

Constitutional and Legislative Affairs Committee

Meeting Venue:
Committee Room 2 – Senedd

Meeting date:
12 March 2012

Meeting time:
14:30

Cynulliad
Cenedlaethol
Cymru

National
Assembly for
Wales



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Agenda

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

Negative Resolution Instruments

CLA101 – The Local Authorities (Alteration of Requisite Calculations) (Wales) Regulations 2012

Negative Procedure. Date made 22 February 2012. Date laid 27 February 2012.
Coming in to force date 28 February 2012

CLA102 – The Residential Property Tribunal Procedures and Fees (Wales) Regulations 2012

Negative Procedure. Date made 23 February 2012. Date laid 28 February 2012.
Coming in to force date 21 March 2012

CLA104 – The Coleg Menai Further Education Corporation (Dissolution) Order 2012

Negative Procedure. Date made 29 February 2012. Date laid 2 March 2012. Coming into force date 1 April 2012

CLA107 – The National Health Service (Optical Charges and Payments) (Amendment)(Wales) Regulations 2012

Negative Procedure. Date made 4 March 2012. Date laid 6 March 2012. Coming into force date 1 April 2012

Affirmative Resolution Instruments

CLA103 – The Mobile Homes Act 1983 (Jurisdiction of Residential Property Tribunals) (Wales) Order 2012

Affirmative Procedure. Date made not stated. Date laid not stated. Coming into force date 21 March 2012

CLA108 – The Welsh Language (Wales) Measure 2011 (Transfer of functions, Transitional and Consequential Provisions) Order 2012

Affirmative Procedure. Date made not stated. Date laid not stated. Coming into force date 1 April 2012

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

Negative Resolution Instruments

CLA105 – The Abergavenny Improvement Act 1854 (Repeal) Order 2012 (Pages 1 – 11)

Negative Procedure. Date made 28 February 2012. Date laid 2 March 2012. Coming into force date 26 March 2012

CLA106 – The Environmental Permitting (England and Wales) (Amendment) Regulations 2012 (Pages 12 – 32)

Negative Procedure. Date made 28th February 2012. Date laid before Parliament 5th March 2012. Date laid before the National Assembly for Wales 5th March 2012. Coming into force date 6th April 2012

CLA109 – The Local Election Survey (Wales) Regulations 2012 (Pages 33 – 54)

Negative Procedure. Date made 4 March 2012. Date laid 6 March 2012. Coming into force date 31 March 2012

CLA110 – The Isle of Anglesey Local Authorities (Change to the Years of Ordinary Elections) Order 2012 (Pages 55 – 65)

Negative Procedure. Date made 6 March 2012. Date laid 6 March 2012. Coming into force date 27 March 2012

Affirmative Resolution Instruments

None

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

The Law Society (Pages 66 – 72)

Papers:

CLA WJ 21 – Response from the Law Society

Present:

- Kay Powell, LLM Solicitor and Policy Adviser, The Law Society
- Michael Imperato, NewLaw Solicitors, Member of the Wales Committee
- Richard Owen, Deputy Head of the School of Law, Accounting and Finance, University of Glamorgan, Member of the Wales Committee

5. Committee Correspondence

Proposal for a Directive of the European Parliament and of the Council on Public Procurement (Pages 73 – 75)

Papers:

CLA(4)-06-12(p1) –Letter from the Chair to the Chairman of the European Scrutiny Committee Mr William Cash MP dated 23 February 2012

CLA(4)-06-12(p2) – Response from the Chairman of the European Scrutiny Committee Mr William Cash MP dated 29 February 2012

6. Date of the next meeting (Pages 76 – 78)

19 March 2012

Papers to note:

CLA(4)-05-12– Report of the meeting 5 March 2012

Transcript

View the [meeting transcript](#).

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

A Committee may resolve to exclude the public from a meeting or any part of a meeting where:

(vi) the Committee is deliberating on the conclusions or recommendations of a report

it proposes to publish

8. Consideration of the evidence submitted to Inquiry to date

Constitutional and Legislative Affairs Committee

CLA(4)-06-12

CLA105

Constitutional and Legislative Affairs Committee Draft Report

Title: The Abergavenny Improvement Act 1854 (Repeal) Order 2012

Procedure: Negative

This Order, made under section 58 of the Local Government (Wales) Act 1994, repeals section 28 (including to the extent that section 26 of that Act has effect in relation to section 28) of the Abergavenny Improvement Act 1954 on the grounds that the section has become obsolete and unnecessary and has been substantially superseded by the Food Act 1984.

Technical Scrutiny

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

Merits Scrutiny

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

Section 58 of the Local Government (Wales) Act 1994 conferred powers on the Secretary of State to repeal local Acts (or specified provisions thereof) where they appeared to be “spent, obsolete or unnecessary or ...have been substantially superseded [by other legislation dealing with the same subject-matter]”.

The power was transferred to the National Assembly by virtue of the National Assembly for Wales (Transfer of Functions) order 1999 and is now vested in the Welsh Ministers.

In so far as can be ascertained, this is the first occasion since the transfer of the power in 1999 and its subsequent vesting in the Welsh Ministers that the power has been exercised. In these circumstances the Assembly is invited to special attention to this Order under Standing Order 21(3)(ii)

Legal Advisers

Constitutional and Legislative Affairs Committee

5 March 2012

2012 No. 629 (W. 87)

**LOCAL GOVERNMENT,
WALES**

**The Abergavenny Improvement Act
1854 (Repeal) Order 2012**

EXPLANATORY NOTE

(This note is not part of the Order)

This Order repeals section 28 of the Abergavenny Improvement Act 1854 (c.49) (“the 1854 Act”) and it comes into force on 26 March 2012.

The 1854 Act is to be read together with the Abergavenny Improvement Act 1860 (c.137) and the Abergavenny Improvement Act 1871 (c.92) (see section 2 of the latter Act).

Section 28 of the 1854 Act conferred functions on the then Abergavenny Commissioners to construct a cattle market and slaughterhouses within a defined area in Abergavenny and to collect tolls. Those functions are now exercisable by Monmouthshire County Council.

Section 26 of the 1854 Act incorporates the majority of the provisions of the Markets and Fairs Clauses Act 1847 (c.14) and several of those provisions have effect in relation to section 28 of the 1854 Act.

This Order repeals section 28 of the 1854 Act, including to the extent that section 26 of the 1854 Act affects section 28.

The ground on which the Order is made is that the repealed provision is obsolete, unnecessary and has been superseded. The Food Act 1984 contains provisions concerning the establishment and operation of livestock markets and applies to county councils, county borough councils and community councils in Wales.

The Welsh Ministers’ Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to this Order. As a result it was not considered necessary to carry out a regulatory

impact assessment as to the likely costs and benefits of complying with this Order.

2012 No. 629 (W. 87)

**LOCAL GOVERNMENT,
WALES**

**The Abergavenny Improvement Act
1854 (Repeal) Order 2012**

Made 28 February 2012

Laid before the National Assembly for Wales

2 March 2012

Coming into force 26 March 2012

It appears to the Welsh Ministers that section 28 of the Abergavenny Improvement Act 1854⁽¹⁾, being a local statutory provision for the purposes of sections 57 and 58 of the Local Government (Wales) Act 1994⁽²⁾, has become obsolete and unnecessary and has been substantially superseded by the Food Act 1984⁽³⁾.

The Welsh Ministers make the following Order in exercise of the powers conferred on the Secretary of State by section 58 of the Local Government (Wales) Act 1994 and now vested in them⁽⁴⁾.

Title and commencement

1.—(1) The title of this Order is The Abergavenny Improvement Act 1854 (Repeal) Order 2012.

(2) This Order comes into force on 26 March 2012.

Repeal

-
- (1) 1854 c.49. The 1854 Act was amended by the Abergavenny Improvement Act 1860 (c.137).
- (2) 1994 c.19.
- (3) 1984 c.30. See sections 50 and 53.
- (4) The powers of the Secretary of State were transferred to the National Assembly for Wales by the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672) and are now vested in the Welsh Ministers by virtue of paragraph 30 of Schedule 11 to the Government of Wales Act 2006 (c.32).

2. Section 28 (commissioners may form and construct cattle market and slaughterhouses) of the Abergavenny Improvement Act 1854 (“the 1854 Act”) is repealed (including to the extent that section 26 (incorporation of the Markets and Fairs Clauses Act 1847(1)) of the 1854 Act has effect in relation to section 28).

Carl Sargeant

Minister for Local Government and Communities, one
of the Welsh Ministers

28 February 2012

(1) 1847 c.14.

Explanatory Memorandum to the Abergavenny Improvement Act 1854 (Repeal) Order 2012

This Explanatory Memorandum has been prepared by the Department for Local Government and Public Services 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 Abergavenny Improvement Act 1854 (Repeal) Order 2012

CARL SARGEANT AM
28 February 2012

1. Description

This order repeals section 28 of the Abergavenny Improvement Act 1854 (including to the extent that section 26 of the Act has effect in relation to section 28). Those sections together appear to require Monmouthshire County Council to hold a livestock market in the town. The order removes any such requirement.

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

None.

3. Legislative background

Section 58 of the Local Government (Wales) Act 1994 deals with the application of local Acts (such as the Abergavenny Improvement Act 1854) to the unitary local authorities in Wales which the 1994 Act created. Section 58(2)(d) contains a power to repeal local Acts (or specified provisions in them) by order where it appears that they are “spent, obsolete or unnecessary, or...have been substantially superseded [by other legislation dealing with the same subject-matter]”. As drafted that power was exercisable by the Secretary of State; the National Assembly for Wales (Transfer of Functions) Order 1999 and the Government of Wales Act 2006 provide that it is now a power of the Welsh Ministers.

Section 63 of the 1994 Act provides that an order under section 58 is to be subject to the negative procedure.

4. Purpose & intended effect of the legislation

The Abergavenny Improvement Acts of 1854 to 1871 (the Acts) conferred numerous functions and duties on the then Abergavenny Commissioners – a board of local landowners which was established in the late 18th century to be responsible for the development of the town. Those functions and duties were transferred to successive institutions of elected local government and now lie with Monmouthshire County Council (the Council).

Among the provisions of the Acts is one in section 28 of the 1854 Act. Taken with section 26 of the same Act (which incorporated the Markets and Fairs Clauses Act 1847 – a standard set of provisions about livestock markets) section 28 appeared to the Council to require the Abergavenny Commissioners (and now the Council) to hold a livestock market in the town on days specified by them.

Monmouthshire County Council approached the Welsh Government to seek the repeal of these provisions on the grounds that they are an unjustified and obsolete constraint on its ability to make decisions about the development of Abergavenny and about the provision of livestock markets in the County. All

local authorities (including Monmouthshire) have modern discretionary powers governing livestock markets in the Food Act 1984.

The Welsh Ministers have powers in section 58 of the Local Government (Wales) Act to repeal local Acts such as these by order where it appears to them that such acts are “spent, obsolete or unnecessary, or to have been substantially superseded”.

Following consultation, the Minister for Local Government and Communities determined that section 26 (in so far as it related to section 28) and section 28 of the 1854 Act were indeed obsolete and unnecessary, and have been superseded by the provisions of the Food Act 1984. This Order repeals those sections. Other provisions in the Abergavenny Improvement Acts are not affected.

This Order only makes provision affecting Monmouthshire County Council. Other local authorities and other areas of Wales are not affected.

As a result, the Council will be free of the obligations which the repealed sections of the Act impose. It will be in the same position as any other local authority in that it will be able to operate livestock markets anywhere in the County under the Food Act 1984.

Monmouthshire County Council has plans both to develop the site of the livestock market in Abergavenny and to open a new market near Raglan. However, those are matters for the Council. The merits or otherwise of these plans have no bearing on the decision to repeal the provisions in the 1854 Act. The repeal does not require the Council to do anything about the livestock market or otherwise; it merely frees it from the obligations that sections 26 and 28 of the 1854 Act impose.

If this order were not made, those obligations would remain. While the exact meaning of the 1854 Act is not completely clear, it is likely that the Council would remain obliged to hold a livestock market in Abergavenny on days which the Council specified. That could be (but need not be) the current market on the current site; but this is nonetheless an unusual and unjustified constraint. So far as is known, no other local authority in Wales or possibly beyond is similarly restricted in its ability to hold livestock markets or to take wider planning and development decisions.

5. Consultation

The Welsh Government consulted on the proposed repeal between 13 September and 30 November 2011. Formal consultation letters, which stated that the Minister was minded to repeal and outlining the reasons why, were sent to: Monmouthshire County Council; Abergavenny Town Council; the Farmers Union of Wales; the National Farmers Union; and Abergavenny Market Auctioneers Limited. Many responses were also received from

members of the public, and the Minister made clear in a statement of 19 October that such responses were welcome. However, the Minister also stated that responses which commented on matters within the Council's control (and in particular the Council's proposals for developing the market site and constructing a new market) were not relevant to the issue of repeal, and would not be taken into account.

There were approximately 250 responses. The majority of letters opposed the repealing of the Abergavenny Improvement Acts. Nevertheless, most focused on objections to Monmouthshire County Council's proposals for the market site, occasionally offering alternate solutions. As noted, local planning matters are a matter for the Council, and comments on them were not taken into account in assessing the case for repeal.

A small number of letters supported the repeal, some with conditions. Monmouthshire County Council strongly supported repeal. The users of the market as represented by the National Farmers Union Cymru, the Farmers Union of Wales and the firm of auctioneers support repeal on condition that there were a smooth transition should the existing market be closed and a new market opened; and that the repeal should be effected accordingly.

Consideration was given to timing the repeal to give effect to the proposals from some market users, ie that it should come into force only when the new market was open for business. However, this option was rejected on the grounds that (a) the opening of the new market is again a matter for the Council; and (b) any order must come into force on a specified date – it cannot be triggered by external events such as the opening of a market.

