanism to address the feedback received regarding the current enforcement process for byelaws and as an effective method to restrain unacceptable behaviour.

Risks/hazards if legislation not made

3.15. A number local authorities have said that they are deterred from making new byelaws and updating outdated ones because of the disproportionate length of time it can take to secure confirmation by the Welsh Ministers. It is possible therefore in respect of certain byelaws which currently are required to

be confirmed that the reluctance due to the current procedure for making and confirming byelaws could give rise to potentially unregulated health and safety situations. Primary legislation is therefore required to amend the process and make it more straightforward to make byelaws in the future.

Sectors to operate more efficiently

3.16. The Bill will serve to provide for local authority byelaws to become a more effective regulatory mechanism. The alternative procedure should enable local authorities to respond more speedily to local issues and the Bill provides a more efficient means of enforcement. Byelaws may be aimed at individuals or groups of people. They may also be aimed at businesses such as markets, amusement premises, hackney carriage proprietors amongst others. All these target groups should operate more responsibly and with respect for other people in their communities as a result of byelaws that are relevant, up to date and consulted on.

Specific territorial extent

3.17. The Bill applies in relation to Wales.

4. Consultation

Who

4.1. Unitary authorities; national park authorities; community and town councils; Welsh Local Government Association; One Voice Wales were consulted from 21 June to 17 September 2010. The consultation paper invited ideas and views on how to improve and make less bureaucratic the procedures for making and confirming local authority byelaws in Wales. The paper also included proposals for fixed penalty notices to be the new form of enforcement where appropriate.

Why

4.2. The organisations above were consulted because they are all responsible for making byelaws and follow the procedures in section 236 of the Local Government Act 1972. The representative associations were also consulted because they have an interest in issues that affect the bodies they represent.

Summary of outcome

4.3. There was positive support for the simplification of the byelaw process by removing the need for confirmation by the Welsh Ministers, the encouragement of greater local ownership of the byelaw process as means of addressing local issues and for the introduction of fixed penalty notices as a new method of enforcement. The feedback received on other aspects of the process provided a detailed account of the capabilities of the individual sectors to make and enforce byelaws; their experience and assessment of the effectiveness of byelaws as a regulatory mechanism; the role of the Welsh Ministers and the Welsh Government and the perceived need for guidance and assistance. A detailed analysis of responses is at Appendix A.

Changes as a result of consultation

4.4. The response to the consultation supported the proposals that were made. The referendum in March 2011 gave the National Assembly full law making powers and, as a result, our aim is to produce a Bill which achieves simplification together with recasting and consolidating those parts of the current byelaws procedure that work well for Wales. The Bill will form part of the new Welsh Statute Book.

5. Power to make subordinate legislation

5.1 The Bill contains provisions to make subordinate legislation. The following table sets out in relation to each provision:

- the person upon whom, or the body upon which, the power is conferred;
- the form in which the power is to be exercised;
- the appropriateness of the delegated power; and
- the applied procedure (*affirmative, negative, no procedure*), if any, together with the reasons why it is considered appropriate;

Section	Power conferred on	Form	Appropriateness	Procedure / reasons
Section 5 (Revocation by Welsh Ministers)	Welsh Ministers	Order	Suitable for an order as provision relates to administrative action in relation to obsolete local byelaws.	Negative resolution procedure applies as the order making power seeks to repeal and tidy up obsolete byelaw.
Section 9 (Power to amend Part 1 of Schedule 1)	Welsh Ministers	Order	Suitable for an order as provision relates to adding or removing from the list of enactments under which byelaws are made in Part 1 of Schedule 1 to the Bill, which are not subject to confirmation by the Welsh Ministers.	Affirmative resolution procedure applies as the Order will amend this Act and may include supplementary amendments to other primary legislation.

Section	Power conferred on	Form	Appropriateness	Procedure / reasons
Section 12(10) (Fixed Penalty Notices)	Welsh Ministers	Regulations	Suitable for regulations as the provision enables the Welsh Ministers to prescribe a detailed form of fixed penalty notice, if required.	Negative resolution procedure applies as the Regulations relate to technical and administrative detail regarding the form of the fixed penalty notice pursuant to this section.
Section 12(13) (Persons giving fixed penalty notices)	Welsh Ministers	Regulations	Suitable for regulations as the provision enables the Welsh Ministers to prescribe conditions to be satisfied before a community council can authorise a person to issues fixed penalty notices.	Negative resolution procedure applies as the Regulations relate to administrative detail in order to support the policy intention.

Section	Power conferred on	Form	Appropriateness	Procedure / reasons
Section 13(3) (Amount of fixed penalty)	Welsh Ministers	Regulations	Suitable for regulations as the provision enables the Welsh Ministers to prescribe limits for fixed penalty notices to ensure consistency of approach.	Negative resolution procedure applies as these regulations seek to specify a fixed penalty notice amount to fall within a specified range and restrict the extent to which a legislating authority can specify different amounts in relation to different byelaws.
Section 13(5) (Default amount for fixed penalty)	Welsh Ministers	Order	Suitable for an order making power as it enables the Welsh Ministers to substitute a different default amount.	Affirmative resolution procedure applies as the Order will seek to amend this Act.
Section 16 (Power to amend Part 2 of Schedule 1)	Welsh Ministers	Order	Suitable for an order as provision relates to adding or removing from the list of enactments under which byelaws are made in Part 2 of the Schedule 1 to the Bill, which may be enforced through fixed penalty notices.	Affirmative resolution procedure applies as the Order will amend this Act and may include supplementary amendments to other primary legislation.

Section	Power conferred on	Form	Appropriateness	Procedure / reasons
Section 22 (Commencement of Act)	Welsh Ministers	Order	Suitable for an order making power as the provision relates to the coming into force date to be decided by the Welsh Ministers.	No procedure
Schedule 2, Paragraph 8(3) (Minor and Consequential Amendments – Wildlife and Countryside Act 1981)	Welsh Ministers	Regulations	Suitable for regulations as enables consequential provisions to be made in the future as a result of the modifications introduced by the Bill.	Negative resolution procedure applies as the regulations will seek to replace the existing regulations which were made pursuant to the negative procedure.

6. Regulatory Impact Assessment (RIA)

6.1 A Regulatory Impact Assessment has been completed in accordance with Standing Order 26.6(vi) for the proposed Bill and follows at Section 7.

6.2 A cost benefit assessment is included at Section 8.

PART 2 – REGULATORY IMPACT ASSESSMENT

7. Options

Impact and costs of Local Government (Byelaws) (Wales) Bill

Option 1 – Do nothing – Maintain the current byelaw making process

7.1 If we do nothing, the Welsh Government would not be able to deliver on one of the strands of the commitment made to reduce bureaucracy in "A Shared Responsibility", local government policy statement in 2007.

7.2 Local authorities have criticised the current byelaw process because gaining confirmation from the Welsh Ministers can be a time consuming and laborious process. Additionally, byelaws can be difficult to enforce because action through the Magistrates Courts can be onerous and time consuming.

7.3 As a result, byelaws may not always be as effective a regulatory mechanism as they should be. It must be noted that there are certain instances such as for environment byelaws which can raise controversial issues and significant debate and employment of children byelaws where a national consistent approach is needed where confirmation of the Welsh Ministers will be retained.

Costs and benefits

7.4 The "do nothing" option would offer no benefits for local authorities, the public or Welsh Government. Wales would continue to operate the current procedure which is no longer deemed fit for purpose, given the revised capacity and expectations from local government since the Local Government Act was introduced in 1972.

7.5 The consultation in 2010 suggested that byelaws are hardly ever enforced and they only have nominal effect as a regulatory tool.

7.6 Unlike the current system, running costs are likely to reduce through the removal of the confirmation process and may be further offset by the revenue generated by fixed penalty notices. Please click on link below to see the revenue generated through fixed penalty notices issued as a result of the Clean Neighbourhoods and Environment Act 2005.

http://wales.gov.uk/topics/environmentcountryside/epq/cleanneighbour/fixedpenalty/1011/?lang=en

7.7 Although implementing fixed penalty notices may necessitate recruitment, resulting in some additional costs on local authorities, it may equally be possible to incorporate enforcement of byelaws within existing fixed penalty notice schemes, without significant additional cost or personnel. Local authorities have already shown that they have been using the fixed penalty regime responsibly under the Clean Neighbourhoods and Environment Act

2005. The positive way in which many local authorities have embraced this type of enforcement would no doubt have saved a significant amount of court time.

7.8 It must be stressed that fixed penalty notices should not be seen as a source of revenue generation but rather as a penalty which encourages behaviour change. The income generated should be used to facilitate compliance with the byelaw regime in general.

Option 2 – Introduce an Assembly Bill

7.9 Local authorities are granted power to make byelaws under various Acts of Parliament including the Local Government Act 1972. The only means of amending the byelaws process is to make changes to primary legislation, which would necessitate an Act of the Assembly. If doing nothing (Option 1) is discounted, introducing an Assembly Bill (Option 2) is the only remaining course of action.

7.10 Introducing a Bill would reduce bureaucracy for both local authorities and the Welsh Government and increase ownership of byelaws by local authorities. It would mean that authorities have greater control over the timescales needed to bring their byelaws in to force and ensure that they coincide with special requirements e.g. summer months, special events etc.

7.11 Consultation with interested parties at the initial stages of developing a byelaw (partly to ascertain that a byelaw is indeed the most appropriate course of action and partly to consult and be transparent) is currently encouraged as good practice and is one of the requirements that Welsh Government officials request evidence of during the confirmation process. The proposal would make this a statutory requirement which will be beneficial for local communities and special interest groups and ensure that their views and needs are taken into account.