No changes to the proposed legislation were thus made as a result of the consultation.

6. Regulatory Impact Assessment (RIA)

No regulatory impact assessment has been prepared for this Order. This is because the Order merely repeals obsolete legislation. It does not create any quantifiable costs or benefits for any person or organisation.

Costs or benefits may accrue to Monmouthshire County Council and/or those it serves if it takes any decisions which this repeal enables. However, that is a matter for the Council and depends entirely on the decisions that it might take and how it might implement them.

The Order has no impact on –

(a) the statutory duties of the Welsh Ministers concerning equality of opportunity (section 77 of the Government of Wales Act 2006), the Welsh language (section 78) and sustainable development (section 79); and

(b) the local government, voluntary sector and business schemes made under sections 73, 74 and 75 of the Government of Wales Act 2006 respectively.

**Local Government Finance and Performance Division
Department for Local Government and Public Services
January 2012**

Agenda Item 3.2

Constitutional and Legislative Affairs Committee Report

CLA(4)-06-12

CLA106

Title: The Environmental Permitting (England and Wales) (Amendment) Regulations 2012

The instrument amends the Environmental Permitting (England and Wales) Regulations 2010 (“the 2010 Regulations”). The amendments do the following:

- reduce regulatory requirements for those who operate certain anaerobic digestion installations or mobile plant and for those who burn waste-derived fuel that has ceased to be waste;
- make it easier to transfer permits in certain situations;
- provide for the vesting of an environmental permit in the personal representative of a deceased operator;
- make relatively minor changes to certain exempt waste operations;
- make minor amendments relating to radioactive substances activities;
- make minor amendments to the Environmental Damage (Prevention and Remediation) Regulations 2009 and the Environmental Damage (Prevention and Remediation) (Wales) Regulations 2009 to clarify the enforcement position of the Environment Agency; and
- make consequential amendments to the 2010 Regulations and to other legislation.

Procedure: Negative

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 save for Regulation 19, which makes minor amendments in both languages to Wales only Regulations.

[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.

David Melding AM

Chair, Constitutional and Legislative Affairs Committee

12 March 2012

The Government has responded as follows:

The Environmental Permitting (England and Wales) (Amendment) Regulations 2012

"These composite Regulations amend some of the provisions in the Environmental Permitting (England and Wales) Regulations 2010 S.I. 2010.675 to:

- reduce regulatory requirements for those who operate certain anaerobic digestion installations or mobile plant and for those who burn waste-derived fuel that has ceased to be waste;
- make it easier to transfer permits in certain situations;
- provide for the vesting of an environmental permit in the personal representative of a deceased operator;
- make relatively minor changes to certain exempt waste operations;
- make minor amendments relating to radioactive substances activities;
- make minor amendments to the Environmental Damage (Prevention and Remediation) Regulations 2009 and the Environmental Damage (Prevention and Remediation) (Wales) Regulations 2009 to clarify the enforcement position of the Environment Agency; and
- make consequential amendments to the 2010 Regulations and to other legislation

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."

2012 No. 630

**ENVIRONMENTAL PROTECTION, ENGLAND AND
WALES**

**The Environmental Permitting (England and Wales)
(Amendment) Regulations 2012**

Made - - - - - *28th February 2012*
Laid before Parliament *5th March 2012*
Laid before the National Assembly for Wales *5th March 2012*
Coming into force - - - *6th April 2012*

CONTENTS

PART 1

General

1.	Citation and commencement	2
2.	Interpretation	2

PART 2

Amendments to the principal Regulations

3.	Regulation 2 (interpretation: general)	3
4.	Regulation 17 (single site permits etc)	3
5.	Regulation 19 (subsistence of an environmental permit)	3
6.	Regulation 20 (variation of an environmental permit)	3
7.	Regulation 21 (transfer of an environmental permit)	3
8.	Regulation 60 (power to require the provision of information)	4
9.	New Chapter 1A in Part 7 (death of sole operator)	4
10.	Regulation 109 (repeals)	5
11.	Regulation 110 (review)	5
12.	Part 2 of Schedule 1 (activities)	5
13.	Part 1 of Schedule 3 (exempt facilities: exempt waste operations)	7
14.	Schedule 5 (environmental permits)	11
15.	Schedule 10 (landfill)	11
16.	Schedule 23 (radioactive substances activities)	11

PART 3
Consequential and other amendments

17.	Site Waste Management Plans Regulations 2008	12
18.	The Environmental Damage (Prevention and Remediation) Regulations 2009	12
19.	The Environmental Damage (Prevention and Remediation) (Wales) Regulations 2009	12
20.	Infrastructure Planning (Miscellaneous Prescribed Provisions) Regulations 2010	13
21.	Mercury Export and Data (Enforcement) Regulations 2010	13
22.	Conservation of Habitats and Species Regulations 2010	13

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

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

- (a) the Environment Agency;
- (b) such bodies or persons appearing to them to be representative of the interests of local government, industry, agriculture and small businesses 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 these Regulations.

PART 1
General

Citation and commencement

1. These Regulations—
- (a) may be cited as the Environmental Permitting (England and Wales) (Amendment) Regulations 2012; and
 - (b) come into force on 6th April 2012.

Interpretation

2. In these Regulations, “the principal Regulations” means the Environmental Permitting (England and Wales) Regulations 2010^(c).

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

(b) The requirement in that section to consult the bodies and persons mentioned, so far as exercisable in relation to Wales, was transferred from the Secretary of State to the National Assembly for Wales by article 3 of S.I. 2005/1958. The requirement was 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).

(c) S.I. 2010/675; a relevant amending instrument is S.I. 2011/2043.

PART 2

Amendments to the principal Regulations

Regulation 2 (interpretation: general)

3. In regulation 2(1) of the principal Regulations, in the definition of “proposed transferee”, after “operator” insert “or a regulator”.

Regulation 17 (single site permits etc)

4. In regulation 17(2) of the principal Regulations—

(a) omit “or” at the end of sub-paragraph (b);

(b) at the end of sub-paragraph (c) insert—

“; or

(d) of more than one radioactive substances activity described in paragraph 11(6) of Part 2 of Schedule 23, where all such activities are in respect of the use or potential use of the same premises for underground disposal (within the meaning of paragraph 11(7) of that Schedule)”(a).

Regulation 19 (subsistence of an environmental permit)

5. In regulation 19 of the principal Regulations, for paragraphs (b) and (c) substitute—

“(b) it is surrendered in whole in accordance with—

(i) regulation 24, or

(ii) regulation 25 and Part 1 of Schedule 5;

(c) it is replaced with a consolidated permit in accordance with any of the following—

(i) regulation 18(2),

(ii) regulation 22(5),

(iii) paragraph 19(2) of Part 1 of Schedule 5; or

(d) it ceases to have effect in accordance with regulation 67A(3), (4) or (5).”.

Regulation 20 (variation of an environmental permit)

6. In regulation 20(5)(b)(i) of the principal Regulations, for “Community Treaties” substitute “EU Treaties”.

Regulation 21 (transfer of an environmental permit)

7. In regulation 21 of the principal Regulations—

(a) for paragraph (1) substitute—

“(1) The regulator may transfer to a proposed transferee an environmental permit or any part of an environmental permit—

(a) if the operator is one individual (A) and the regulator is satisfied that A cannot be found, on the application of the proposed transferee only,

(b) if the operator is two or more individuals (A and B) and the regulator is satisfied that A cannot be found, on the joint application of B and the proposed transferee, or

(c) otherwise, on the joint application of the operator and the proposed transferee.”;

(a) Schedule 23 was substituted by S.I. 2011/2043.

(b) for paragraph (4) substitute—

“(4) The regulator may transfer to a proposed transferee an environmental permit to which paragraph (1) does not apply, or any part of that permit—

- (a) if the operator is one individual (A) and the regulator is satisfied that A cannot be found, on the notification of the proposed transferee only;
 - (b) unless sub-paragraph (c) applies, if the operator is two or more individuals (A and B) and the regulator is satisfied that A cannot be found, on the joint notification of B and the proposed transferee;
 - (c) if the operator is two or more individuals (A and B) and the proposed transferee is two or more individuals (B and C), where B is both an operator and a proposed transferee—
 - (i) on the joint notification of A and C, or
 - (ii) if the regulator is satisfied that A cannot be found, on the notification of C only; or
 - (d) otherwise, on the joint notification of the operator and the proposed transferee.”;
- and

(c) after paragraph (7) insert—

“(8) Unless a proposed transferee makes a joint application or gives a joint notification, the regulator may not transfer to the proposed transferee an environmental permit or any part of an environmental permit in respect of a regulated facility that ceased to be in operation more than 6 months before the proposed date of transfer.”.

Regulation 60 (power to require the provision of information)

8. In regulation 60(3)(a) of the principal Regulations, for “Community Treaties” substitute “EU Treaties”.

New Chapter 1A in Part 7 (death of sole operator)

9. After regulation 67 of the principal Regulations insert—

“Chapter 1A

Further provision – death of sole operator

Death of sole operator

67A.—(1) This regulation applies if—

- (a) an environmental permit authorising the operation of a regulated facility is held by one individual (“A”); and
 - (b) A dies.
- (2) On the death of A, the environmental permit—
- (a) forms part of A’s personal estate;
 - (b) vests in A’s personal representatives;
 - (c) continues to have effect subject to the conditions that applied at the time of A’s death; and
 - (d) must be read as if it contained the following condition—

“As soon as is practicable after the death of the operator, the personal representatives of the operator must notify the regulator that the environmental permit has vested in them.”.

(3) The environmental permit ceases to have effect 6 months after the day on which A dies, unless, by that time—

- (a) the permit has been transferred under regulation 21; or

- (b) the regulator has received from A's personal representatives a duly-made application under regulation 21(1) for the transfer of the permit, and the application has not been withdrawn or finally determined.

(4) If paragraph (3)(b) applies, the environmental permit continues in effect until the application—

- (a) is withdrawn; or
- (b) on determination, is refused.”.

Regulation 109 (repeals)

10. In regulation 109 of the principal Regulations, omit paragraphs (2) and (3).

Regulation 110 (review)

11. After regulation 109 of the principal Regulations insert—

“Chapter 6
Review

Review

110.—(1) The Secretary of State, in relation to England, must from time to time—

- (a) carry out a review of these Regulations;
- (b) set out the conclusions of the review in a report; and
- (c) publish the report.

(2) The report must in particular—

- (a) set out the objectives intended to be achieved by the regulatory system established by these Regulations;
- (b) assess the extent to which the objectives have been achieved; and
- (c) assess whether the objectives remain appropriate and, if so, the extent to which they could be achieved with a system that imposes less regulation.

(3) The first report under this regulation must be published before the end of the period of 5 years beginning with 6th April 2012.

(4) Reports under this regulation are afterwards to be published at intervals not exceeding 5 years.”.

Part 2 of Schedule 1 (activities)

12.—(1) Part 2 of Schedule 1 to the principal Regulations is amended as follows.

(2) In Section 1.1 (combustion activities)—

- (a) for paragraph 1 substitute—

“1. In this Section—

“anaerobic digestion” means the mesophilic and thermophilic biological decomposition and stabilisation of biodegradable materials which—

- (a) is carried on under controlled anaerobic conditions,
- (b) produces a methane-rich gas mixture, and
- (c) results in stable sanitised material that can be applied to land for the benefit of agriculture or to improve the soil structure or nutrients in land; and

“recovered oil” means waste oil which has been processed but which has not ceased to be waste.”;

- (b) in Part A(1), for paragraph 5 substitute—
- “5. In Part A(1)(b)(iii) of this Section, “fuel” excludes—
- (a) gas produced by biological degradation of waste in a landfill that is not listed in Part 2 of this Schedule,
 - (b) gas produced as a result of the anaerobic digestion of biodegradable waste, and
 - (c) fuel which has ceased to be waste.”;
- (c) in Part A(1), after paragraph 5 insert—
- “6. Nothing in this Part of this Section applies to burning fuels in an appliance installed on a storage or unloading platform as defined in regulation 2 of the Offshore Combustion Installations (Prevention and Control of Pollution) Regulations 2001(a).”; and
- (d) in Part B, for paragraph 2 substitute—
- “2. In Part B(b)(iii), (c) or (d) of this Section—
- “fuel” excludes—
- (a) gas produced by biological degradation of waste, and
 - (b) fuel which has ceased to be waste.”.
- (3) In Section 1.2 (gasification, liquefaction and refining activities), in Part A(1)—
- (a) for paragraph (e) substitute—
 - “(e) Producing gas from oil or other carbonaceous material or from mixtures of oil and other carbonaceous material, unless the production is carried on as part of an activity which is a combustion activity (whether or not that combustion activity is described in Section 1.1), or the gas is produced as a result of—
 - (i) the anaerobic digestion of biodegradable material, none of which is waste, or
 - (ii) the anaerobic digestion of biodegradable waste in an installation with a waste treatment capacity not exceeding 100 tonnes per day.”;
 - (b) in paragraph 1, for sub-paragraph (c) substitute—
 - “(c) any activity for the treatment of sewage or sewage sludge;
 - (d) the anaerobic digestion of biodegradable material, none of which is waste; or
 - (e) the anaerobic digestion of biodegradable waste in an installation with a waste treatment capacity not exceeding 100 tonnes per day.”; and
 - (c) for paragraph 3 substitute—
 - “3. In Part A(1)—
 - “anaerobic digestion” means the mesophilic and thermophilic biological decomposition and stabilisation of biodegradable materials which—
 - (a) is carried on under controlled anaerobic conditions,
 - (b) produces a methane-rich gas mixture, and
 - (c) results in stable sanitised material that can be applied to land for the benefit of agriculture or to improve the soil structure or nutrients in land; and
 - “carbonaceous material” includes such materials as charcoal, coke, peat, rubber and wood, but does not include wood which has not been chemically treated or sewage.”.
- (4) In section 7 (SED activities), in paragraph 1, for the definition of “the Motor Vehicle Directive” substitute—
- ““the Motor Vehicle Directive” means Directive 2007/46/EC of the European Parliament and of the Council(b) establishing a framework for the approval of motor

(a) S.I. 2001/1091, amended by S.I. 2010/1513. There are other amending instruments but none is relevant.