7.12 The introduction of fixed penalty notices would facilitate an alternative means of enforcement of byelaws. There is already evidence of this from the fixed penalty notices being used by local authorities under the Clean Neighbourhoods and Environment Act 2005 for litter, dog fouling and fly tipping offences. The fines collected in respect of these offences are used to fund improvements within the entire spectrum of byelaws to implement behaviour changing measures and make the enforcement system more effective. Please click on the link below to see the latest fixed penalty notice figures which show that the number of notices issued during 2010-11 has increased from the previous year.

http://wales.gov.uk/topics/environmentcountryside/epq/cleanneighbour/fixedpenalty/1011/?lang=en

8. Costs & benefits

8.1 It is anticipated that the cost implications of the Bill are likely to be low given the small number, approximately 4 to 5, of byelaws currently confirmed by the Welsh Ministers each year. This view is further supported by the findings of the consultation exercise undertaken between 21 June 2010 and 17 September 2010. A monetary quantification of the cost implication is detailed below. An assessment of the potential 'winners' and 'losers', together with a description of the likely impact, can be found at Appendix B.

8.2 It should be noted that Regulatory Impact Assessments are required to consider the costs and benefits that are additional (i.e. incremental or marginal) to those that would have been incurred if no action were taken.

8.3 Any additional expenditure resulting from changes to the byelaw process would be met from current budgets with no extra charge against the Welsh Consolidation Fund.

OPTION 1: Do Nothing – Maintain the current byelaw process

COSTS

Transitional Costs (one off):

8.4 Under Option 1, current processes and practices will remain the same. There will therefore be no transitional costs.

Average Annual Costs (excluding one-off):

8.5 It is for local authorities to determine if, and when, it is appropriate to develop byelaws. Byelaws by their very nature deal with local issues across a diverse range of situations, such as nuisance behaviours, public baths, pleasure fairs etc. While the statutory process is the same, the issues to be considered and the extent of consultation and engagement with communities and stakeholders will differ and in that respect there is no such thing as a typical byelaw process.

8.6 Based on a recent byelaw a best estimate of the administrative cost to local authorities is £7000 - £9000 per byelaw. This related to the resource cost of drafting the byelaw, completing the consultation and press notices and submitting the byelaw to the Welsh Government for confirmation.

8.7 Based on a recent byelaw a best estimate of the cost to the Welsh Government is £1250 per byelaw. This relates to the cost of policy and legal resources to take the byelaw through the confirmation process.

8.8 Under Option 1, current processes and practises will remain the same, so there will be no additional costs.

BENEFITS

8.9 There are no additional benefits under Option 1. The process for submission and confirmation of byelaws will remain as present.

OPTION 2: Introduce an Assembly Bill

COSTS

Transitional Costs (one off):

8.10 Option 2 will involve minor transitional costs for the Welsh Government and potentially some transitional costs for local authorities.

- The Welsh Government will need to provide guidance to local authorities detailing the new process. The best estimate of this cost is £1000, which would fund the resources to review the existing guidance, revise and publish the updated guidance.

- The use of fixed penalty notices is optional. Local authorities wishing to enforce byelaws through this means will need to make appropriate arrangements. However, most authorities already have arrangements in place under the Clean Neighbourhoods and Environment Act 2005. It is anticipated that any additional costs would largely be limited to awareness training for existing staff and would not be significant. This would likely form part of ongoing training programmes and, as such, the best estimate of this cost is £500 per authority.

Average Annual Costs (excluding one-off):

8.11 Under Option 2, there would be a resource saving for both local authorities and the Welsh Government due to the removal of the confirmation process. Where Welsh Ministers' confirmation was not required, the Welsh Government would save the £1250 detailed under Option 1 with a commensurate saving in local authority costs.

8.12 Option 2 does place a statutory requirement upon authorities to consult stakeholders and assess impacts before new byelaws are made. Whilst consultation is merely recommended under the current process, in practise authorities are expected to demonstrate that there has been appropriate consultation before byelaws are confirmed by the Welsh Ministers. Option 2 effectively codifies current practise in this regard and there is no associated additional cost. The extent of consultation required in developing a byelaw will depend on factors such as the type of byelaw, the number of stakeholders and the scale of the issue being addressed. Based on the figures given at paragraph 8.6, the best estimate of consultation cost is £2,000-£3,000.

8.13 Option 2 also provides for a more efficient, but optional, means of enforcement through fixed penalty notices. It is estimated that the saving in cost of pursuing an offence against a byelaw through the Magistrates Court would be of the order of £500 – £1000.

BENEFITS

8.14 Under Option 2, both local authorities and the Welsh Government would realise benefits.

- The foremost benefit to local authorities would be the reduction in the time taken to introduce a byelaw. This would enable an authority to address local issues in an effective and timely manner, reduce bureaucracy and foster greater ownership of local laws.

- The removal of the confirmation process for non-controversial byelaws would release Welsh Government resources to work on other policy areas.

- The option of Fixed Penalty Notices would remove the need for local authority resources to prepare statements and prosecution files and release Magistrate Courts' time.

9. Competition Assessment

How the Bill affects business, charities and/or the voluntary sector.

9.1. It is not possible to apply the competition filter because data in relation to byelaw activity is sparse; the use and enforcement of changed byelaws is indeterminable; and there is insufficient detail to be able to determine how the changes may impact on business and competition and on charities and the voluntary sector. Many of the byelaw powers affect individuals rather than the sectors mentioned above.

9.2. It is possible that a significant proportion of byelaws created under the new powers would have occurred anyway under the existing system if it had not been changed. Thus the additional impact of the Bill provisions on business, charities and the voluntary sector may be marginal.

9.3. Taking a risk based approach, since safeguards are built into the Bill in terms of the requirement for statutory consultation at the outset of the byelaw making process by local government, it would seem unlikely that the new provisions will have a “significant detrimental effect on competition”.

10. Post implementation review

10.1. Although many byelaws will in future be made without the need for confirmation, there will still be byelaws, such as the environment and employment of children byelaws which will need the Welsh Minister's confirmation. This is because these byelaws can be controversial and have wider implications. Response to the consultation exercise in 2010 indicated that it was advisable to retain the Welsh Ministers' role in these cases. For this reason these byelaws will still need to be submitted to Welsh Government officials for scrutiny before they apply to Welsh Ministers for confirmation.

10.2. The Welsh Government Departments will continue to provide guidance and byelaw models to local government. The Democracy Ethics and Partnership Division as the lead Welsh Government Division will co-ordinate engagement with local government to obtain feedback on byelaws made and fixed penalty notices issued.

Appendix A

Local Authority Byelaws in Wales – A Consultation Paper
Procedures for Making, Confirming and Enforcing byelaws

Report on the responses to a consultation carried out from 21 June to 17 September 2010.

Introduction

1. The consultation paper stated the Assembly Government's intention to reform the byelaw procedure and outlined proposals for improving and make less bureaucratic the procedures for making and confirming local authority byelaws in Wales.

2. The paper also included proposals for fixed penalty notices to be the new form of enforcement for Wales.

3. The byelaws being considered were those for which procedures in section 236 of the Local Government Act applied.

4. The consultation document was issued to the 22 unitary authorities; the national park authorities; all 735 community and town councils

5. In all, there were 48 responses which comprised of 11 unitary authorities (50% response rate); 35 community and town councils (5% response rate); a consolidated response from the Welsh Association of National Park Authorities on behalf of the 3 National Park Authorities; 1 other. A list of all the respondents can be found at the end of this report.

6. A range of questions were asked not only to ascertain the views of respondents to a less bureaucratic process with more ownership given to local authorities (unitary authorities, national park authorities and community and town councils for the purposes of this consultation) but also to get feedback on how the process works currently.

7. The summary response has been presented in some detail and classified by each sector's response to the questions because feedback on byelaw making has not been gathered before and for this reason could be of interest and assistance to all those concerned.

Response to consultation

(Please see Annex A for summary of responses)

8. There was positive support for the simplification of the byelaw process and for the introduction of fixed penalty notices as a new method of enforcement.

9. The feedback received on other aspects of the process provided a detailed account of the capabilities of the individual sectors to make and enforce byelaws; their experience and assessment of the effectiveness of

byelaws as a regulatory mechanism; the role of the Welsh Ministers and the Welsh Assembly Government and the perceived need for guidance and assistance.

10. Respondents were asked to draw our attention to any powers that were not included in the table on pages 3 to 6 of the consultation document. We did not receive any additions or amendments.

Next steps

11. The views and comments expressed during this consultation exercise will be considered when we develop proposals to reform the byelaw procedure.

Annex A - Summary of consultation responses

Q1. How many byelaws has your authority made or amended in the past 5 years?

Just over half of the unitary authorities which responded had made or amended byelaws in the past 5 years.

National Park Authorities had not made or amended any byelaws in the past 5 year and neither had the community and town councils that responded.

Q2. In your experience, how effective are byelaws as a regulatory mechanism?

Unitary authorities:

There was a mixed response. Some respondents thought byelaws were effective and still had a role in local law enforcement and there were others who felt they were not effective. The comment that specific byelaws were more useful than others seemed to support the established role of byelaws as a local regulatory mechanism.

Many respondents cited the necessity for adequate resources to enforce byelaws as a determining factor for whether they were effective or not. There was also mention made of the value placed on byelaws by the police in preventing unacceptable behaviour and the police's powers to interview witnesses which helped in the enforcement of byelaws.

Two respondents stated that they found that primary legislation was preferred since it helped to ensure consistency in enforcement and greater transparency for residents and businesses.

National Park Authorities:

The collective experience was that byelaws possessed limited effectiveness. They involved an unwieldy process to obtain, and also to enforce.

Community and Town Councils:

Many councils expressed the view that byelaws were only effective if they were clearly known and enforced correctly and some gave examples of the difficulties in enforcement such as funding and resourcing constraints.

Q3. What are your views on the byelaw making and confirmation process as it operates currently?

Unitary Authorities:

Almost all respondents felt that the byelaw making and confirmation process was slow, bureaucratic and not user friendly. However one respondent did not view it as an obstacle or cause for delay and wondered why the Assembly Government was inviting challenges to the current process.

National Park Authorities:

The response was that the process was somewhat unwieldy and perhaps disproportionately consumed time, effort and expense.

Community and Town Councils:

The majority of respondents felt that the process was too long and bureaucratic. One respondent mentioned that it was not easy to find information or guidance on making byelaws and that there was no information on either the Assembly Government or the unitary authority websites.

A few respondents felt that it was important to continue the Assembly Government's involvement and one remarked that this would maintain cohesion and continuity.

Q4. Does the Welsh Ministers confirmation of byelaws add any value to the byelaws making process? If so how?

Unitary Authorities:

The majority stated that the process leading to the Welsh Ministers' confirmation did not add any value. It simply added another level of administration and caused delay.

Conversely, one respondent claimed that the Welsh Ministers' confirmation had value because byelaws imposed criminal sanctions and another respondent remarked that it was justified when controversial or complex byelaws were to be introduced.

National Park Authorities:

The response was that it added an important validating dimension – an additional check – as well as providing scrutiny for process, drafting, good

practice etc. At least it minimised the risk that a byelaw was rendered ineffectual through poor drafting.

Community and Town Councils:

Just over a third of community and town council respondents stated that it added value to the process. A variety of reasons were given including that it removed barriers and provided necessary scrutiny; provided checks and balances against poorly drafted byelaws; provided objectivity; adds status by becoming part of the Assembly Government law making process; endorsed the process being administered by the local authority; was vital to maintain the consistency of application of byelaws; ensured that they were the appropriate regulatory mechanism for the issues being addressed and that they complied with legislation. One said that the decision to make a byelaw should rest with the local authority. However, the Welsh Minister should be involved in a judicial role if there was an appeal process.

About one fifth of respondents did not agree that the Welsh Ministers' confirmation added value. One of these respondents stated that it only ensured that a byelaw followed the existing model byelaw and suggested that the "confirmation" may be replaced by making any variation from the model "ultra vires".

Q5. Are there any byelaws that you can identify where the Welsh Assembly Government's role should be retained? If so, why?

Unitary Authorities:

Most respondents said "no" and one respondent said that if a byelaw was made beyond the powers of the local authority, then there was a challenge process available through the courts.

The exceptions were byelaws which protected Sites of Special Scientific Interest (SSSIs) and involved other environmental considerations which frequently had a wider implication or effect other than at the local level; complex byelaws; or where there was a need for consistency as in employment of children byelaws.

National Park Authorities:

The views were mixed, ranging from none to a more general attitude that there was merit in the Assembly Government retaining its role in relation to all byelaws.

Community and Town Councils:

The majority of respondents were of the view that Assembly Government's role need not be retained. The exceptions quoted were that the Assembly Government had an important role where there was conflict with the local community as an adjudicator for disputes, and where a consistent national approach was needed as in byelaws relating to children.

There were some that felt the Assembly Government's role should be retained. The instances for community and town councils needing new byelaws were generally low and so it could still be worth retaining a check for all.

Q6. Would there be value in the Welsh Assembly Government continuing its role in providing guidance? If so how could current guidance on making byelaws be improved?

Unitary Authorities:

All agreed that Assembly Government guidance needed to be continued. The reasons given were that it simplified the adoption process; ensures consistency amongst the local authorities; supported the needs of community and town councils; helpful to be able to speak to officials about the interpretation of written guidance or model byelaws.

Improvements to the current process that were suggested included byelaw models and guidance to be adapted for Wales; needed to be kept up to date and available on the Assembly Government website; promote best practice and advice on preventing possible challenges to byelaws.

National Park Authorities

Assembly Government guidance was seen to provide an important function in promoting the consistency and quality of byelaws.

Community and Town Councils:

A mixed response. Some negative replies and "no answers". However just over half of respondents said there was value in maintaining the Assembly Government's guidance role. Some of the reasons given included that the Assembly Government provided a safeguard that byelaws were fair; it ensured the equality of implementation and creation of byelaws; the absence of Assembly Government guidance would mean that authorities and local councils would need to raise their own capacity adding significantly to costs and resulting in unnecessary duplication.

Some of the improvements suggested were that guidance could be issued via One Voice Wales, Society of Local Councils Clerks and Welsh Local Government Association and should include model byelaws; expectation of a quicker response from the Assembly Government; to be included in the training sessions for new councillors; to be posted on Assembly Government website; to be incorporated into the councillors' handbook.

Guidance in relation to disputes to proposals for byelaws and appeals was also requested.

Q7. Would some form of capacity building and information forum be of benefit? If so, what is the most effective vehicle for this?

Unitary Authorities:

The majority were in favour of some form of capacity building or information sharing though a couple of respondents felt that this would not be necessary. The suggestions included Welsh Local Government Association/One Voice Wales to co-ordinate more effective use of new byelaws on an all-Wales basis; the Association of Council Secretaries and Solicitors Wales (who was viewed as probably to have the most hands on experience of byelaw making) to complement the Assembly Government's guidance role; a web based facility to be hosted by the Assembly Government ; an internet portal to be set up by unitary authorities and community and town councils jointly (costs to be reimbursed by the Assembly Government).

National Park Authorities:

While the general principle of an information sharing forum was generally welcomed, more information would be required regarding this particular suggestion before it can be given the collective support of the national park authorities.

Community and Town Councils:

Many thought a forum or some type of capacity building was a good idea. Suggestions included regional road shows, seminars, networking opportunities; creation of a database with expert advice and support for various subject areas of law; work shops for community and town councils in each authority area or regional level; on-line information forum; through national bodies One Voice Wales and Society of Local Council Clerks; county council legal department and through the One Voice Wales training programme;

Q8. Should unitary authorities play some role in relation to byelaws made by community and town councils? If so, what should that role be?

Unitary authorities:

Acknowledgement was made of the probable lack of capacity at most community councils to make their own byelaws.

The comments from unitary authorities included: the likely resource implications for unitary authorities to be considered; should it become apparent that more than one community council in the authority area wished to make a similar byelaw, duplication may be avoided by the unitary authority making a byelaw for the entire area; should appeals against community council byelaws be directed to unitary authorities, this may seem inappropriate when appeals against unitary authorities are directed to the Assembly Government; unitary authority involvement would ensure uniformity and consistency.

National Park Authorities:

Wish to leave this for community and town councils to comment on.

Community and Town Councils:

Definite consensus on the need for unitary authority involvement. The reasons given by respondents included the higher level of expertise at unitary authority level due to dedicated legal departments and the ability to provide IT support. There was reference to a supervisory role. There were suggestions that unitary authorities should provide legal advice, guidance and vetting to ensure conformity and consistence.

Some respondents suggested that unitary authorities and community and town councils should work in partnership, co-operating towards a common interest and community councils should offer support to unitary authorities in consulting communities; provide intelligence on the differences between different types of communities e.g. urban and rural; and that resources should be shared in the enforcement of byelaws. Charters may be used as the basis for such collaboration and mutual support.

There were also those who commented that the current consultation process should continue and there were a couple of respondents who felt that unitary authorities should make the byelaws.

Q9. What consultation do you currently do before and during making the byelaw?

Unitary Authorities:

Unitary authorities stated that consultation processes and contact lists for consultees were in place e.g. the public, elected council representatives, community and town councils; local access forum; local businesses; special interest groups; police; trade bodies; citizens' forums; statutory authorities. The council website and web based consultation process were also mentioned.

National Park Authorities:

No byelaws have been made in past 5 years. Would seek to comply with government guidance when making byelaws.

Community and Town Councils:

No byelaws made within the past 5 years.

Q10. Does the process outlined above provide for appropriate consultation arrangements for local communities and interest groups? Are there any further measures which could usefully provide for consultation with local people?

Unitary Authorities:

Views ranged from "adequate arrangements" to suggestions for alternative arrangements. These included a formal requirement to hold public meetings for more rigorous local consultation; type of consultees to depend on the type of consultation e.g. Countryside Council for Wales for Sites of Special Scientific Interest (SSSIs) or Health Trusts for health and social services byelaws; compilation of a standard list of consultees i.e. local interest and community groups together with public authorities but also consider the need to include local residents.

Also mentioned was the use of the county / county borough council's website for informing the public and providing on-line feedback.

National Park Authorities:

Commented that current guidelines are sufficient.

Community and Town Councils:

Not much response to this question – in line with response to question 9. A couple of suggestions made – the use of a community council forum and that interested groups are informed by direct contact.

Q11. Should byelaws continue to be advertised in local newspapers? Are there more effective means of advertising them?

Unitary Authorities

The majority were of the view that byelaws should continue to be advertised in local newspapers. The public still read public notices and such advertisements show that the unitary authority has tried to reach a wider audience.

However, due to the decline of readership over recent years other forms of media were suggested to supplement the local press – council's own website; council's free newspaper; local notice boards; directly liaising with specific groups that may be affected.