(b) OJ No L 263, 9.10.2007, p 1.

vehicles and their trailers, and of systems, components and separate technical units intended for such vehicles;”.

Part 1 of Schedule 3 (exempt facilities: exempt waste operations)

13.—(1) Part 1 of Schedule 3 to the principal Regulations is amended as follows.

(2) In Section 2 of Chapter 2 (use of waste)—

(a) for table 2 in paragraph 1(2) substitute—

Table 2

<i>Codes</i>	<i>Waste types</i>	<i>Quantity limit</i>	<i>Additional specific conditions</i>
020399, 020401	Soil from cleaning and washing fruit and vegetables only	1,000 tonnes	
170302	Bituminous mixtures other than those mentioned in 170301	1,000 tonnes	B
170504	Soil and stones other than those mentioned in 170503	1,000 tonnes	
170506	Dredging spoil other than those mentioned in 170505	1,000 tonnes	
191302	Solid wastes from soil remediation other than those mentioned in 191301	1,000 tonnes	
200202	Soil and stones	1,000 tonnes	
020103	Plant tissue waste	1,000 tonnes	B
030101, 030301	Untreated waste bark, cork and wood only	1,000 tonnes	B
030105	Untreated wood including sawdust, shavings and cuttings from untreated wood only	1,000 tonnes	B
170201	Untreated wood only	1,000 tonnes	B
191207	Untreated wood other than those mentioned in 191206 only	1,000 tonnes	B
200138	Untreated wood other than those mentioned in 200137 only	1,000 tonnes	B

(b) for the table in paragraph 8(2) substitute—

<i>Codes</i>	<i>Waste types</i>	<i>Specified purpose</i>	<i>Quantity limit (at any one time)</i>
030105, 191207	Untreated wood (including shavings, woodchip and sawdust) and oversized compost only	Use in horse menages	1,000 tonnes
191204	Shredded or granulated rubber and end-of-life tyres only	Use in horse menages	1,000 tonnes
191201	Shredded paper and cardboard	Use as animal bedding	100 tonnes
030305, 030310, 030311	Paper fibre, de-inked paper pulp and de-inked paper sludge from paper manufacturing only	Use as animal bedding	100 tonnes
030105, 191207	Untreated wood (including shavings, woodchip and sawdust) and oversized compost only	Use as animal bedding	100 tonnes

160103	End-of-life tyres	Use as a weight on cover sheeting on agricultural premises or use as crash barriers	40 tonnes
150102	Geotextile bags (flexible intermediate bulk containers) only	Use as reinforcement in construction	100 bags
020202	Shellfish shells from which the soft tissue or flesh has been removed only	Use for ornamental purposes	50 tonnes
191205	Crushed glass only	Use for ornamental purposes	50 tonnes
200127*, 200128, 080111*, 080112	Paints (excluding specialist and industrial paints, wood preservatives, aerosol and spray paints, inks, adhesives and resins)	Use as paint	1,000 litres
190599	Compost produced for the purposes of growing mushrooms only	Use in growing mushrooms	1,000 tonnes
170102, 170904	Stones and bricks capable of being used in their existing state only	Use in construction of buildings, fencing, barriers, containment or similar above ground construction	100 tonnes
170201, 191207, 200138	Non-hazardous wood including telegraph poles and railway sleepers and lock gates and associated balance beams	Use in construction of buildings, fencing, barriers, containment or similar above ground construction	100 tonnes
110105*, 110107*	Ferric chloride and aluminium hydroxide only	Use in treating municipal waste water effluent	50 cubic metres
110105*, 110107*	Ferric chloride and aluminium hydroxide only	Use in potable water treatment processes	50 cubic metres
190902, 190903, 190906	Sludges/solutions from the treatment of water only	Use in treating municipal waste water effluent	50 cubic metres
100201, 100202, 170504, 191209	Blast furnace slag and stones only	Use as filter media at waste water treatment works	50,000 tonnes

170204*, 191206*, 200137*	Hazardous wooden telegraph poles and railway sleepers and lock gates and associated balance beams only	Use in construction of buildings, fencing, barriers, containment or similar above ground construction	100 tonnes
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(c) in paragraph 8(3), for paragraph (d) substitute—

“(d) in relation to any relevant waste to which code 110105* (ferric chloride), 110107* (aluminium hydroxide), 190902, 190903, 190906 (sludges/solutions from the treatment of water) applies, the waste is stored—

- (i) with secondary containment, and
- (ii) in a location with sealed drainage; and

(e) in relation to any relevant waste to which code 110105* (ferric chloride), 110107* (aluminium hydroxide) applies, within the quantity limit specified for that waste type, not more than 10 tonnes of waste may be used per day.”;

(d) in the table in paragraph 10(2)—

(i) after the first entry insert—

020101	Sludges from washing and cleaning fruit and vegetables on farm only	50 tonnes per hectare	200 tonnes	12 months	A, F
020199, 020399	Untreated wash waters from cleaning fruit and vegetables on farm only	100 tonnes per hectare	200 tonnes	12 months	A, F
020305	Effluent from the on-site treatment of wash waters from cleaning fruit and vegetables on farm only	100 tonnes per hectare	200 tonnes	12 months	A, F

(ii) in the second column of the second entry relating to code 020199, for “compost only” substitute “only”;

(e) in paragraph 10(3)(f), after specific condition E add—
“F the waste is spread at the place where it is produced.”;

(f) for paragraph 16(4) substitute—

“(4) In this paragraph—

“depolluted” means that the vehicle has been subjected to all of the operations described in paragraph 3 of Annex 1 to the End-of-Life Vehicles Directive;

“end-of-life vehicle” has the meaning given in paragraph 2(2)(b) of Schedule 11.”.

(3) In Section 2 of Chapter 3 (treatment of waste)—

(a) in the table in paragraph 5(2), in the second column—

(i) in the entry relating to code 030101, for “Waste bark and cork” substitute “Untreated waste bark and cork only”,

- (ii) in the entry relating to code 030301, for “Waste” substitute “Untreated waste”, and
- (iii) in the entry relating to code 170201, for “Wood” substitute “Untreated wood only”;
- (b) in the table in paragraph 6(2), in the second column in the entry relating to code 150103, for “Untreated wooden” substitute “Wooden”;
- (c) in paragraph 11—
 - (i) for sub-paragraph (1) substitute—

“(1) The treatment of WEEE that is relevant waste by repairing, refurbishing or dismantling it.”, and
 - (ii) for sub-paragraph (3)(f) substitute—

“(f) the operation is for the purposes of—

 - (i) re-using the WEEE for its original purpose,
 - (ii) re-using any dismantled components for their original purpose, or
 - (iii) dismantling the WEEE components for the purposes of recovery.”;
- (d) in paragraph 16 (the title to which becomes “Treatment of waste toner cartridges and waste ink cartridges by sorting, dismantling, cleaning or refilling (T16)”—
 - (i) in sub-paragraph (1), after “cartridges” insert “and waste ink cartridges”,
 - (ii) in the table in sub-paragraph (2), before the first entry insert—

080313	Waste ink other than that mentioned in 080312*
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- (iii) in sub-paragraph (3)(a), for “50,000 cartridges” substitute “150 tonnes”;
- (e) in paragraph 19 (the title to which becomes “Physical and chemical treatment of waste edible oil and fat to produce biodiesel (T19)”—
 - (i) in sub-paragraph (1), after “physical” insert “and chemical”, and
 - (ii) for sub-paragraph (3)(a) substitute—

“(a) the total quantity of waste physically treated or stored at any one time does not exceed 5,000 litres;

(aa) the total quantity of waste chemically treated at any one time does not exceed 250 litres.”;
- (f) in paragraph 23(2), in table 1, after the entry relating to code 020107, insert—

020199	Fully biodegradable animal bedding
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- (g) in paragraphs 24(2) and 25(2), in the table, insert at the appropriate place—

020199	Fully biodegradable animal bedding
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- (h) in paragraph 27 (the title to which becomes “Treatment of sheep dip using organophosphate-degrading enzyme (T27)”—
 - (i) for sub-paragraph (3)(d) substitute—

“(d) the treatment is carried on in a secure container located within a drain pen or in a secure sheep dip bath.”, and
 - (ii) after sub-paragraph (3) insert—

“(4) In this paragraph, “drain pen” means an impermeable area draining back to the sheep dip bath where newly-dipped sheep are held while they continue to drip.”; and
- (i) in the table in paragraph 30(2), before the first entry insert—

090106*	Wastes containing silver from on-site treatment of photographic wastes
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(4) In Section 2 of Chapter 5 (the title to which becomes “Storage of waste”), in paragraph 1(3), for paragraphs (d) and (e) substitute—

- “(d) the person storing the waste is the owner of the container or containers or has the consent of the owner;
- (e) in respect of any waste oils and waste to which code 160107* (oil filters) applies, the waste is stored with secondary containment; and
- (f) each waste type is stored separately.”.

Schedule 5 (environmental permits)

14. In Part 1 of Schedule 5 to the principal Regulations—

- (a) sub-paragraph (1) is renumbered as paragraph 1;
- (b) in that paragraph, in the definition of “applicant”, for paragraph (a) substitute—
 - “(a) in the case of an application for the transfer of an environmental permit in whole or in part—
 - (i) the operator and the proposed transferee, or
 - (ii) the proposed transferee.”; and
- (c) in paragraph 2(1), for paragraph (b) substitute—
 - “(b) include—
 - (i) such information as is specified on the form, and
 - (ii) any additional information required by the regulator.”.

Schedule 10 (landfill)

15. In Schedule 10 to the principal Regulations—

- (a) in paragraph 2(2)(c), in sub-paragraph (ii) of the definition of “nature protection zone”, for “regulation 10(1) of the Conservation (Natural Habitats, &c) Regulations 1994” substitute “regulation 8(1) of the Conservation of Habitats and Species Regulations 2010(a)”; and
- (b) in paragraph 2(2)(d), for “Naphthalene” substitute “Naphthalene”.

Schedule 23 (radioactive substances activities)

16.—(1) Schedule 23 to the principal Regulations is amended as follows.

- (2) In Part 2, in paragraph 2(1), in paragraph (a) of the definition of “type 2 NORM industrial activity” for “extraction, production and use” substitute “extraction and production”.
- (3) In Part 3, in paragraph 3, in the last entry of the first column of Table 2 (radionuclide), for “non-aqueous liquid” substitute “relevant liquid”.
- (4) In Part 7—
 - (a) in paragraph 10(1)(c) omit “(except paragraph 11(e)(ii) and 11(f))”,
 - (b) in paragraph 25, in the last entry of the first column of Table 4 (substance or article) after “intended for use for” insert “, used for, or arises from”.

(a) S.I. 2010/490.

PART 3

Consequential and other amendments

Site Waste Management Plans Regulations 2008

- 17.—(1) The Site Waste Management Plans Regulations 2008(a) are amended as follows.
- (2) In regulation 3 (exemptions), for “2007” substitute “2010”.
- (3) In regulation 8 (updating a site waste management plan for a project worth more than £500,000), for paragraph (2)(d) substitute—
- “(d) the site that the waste is being taken to, and whether the operator of that site—
- (i) holds an environmental permit under the Environmental Permitting (England and Wales) Regulations 2010(b) authorising the carrying on of a waste operation on that site, or
- (ii) is registered under those Regulations in relation to an exempt waste operation carried on on that site.”.

The Environmental Damage (Prevention and Remediation) Regulations 2009

- 18.—(1) The Environmental Damage (Prevention and Remediation) Regulations 2009(c) are amended as follows.
- (2) In regulation 10 (enforcing authorities under the Environmental Permitting (England and Wales) Regulations 2010), in paragraph (1) for “an installation, waste operation or mobile plant” substitute “an activity”.

The Environmental Damage (Prevention and Remediation) (Wales) Regulations 2009

- 19.—(1) The Environmental Damage (Prevention and Remediation) (Wales) Regulations 2009(d) are amended as follows.
- (2) In regulation 10—
- (a) in the Welsh text (the title to which becomes “Yr awdurdodau gorfodi o dan Rheoliadau Trwyddedu Amgylcheddol (Cymru a Lloegr) 2010”), in paragraph (1)—
- (i) for “weithfa, gweithred wastraff neu offer symudol” substitute “weithred”, and
- (ii) for “2007” substitute “2010”;
- (b) in the English text (the title to which becomes “Enforcing authorities under the Environmental Permitting (England and Wales) Regulations 2010”), in paragraph (1)—
- (i) for “an installation, waste operation or mobile plant”, substitute “an activity”, and
- (ii) for “2007” substitute “2010”.
- (3) In regulation 11 (enforcing authorities in other cases), in paragraph (1) for “2007” substitute “2010” in both the Welsh and English texts.
- (4) In paragraph 1 of Schedule 3 (permits, etc)—
- (a) in the Welsh text—
- (i) in sub-paragraph (a), for “2007” substitute “2010”;
- (ii) in sub-paragraph (c), omit “cydsyniad gollwng dwr”; and
- (iii) omit sub-paragraph (ch);

(a) S.I. 2008/314. These Regulations apply in England only.

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

(c) S.I. 2009/153, which apply in England only; a relevant amendment was made by S.I. 2010/675.

(d) S.I. 2009/995 (W. 81), to which there are amendments not relevant to these Regulations.

- (b) in the English text—
 - (i) in sub-paragraph (a), for “2007” substitute “2010”;
 - (ii) in sub-paragraph (c), omit “a water discharge consent,”; and
 - (iii) omit sub-paragraph (d).