National Park Authorities

Responded that newspaper advertising represented objectivity and generally provided the greatest chance of reaching the largest number of people. However other (electronic) means should supplement this approach.

Community and town councils

Half agreed. No comment from about one third .Other forms of media suggested included public meetings, websites, local notice boards; minutes of meetings; community newsletters; direct methods of engagement as a result of research into the impact on specific groups;

Q12. Is there a case for a mechanism for referring disputed byelaw proposals to the Welsh Assembly Government if there are significant objections to a proposed byelaw?

Unitary authorities:

There was agreement that disputed byelaws should be referred to the Assembly Government, but only when and where there were significant objections. There was a view that it would not be desirable to unduly complicate or delay the process and that a system of written submissions may be best. One respondent commented that all byelaws should be dealt with by the unitary authority alone.

The view was also expressed that any mechanism which served to deter expensive challenges through the courts was welcome.

National Park Authorities:

Stated that there was a strong case for disputed byelaw proposals to be referred to the Assembly Government. It seemed a sensible option.

Community and town councils:

Over half agreed. Two respondents said disputes should be referred to the unitary authority.

Q13. Could other authorities or bodies or another part of the byelaw-making authority perform this role?

Unitary Authorities:

There was consensus in response that this was not a workable proposal and that it was best handled at the Assembly Government level to ensure consistency.

Diverse comments included the view that another authority would not be seen to be sufficiently independent to pass judgement on its peers; there were resource implications on authorities required to perform this role; a unitary authority should be able to hear an appeal against a community council; internal scrutiny within the unitary authority should be sufficient.

National Park Authorities:

No, not unless an absolutely independent body was established for this reason.

Community and town councils:

Mixed response. Some in favour of Assembly Government and others in favour of unitary authorities. Some stated that the Assembly Government should have the final say if a dispute could not be resolved. Others stated that it would not be appropriate for other authorities or another part of the byelaw making process to perform this role. Appeals should be dealt with by an independent body.

Q14. Should the means of enforcing byelaws be amended, so that they are no longer subject to action in the Magistrates Courts, but would instead be liable to fixed penalty notices?

Unitary Authorities:

Almost all respondents were in favour of this suggestion. Comments included that this would be a more effective and more easily understood means of enforcement and would ease the pressure on the court system; it seemed to work well in the enforcement of other legislation. There was a view that fixed penalties should be introduced as an addition to prosecution through the courts.

Attention was also drawn to the possible need for more resources to issue and enforce fixed penalties. The question of whether councils would be able to retain income from this source was raised.

National Park Authority:

Yes this would help and provide a public benefit.

Community and town councils:

Mixed response – well over half of respondents were in favour. But this was accompanied by cautionary comments such as concerns about the additional resources needed for fixed penalties to be effectively enforced including the problem of dealing with non payment of fines. Some wished to keep the option of using the Magistrate's Courts and there was a respondent who called for a wider debate on the proposals to include Police and Communities Together (PACT) members.

Q15. How can awareness of byelaws in force in open areas be made without adding to street clutter?

Unitary authorities:

All stated that some form of street signage was necessary to ensure that everyone in the community, including visitors to the area, was informed. This was an essential requirement if byelaws were to be successfully enforced. These signs could be made smaller and / or more attractive. They could be supplemented by publicity through council websites, newsletters, local newspapers, displays in public buildings etc.

National Park Authority:

This is an important issue for the National Park Authorities. The response of Pembrokeshire Coastal National Park Authority is quoted here: strongly of the view that displaying byelaws in full can be seriously detrimental, especially to high value landscapes and amenity land. They would welcome formal recognition that enforcement does not require that a byelaw be reproduced on site – clearly the full byelaws need to be accessible in some appropriate centralised place, and / or on websites but clarity that they do not need to be displayed for example at each of numerous access points would be very helpful. This should go hand in hand with a recognition that a unitary authority would not prosecute in circumstances where a person was simply unaware of the existence of a byelaw. Informing the public (perhaps referring to a portable notice presented by a Ranger / Warden etc) and the giving of an appropriate warning should in these circumstances be pre-requisites to formal enforcement.

However, there was another reason for the approach argued above. Greater awareness usually results from effective enforcement, not the position of a notice. So there needs to be sufficient resources in place to police byelaws once they are enacted.

Community and town councils:

Agreement that street signs and signs in open areas were unavoidable, but could be installed in such a way as to be in keeping with the surroundings together with good design and careful placement.

Additional communication methods suggested included newspapers with details of fines, notices in annual council tax demands, use of public notice boards, council websites, tourist visitor boards, village and community plans, notices in libraries, local awareness campaigns, leaflet drops and radio.

Q16. Should new byelaws include a timescale for review? What should the timescale be?

Unitary authority:

Most respondents were in agreement that there should be a timescale suggesting a period ranging from 12 months to 10 years. Attention was drawn to the resource capacity and finances needed to carry out these reviews and there was a view that timescales should be flexible. One respondent felt that would place an unnecessary burden on authorities at a time when cuts in funding were being imposed.

National Park Authorities:

Seems reasonable. Every 10 years perhaps. The process for review should not be as arduous as the process of establishing the byelaws in the first place.

Community and town councils:

Opinions ranged from 12 months to 10 years.

Q17. Are you in favour of simplifying the byelaw regime in a manner similar to that described in the consultation document?

Unitary Authorities:

About 90% of respondents were in favour of simplification in the manner described in the consultation document. Qualifying comments included the view that revision would not guarantee changes unless sufficient resources needed to enforce byelaws were in place. Controversial byelaws and those which have an impact outside the local area may still require some input from the Assembly Government.

National Park Authorities:

Yes, subject to previous comments in their response.

Community and Town Councils:

Almost three quarters of respondents were in favour.

Q18. We have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please use this space to report them.

Unitary Authorities:

Two respondents commented - byelaws had a useful role to play in addressing local issues. However, the process for making, approving and enforcement needed to be more effective. Should the process be simplified and the need for confirmation removed, it was suggested that to ensure the validity, need and fitness for purpose of a byelaw, additional processes and checks and balances would have to be included in Assembly Government guidance.

National Park Authorities:

Pembrokeshire Coastal National Park Authority (PCNPA) have drawn attention to some practical issues regarding enforcement, in particular the desirability of unambiguous powers when investigating possible breaches of byelaws to require a person to give their correct name and address, and the provision of appropriate sanctions if they do not do so. Also suggested that a clear power to take photographs of offending activities and persons undertaking them would be extremely helpful.

List of respondents:

(those requesting confidentiality not included in list)

Unitary authorities:

- Blaenau Gwent
- Cardiff
- Caerphilly
- Conwy
- Denbighshire
- Flintshire
- Neath Port Talbot
- Swansea
- Torfaen
- Wrexham

National Park Authorities

Consolidated response from:

- Brecon Beacons National Park Authority
- Pembrokeshire Coast National Park Authority
- Snowdonia National Park Authority

Community and town councils

- Abergele Town Council
- Aber Valley Community Council
- Blackwood Town Council
- Caerphilly Town Council
- Cowbridge and Llanblethian Town Council
- Denbigh Town Council
- Henllanfallteg Community Council
- Henllys Community Council
- Hirwaen and Penderyn Community Council
- Holywell Town Council
- Llandyfaelog Community Council
- Llandysul Community Council
- Llandudno Town Council
- Llanelli Rural Community Council
- Llanelli Town Council
- Llandrino Community Council
- Llangattock Vibon Avel Community Council
- Llanwrtyd Wells Town Council
- Lledrod Community Council
- Lisvane Community Council
- Llwchwr Town Council
- Maesteg Town Council
- Myddfai Community Council
- New Radnor Community Council

Community and town councils (continued)

- Northop Hall Community Council
- Overton Community Council
- Pembroke Dock Community Council
- Presteigne and Norton Town
- Rhuddian Town Council
- St Clears Town Council
- St Dogmaels Community Council
- Whitton Community Council

Appendix B

The following tables show who will be affected by the Bill proposals.

Table 1: Removal of requirement for Ministerial confirmation of byelaws

Winners	**Likely Scale of Impact (High / Medium / Low)**
Welsh Government Officials' time will be released to work on other policy areas.	Low Only about 8-10 officials currently involved very occasionally.
Local Authorities The time required to introduce a new byelaw will be reduced.	Low About 50 % of authorities that responded had not made any byelaws in the five years before the consultation exercise in 2010. National park authorities and community and town councils had not made any.
Losers	**Likely Scale of Impact (High / Medium / Low)**
Welsh Ministers Opportunity to input into the byelaw making process will be diminished.	Low
Local Authorities Will lose the scrutiny that Welsh Government officials provide.	Low With guidance provided by Welsh Government, local authorities will be able to take responsibility for this.

Table 2: Duty to Consult

Winners	**Likely Scale of Impact (High / Medium / Low)**
Stakeholders – includes communities and special interest groups There will be a duty placed on local authorities to consult them rather than the good practice recommendation currently.	High Although consultation is currently suggested as good practice, the duty to consult will ensure that all those who have an interest in the byelaw are consulted and their views taken into account.
Losers	**Likely Scale of Impact (High / Medium / Low)**
Local Authorities Local Authorities will have to incur the cost of a consultation exercise when introducing a new byelaw	Low. Consultation is currently recommended as good practice therefore the number of additional consultations (and associated costs) will be small.

Table 3: Power to introduce Fixed Penalty Notice (Fixed Penalty Notices) as a method of enforcement

Winners	**Likely Scale of Impact (High / Medium / Low)**
Local Authorities Local Authorities will have an additional option for byelaw enforcement.	Low. Fixed penalty notices are optional so it will depend on each authority
Magistrates Courts Byelaws are normally enforced through the Magistrates Courts. Fixed penalty notices will therefore potentially reduce the number of cases heard freeing up time to hear other cases. However cases may still proceed in respect of non payment of fines.	Possibly medium. There is definite potential for fixed penalty notices to increasingly take the place of enforcement through the Magistrates Courts.
Losers	**Likely Scale of Impact (High / Medium / Low)**
Local Authorities Local Authorities will need to put systems in place for the collection of fines.	Low. There is no specific duty on Local Authorities to use fixed penalty notices. It is an option rather than a requirement.

Local Government Byelaws (Wales) Bill

Annex 1 to the Explanatory Memorandum
incorporating the

Explanatory Notes

Introduction

1. These Explanatory Notes relate to the proposed Local Government Byelaws (Wales) Bill introduced into the National Assembly for Wales on 28 November 2011.

2. They have been prepared by the Welsh Government's Department for Local Government and Communities in order to assist the reader of the proposed Bill and to help inform debate on it. They do not form part of the draft Bill and have not been endorsed by the National Assembly for Wales.

3. The Explanatory Notes should be read in conjunction with the proposed Bill. They are not, and are not meant to be, a comprehensive description of the Bill. Where a section of the Bill does not seem to require any explanation or comment, none is given.

4. The powers to make the Bill are contained in Part 4 and paragraph 6 and 12 of schedule 7 to the Government of Wales Act 2006 ("GOWA 2006"). The National Assembly for Wales has the requisite legislative competence to make provision for and in connection with such proposals by virtue of the subject which relates to powers and duties of local authorities and their members and officers under the heading of local government and by virtue of the subjects which relate to countryside and open spaces, nature conservation and sites of special scientific interest under the heading of environment.

5. The following terms are used in these Explanatory Notes:

- Legislating authority – to refer to a county borough council or county council in Wales, a community council, a National Park authority in Wales, the Countryside Council for Wales.
- The 1972 Act – the Local Government Act 1972.

Commentary on Sections

Introduction

6. A byelaw is a law which has been made by a legislating authority under a power conferred by statute. Currently byelaws in Wales must be confirmed by the Welsh Ministers (in some cases, this confirmation power is exercisable concurrently by the Secretary of State). Offences against byelaws attract a penalty fine, which is enforced through the Magistrates' Courts.

7. The proposed Bill gives effect to the Welsh Government's proposals to simplify procedures for making and enforcing byelaws made by a legislating authority. Proposals for changes to current procedures were set out in the Welsh Government's consultation paper *'Local Authority Byelaws in Wales: Procedures for making, confirming and enforcing byelaws',* issued in June 2010.

8. In addition to the above, the proposed Bill disapplies existing provisions in sections 235 to 238 of the 1972 Act, insofar as they apply to Wales, and recasts those sections in the Bill (with some modification where appropriate).

This means the key legislative provisions relating to the making and enforcement of byelaws in Wales are accessible in the Bill.

9. The Bill provides for an alternative procedure for legislating authorities to follow in making byelaws. Where a legislating authority has consulted on, prepared and advertised draft byelaws locally, they can be enacted without confirmation by the Welsh Ministers. The Bill provides the Welsh Ministers with an order making power to amend the list of byelaws which do not require confirmation and to which the alternative procedure applies.

10. The Bill also provides for the enforcement of certain byelaws through fixed penalty notices, as an alternative to enforcement through Magistrates Courts. This will bring the enforcement of byelaws on to the same footing as the enforcement of other low-level nuisance activities, and will facilitate a more coordinated approach to the enforcement of such matters. The Bill provides the Welsh Ministers with an order making power to amend the list of byelaws that may be enforced by fixed penalty notices going forward.

11. The Welsh Ministers will have the power to issue guidance in relation to the new procedures, dealing in particular with consultation on, and the advertisement of, byelaws locally and the use of fixed penalties.

Powers to make byelaws

Section 1 – Overview

12. This provides an overview of the key provisions of the Bill and what the Bill seeks to achieve. The Bill has 21 sections and 2 schedules.

Section 2 – Byelaws for good rule and government and suppression of nuisances

13. This consolidates the provision of section 235 of the 1972 Act into the Bill. This enables county borough councils and county councils to make byelaws for the good rule and government of their areas and for the prevention and suppression of nuisances in their areas. Byelaws cannot be made under this section if provision for the purpose in question is made, or could be made, under another enactment. Byelaws under this power can, for example, prohibit skateboarding, ball games or touting in certain places where it causes a particular danger or nuisance, or can seek to regulate the manner in which those activities can be conducted.

Interpretation

Section 3 – Meaning of "legislating authority"

14. This defines the meaning of "legislating authority" in Wales for the purpose of the Bill. The definition includes other public bodies who have powers to make byelaws which are currently subject to confirmation by the Welsh Ministers, namely a National Park authority and the Countryside Council for Wales.

Revocation or amendment of byelaws

Section 4 – Revocation or amendment by a legislating authority

15. This recasts, in part, section 236B of the 1972 Act. It provides a power for a legislating authority to make a byelaw revoking or amending a byelaw it has previously made where, there exists no other power to do so. This will allow legislating authorities to remove obsolete byelaw provisions.

16. The power to revoke or amend a byelaw is subject to the same procedure as applied to the making of the byelaw.

Section 5 – Revocation by the Welsh Ministers

17. This recasts, in part, section 236B of the 1972 Act. It confers a power on the Welsh Ministers to make an order revoking a byelaw which they believe is obsolete. The intention behind this provision is that the power of the Welsh Ministers will only be used where the power to revoke the byelaw, or the identity of the authority which should otherwise revoke the byelaw, is unclear. By virtue of section 21, such an order is subject to the National Assembly for Wales negative resolution procedure as the order making power merely enables Ministers to revoke byelaws that are no longer relevant.

Procedure for byelaws

Section 6 – Byelaws not requiring confirmation

18. This section prescribes the alternative procedure for a legislating authority to make a byelaw which will not require confirmation by the Welsh Ministers. This section applies to byelaws made by a legislating authority pursuant to any of the enactments specified in Part 1 of Schedule 1 to the Bill.

19. There are three stages to the procedure:

- Initial written statement and consultation with interested persons;
- Publication of decision and draft byelaws, if appropriate;
- Making and the coming into effect of byelaws.

20. Before making byelaws, a legislating authority must produce and publish an initial written statement which describes the issue which the legislating authority thinks may be addressed by making byelaws. The legislating authority must consult persons likely to be interested in, or affected by, the issue and, following consultation, to decide whether making byelaws is the most appropriate way forward. It is intended that guidance will emphasise that a legislating authority should keep an open mind as to whether a byelaw is the most appropriate way forward, prior to consultation.

21. The legislating authority must produce and publish a second written statement which contains the initial written statement, a summary of

consultation response, details of the decision reached following the conclusion of the consultation exercise and the rationale for that decision.

22. Where a legislating authority decides to make byelaws, it must give notice of its intention at least one month before the byelaws are made in one or more local newspapers circulating in the area to which the byelaws apply. The legislating authority must also publish this notice by placing it on the legislating authority's website, if a website is available. The legislating authority must also for one month prior to making byelaws publish the draft byelaws, place a copy on deposit at its principal office and ensure that a copy is open to public inspection. The byelaw must be made no later than 6 months after the date on which the legislating authority gave notice of its intention to do so.

23. The legislating authority is required to publish the initial written statement, second written statement, notice of intention to make the byelaw and the draft byelaw on its website.

24. A legislating authority may charge a reasonable fee for providing a copy of proposed draft byelaws to any person.

Section 7 – Byelaws requiring confirmation

25. This section replaces and modifies provisions in section 236 of the 1972 Act. It relates to those byelaws made by a legislating authority pursuant to any enactment which confers on the legislating authority powers to make byelaws where specific provision as to the procedure is not otherwise made. The section 236 procedure detailed in the 1972 Act is the common procedure for the making of byelaws which require confirmation.

26. There is a three stage procedure:

- Making of byelaws;
- Publication of intention to seek confirmation of byelaws;
- Confirmation and the coming into effect of byelaws.

27. The legislating authority must submit the byelaws it makes to the confirming authority. At least one month before a byelaw is submitted for confirmation, a legislating authority must give notice of its intention to do so in one or more local newspapers circulating in the area. The legislating authority must also publish its intention to do so and to deposit a copy of the bylaws at their offices and ensure a copy is open to public inspection.

28. The legislating authority is required to publish notice of intention to make the byelaw and the byelaw submitted for confirmation on its website.

29. A legislating authority may charge a reasonable fee for providing a copy of the byelaws to any person and must ensure that a copy of the byelaw is deposited at its principal office and is open to public inspection at all reasonable hours.

30. The confirming authority may refuse to confirm any byelaw submitted for confirmation. Byelaws do not have effect unless and until they are confirmed by the confirming authority.

31. Where no confirming authority is specified in the enactment under which the byelaws are made the confirmation functions of the Welsh Ministers are exercisable concurrently with the Secretary of State. It is intended that the Secretary of State would act as the confirming authority for any byelaws that may fall outside the legislative competence of the National Assembly for Wales.