Infrastructure Planning (Miscellaneous Prescribed Provisions) Regulations 2010

20.—(1) The Infrastructure Planning (Miscellaneous Prescribed Provisions) Regulations 2010(a) are amended as follows.

(2) In Part 1 of the Schedule (England and Wales)—

- (a) omit paragraphs 7, 8 and 39;
- (b) for paragraph 26 substitute—

“**26.** An environmental permit under the Environmental Permitting (England and Wales) Regulations 2010, or an exemption from the requirement for such a permit.”; and

- (c) in paragraph 28, for “88, 89(4), 90(1), 90(2), 109 or 164, Schedule 10” substitute “109 or 164”.

(3) In Part 2 of the Schedule (Wales), for paragraph 23 substitute—

“**23.** An environmental permit under the Environmental Permitting (England and Wales) Regulations 2010, where a local authority is the regulator.”.

Mercury Export and Data (Enforcement) Regulations 2010

21. In regulation 5(4) of the Mercury Export and Data (Enforcement) Regulations 2010 (offences in respect of the EU Regulation)(b), for sub-paragraph (a) substitute—

“(a) in England and Wales, an offence under regulation 38(2) or (4)(b), (c) or (d) of the Environmental Permitting (England and Wales) Regulations 2010;”.

Conservation of Habitats and Species Regulations 2010

22. In regulation 98(1) of the Conservation of Habitats and Species Regulations 2010 (environmental permits)(c), for “2007” substitute “2010”.

16th February 2012

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

28th February 2012

John Griffiths
Minister for Environment and Sustainable Development
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 (“the principal Regulations”)—

(a) S.I. 2010/105.
(b) S.I. 2010/265.
(c) S.I. 2010/490, to which there are amendments not relevant to this instrument.

- (a) to clarify the position relating to single site permits for certain radioactive substances activities (regulation 4);
- (b) to change the procedure for transferring environmental permits in certain situations (regulation 7);
- (c) to provide for the vesting of an environmental permit in the personal representatives of a deceased operator (regulation 9);
- (d) to require the Secretary of State to review the operation and effect of the principal Regulations in relation to England before 6th April 2017, and within every 5 years after that (regulation 11);
- (e) to reduce regulatory requirements for those who operate certain anaerobic digestion installations or burn in appliances waste-derived fuel that has ceased to be waste (regulation 12);
- (f) to make minor changes to certain exempt waste operations (regulation 13);
- (g) to make minor changes relating to radioactive substances activities (regulation 16).

These Regulations also make miscellaneous and consequential amendments to other legislation (Part 3).

An impact assessment of the effect that this instrument will have on the costs of business, the voluntary sector and the public sector is available from the Better Regulation Programme, Department for Environment, Food and Rural Affairs, Ergon House, Horseferry Road, London SW1P 2AL. It is published at www.legislation.gov.uk alongside the Explanatory Memorandum and this instrument.

EXPLANATORY MEMORANDUM TO

The Environmental Permitting (England and Wales) (Amendment) Regulations 2012

2012 No. [630]

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 statutory instrument 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) Regulations 2012.

Name of Minister: J Griffiths

Date: 28 February 2012

Description

1. The instrument amends the Environmental Permitting (England and Wales) Regulations 2010 (“the 2010 Regulations”). The amendments do the following:
 - reduce regulatory requirements for those who operate certain anaerobic digestion installations or mobile plant and for those who burn waste-derived fuel that has ceased to be waste;
 - make it easier to transfer permits in certain situations;
 - provide for the vesting of an environmental permit in the personal representative of a deceased operator;
 - make relatively minor changes to certain exempt waste operations;
 - make minor amendments relating to radioactive substances activities;
 - make minor amendments to the Environmental Damage (Prevention and Remediation) Regulations 2009 and the Environmental Damage (Prevention and Remediation) (Wales) Regulations 2009 to clarify the enforcement position of the Environment Agency; and
 - make consequential amendments to the 2010 Regulations and to other legislation.

Matters of special interest to the Constitutional and Legislative Affairs Committee

2. Prior to the coming into force of the 2010 Regulations on 6 April 2010, the environmental permitting regime was set out in the Environmental Permitting (England and Wales) Regulations 2007 (S.I 2007/3538) (“the 2007 Regulations”). The 2007 Regulations created a single regulatory framework in England and Wales for waste management licensing and pollution, prevention and control activities. The overall aim of the environmental permitting regime is to streamline permitting requirements and is under constant review with the aim of developing and expanding the regime. This work is done on an England and Wales basis and therefore these Regulations are made on a composite basis to ensure consistency of application in Wales and England.
3. This composite statutory instrument applies to England and Wales and is subject to the negative resolution procedure in the National Assembly for Wales and in both Houses of the UK Parliament. It is therefore not considered reasonably practicable for this Instrument to be made bilingually.

Legislative Background

4. The environmental permitting regime (EPR) was set out in the Environmental Permitting (England and Wales) Regulations 2007. The 2007 Regulations created a single regulatory framework for England and Wales for waste management licensing and pollution, prevention and control activities. Those Regulations

transposed the provisions of 11 EU Directives which impose obligations required to be delivered through permits or capable of being delivered through permits. The 2007 Regulations were amended in 2009 to transpose the permitting and compliance requirements of the Mining Waste Directive (Directive 2006/21/EC) and the Batteries Directives (Directive 2006/66/EC) and to revise the provisions relating to exempt waste operations. The amending instruments were SI 2009/890, 2009/1799 and 2009/3381.

5. On 6 April 2010, the 2007 Regulations were revoked, subject to some savings and exceptions, and made as the 2010 Regulations with the addition of permitting regimes covering water discharge consenting, groundwater authorisations and radioactive substances regulation.

Policy background

6. The environmental permitting framework has rationalised various permitting regimes that control pollution from business and domestic activity into a common framework that is easier to understand and use than the previous consenting regimes. For example, it allows businesses that would otherwise require several permits for activities falling under the regulations on a single site to have just one permit; and it enables regulators to focus resources on higher risk activities. It cuts administrative red tape without affecting environmental standards.
7. The phased approach to regulation, as described in section 4 above, has led to a streamlined, flexible, risk-based framework. It enables both an easier transposition of future EU Directives that include permitting requirements and additional suitable consenting regimes to be incorporated into it.
8. A number of UK Government reports have welcomed the environmental permitting programme and its modernisation of the application process and permit types. This included a recommendation that the principles applied to streamlining environmental permits should be applied to other types of linked consenting regimes. The instrument makes a number of amendments to the Environmental Permitting framework. A first consultation in Wales and England in 2010 on the instrument sought views on:
 - introducing new civil sanction enforcement powers for the Environment Agency in the form of Fixed Monetary Penalties (FMP), Variable Monetary Penalties (VMP), and Enforcement Undertakings (EU) in respect of existing offences in the 2010 Regulations (the civil sanction proposals were removed from statutory instrument – see paragraph 14 below);
 - introducing a common approach to keeping a permit in force if an individual who is a sole operator should die;
 - making it easier to transfer a permit if an individual permit holder cannot be found;

- removing certain obligations relating to traffic travelling to and from permitted waste sites, like landfills, from the Environment Agency. These have been implemented via separate Regulations transposing the revised Waste Framework Directive which came into force on 29 March 2011;
- reducing the burden of regulation on waste-derived fuel where it has ceased to be waste before being burned as a fuel;
- changing some of the waste descriptions and codes for exempt waste operations and amending the scope of some of the exemptions; and
- clarifying the interface between permitting under the EP Regulations and licensing under the Marine and Coastal Access Act 2009 in respect of waste operations in the marine environment, including ship dismantling.

9. A second consultation extended the scope of the instrument seeking views on:

- transposing two Articles in the CCS Directive that impact on the permitting framework, one requiring the carbon capture element to be subject to integrated pollution prevention and control (IPPC) under the eponymous Directive; and the second excluding carbon dioxide injection, into certain geological formations from prohibition under the Water Framework Directive. These have since been taken forward by DECC in Regulations that implemented the outcome of a review of radioactive substances exemption orders – the Environmental Permitting (England and Wales) (Amendment) Regulation 2011 (SI 2001/2043) – that came into force on 1 October 2011;
- clarifying the interface between permitting under the EP Regulations and that under the Offshore Combustion Regulations to avoid double regulation of offshore CCS activities; and
- removing IPPC permit requirements in the 2010 Regulations for anaerobic digestion installations or mobile plant that do not burn the resultant biogas on-site where they (a) treat non-waste biodegradable materials or (b) treat biodegradable waste materials where the installation has a waste treatment capacity not exceeding 100 tonnes per day. The treatment of waste by an anaerobic digestion installation or plant will continue to be regulated under the 2010 Regulations as a waste operation.

Consultation

10. The instrument is made following public consultation in two phases as described above. The first consultation ran from 30 July 2010 to 24 September 2010 and sought responses to proposals covered by paragraph 7.5 above. The second consultation on proposals covered by paragraph 7.6 ran from 3 September 2010 to 26 November 2010.

11. The consultation documents and the summary of responses to them can be found at <http://ww2.defra.gov.uk/environment/quality/permitting/>. Overall, respondents were supportive of the proposals contained in the two consultation

documents and welcomed the additional flexibilities contained within them. A number of points of detail were raised; these have either been reflected by subsequent revisions to the instrument or will be addressed through guidance.

12. Two proposals forming part of the consultation process are not being taken forward at this stage through this instrument. Those are the proposal to introduce civil sanction enforcement powers and the clarification of the interface between permitting under the EP Regulations and licensing under the Marine and Coastal Access Act 2009. It is intended that these two proposals will form part of future legislation.

Guidance

13. There is one overarching guidance document (the Core Guidance) which provides advice on the 2010 Regulations and compliance with them, underpinned by separate UK Government guidance on each regime within the permitting framework. These will be amended to reflect the changes brought about by the 2010 Regulations and will be published before the amending Regulations come into force on 6 April 2012. Welsh Government officials are fully engaged with their Whitehall counterparts in any amendments to this Guidance.

Regulatory Impact Assessment

14. A Regulatory Impact Assessment has not been prepared as the Regulations will impose no significant costs on the public or private sectors, charities, the voluntary sector and the business sector

DRAFT SI REPORT

Constitutional and Legislative Affairs Committee

(CLA(4)-06-12)

CLA109

Constitutional and Legislative Affairs Committee Draft Report

Title: The Local Election Survey (Wales) Regulations 2012

Procedure: Affirmative

Section 1 of the Local Government (Wales) Measure 2011 (the Measure) imposes a duty on a local authority (a county council or a county borough council), in accordance with regulations, to conduct a survey after each ordinary election to the council of the county or county borough and to each community council (normally held concurrently every four years) in the local authority's area.

A local authority must conduct the survey by asking prescribed questions of councillors and unsuccessful candidates who have stood for election as councillors in the local authority's area.

These Regulations prescribe the questions that a local authority must ask when conducting a local election survey. The prescribed questions and the form in which they may be asked are set out in the Schedule to the Regulations.

Technical Scrutiny

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

Merits Scrutiny

The following point is identified for reporting under Standing Order 21.3 in respect of this instrument –

Much of the information to be gathered by this survey is sensitive personal data within the meaning given to that term by section 2 of the Data Protection Act 1998. Although the Measure provides for anonymity, the small number of candidates for some authorities may make it relatively easy to recognise those with a particular combination of characteristics (age, gender, religion etc.). The form of questionnaire therefore includes a footnote that draws attention to the provision in section 1 of the Measure that there is no duty to complete the survey.

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

DRAFT SI REPORT

**Legal Advisers
Constitutional and Legislative Affairs Committee**

March 2012

2012 No. 685 (W. 93)

**LOCAL GOVERNMENT,
WALES**

**The Local Election Survey (Wales)
Regulations 2012**

EXPLANATORY NOTE

(This note is not part of the Regulations)

Section 1 of the Local Government (Wales) Measure 2011 imposes a duty on a local authority (a county council or a county borough council), in accordance with regulations, to conduct a survey after each ordinary election to the council of the county or county borough and to each community council (normally held concurrently every four years) in the local authority's area.

A local authority must conduct the survey by asking prescribed questions of councillors and unsuccessful candidates who have stood for election as councillors in the local authority's area.

These Regulations prescribe the questions that a local authority must ask when conducting a local election survey. The prescribed questions and the form in which they may be asked are set out in the Schedule to the Regulations.

The prescribed questions relate to gender, sexual orientation, language, race, age, disability, religion or belief, health, education and qualifications, employment, work as a councillor, party affiliation, involvement with the third sector and length of political activity.

These Regulations prescribe that the survey information must be collated in an electronic spreadsheet. Details relating to the spreadsheet will be included in guidance.

In addition, these Regulations prescribe that the manner in which the collated information must be provided to the Welsh Ministers is by electronic spreadsheet.

2012 No. 685 (W. 93)

**LOCAL GOVERNMENT,
WALES**

**The Local Election Survey (Wales)
Regulations 2012**

Made 4 March 2012

Laid before the National Assembly for Wales

6 March 2012

Coming into force 31 March 2012

The Welsh Ministers, in exercise of the powers conferred upon them by sections 1(3)(a), 1(3)(b), 2 (2), and 175, of the Local Government (Wales) Measure 2011(1) make the following Regulations:

Title and commencement

1.—(1) The title of these Regulations is the Local Election Survey (Wales) Regulations 2012.

(2) These Regulations come into force on 31 March 2012.

Interpretation

2. In these Regulations—

“the Measure” (“*y Mesur*”) means the Local Government (Wales) Measure 2011.

Survey questions and form

3. For the purposes of section 1(3) (a) of the Measure, the questions and the form in which they are to be asked are set out in the Schedule.

(1) 2011 (nawm 4).