Section 8 – Formalities, commencement and publication of byelaws

32. This section recasts the provisions in section 236 of the 1972 Act which will apply to both byelaws made subject to the confirmation procedure and byelaws made subject to the alternative procedure which do not require confirmation by the Welsh Ministers. This section applies to byelaws made by a legislating authority under any enactment which confers on the legislating authority the power to make byelaws. It should be noted that this the procedures described in the section only apply to the extent that specific provision as to the procedure is not otherwise made.

33. Byelaws are to be made under the common seal of the legislating authority, or signed by two members of a community council not having a seal.

34. Byelaws are to come into effect on the date fixed by the legislating authority or the confirming authority as appropriate to the procedure under which the byelaws are made. Where no date is fixed, byelaws will come into effect one month from having been made (under the section 6 procedure) or one month from confirmation (under the section 7 procedure), as appropriate.

35. The legislating authority which makes the byelaws must publish the byelaws on its website and deposit a copy at its principal office for public inspection. The requirement to "publish" includes by placing the appropriate documents on the authority's website. A legislating authority may charge a reasonable fee for providing a copy of the byelaws to any person.

36. The proper officer of a legislating authority must send a copy of the byelaws made by the legislating authority to the proper officer of the council of every community to which the byelaws apply. For a National Park authority, the proper officer must send a copy of every byelaw once made, or where required once confirmed, to the proper officer of the council for every county borough or county or community in Wales whose area includes the whole or part of the National Park.

37. The proper officer of the community council must deposit the byelaws with the public documents of the community and ensure that a copy is open to public inspection.

38. For byelaws made by the Countryside Council for Wales the Countryside Council for Wales must ensure that a copy of a byelaw once made, or where required once confirmed, is sent to the proper officer of the council of every

county borough or county to whose area the byelaws applies and to the proper officer of the council of every community to whose area the byelaw applies.

39. This section provides that the "proper officer" is the officer duly authorised to serve that purpose by that body.

Section 9 – Power to amend Part 1 of Schedule 1

40. This provides a power for the Welsh Ministers, by order, to amend Part 1 of Schedule 1 (byelaws not requiring confirmation). In making any such order the Welsh Ministers may amend Part 1 of Schedule 1 by adding or subtracting from the list of enactments or by amending the type of authority that may make byelaws without confirmation. By virtue of section 21(3), such an order is subject to affirmative resolution by the National Assembly for Wales as the Order will amend this Act and may include consequential amendments to other primary legislation in accordance with the power in section 21(1).

41. Provision in section 21(1) to allows the Welsh Ministers to make such incidental, consequential, transitional or supplemental provision as the Welsh Ministers consider to be appropriate. In the case of an order under section 9 this provision can include provision to amending, repealing or revoking enactments.

Enforcement of byelaws

Section 10 - Offences against byelaws

42. This recasts section 237 of the 1972 Act, including the modifications made regarding the fine payable provided by the Criminal Justice Act 1982. Byelaws made by a legislating authority may provide that persons contravening such byelaws are liable on summary conviction to a fine. Such fine must not exceed the amount fixed by the relevant enactment or, if no sum is fixed, level 2 on the standard scale (currently £500). Similarly, the fine for conviction of a continuing offence is the amount fixed in the relevant enactment or £5 for each day during which the offence continues.

Section 11 – Section 2 byelaws; powers of seizure etc

43. This replicates section 237ZA of the 1972 Act, inserted by section 150(2) of the Police Reform and Social Responsibility Act 2011. It enables a county council or county borough council to attach powers of seizure and retention of any property in connection with any breach of a byelaw made under section 2 (good rule and government and for the prevention and suppression of nuisances) and, upon conviction for non-compliance or contravention of any byelaw, provision for forfeiture of any such property.

Fixed Penalty Notices

Section 12 – Power to offer fixed penalties for offences against certain byelaws

44. This section enables a legislating authority to use fixed penalties as an alternative means of enforcing byelaws made under the enactments listed within Part 2 of schedule 1 to the Bill.

45. Where a byelaw is specified within Part 2 of the schedule 1 to the Bill, subsection (2) provides for an authorised officer of a legislating authority to issue a fixed penalty notice offering a person the opportunity of discharging liability for conviction for a byelaw offence by the payment of the amount specified in the fixed penalty notice. Subsection (3) makes the same provision for an authorised officer of a community council to issue fixed penalty notices in relation to offences against byelaws committed in its area, even if the byelaw was made by a legislating authority other than the community council.

46. Subsection (4) provides that a fixed penalty is payable to the legislating authority whose officer issued the notice.

47. Subsection (5) provides that, following receipt of a fixed penalty notice, the recipient has fourteen days in which to pay the specified fine, and thus avoid attending the Magistrates' Court in respect of the offence.

48. Subsection (6) provides that the fixed penalty notice must give sufficient information to the recipient so that the nature of the offence is clear.

49. Subsection (7) provides that a fixed penalty notice must also detail the period during which proceedings will not be taken for the offence, the amount of the fixed penalty and the person to whom and the address at which the fixed penalty may be paid.

50. Subsection (8) provides for the method of payment of the fixed penalty by way of pre-paying and posting a letter.

51. Subsection (9) details that where a letter is sent discharging payment the payment will be deemed to have been made at the time at which the letter would be delivered in the ordinary course of post.

52. Subsection (10) provides the Welsh Ministers with a regulation making power to specify the form of the fixed penalty notice issued pursuant to this section. These powers are subject to the National Assembly negative resolution procedure.

53. Subsection (11) provides that in the event of proceedings a certificate signed on behalf of the chief finance officer of an authority which states the payment of a fixed penalty having been received, or not, as the case may be will be deemed evidence of the facts stated.

54. Subsection (12) makes provision about which persons are authorised to issue fixed penalty notices. "Authorised officers" will be restricted to those authorised in writing by the legislating authority to carry out the function. This may be a direct employee of the legislating authority, or a person, or an employee of a person, with whom the legislating authority has a contract for the enforcement of byelaws.

55. Welsh Ministers are empowered to specify, by regulations, the form of such a notice and the conditions to be satisfied by a person before a community council may authorise them for the purpose of giving notices. This power is subject to the National Assembly negative resolution procedure.

Section 13 - Amount of fixed penalty

56. This section provides for the level of fixed penalties payable in respect of a breach of byelaws that may be specified by the legislating authority. The section confers on the Welsh Ministers the power to make regulations specifying a range within which the amount of fixed penalty must fall. The exercise of this power is subject to the National Assembly negative resolution procedure.

57. Where a range has been specified, a legislating authority may choose to set an amount within that range. Where no range has been set, a legislating authority will have the freedom to set the penalty. Where the legislating authority does not specify a penalty for breach of a byelaw, the section provides for a default amount of £75. This section empowers the Welsh Ministers to make an order to change the default amount as necessary, so that the level remains in line with similar low-level offences. The Welsh Ministers' powers in this regard are subject to affirmative resolution by the National Assembly.

Section 14 – Power to require name and address in connection with fixed penalty

58. This section gives an authorised officer who proposes to issue a fixed penalty notice for breach of a byelaw the power to require the person to whom the notice is issued to give their name and address. A person who fails without reasonable excuse to give their name and address or gives a false name and address will commit an offence and is liable on summary conviction to fine not exceeding level three on the standard scale (currently £1,000). The offence of failing to co-operate undermines the ability of a legislating authority to enforce the law and this offence is reflected in the level of the fine.

Section 15 – Use of fixed penalty receipts

59. This section requires a legislating authority, when considering how to use their fixed penalty receipts, to have regard to the desirability of using the money in combating nuisances for the prevention of which any byelaw has been made. This means that legislating authorities are required to consider whether fixed penalty receipts should be used generally in combating such nuisances. It would not be necessary for receipts to be used only towards combating the nuisance the relevant byelaw is concerned with.

Section 16 – Power to amend Part 2 of Schedule 1

60. This section provides that the Welsh Ministers may by order amend the list detailed at Part 2 of Schedule 1 to the Bill (byelaws in relation to which fixed penalties may be issued) by adding to or subtracting from the list of enactments or by amending the type of the authority that may offer fixed penalty notices. This order making power is subject to the National Assembly for Wales affirmative resolution procedure.

Section 17 – Community Support Officers etc

61. This section amends the Police Reform Act 2002 so that if a legislating authority and the chief police officer for the area agree, community support officers and other "accredited persons" under that Act may issue fixed penalty notices for breach of legislating authority byelaws. Before a community support officer or accredited person will be able to do this, the chief police officer is required to designate the community support officer or accredited person as having that function. In addition, the byelaw to which the fixed penalty notice relates is required to appear on a list agreed between the chief police officer and the legislating authority.

Miscellaneous and general

Section 18 – Guidance

62. This section gives the Welsh Ministers the power to issue statutory guidance in relation to the procedures for making byelaws, the enforcement of byelaws and anything related to these matters. Such related matters will include guidance on consulting on and publicising new byelaws, good practice in relation to byelaws and the use of fixed penalty notices. The legislating authority must have regard to the guidance issued when making or enforcing byelaws.

Section 19 – Evidence of byelaws

63. This section recasts section 238 of the 1972 Act. It makes provision for evidencing the existence of byelaws made by a legislating authority for byelaws made that are not subject to the confirmation procedure. A certified copy of a byelaw is deemed to be a printed copy of the byelaw that was made which is endorsed together with a certificate signed by the proper officer of a legislating authority.

64. The certified copy byelaw must state that the byelaw was made by the legislating authority, that it is a true copy of the made byelaw, the date upon which the byelaw was confirmed by the legislating authority named in the certificate, or not, as the case may be, and if sent to the confirming authority was not disallowed. In addition, the certified copy must state the date, if any, fixed by the confirming authority for the coming into effect of the byelaw.