Collation of survey information

4. For the purposes of section 1(3) (b) of the Measure, the information must be collated in an electronic spreadsheet.

Provision of survey information

5. For the purposes of section 2(2) of the Measure, the collated information must be provided to the Welsh Ministers by electronic spreadsheet.

Carl Sargeant

Minister for Local Government and Communities, one
of the Welsh Ministers

4 March 2012

Survey of Local Government Candidates
in Wales

No	Question		Response (see footnote at the end of the questions)
1	At the last local government election, did you stand for election to a: (please tick as appropriate)	<ul style="list-style-type: none"> County or County Borough Council 	
		<ul style="list-style-type: none"> Community or Town Council 	
2	What is your status following the local election? (please tick as appropriate)	<ul style="list-style-type: none"> Councillor - County or County Borough 	
		<ul style="list-style-type: none"> Councillor - Community or Town Council 	
		<ul style="list-style-type: none"> Unelected 	
3	In the local government election, which party, if any, were you representing? (please tick as appropriate)	<ul style="list-style-type: none"> Independent 	
		<ul style="list-style-type: none"> Plaid Cymru 	
		<ul style="list-style-type: none"> Welsh Conservative Party 	
		<ul style="list-style-type: none"> Welsh Labour Party 	
		<ul style="list-style-type: none"> Welsh Liberal Democrats 	
		<ul style="list-style-type: none"> Other (please specify) 	
4	Have you stood for election to a council in the past? (please tick as	<ul style="list-style-type: none"> Yes (County or County Borough Council) 	

	appropriate)		
		<ul style="list-style-type: none"> • Yes (Community or Town Council) 	
		<ul style="list-style-type: none"> • No 	
5	Have you served as a councillor in the past? (please tick as appropriate)	<ul style="list-style-type: none"> • Yes (County or County Borough Council) 	
		<ul style="list-style-type: none"> • Yes (Community or Town Council) 	
		<ul style="list-style-type: none"> • No 	
6	If yes, how many years in total have you served as a councillor? Please include all periods of office that you have served as a councillor	<ul style="list-style-type: none"> • Years as a county or county borough councillor 	
		<ul style="list-style-type: none"> • Years as a community or town councillor 	
7	Are you: (please tick as appropriate)	<ul style="list-style-type: none"> • Male 	
		<ul style="list-style-type: none"> • Female 	
8	What age band were you in on your last birthday? (please tick as appropriate)	<ul style="list-style-type: none"> • 18-24 years 	
		<ul style="list-style-type: none"> • 25-29 years 	
		<ul style="list-style-type: none"> • 30-34 years 	
		<ul style="list-style-type: none"> • 35-39 years 	
		<ul style="list-style-type: none"> • 40-44 years 	
		<ul style="list-style-type: none"> • 45-49 years 	
		<ul style="list-style-type: none"> • 50-54 years 	
		<ul style="list-style-type: none"> • 55-59 years 	
		<ul style="list-style-type: none"> • 60-64 years 	
		<ul style="list-style-type: none"> • 65 -69 years 	
		<ul style="list-style-type: none"> • 70-74 years 	
		<ul style="list-style-type: none"> • 75-79 years 	
		<ul style="list-style-type: none"> • 80 years or over 	

9	What is your ethnic group? (please tick as appropriate)	A. White <ul style="list-style-type: none"> • Welsh/English/Scottish/Northern Irish/British 	
		<ul style="list-style-type: none"> • Irish 	
		<ul style="list-style-type: none"> • Gypsy or Irish Traveller 	
		<ul style="list-style-type: none"> • Any other White background, write in 	
		B. Mixed/multiple ethnic groups <ul style="list-style-type: none"> • White and Black Caribbean 	
		<ul style="list-style-type: none"> • White and Black African 	
		<ul style="list-style-type: none"> • White and Asian 	
		<ul style="list-style-type: none"> • Any other Mixed/multiple ethnic background, write in 	
		C. Asian/Asian British <ul style="list-style-type: none"> • Indian 	
		<ul style="list-style-type: none"> • Pakistani 	
		<ul style="list-style-type: none"> • Bangladeshi 	
		<ul style="list-style-type: none"> • Chinese 	
		<ul style="list-style-type: none"> • Any other Asian background, write in 	
		D. Black/African/Caribbean/Black British <ul style="list-style-type: none"> • African 	
		<ul style="list-style-type: none"> • Caribbean 	
		<ul style="list-style-type: none"> • Any other Black/African/Caribbean background, write in 	
		E. Other ethnic group <ul style="list-style-type: none"> • Arab 	
		<ul style="list-style-type: none"> • Any other ethnic group, write in 	
10	What is your religion?	<ul style="list-style-type: none"> • No religion 	

		<ul style="list-style-type: none"> • Christian (all denominations) 	
		<ul style="list-style-type: none"> • Buddhist 	
		<ul style="list-style-type: none"> • Hindu 	
		<ul style="list-style-type: none"> • Jewish 	
		<ul style="list-style-type: none"> • Muslim 	
		<ul style="list-style-type: none"> • Sikh 	
		<ul style="list-style-type: none"> • Any other religion, write in 	
11	Do you consider yourself to be: (please tick as appropriate)	<ul style="list-style-type: none"> • Heterosexual or straight 	
		<ul style="list-style-type: none"> • Gay or lesbian 	
		<ul style="list-style-type: none"> • Bisexual 	
		<ul style="list-style-type: none"> • Other 	
12	What is your employment status? (please tick as appropriate)	<ul style="list-style-type: none"> • Self employed 	
		<ul style="list-style-type: none"> • In full time employment 	
		<ul style="list-style-type: none"> • In part-time employment 	
		<ul style="list-style-type: none"> • Unemployed 	
		<ul style="list-style-type: none"> • Retired 	
		<ul style="list-style-type: none"> • On maternity leave 	
		<ul style="list-style-type: none"> • Looking after family or home 	
		<ul style="list-style-type: none"> • Full-time student 	
		<ul style="list-style-type: none"> • Long term sick or disabled 	
		<ul style="list-style-type: none"> • On a government training scheme 	
		<ul style="list-style-type: none"> • Unpaid worker in family business 	
		<ul style="list-style-type: none"> • Unpaid carer 	
		<ul style="list-style-type: none"> • Doing something else (please specify) 	
13	What category best describes your current or most recent employment sector? (please tick as appropriate)	<ul style="list-style-type: none"> • Local government 	

		<ul style="list-style-type: none"> • Central government 	
		<ul style="list-style-type: none"> • NHS 	
		<ul style="list-style-type: none"> • Education 	
		<ul style="list-style-type: none"> • Other public sector 	
		<ul style="list-style-type: none"> • Private sector 	
		<ul style="list-style-type: none"> • Voluntary sector 	
		<ul style="list-style-type: none"> • Other (please specify) 	
14	If your status is employed, which category best describes your type of employment?	<ul style="list-style-type: none"> • Managerial or executive 	
		<ul style="list-style-type: none"> • Professional or technical 	
		<ul style="list-style-type: none"> • Lecturer, teacher or researcher 	
		<ul style="list-style-type: none"> • Administrative, clerical secretarial or sales 	
		<ul style="list-style-type: none"> • Manual or craft 	
15	Do you have parental responsibility for a child aged 16 or under ? (please tick as appropriate)	<ul style="list-style-type: none"> • Yes 	
		<ul style="list-style-type: none"> • No 	
16	Have you given unpaid help to any of these types of groups or organisations at any time in the last 12 months? For example as a volunteer, trustee or board member (please tick all that apply)	<ul style="list-style-type: none"> • Children's education/schools 	
		<ul style="list-style-type: none"> • Youth/children's activities (outside school) 	
		<ul style="list-style-type: none"> • Education for adults 	

		<ul style="list-style-type: none"> • Sports or exercise (e.g. coaching) 	
		<ul style="list-style-type: none"> • Religious or faith based group 	
		<ul style="list-style-type: none"> • Gender group 	
		<ul style="list-style-type: none"> • Sexuality group 	
		<ul style="list-style-type: none"> • Political party 	
		<ul style="list-style-type: none"> • Health, disability or social welfare group 	
		<ul style="list-style-type: none"> • The elderly 	
		<ul style="list-style-type: none"> • First Aid 	
		<ul style="list-style-type: none"> • Environment group 	
		<ul style="list-style-type: none"> • Animal welfare group 	
		<ul style="list-style-type: none"> • Justice and Human Rights 	
		<ul style="list-style-type: none"> • Community or neighbourhood group 	
		<ul style="list-style-type: none"> • Citizens' group 	
		<ul style="list-style-type: none"> • Social club 	
		<ul style="list-style-type: none"> • Trade Union 	
		<ul style="list-style-type: none"> • Other (please specify) 	
		<ul style="list-style-type: none"> • None 	
17	What is your <u>highest</u> education qualification? (please tick as appropriate)	<ul style="list-style-type: none"> • None 	
		<ul style="list-style-type: none"> • 'O' level, GCSE, CSE, NVQ 1/2 or equivalent 	
		<ul style="list-style-type: none"> • 'A' level, NVQ 3 or equivalent 	
		<ul style="list-style-type: none"> • NVQ level 4 or equivalent 	
		<ul style="list-style-type: none"> • Foundation or Ordinary degree • NVQ level 5 • HND and HNC 	
		<ul style="list-style-type: none"> • Honours Degree 	
		<ul style="list-style-type: none"> • Master/Postgraduate qualification 	

		<ul style="list-style-type: none"> Professional qualification (e.g. accountancy) 	
18	How is your physical health in general? (please tick as appropriate)	<ul style="list-style-type: none"> Very good 	
		<ul style="list-style-type: none"> Good 	
		<ul style="list-style-type: none"> Fair 	
		<ul style="list-style-type: none"> Poor 	
		<ul style="list-style-type: none"> Very Poor 	
19	How is your mental health in general? (please tick as appropriate)	<ul style="list-style-type: none"> Very Good 	
		<ul style="list-style-type: none"> Good 	
		<ul style="list-style-type: none"> Fair 	
		<ul style="list-style-type: none"> Poor 	
		<ul style="list-style-type: none"> Very Poor 	
20	Do you consider yourself to be a disabled person? (please tick as appropriate)	<ul style="list-style-type: none"> Yes 	
		<ul style="list-style-type: none"> No 	
	If so, do you have a:		
	Physical impairment		
	Sensory impairment		
	Learning disability		
	Mental health issue		
	Long term health condition		
	Other (please state)		
21	If yes, does this illness or disability limit your activities in any way? (please tick as appropriate)	<ul style="list-style-type: none"> Yes 	
		<ul style="list-style-type: none"> No 	

22	Can you understand, speak, read or write Welsh? (please tick all that apply)	<ul style="list-style-type: none"> • Understand spoken Welsh 	
		<ul style="list-style-type: none"> • Speak Welsh 	
		<ul style="list-style-type: none"> • Read Welsh 	
		<ul style="list-style-type: none"> • Write Welsh 	
		<ul style="list-style-type: none"> • None of the above 	
23	What is your main language? (please tick all that apply)	<ul style="list-style-type: none"> • English 	
		<ul style="list-style-type: none"> • Welsh 	
		<ul style="list-style-type: none"> • Other, write in (including British Sign Language) 	

Please note that you are not obliged to answer all or any of the above questions.

Explanatory Memorandum to the Local Election Survey (Wales) Regulations 2012

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 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 Local Election Survey (Wales) Regulations 2012. I am satisfied that the benefits outweigh any costs.

Carl Sargeant

Minister for Local Government and Communities, one of the Welsh Ministers

4 March 2012

1. Description

- 1.1 The Local Election Survey (Wales) Regulations 2012 make provision for local authorities to conduct a survey of councillors and unsuccessful candidates in each ordinary general election to county and county borough councils and in each ordinary general election to community councils in a local authority's area.
- 1.2 The Regulations prescribe the questions that a local authority must ask and prescribes the manner in which the information collected must be collated.

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

None

3. Legislative background

- 3.1 Part 1 of the Local Government (Wales) Measure 2011 introduced a duty on principal councils to monitor the equality and diversity profile of candidates in ordinary elections to principal and town and community councils.
- 3.2 Section 1 (1) and (2) provide that a local authority must, in accordance with regulations, conduct a survey of councillors in its area and unsuccessful candidates for election to the council of a county or county borough and to a community or town council in the local authority's area.
- 3.3. Section 1 (3) (a) and (b) provide that the questions asked in the survey must be prescribed questions in any prescribed form or manner and the information must be collated in any prescribed form or manner.
- 3.4 Section 175 defines "prescribed" as prescribed in regulations made by the Welsh Ministers.
- 3.5 Section 1(4) sets out 11 fields of enquiry that questions in the survey may relate to and provides that questions are not limited to those fields. The fields are: *gender, sexual orientation, language, race, age, disability, religion or belief, health, education or qualification, employment and work as a councillor.*

- 3.6 Sections 1(5) and (6) provide that there is no duty on a councillor or unsuccessful candidate to provide any information. The local authority must enable respondents to provide information anonymously.
- 3.6 Section 2(1) provides that a local authority must complete its survey and provide the information to Welsh Ministers within six months of the ordinary election to which it relates.
- 3.7 Section 2 (5) provides that the Welsh Ministers may publish and share the information, subject to a restriction in section 2(6), which prohibits the information being published or shared in a form which identifies or is capable of identifying individual to which it relates. The information must be published within 12 months of the election to which it relates.

4. Purpose & intended effect of the legislation

- 4.1 Part 1 of the Local Government (Wales) Measure 2011 contains a number of provisions to strengthen local democracy and support and promote the elected members of local authorities, starting with the duty to conduct a survey.
- 4.2 The justification and evidence for this part of the Measure came principally from the report of the Councillor Commission Expert Panel Wales which was convened with the aim of making recommendations to the Welsh Government to encourage a more diverse range of people to consider standing for election to local authorities and to better support those that get elected to combine their public duties with other responsibilities.
- 4.3 For many years, concerns have been expressed that the membership of councils across Wales does not reflect the characteristics of the population as a whole. The report of the Councillor Commission Expert Panel Wales "*Are we being Served?*" found that the average age of members was just under 60 and the membership tended to be white, male and retired. The number of female councillors was estimated to be 24% of the total and the number of councillors from the black and ethnic minority communities was estimated to be less than 1% of the total. There is no data on the profile of community and town councillors.
- 4.4 The Expert Panel recommended a number of measures to encourage people from diverse backgrounds to stand for elections and to stay on as councillors. These included diversity monitoring of councillors and candidates; the training and development of serving councillors; flexible working for councillors; administrative support for councillors; and public accountability of councillors. Other sections in Chapter 1 of Part 1 and Part 2 of the Measure make provision for the training and development of councillors, flexible working, administrative support and public accountability.

- 4.6 The Welsh Government recognises the crucial role elected members play in local democracy and the importance of having elected members who are representative of the communities they serve and can understand the varying needs of the users of local services. Councils are more effective when the needs of all members of the local communities are considered in decisions made about the delivery of local services. The Welsh Government wishes to encourage a more diverse range of elected members to stand and become elected members.
- 4.7 A statutory duty to conduct a survey at regular intervals, the subject of these Regulations, will enable the compilation of a set of reliable data on the profile of candidates and councillors at local government elections in both principal councils and community and town councils. This will enable policy-makers to design initiatives to improve diversity in council chambers and assess their effectiveness.
- 4.8 These Regulations prescribe the questions that a local authority must ask when conducting the survey, and prescribe that an electronic spreadsheet must be used to collate the information. This will ensure that the survey is conducted in a uniform manner across Wales and the collated information is also uniformly presented.
- 4.9 The Schedule to the Regulations contains 23 questions in total: 21 questions are based on the 11 fields of enquiry set out in section 1 (4) of the Measure. Section 1 (4) of the Measure does not limit the prescribed questions to solely the 11 fields of enquiry set out in sub paragraph 4 (a) to (k) of section 1. Two questions do not relate to the specified fields of enquiry: “parental responsibility”, question 15 and “volunteering experience”, question 16 are permitted additional question to the list of question headings in section 1 (4).
- The first six questions relate to the “*work as a councillor*” field. The questions are designed to gather data on which council the respondent stood for election, previous experience in standing for elections and serving as councillors. The wording of these questions has been adapted from the surveys carried out by the Scottish Government¹ and the Local Government Association in England of candidates and councillors².
 - Questions seven, eight and nine relate to *gender*, *age* and *race*. The wording of seven replicates the question included in the Scottish Government Survey, the wording of eight arose from the consultation. The wording of nine replicates the questions in

¹ **Scottish National Survey of LG Candidates (questionnaire from p.66)**
<http://www.scotland.gov.uk/Resource/Doc/221835/0059630.pdf>

² **National Census of Local Authority Councillors 2010**
<http://www.lga.gov.uk/lga/core/page.do?pageId=15003600>

the Office National Statistics Census³, the National Survey of Wales⁴

- Question 10 relates to *belief*. The wording of this question is the same as the equivalent question included in the Office National Statistics Census and the National Survey of Wales.
- Question 11 relates to *sexual orientation*. The wording of this question is adapted from the equivalent question included in the Place Survey.⁵
- Questions 12, 13 and 14 relates to *employment status*. The wording of 12 and 13 is adapted from the British Household Panel Survey⁶ and the Scottish Government survey. Question 14 was suggested as a result of the consultation.
- Question 15 relates to parental responsibility. “Parental responsibility” is a permitted additional question to the list of question headings in section 1 (4) of the Measure. The wording of this question was suggested as a result of the consultation.
- Question 16 relates to volunteering experience. This is a permitted additional question to the list of question headings in section 1 (4) of the Measure. This wording has been slightly amended from the National Survey for Wales
- Question 17 relates to *education* and is slightly amended from equivalent question included in the Scottish Government Survey.
- Questions 18 to 21 relate to *health and disability* and the wording is as a result of the consultation.
- Questions 22 and 23 relate to *language* and replicate the equivalent questions included in the ONS Census.

Regulatory Impact Assessment (RIA)

5.1 Options for achieving the policy objectives in relation to the Regulations as discussed in Section 4 are:

Option 1 – Do nothing and not make the Regulations

³ **Census**

<http://www.ons.gov.uk/ons/guide-method/census/2011/the-2011-census/2011-census-questionnaire-content/index.html>

⁴ **National Survey for Wales
ONS Opinions Survey**

<http://wales.gov.uk/about/aboutresearch/social/ocsropage/pilotsurvey/qresurmat/?lang=en>

⁵ **Place Survey Question Bank**

<http://www.communities.gov.uk/publications/localgovernment/placesurveymanual0809>

⁶ **British Household Panel Survey**

http://www.iser.essex.ac.uk/bhps/documentation/pdf_versions/survey_docs/index.html

Option 2 – Make the Regulations

Option 1 – *Costs and benefits*

- 5.2 The duty on local authorities to conduct a survey cannot be fulfilled without the supporting Regulations since the Measure requires local authorities to conduct a survey in accordance with regulations made by Welsh Ministers. Not making regulations would mean that a survey would not occur and Welsh Government and other stakeholders would have no reliable data on the diversity of candidates at local government elections. It would be impossible to tell whether the policies being implemented to encourage a wider range of people to stand as candidates were having any impact.
- 5.3 There would be no financial costs to the Welsh Government or local authorities as a result of failing to make the Regulations.

Option 2 - *Costs and Benefits*

- 5.4 Legislation is considered to be the only means of ensuring that monitoring of candidates and councillors takes place regularly. Other organisations such as the Welsh Local Government Association and the Electoral Commission have conducted surveys into the profile of councillors and candidates in the past but there is no regular survey undertaken. For example no survey was undertaken in 2008, the year of the last local government elections. The provisions in the proposed Regulations will deliver wider and more regular data and will also chart the under representation in local government: the Expert Panel found that women, ethnic minorities, young people, disabled people, people in paid employment and non-professionals were all under-represented in council chambers across Wales.
- 5.5 Monitoring the diversity of those who stand as candidates for election to local government will give all stakeholders, over time, a solid evidence base on which to make judgement about their progress in reaching their objectives to widen participation in local democracy according to the extent and nature of the diversity within the electorate.
- 5.6 The progress of local authorities, in particular, will be open and transparent and raise awareness generally about the importance of diversity issues.
- 5.7 Introducing a regular survey is estimated to cost £35,000 per survey, funded by the Welsh Government and distributed among the 22 principal councils to undertake the survey of candidates at community and principal council elections. This cost would occur every fourth year, starting from the 2012-13 financial year. The Welsh Government's Local Government and Communities Department would also absorb within existing projected resources an administrative cost of some £2,500 in analysing and publishing the survey data.

6. Consultation

- 6.1 The Welsh Government issued an electronic public consultation on the draft Regulations. The consultation ran for 6 weeks between 20 December 2011 and 24 January 2012 and asked for views on the content of the draft Regulations and draft statutory guidance.
- 6.2 The details of the consultation were sent directly to:
- Association of Council Secretaries and Solicitors
 - Electoral Administrators in the 22 Welsh local authorities
 - The Electoral Commission
 - Equalities and Human Rights Commission
 - One Voice Wales
 - The four major Political Parties in Wales
 - Society of Local Authority Chief Executives
 - Wales Council for Voluntary Action
 - Wales Audit Office
 - Welsh Local Government Association
- 6.3 A total of 18 responses were received. A number of organisations offered valuable suggestions to improve the structure and content of the questions contained in the Schedule to the Regulations and suggested additional questions.

Competition Assessment

- 7.1 There are no market implications associated with the making of these Regulations. It has no impact on business, charities or the voluntary sector.

DRAFT SI REPORT

Constitutional and Legislative Affairs Committee

(CLA(4)-06-12)

CLA110

Constitutional and Legislative Affairs Committee Draft Report

Title: The Isle of Anglesey Local Authorities (Change to the Years of Ordinary Elections) Order 2012

Procedure: Negative

This Order provides that the ordinary elections of councillors to the Isle of Anglesey County Council will take place in 2013 instead of 2012. It also provides that the ordinary elections of councillors to the community councils in the Isle of Anglesey county will take place in 2013 instead of 2012.

The current term of office of existing councillors elected to the Isle of Anglesey County Council is accordingly extended by one year. The current term of office of existing community councillors elected to community councils in the Isle of Anglesey county is also accordingly extended by one year.

Technical Scrutiny

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

Merits Scrutiny

The following points are identified for reporting under Standing Order 21.3 in respect of this instrument –

1. This Order has the effect of postponing elections in Anglesey by one year. Nevertheless, the enabling legislation provides that the negative procedure applies to this Order.
2. The Order also has the effect of putting Anglesey on a different electoral cycle from the other Welsh counties. Attention is therefore drawn in particular to the final paragraph of part 4 of the Explanatory Memorandum.

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

Legal Advisers

Constitutional and Legislative Affairs Committee

DRAFT SI REPORT

March 2012

2012 No. 686 (W.94)

**LOCAL GOVERNMENT,
WALES**

**The Isle of Anglesey Local
Authorities (Change to the Years of
Ordinary Elections) Order 2012**

EXPLANATORY NOTE

(This note is not part of the Order)

This Order changes the years of ordinary elections of councillors to the Isle of Anglesey County Council and councillors to the community councils in the Isle of Anglesey county.

This Order provides that the ordinary elections of councillors to the Isle of Anglesey County Council will take place in 2013 instead of 2012. It also provides that the ordinary elections of councillors to the community councils in the Isle of Anglesey county will take place in 2013 instead of 2012.

The current term of office of existing councillors elected to the Isle of Anglesey County Council is accordingly extended by one year. The current term of office of existing community councillors elected to community councils in the Isle of Anglesey county is also accordingly extended by one year.

The scheme for elections of councillors to the Isle of Anglesey County Council is unchanged, in that subsequent ordinary elections will take place every four years after 2013. The scheme for elections of community councillors to the community councils in the Isle of Anglesey county is also unchanged, in that subsequent ordinary elections will take place every four years after 2013.

This Order overrides the general provisions in relation to the timing of ordinary elections and the term of office of councillors in Wales set out in section 26 (principal councils) of the Local Government Act 1972. This Order also overrides the general provisions in relation to the timing of ordinary elections and the term of office of community councillors in Wales set

out in section 35 (community councils) of the Local Government Act 1972.

A regulatory impact assessment has been prepared as to the likely costs and benefits of complying with this Order. A copy can be obtained from the Democracy, Ethics and Partnership Division, Department for Local Government and Public Services, Welsh Government, Cathays Park, Cardiff CF10 3NQ.

2012 No. 686 (W. 94)

**LOCAL GOVERNMENT,
WALES**

**The Isle of Anglesey Local
Authorities (Change to the Years of
Ordinary Elections) Order 2012**

Made 6 March 2012

Laid before the National Assembly for Wales

6 March 2012

Coming into force 27 March 2012

The Welsh Ministers make the following Order in exercise of the powers conferred upon the National Assembly for Wales by sections 87, 105(2) and 106(1)(b) and (c) of the Local Government Act 2000(1), and now exercisable by them(2):

Title, commencement and application

1.—(1) The title of this Order is the Isle of Anglesey Local Authorities (Change to the Years of Ordinary Elections) Order 2012 and it comes into force on 27 March 2012.

(2) This Order applies to Wales.

Change of year of ordinary elections of councillors to the Isle of Anglesey County Council

2.—(1) This article applies to the ordinary election of councillors to the Isle of Anglesey County Council .

(2) Elections which, but for this Order, would have taken place on the ordinary day of election of

(1) 2000 c.22.

(2) The functions of the National Assembly for Wales were transferred to the Welsh Ministers by virtue of section 162 of and paragraph 30 of Schedule 11 to the Government of Wales Act 2006 (c.32).

councillors(1) in 2012 and every fourth year after 2012(2) will instead take place on the ordinary day of election of councillors in 2013 and every fourth year after 2013.

Term of office of existing councillors

3. The term of office of existing councillors elected to the Isle of Anglesey County Council is accordingly extended by one year .

Change of year of ordinary elections of community councillors to community councils in the Isle of Anglesey county

4.—(1) This article applies to the ordinary election of community councillors to community councils in the Isle of Anglesey county.

(2) Elections which, but for this Order, would have taken place on the ordinary day of election of community councillors(3)in 2012 and every fourth year after 2012(4) will instead take place on the ordinary day of election of community councillors in 2013 and every fourth year after 2013.

Term of office of existing community councillors

5. The term of office of existing community councillors elected to community councils in the Isle of Anglesey county is accordingly extended by one year.

Carl Sargeant

Minister for Local Government and Communities, one of the Welsh Ministers

6 March 2012

-
- (1) For the ordinary day of election of councillors of local government areas, see section 37 of the Representation of the People Act 1983 (c.2), as amended by section 18 of the Representation of the People Act 1985 (c.50), paragraphs 1 and 5 of Schedule 3 to the Greater London Authority Act 1999 (c.29) and section 60 of the Local Government and Public Involvement in Health Act 2007 (c.28).
- (2) For the year in which ordinary elections would otherwise have taken place see section 26 of the Local Government Act 1972 (c.70) in respect of councillors of principal councils.
- (3) For the ordinary day of election of community councillors of local government areas, see section 37 of the Representation of the People Act 1983 (c.2), as amended by section 18 of the Representation of the People Act 1985 (c.50), paragraphs 1 and 5 of Schedule 3 to the Greater London Authority Act 1999 (c.29) and section 60 of the Local Government and Public Involvement in Health Act 2007 (c.28).
- (4) For the year in which ordinary elections would otherwise have taken place see section 35 of the Local Government Act 1972 (c.70) in respect of community councillors.