65. This section provides that the production of a certified copy byelaw is deemed sufficient evidence of the facts stated in the certificate, unless otherwise proved.

66. A legislating authority would not be required to state within the certified copy the requirements detailed at subsection 19(2)(c) and (d) if the byelaw was not subject to confirmation after it was made.

Section 20 – Consequential amendments

67. This section gives effect to Schedule 2 which makes minor and consequential amendments to a number of enactments containing provisions relating to the making of byelaws subject to the confirmation procedure pursuant to section 236 of the 1972 Act. Where byelaws are to be subject to the alternative procedure detailed in the list at Part 1 of schedule 1 to the Bill, any requirement for confirmation is to only apply in England.

68. Amendments are made which place on a legislating authority the duties that were formerly exercised by the Welsh Ministers acting as the confirming authority.

69. Amendments are also made to sections 235,236, 236B and section 238 of the 1972 Act to disapply these provisions in relation to Wales.

Section 21 - Orders and regulations

70. This section provides for a power to make regulations and orders under the Act to include power to make incidental, consequential, transitional or supplemental provision.

71. In the case of the powers to make orders under sections 9 and 16 (amendment of parts 1 and 2 of Schedule 1) the incidental, consequential, transitional or supplemental provision which may be made can include provision amending, repealing or revoking enactments.

72. Orders under sections 9 and 16, and any order under section 13(5), are made subject to the affirmative procedure as they seek to amend this Act and may make subsequent amendments to other primary legislation.

73. Other orders and regulations (apart from commencement orders) are subject to the negative procedure.

Section 22 – Commencement

74. This section provides for the Act to come into force in accordance with provision made by the Welsh Ministers by order.

Section 23 – Short title

75. This section provides that the short title of this Act is the Local Government Byelaws (Wales) Act 2012.

Schedule 1 – Lists of byelaw making powers

Sections 6 and 12

Part 1 – Byelaws not requiring confirmation

76. Part 1 of schedule 1 lists the enactments under which byelaws are made which are not subject to confirmation by the Welsh Ministers. It is provided that section 6 of the Bill will apply to byelaws made under the enactments and type of legislating authority listed in Part 1 of schedule 1.

Part 2 – Byelaws in relation to which fixed penalties may be issued

77. Part 2 of schedule 1 lists the enactments under which byelaws are made which may be discharged by fixed penalty notice. It is provided that section 12 of the Bill will apply to byelaws made under the enactments and type of legislating authority listed in Part 2 of schedule 1.

Schedule 2 – Minor and consequential amendments

Section 20

78. Schedule 2 lists the minor and consequential amendments made by the Bill to a number of enactments containing provisions relating to the making of byelaws subject to the confirmation procedure pursuant to section 236 of the 1972 Act.

Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol

Constitutional and Legislative Affairs Committee

Cynulliad Cenedlaethol Cymru
National Assembly for Wales

Bae Caerdydd / Cardiff Bay
Caerdydd / Cardiff
CF99 1NA

Carl Sargeant AM
Minister for Local Government and Communities
5th Floor, Tŷ Hywel
Cardiff Bay, CF99 1NA

17 November 2011

Dear Minister

CLA49 - The Audit and Assessment Reports (Wales) (Amendment) Order 2011

The Constitutional and Legislative Affairs Committee considered the above Statutory Instrument at its meeting on 14 November 2011 and agreed that I should bring to your attention the Committee's report made under Standing Order 21.3 on the merits of the Instrument.

The Committee agreed to invite the Assembly to pay special attention to this Instrument on the grounds "that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Assembly" (Standing Order 21.3(ii)).

The Committee's report was laid in the Table Office on 16 November 2011 and is attached for information. I would be grateful if you could consider the report and let the Committee have your response in due course.

I am copying this report to the First Minister for information and have also arranged for the report and this letter to be drawn to the attention of Assembly Members.

Yours sincerely

David Melding AM
Chair, Constitutional and Legislative Affairs Committee

Carl Sargeant AC / AM
Y Gweinidog Llywodraeth Leol a Chymunedau
Minister for Local Government and Communities

Llywodraeth Cymru
Welsh Government

Eich cyf/Your ref CLA49
Ein cyf/Our ref CS/07065/11

David Melding AM

Chair - Constitutional & Legislative
Affairs Committee
Ty Hywel
Cardiff Bay
Cardiff
CF99 1NA

7th December 2011

Dear David.

Thank you for your letter of 17 November on behalf of the Constitutional and Legislative Affairs Committee enclosing a copy of the Committee's Merits Report of 14 November on the Audit and Assessment Reports (Wales) (Amendment) Order 2011.

I have considered the report and have noted that there is the need for officials to address all reports prepared by Committees when drafting legislation, to ensure that the legislative process is carried out as effectively as possible.

I will ensure that if it becomes necessary to amend the 2010 Order further then proper consideration will be given to revoking the 2010 Order and producing a new order in English and in Welsh.

Carl

Carl Sargeant AC / AM
Y Gweinidog Llywodraeth Leol a Chymunedau
Minister for Local Government and Communities

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Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol

Constitutional and Legislative Affairs Committee

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CF99 1NA

Carl Sargeant AM
Minister for Local Government and Communities
Welsh Government
5th Floor
Tŷ Hywel
Cardiff Bay
CF99 1NA

14 November 2011

Dear Minister

The Localism Bill – Written Statement by the Welsh Government

On 18 October, you made a written Statement about proposed amendments to the Localism Bill. The amendments confer powers on the Welsh Ministers to pass on to Welsh public authorities EU infraction fines that are imposed on the UK Government by the Court of Justice of the European Union.

The Constitutional and Legislative Affairs Committee discussed these amendments at its meeting on 31 October. The Committee noted that the Welsh Government's justification for seeking these powers in this Bill is that it:

> *'represents the most appropriate and proportionate legislative vehicle to enable these provisions to apply in Wales at the earliest opportunity.'*

The Committee also noted the Welsh Government's statement that:

> *'These amendments giving the Welsh Ministers powers to pass on fines to Welsh public authorities do not fall within the Assembly's legislative competence…'.*

In arriving at this view, the Welsh Government was required to lay a written statement under Standing Order 30 but was not required to seek the consent of the Assembly, for amendments that fall within the Assembly's legislative competence, required under Standing Order 29.

The Committee was surprised, therefore, that your statement gave no explanation of why the Government had come to the view it had on competence in this area. The Committee noted that the Assembly has extensive legislative competence in relation to public authorities in Wales. I would be grateful, therefore, if you could now provide some explanation of why

the Government has taken the view that the Assembly has no competence in this area.

The Committee also noted that the UK Government tabled the amendments on 3 October and that the Assembly was notified in your statement, on 18 October. Standing Order 29 asks for a written statement 'normally' within two weeks of amendments being tabled or agreed to. I am sure you would agree that the earliest possible notice is desirable unless there are good reasons otherwise.

I am copying this letter to the First Minister and Counsel General for information and to the Presiding Officer as Chair of the Business Committee.

Yours sincerely

David Melding AM
Chair, Constitutional and Legislative Affairs Committee

Y Gwir Anrh/Rt Hon Carwyn Jones AC/AM
Prif Weinidog Cymru/First Minister of Wales

Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref: LF/FM/5171/11

David Melding AM
Chair
Constitutional & Legislation Affairs Committee
National Assembly for Wales
Cardiff Bay
Cardiff

15th December 2011

Dear David,

Written Statement by the Welsh Government on Localism Bill

I am replying to your letter to Carl Sargeant of 14th November on the above subject.

As you will be aware, Standing Order 30 requires that the Assembly's attention be drawn to UK Government Bills in certain specified circumstances: where a Bill provision either has a significant impact on the functions of the Welsh Ministers or the Counsel General, or it has a (more than trivial) impact on the legislative competence of the Assembly. SO 29 does not require the Welsh Government, in any written statement laid under that Standing Order, to include an explanation of why a Bill's provisions or amendments are considered not to have an impact on the Assembly's competence. We would not therefore normally expect to do so.

You have however specifically asked about certain provisions in what is now the Localism Act. In the case of the provisions conferring powers on the Welsh Ministers to pass EU infraction fines on to Welsh public authorities in that Act, the Government considers that they deal with the financial consequences of breaching EU law, as opposed to compliance with EU law, and are therefore not within the competence of the Assembly.

I hope that the above provides the explanation that you were seeking.

I am copying this letter to Carl Sargeant, the Counsel General and the Presiding Officer.

Yours sincerely

CARWYN JONES

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Cynulliad Cenedlaethol Cymru
National Assembly for Wales

Constitutional and Legislative Affairs Committee

Report: CLA(4)-14-11 : 5 December 2011

The Committee reports to the Assembly as follows:

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

Negative Resolution Instruments

CLA63 - The Agricultural Holdings (Units of Production) (Wales) Order 2011
Procedure: Negative.
Date made: 22 November 2011
Date laid: 24 November 2011
Coming into force date: 21 December 2011

Affirmative Resolution Instruments

None

No Procedure Instruments

CLA62 - The Food Protection (Emergency Prohibitions) (Radioactivity in Sheep) (Wales) (Partial Revocation) Order 2011
Procedure: No Procedure.
Date made: 16 November 2011.
Date laid: 18 November 2011.
Coming into force date: 9 December 2011

Instruments that raise reporting issues under Standing Order 21.2 or 21.3

Negative Resolution Instruments

None

Affirmative Resolution Instruments

CLA61 - The London Olympic Games and Paralympic Games (Advertising and Trading) (Wales) Regulations 2012

Procedure: Affirmative.
Date made: not stated.
Date laid: not stated.
Coming into force date: in accordance with regulation 1(2)

The Committee agreed a report under Standing Order 21.2 on this statutory instrument, which is attached as Annex 1.