The Explanatory Memorandum

The Isle of Anglesey Local Authorities (Change to the Year of the Ordinary Election) Order 2012

This Explanatory Memorandum has been prepared by the Department for Local Government and Public Service 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 Isle of Anglesey Local Authorities (Change to the Year of the Ordinary Election) Order 2012. I am satisfied that the benefits outweigh any costs.

Carl Sargeant

Minister for Local Government and Communities

6 March 2012

1. Description

This Order provides for a delay by one year to the ordinary day of election of councillors to the Isle of Anglesey County Council and community councillors to the community councils in the Isle of Anglesey county.

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

None

3. Legislative Background

This Order is made under sections 87, 105(2), 106(1)(b) and 106(1)(c) of the Local Government Act 2000 ("the 2000 Act").

Section 26 and section 35 of the Local Government Act 1972 provide that for elections taking place after 2004, the ordinary elections in respect of councillors to principal authorities and community councils shall take place every four years and that councillors in office shall retire on the fourth day after an ordinary election has taken place.

Section 87 of the 2000 Act enables the Secretary of State to introduce an order to change the year in which ordinary elections of councillors to any specified authority takes place. In Wales, a local authority is a county or county borough council or a community council.

In its application to Wales, Section 106 of the 2000 Act has the effect that any reference to the Secretary of State can be substituted by a reference to the National Assembly for Wales.

Section 162 of and Schedule 11 to the Government of Wales Act 2006 provide for the functions of the National Assembly for Wales to be transferred to Welsh Ministers.

This instrument follows the Negative Resolution procedure .

4. Purpose & intended effect of the legislation

Since 2004, the ordinary day of election of county and county borough councillors and community councillors in Wales has taken place on the first Thursday in May every four years.

The next ordinary day of elections is scheduled for Thursday 3 May 2012.

Presently there are 40 electoral divisions in the Isle of Anglesey county, each represented on the principal authority by a single elected member. At the 2008 local government elections a significant proportion of councillors were returned to the Isle of Anglesey County Council, unopposed.

In a special inspection report dated March 2011 the Auditor General for Wales recommended that the Isle of Anglesey County Council should adopt a strategy for democratic renewal. He recommended that Welsh Ministers consider directing the Local Government Boundary Commission for Wales (“the Commission”) to review the electoral boundaries in the Isle of Anglesey county with a view to considering the number of councillors and the creation of multi member electoral divisions.

The Commission has consulted on draft proposals and is due to publish its final report and recommendations at the end of April 2012.

Delaying the elections by one year will provide time for the Commission to complete their review and publish their final report. It will also provide time for Welsh Ministers to consider the Commission’s recommendations and for any changes to be brought into effect should the Welsh Ministers so decide. The delay will also enable the democratic renewal work being undertaken in Anglesey to be concluded. This would mean that the ordinary elections could then take place in accordance with any changes to the electoral boundaries and divisions which would by then have been effected.

The term of office of the existing county and community councillors will be extended by one year. Existing county and community councillors will retire on the fourth day after the ordinary day of elections in May 2013.

The effect of the Order will result in the election of councillors to the Isle of Anglesey County Council and community councillors to the community councils in the Isle of Anglesey being held in different years to the election of councillors to other local authorities in Wales. A consultation is however currently underway seeking views on the proposal to defer the elections of councillors to all local authorities in Wales by one year from 2016 to 2017 to avoid national and local elections in Wales being held at the same time. Should Welsh Ministers decide to exercise their powers under section 87 of the 2000 Act and change the years in which the ordinary elections of councillors to local authorities across Wales are held, this would result in synchronisation with the Isle of Anglesey county from 2017 onwards.

5. Consultation

Details of consultation undertaken are included in the Regulatory Impact Assessment below.

Part 2- REGULATORY IMPACT ASSESSMENT

Options

Option 1: Do nothing. Ordinary elections of councillors to the Isle of Anglesey County Council and community councillors to the community councils in the Isle of Anglesey county would be held in May 2012, as scheduled.

Option 2: Postpone by one year the ordinary elections of councillors to the Isle of Anglesey County Council only. The ordinary elections of community councillors to the community councils in the Isle of Anglesey county would be held in May 2012, as scheduled.

Option 3: Postpone the ordinary elections of councillors to the Isle of Anglesey County Council and community councillors to the community councils in the Isle of Anglesey county by one year.

Costs and benefits

Option 1

There are no immediate costs or benefits associated with this option.

The elections of county and community councils would take place in the Isle of Anglesey county at the same time as elections to all other county and county borough and community councils in Wales.

Section 36(4) of the Representation of the People Act 1983 provides that the returning officer may recover the costs incurred relating to the election of a county or county borough councillor. The council may set a fixed scale for this purpose. Provided the amounts incurred does not exceed the scale set (if one is set) the expenditure will be paid by the council.

Section 36(5A) also provides that the costs incurred by a returning officer when holding an election of a community councillor, providing it does not exceed any fixed scale set by the principal council in which the community council is situated, shall be paid by the principal council. The principal council in turn may require any expenditure incurred to be repaid by the Community council.

There would therefore be no immediate cost to the Welsh Government as the expenditure incurred in the conduct of the election would be met by the local authority who could in turn require repayment by the community councils of the costs.

Should the Commission propose significant changes to councillor numbers and electoral divisions in their final report and these be reflected in a subsequent Order, either fresh elections would need to be called – at considerable cost – or the changes would not be effected until the next elections resulting in a potential delay in the democratic renewal of the county.

Option 2

The electoral boundaries of community councils will not be affected by the Commission's proposals. The election of community councillors could go ahead as scheduled in May 2012. The impact of this on community councils would be that they are required to fund the elections themselves.

The effect of the Local Government Elections (Wales) Order 2001 was that local government elections were held separately from elections to the National Assembly for Wales. In consultation responses at that time community councils favoured their elections being combined with elections on county and county borough councils. They cited the burden of cost and voter fatigue as grounds community council elections should not be stand alone.

Community councils would be required to cover the printing cost of ballot papers; the printing costs of poll cards; the delivery costs of poll cards and postal voting ballots. The principal council could also recharge the staff costs for running the election.

Option 3

Changing the year of local government elections in the Isle of Anglesey county will mean that the elections in the county are held in different years to those in other local authority areas in Wales and that inhabitants of the county's right to exercise their vote will be delayed by one year.

A consultation is however currently underway seeking views on the proposal to defer the elections of councillors to all local authorities in Wales, which would normally take place in 2016, by one year to 2017. Should Welsh Ministers decide to exercise their powers under section 87 of the 2000 Act and change the years in which the ordinary elections of councillors to local authorities across Wales are held, this would result in synchronisation with the Isle of Anglesey county in 2017.

Delaying the ordinary elections within the Isle of Anglesey county from 2012 to 2013 will allow any desired changes to be effected as a result of the Commission's recommendations within one year, as opposed to four years, when the next local government elections would be held. This will assist further effective and timely democratic renewal within the county.

Local authorities are responsible for paying for their own elections. Postponing elections to community councils ensures that the elections are held together. The associated costs are shared. Political parties only have to campaign once and voter fatigue is lessened.

The Local Government (Wales) Measure 2011 provides for there to be an Independent Remuneration Panel for Wales (the Panel) whose principal function is to decide the allowances to be paid to County and County borough Councillors in Wales.

In their annual report dated December 2011 the Panel set the basic salary for members of a principal authority in Wales for 2012/13 as £13175.

Extending the term of office of the existing councillors by one year means that Anglesey County Council will be required to pay £527,040 in basic salary payments. This is not an additional cost as this amount would be paid to new councillors also.

For these reasons, Option 3 is the Welsh Ministers' preferred option.

Consultation

A consultation with stakeholders took place over a six week period ending 6 January 2012 on the proposal to change the year of elections of councillors in the Isle of Anglesey county. Those consulted included the Leader of Anglesey County Council, the Chief Executive of Anglesey County Council, the WLGA, Anglesey Commissioners, town and community councils in the county, One Voice Wales, the Electoral Commission and Political Parties.

A total of eleven responses were received to the consultation.

Of those who replied a few were of the view that council elections should be held at the same time across Wales. They noted that the political challenges facing the authority would not be resolved by changing electoral boundaries. They also noted that the running of the Isle of Anglesey County Council should return as soon as possible to elected councillors.

Some respondents did not express a view in favour of or against altering the date but commented that an early decision would be preferred on a practical issue. Some supported changing the date especially for community council elections to ensure they are held at the same time as the elections of county councillors.

At the time of the consultation the Leader of Plaid Cymru, who is also the Assembly Member for the area supported changing the date of the elections. He noted that democracy in the county would be strengthened if the elections took place on new electoral boundaries.

The Welsh Government considers there to be merit in delaying the elections to county and community councils in the Isle of Anglesey county by one year. It will contribute to strengthening democratic renewal in the county, as recommended in the Auditor General's report.

Agenda Item 4.1

Inquiry into the establishment of a separate Welsh jurisdiction
Response from The Law Society



Cymdeithas y Cyfreithwyr
The Law Society

Wales:
Separate Jurisdiction
February 2012

cefnogi
cyfreithwyr

supporting
solicitors

The Law Society is the representative body for 150,128 solicitors in England and Wales¹. The Society represents and supports solicitors, negotiates on behalf of the profession and lobbies regulators, government and others.

In Wales, The Law Society has a permanent office which is resourced to enable solicitors across England and Wales to respond to both law and policy consultations and to respond to current legal issues both stemming from the devolution of law-making and consequent upon a developing and distinct legal community.

A. Overview

This inquiry by the Constitutional and Legislative Affairs Committee ("the Committee") is welcomed. Our interest in the development of law-making and the administration of justice in Wales is broad and is reflected in our work with the National Assembly for Wales, the Welsh Government, stakeholders in public life in Wales and in our annual lecture at the National Eisteddfod, which has provided a platform for the raising of issues related to the development of devolution.

Our members' views on a separate Welsh jurisdiction and, indeed, the separation of the Welsh jurisdiction from the jurisdiction of England and Wales vary and over the coming months we are undertaking our own work to raise the debate within the profession in order to ascertain these views. Our response to this inquiry is not intended to be a position statement on the principle of a separate jurisdiction for Wales but a response which aims to assist the Committee with its consideration of the nature and implications of a separate jurisdiction by outlining some of the key considerations and options that exist.

B. Response to the terms of reference

B.1 the meaning of the term "separate Welsh jurisdiction"

A legal jurisdiction in its simplest form is a justice system, it is the system for delivering justice and can be defined territorially. A "separate Welsh jurisdiction" would be geographically defined but how far would its legal remit extend?

The First Minister has claimed "criminal justice need not be devolved for there to be a Welsh jurisdiction"². In Northern Ireland there was a separate court system with full law reform support falling under their Department for Finance and Personnel before the recent devolution of criminal justice which sits in the Northern Ireland Department

¹ Total number of solicitors on the roll as of 31 July 2011 - Law Society Annual Statistical Report

² Law Society Annual Lecture National Eisteddfod of Wales Cardiff and District 2008
Carwyn Jones AM, Counsel General Law in Wales: The Next Ten Years

for Justice. The two parts have yet to be joined together. Full devolution of a criminal justice system is likely to take time and, if there are to be significant differences in law and procedure between the two systems, is likely to carry significant implications for training and reform across the entire system in Wales. This is likely to be costly and over-ambitious at this stage. The devolution of criminal justice is not considered further in this response.

Looking at a separate Welsh jurisdiction in today's context, therefore, any separation from the jurisdiction of England and Wales will likely be limited to civil law. But, can there be a separation of the machinery of justice where there is a continuation of legal principle and vast areas of coterminous legislation? Although the areas of primary law-making in Wales extend across 20 subjects³ which directly impact on the lives of people in Wales there is a wide body of law which continues to apply to England and Wales.

In its report the All Wales Convention noted that "the courts in England and Wales are fully competent to consider cases involving the laws of England and Wales, the laws of Wales only and relevant considerations from European Union or common law more generally"⁴. The Committee will be aware of changes within the courts and tribunals service which were usefully described by the Hon. Mr David Lloyd Jones in The Law Society Wales annual lecture of 2010⁵.

There are a number of elements to be considered, which lead to the following questions:

1. First, the substantive law. It is relatively simple for different law to be applied by the courts in a distinct territory, as has been demonstrated by the success in the devolved areas so far. However, a number of questions need to be resolved, particularly in the field of private law where agreements will have been entered into on the basis of a particular understanding of English law. How far will Welsh legislation overturn or amend this understanding? There is also the question of the extent to which Welsh courts are to have jurisdiction in developing a distinct approach to interpreting common law obligations. In principle, there is no reason why Welsh treatment of disputes should not diverge from the existing English and Welsh approach. However, there may need to be clarity over how individual disputes will be treated. Many agreements will have been entered into without any contemplation that a separate Welsh jurisprudence may develop and some provisions will be needed to establish how the courts will deal with disputes over such agreements brought to the Welsh courts by parties, one of which may not reside in Wales or neither of which may wish to be bound by Welsh jurisprudence. There will need to be clarity over the approach of the Welsh system to parties choosing their jurisdiction. It may well be that, as jurisprudence develops, Welsh law will become an attractive alternative to the law of England and Wales but equally parties may choose not have disputes resolved by Welsh law. In public law, these questions are less likely to arise provided there is clarity over which law will apply to which institutions.