Other Business

Protection of Freedoms Bill (Legislative Consent Motion)

The Committee considered a Legislative Consent Memorandum regarding amendments to the Protection of Freedoms Bill. The Committee agreed to report to the Assembly that it saw no reason why the Legislative Consent Motion in respect of the changes should not be approved.

Committee Correspondence

CLA31 - The National Curriculum (Assessment Arrangements on Entry to the Foundation Phase) (Wales) Order 2011 and CLA32 - The National Curriculum (End of Foundation Phase Assessment Arrangements and Revocation of the First Key Stage Assessment Arrangements) (Wales) Order 2011

The Committee noted the Minister's response to the Chair's letter dated 14 November 2011, which had asked the Minister to reconsider his decision not to inform the Committee separately if the powers under Article 5 of the original Orders are used again in future.

Resolution to Meet in Private

In accordance with Standing Order 17.42(vi) the Committee resolved to exclude the public from the remainder of the meeting to discuss the evidence submitted thus far on the Inquiry into the Granting of Powers to Welsh Ministers in UK Laws and the issues emerging from that evidence.

David Melding AM
Chair, Constitutional and Legislative Affairs Committee

5 December 2011

Annex 1

Constitutional and Legislative Affairs Committee

(CLA(4)-14-11)

CLA61

Constitutional and Legislative Affairs Committee Report

Title: The London Olympic Games and Paralympic Games (Advertising and Trading) (Wales) Regulations 2012
Procedure: Affirmative

These draft regulations made under sections 19, 20, 22 (8), 25, 26 and 28 (6) of the London Olympic Games and Paralympic Games Act 2006, control advertising and outdoor trading around the only Olympic event centre in Wales, the Millennium Stadium, Cardiff, during periods when Olympic events take place in the stadium. They are intended to uphold the Host City Contract that both the UK and Welsh Governments promised to implement by preventing ambush marketing. The regulations enable the Olympic Delivery Authority ("ODA") and the London Organising Committee ("LOC") to determine what trading takes place and advertising is displayed within a designated 'event zone' around the Millennium Stadium, although the regulations contain exemptions to allow businesses to trade and advertise with minimal disruption.

Technical Scrutiny

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

Merits Scrutiny

The following points are identified for reporting under Standing Order 21.3 (ii) in respect of this draft instrument – that it gives rise to issues of public policy likely to be of interest to the Assembly.

Background

This is the first time that the powers to regulate advertising and trading in the vicinity of Games events in the London Olympic Games and Paralympic Games Act 2006 have been exercised in Wales. Similar regulations are being made in England and Scotland.

A joint consultation was issued with England and Scotland between 07 March and 30 May 2011.

In total there were 50 responses, none of which specifically related to Wales

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

None

Other issues

A number of issues have been brought to the attention of the Committee within written correspondence.

Wide definition of Ambush Marketing

Both “advertisement” and “ambush marketing campaign” are defined in Regulation 5 (1).

Advertisement includes any word, letter, image (including logos and other forms of branding), mark, sound, light, model, sign, placard, board, notice, screen, awning, blind, flag, device, costume or representation, whether illuminated or not, which is in the nature of, and employed wholly or partly for the purposes of, promotion, advertisement, announcement or direction.

The regulations define an ambush marketing campaign (whether of one or many acts) as a campaign intended specifically to advertise goods or services or a person who provides goods or services in an Event Zone during an Event Period.

The explanatory memorandum states that the regulations are necessary to give effect to the host city contract which requires ambush marketing to be combatted.

The regulations provide that within the event zones during the event periods, a person wishing to engage in advertising activities, subject to certain exceptions will require a specific prior authorisation from London Olympic Game Organising Committee (LOCOG). The authorisation process will ensure that only advertising which is consistent with the aims of the Regulations is permitted. The regulations provide many exceptions to allow businesses to operate as normal from their premises with advertising that does not conflict with the aims of the Regulations. There are also other exceptions to various specific forms of advertising which don’t conflict with the aims of the Regulations.

For groups other than non - official sponsors licensees and partners LOCOG will operate a public application process for which there will be no charge.

The general position is that so long as you are not seeking to mislead the public into thinking that there is an association between your business and the 2012 games or their sponsors, and you comply with the 2011 regulations then you should not face prosecution.

Penalties

Advertising or Trading without the necessary permit in contravention of the regulations will be an offence under Section 22 of the London Olympic Games and Paralympic Games Act 2006 and will be punishable by a fine of up to £20 000.00. The Act rather than these regulations provides for the criminal offence.

Guidance

The Olympic Delivery Authority has recently issued guidance on trading and advertising during the games which can be found here[1]

Reverse Burden

The regulations provide that a person who has an interest in or is responsible for a business, goods or service, will be liable for a contravention of the regulations by the business, or if the contravention relates to the goods or service. Similarly, a person who owns or occupies land will be responsible for any contravention of the Regulations that takes place on the land.

In both cases a person can escape liability if they prove that the contravention took place without their knowledge or despite them having taken all reasonable steps to prevent a contravention from occurring, continuing or recurring.

The Regulations therefore reverse the normal burden of proof in criminal offences.

Within the human rights assessment at Appendix B of the explanatory memorandum the UK government accept that the Regulations *"could be said to interfere with the right to be presumed innocent affirmed by Article 6 (2) ECHR."* The following justification is provided.

> *An interference with the right to be presumed innocent will be justified where it is confined "within reasonable limits which take into account the importance of what is at stake and maintain the rights of the defence." Putting this another way, an*

[1] http://www.london2012.com/documents/oda-publications/detailed-provisions-of-the-advertising-and-trading-regulations.pdf

interference will be justified where it furthers a legitimate aim and is reasonably proportionate to that aim.
In paragraph 12 above, we have set out the three general objectives of the Regulations. The reverse onus provision is intended to contribute to the achievement of those objectives. In addition, it is specifically intended to ensure that people who are responsible for businesses that contravene the Regulations, or goods or services in relation to which a contravention occurs, or land on which a contravention takes place, are held accountable for the contravention or, at least, take reasonable steps to prevent a contravention occurring.
The reversal of onus is reasonably proportionate to those objectives. The onus (to prove a lack of knowledge or reasonable preventative steps) will only transfer to an accused once the prosecution has proven that a contravention of the regulations has occurred (that is, that there has been advertising or trading activity in contravention of the regulations). The prosecution would also have to prove that the contravention was undertaken by a business for which the defendant was responsible, or that it related to a good or service for which the person was responsible, or that it occurred on land which the person owned or occupied. Accordingly, the prosecution will be required to make out the main elements of an offence before the onus shifts to the defendant.
In addition, once the onus is reversed, the matters that a person is required to prove in order to benefit from the defence are peculiarly within the knowledge of the person – that they did not know about the trading or advertising or that they took reasonable steps to prevent the trading or advertising from occurring. The burden on the accused person would, accordingly, not be difficult for a person to discharge if they have no knowledge of the advertising or trading at issue or have taken steps to prevent

The Joint Committee on Human Rights in their fifteenth report on the London Olympic Games and Paralympic Games Bill stated:-

"We accept that, in light of the guidance recently given by the House of Lords on assessing the compatibility of reverse onus provisions (Sheldrake –v- DPP), this clause is compatible with the presumption of innocence in Article 6 (2) ECHR because the matters in relation to which the defendant bears a legal burden of proof (knowledge of, or efforts made to prevent, and advertisement) are not arbitrary, but matters within his particular knowledge, and do not go beyond what is reasonable for the defendant to establish."[2]

Charity/not-for profit bodies

[2] Joint Committee on Human Rights – Fifteenth Report 20 March 2006

Regulation 7 provides an exemption to the advertising restrictions in relation to a not for profit body that engages in activity intended to demonstrate support for or opposition to the views or actions of a person or body of persons, publicise a belief, cause or campaign, or mark or commemorate an event.

A "not for profit body" is defined in regulation 5 as a body that is required to use its funds for charitable or public purposes and is prohibited from distributing its assets to members (other than for charitable or public purposes).

Goods Deliveries

Whilst the draft regulations which were consulted on in March 2011, only provided limited exceptions for goods deliveries, the current regulations provide an exemption to the restrictions on trading at regulation 14 (1) (c) to *"selling or delivering an article to a person in premises adjoining a highway"*. This would allow for example a pizza delivery or catalogue courier to engage in that activity in the event zone during the event period without contravening the regulations.

Proportionality

The Welsh Government state in the explanatory memorandum that the Regulations contain a trade-off between seeking to achieve the common aims of the regulations which are to ensure:-

- The games have a consistent look and feel across London and the UK;
- To prevent ambush marketing within the vicinity of venues, and
- Spectators and those participating in the Games can get in and out of venues easily and safely.

And seeking to maintain 'business as usual' for those organisations located within the event zone, and to maintain the same extent of controls as those in the other administrations.

The restrictions are in place for a total of 13 days, and extend no further than 500 metres from avenue entrance where this is along a main access route and substantially less otherwise.

The explanatory memorandum goes on to state:-

"If the regulations are not made it will mean the Host City Contract cannot be fulfilled in Wales and there is a risk that the football matches would be moved to an alternative stadium in England".

David Melding AM

Chair, Constitutional and Legislative Affairs Committee

5 December 2011