³ Government of Wales Act 2006 Schedule 7

⁴ All Wales Convention Report para 3.9.22

⁵ The machinery of justice in a changing Wales the Hon. Mr Justice David Lloyd Jones Senior Presiding Judge, Wales Circuit

2. This leads to the question of the jurisdiction of individual courts. It is assumed that it is likely that Welsh courts will follow usual international practice in enforcing judgements from other jurisdictions. But, a decision will need to be made as to the extent to which courts in Wales will deal with disputes arising involving what will then be English law. It is not clear to what extent it will be necessary for individuals living in Wales to challenge public institutions governed by English law but, if they do, there will be a question as to whether proceedings should begin in Wales or England. However, it is inevitable that some private disputes involving individuals living in Wales will be governed by English law and there will need to be a view taken as to whether the Welsh courts will adjudicate on those disputes and, if they do, what appeal mechanisms will exist. Should there, for example, be a separate Court of Appeal dealing with Welsh law while cases decided under English law go to the Court of Appeal in London? How far should the Supreme Court continue to have jurisdiction?

3. There then follows the question of the procedures to be adopted by the courts. Even if some disputes are to be decided under what will then be English law, it does not necessarily follow that procedures for resolving such disputes will be the same or, arguably, the rules as to costs.

4. These considerations then lead to questions about the character of the judiciary in Wales (and, indeed, of the legal profession) and the extent to which a separation of qualification and appointments mechanisms are needed or whether existing ones can be adapted.

The changes which have led to the current arrangements accommodate the need to have access to justice according to the law in Wales, but a separation from the England and Wales structure would require the establishment of a number of bodies. The Justice department lists around 30 organisations within the justice system which are necessary to its operation in respect of civil law. The structure supporting the judiciary and the courts and tribunals service is extensive and a separate jurisdiction could require the creation and implementation of such a structure including responsibility for areas such as judicial appointments and conduct, and civil procedure and costs.

Wales would need a new department within the Welsh Government to have responsibility for the jurisdiction and to establish an independent judiciary. Speaking in 2009, the Rt Hon Sir Malcolm Pill noted "the judicial arm of the constitution of Wales must be integral to the settlement and not left merely to follow along and comply with it, whatever form it takes"⁶.

As well as the machinery of justice, a jurisdiction denotes the jurisprudence and there are responsibilities following this aspect of a jurisdiction. The growth of the body of law is central to this and the establishment of an organisation to review legislation and recommend reform in the way that the Law Commission does now for England and Wales is crucial to a fully rounded jurisdiction.

⁶ Rt Hon Sir Malcolm Pill Legal Wales Conference Marriott Hotel, Cardiff 9 October 2009

B.2 the potential benefits, barriers and costs of introducing a separate Welsh jurisdiction;

The costs will depend upon the extent to which the Welsh jurisdiction is entirely separate (something that may be easier to achieve in the lower courts than in the county or High Court) or can use the existing mechanism and resources from the current jurisdiction. It may well be a gradual process. In Wales there are already a number of separate Welsh tribunals. These tribunals are demonstrating the pros and cons of a separate system, for example the Welsh policies developed in the areas in which the tribunals operate are readily applied to the hearing and resolution of cases. However, the small number of members of each tribunal does have an effect particularly on the costs e.g. the cost per head of training is likely to be higher. The evidence of the Chairmen of the Welsh tribunals might inform the Committee on the success or otherwise of the operation of these tribunals although the Wales only tribunals do not operate in a way that is directly similar to a Welsh courts and tribunals service⁷.

Another body which gives a useful example of the operation of a separate justice organisation within Wales is CAF/CASS Cymru the family courts service. This is the responsibility of the Welsh Government and knowledge of the experience of running this service may usefully be gleaned by the Committee.

A separate jurisdiction would raise the question of whether there needed to be a separate regulatory system for legal services providers and a different system for qualification. In the context of a smaller legal profession, the costs of this might well be considerable, particularly if a number of its members wished also to practise in England and were to face a double regulatory cost. It might, however, be possible to adapt the existing structures that work for both England and Wales, at least in the first instance, to apply to both jurisdictions. There would be an impact on legal education: would all courses in Wales offer only Welsh legal qualifications? The teaching of a bilingual approach to law-making and the use of Welsh in providing legal services and in representing persons through the courts and tribunals would receive renewed attention.⁸

The Law Society promotes the benefits of the jurisdiction of England and Wales on a global stage. The law in England and Wales is transparent, predictable, flexible and supports the needs of modern commerce; in addition English is the language of international business. These features make England and Wales a highly attractive jurisdiction in which to resolve disputes. By creating a "separate Welsh jurisdiction" the benefits of this might be lost and Wales could be perceived as a difficult place to do business. Conversely, economic and social advantages may flow from developing the legal profession in Wales and in the development of law that is suited to the particular situation in Wales.

⁷ The Hon. Mr Roderick Evans The Lord Callaghan Memorial Lecture 2010 Devolution and the Administration of Justice Swansea University 19th February 2010

⁸ See below B3

B.3 the practical implications of a separate jurisdiction for the legal profession and the public

An immediate issue is how solicitors qualified in England and Wales would qualify to practise in the new jurisdiction. Legal services are not within the devolved subjects and any changes would require new legislation on regulation of legal services for the Welsh jurisdiction. This is an area in which the Law Society has particular interest and is under active consideration currently.

Would a separate Welsh jurisdiction create a need for a separate regulatory infrastructure in Wales for the legal profession, e.g. the equivalent of the Solicitors Regulation Authority or could practitioners in Wales remain within the current regulatory system? Regulation of legal services includes record keeping, disciplinary proceedings, supervising legal education providers and dealing with the transfer of lawyers into the jurisdiction. This is of central importance because of concerns regarding the ability of practitioners to move across the border between Wales and England to practise in future.

The relationship between Northern Ireland and England and Wales has been held up as an example of mutual recognition of legal qualification however a practitioner from Northern Ireland cannot automatically practise in England and Wales. The Solicitors Regulation Authority require application through its Qualified Lawyers Transfer Scheme as for lawyers coming from any other jurisdiction. In the case of Northern Ireland academic qualifications are recognised but a period of training is often required. There would be a need to arrange agreements for recognition of rights of audience so that practitioners in England and Wales could be heard in courts and tribunals in the other country.

Would the legislation on the provision of legal services more generally and the opening up of new markets continue to apply to Wales?

For some time we have advocated "a single database for all legislation applicable for Wales to be compiled and maintained as a public service"⁹. The UK Statute Law Database is held up as an example of such a single portal but it is not well maintained. On many of its pages there are warnings that there have been amendments without the relevant provisions being added. This is not an adequate service. It is apparent that maintaining information on legislation for Wales is not commercially viable and so the task must fall to public provision. There is a need for a comprehensive Welsh Statute Book.

In addition, there is a dearth of practitioners' texts with many commercial publications failing to maintain commentary on Welsh legislation and cases. As time moves on and the body of law increases through new legislation and court decisions, this gap will become more significant.

Devolution is progressing and public awareness increasing but a move to a separate Welsh jurisdiction will require careful explanation. Public access to justice will be changed at its roots although a Welsh legal service is likely to follow the traditions of the jurisdiction of England and Wales it will be separate, it will be new.

⁹ The Law Society Wales Response to the All Wales Convention February 2009

B.4 The operation of other small jurisdictions in the UK, particularly those, such as Northern Ireland, that use a common law system

We are the Law Society of England and Wales and do not operate within the other devolved legislatures. However, we have links with our colleagues in Scotland and Northern Ireland and it may be of interest for the committee to direct questions to these representative bodies.

For further information please contact:

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Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol Constitutional and Legislative Affairs Committee

Cynulliad
Cenedlaethol
Cymru
National
Assembly for
Wales



Mr William Cash MP
Chairman
European Scrutiny Committee
House of Commons
7 Millbank
London
SW1P 3JA

23 February 2012

Dear Mr Cash,

Proposal for a Directive of the European Parliament and of the Council on Public Procurement

Nick Ramsay AM the Chair of the National Assembly's Enterprise and Business Committee and Julie James AM, the Chair of that Committee's sub group looking at European Union (EU) procurement policy, wrote to the Welsh Government's Finance Minister, Jane Hutt AM, on 15 February 2012. The letter was copied to you and to Baroness O'Cathain. I enclose a copy for ease of reference.

The issue has now been considered by the Assembly's Constitutional and Legislative Affairs Committee, which is charged under our standing orders with considering whether draft EU legislation complies with the principle of subsidiarity. The Committee has laid its report before the Assembly today and I attach a copy for your information.

You will note that the Committee shares concerns about whether the national oversight body proposed in Article 84 of the draft Directive complies with the principle of subsidiarity, by requiring an administrative body to carry out functions that would normally be carried out by the courts in the UK. The

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Committee would, therefore, support an objection to the requirement for a national oversight body because it breaches the principle of subsidiarity in that way.

The Committee is also concerned that the proposal also fails to have regard to the principle of devolution. Even if a national oversight body were to be established for the purposes of reporting under Article 84.2, Member States should be able to take account of their own constitutional structures. Such arrangements could be made by inserting into Article 84 the degree of flexibility provided for in Article 87. That would at least mitigate the degree to which Article 84 breaches the subsidiarity principle.

I would be grateful if you could give consideration to incorporating the Committee's representations, on behalf of the National Assembly, into any reasoned opinion that your Committee submits to the European Commission. I would also be grateful if you could keep me informed of developments.

I am writing in similar terms to Baroness O' Cathain, the Chair of House of Lords EU Sub-Committee B.

Yours sincerely

A handwritten signature in black ink that reads "David Melding". The signature is written in a cursive style with a long, sweeping tail that extends to the right.

David Melding AM
Chair

cc

Rosemary Butler AM, Presiding Officer, National Assembly for Wales
Lord Roper, Chair, European Union Select Committee, House of Lords
Nick Ramsay AM, Chair, Enterprise and Business Committee
Julie James AM, Chair, EU Procurement Policy Task and Finish Group
Jane Hutt AM, Minister for Finance, Welsh Government
Edwina Hart AM, Minister for Business, Enterprise, Technology and
Science, Welsh Government



European Scrutiny Committee

House of Commons 7 Millbank London SW1P 3JA

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From: Mr William Cash MP

29 February 2012

Mr David Melding AM
Chair
Constitutional and Legislative Affairs Committee
National Assembly for Wales
Cardiff Bay
Cardiff CF99 1NA

Public procurement (33586) 18966/11

Thank you for your letter of 23 February, drawing to our attention your Committee's views on this draft Directive which the Commission has put forward on public procurement.

My Committee considered this document at its meeting today, and it is clear that you, we and the UK Government all have similar concerns about the extent to which the powers of the proposed national oversight body to seize the jurisdiction of the courts would conflict with the principle of subsidiarity (and indeed could also raise certain human rights issues).

The Report we will be making to the House of Commons does therefore recommend that the House should issue a Reasoned Opinion relating both to this proposal and to a parallel proposal (18964/11) on procurement by public entities, which gives rise to similar issues. The Report will also draw attention to the points in your letter (including your concern about whether the proposal gives due consideration to the principle of devolution), and, as requested, it makes clear that your Committee's representations are being appended to the Opinion.

CHAIRMAN

Page 75

Agenda Item 6

Cynulliad
Cenedlaethol
Cymru
National
Assembly for
Wales



Constitutional and Legislative Affairs Committee

Report: CLA(4)-04-12 : 5 March 2012

The Committee reports to the Assembly as follows:

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

Negative Resolution Instruments

CLA96 – The Special Educational Needs Tribunal for Wales Regulations 2012

Procedure: Negative.

Date made: 8 February 2012.

Date laid: 13 February 2012.

Coming in to force date: 6 March 2012

CLA97 – The Education (Wales) Measure 2009 (Pilot) Regulations 2012

Procedure: Negative.

Date made: 8 February 2012.

Date laid: 13 February 2012.

Coming in to force date: 6 March 2012

CLA98 – The Non-Domestic Rating (Deferred Payments) (Wales) Regulations 2012

Procedure: Negative.

Date made: 20 February 2012.

Date laid: 23 February 2012.

Coming in to force date: 16 March 2012

CLA99 – The Non-Domestic Rating (Demand Notices) (Wales) (Amendment) Regulations 2012

Procedure: Negative.

Date made: 20 February 2012.

Date laid: 23 February 2012.

Coming in to force date: 16 March 2012

CLA100 – The Non-Domestic Rating (Small Business Relief) (Wales) (Amendment) Order 2012

Procedure: Negative.

Date made: 20 February 2012.

Date laid: 23 February 2012.
Coming in to force date: 16 March 2012

Affirmative Resolution Instruments

None

Instruments that raise reporting issues under Standing Order 21.2 or 21.3

Negative Resolution Instruments

None

Affirmative Resolution Instruments

None

Other Business

Committee Correspondence

Welsh Government Guidelines on Choice of Affirmative or Negative Procedure in Subordinate Legislation

The Committee noted the Counsel General's response dated 28 February 2012 to the Chair's letter dated 16 February 2012 regarding the publication of the Welsh Government Guidelines on Choice of Affirmative or Negative Procedure in Subordinate Legislation. The Committee agreed to review how the Guidelines work in the light of experience of scrutinising Assembly Bills in around 18 months' time.

The British Waterways Board (Transfer of Functions) Order 2012

The Committee had a preliminary discussion on The British Waterways Board (Transfer of Functions) Order 2012 and decided to invite the Environment and Sustainability Committee and the Enterprise and Business Committee to consider the Order from a policy perspective.

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

The Committee took oral evidence from Professor John Williams, Department of Law and Criminology, Aberystwyth University. Professor Williams agreed to provide additional information on the distribution of the first employment for the Aberystwyth Legal Practice Course graduates and the graduates of the Department of Law and Criminology of Aberystwyth University.

Resolution to Meet in Private

In accordance with Standing Order 17.42(vi) the Committee resolved to exclude the public from the remainder of the meeting to discuss the evidence submitted thus far on the Inquiry into the establishment of a separate Welsh jurisdiction and to agree the Committee's reports on the Inquiry into the Granting of Powers to Welsh Ministers in UK Laws and The Local Government Byelaws (Wales) Bill. The Committee also discussed options for timetabling its meetings at alternative times.

David Melding AM

Chair, Constitutional and Legislative Affairs Committee

5 March 2012