

Explanatory Memorandum to the Waste (England and Wales) Regulations 2011

This Explanatory Memorandum has been prepared by the Department for Environment and Sustainability and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation. This draft Statutory Instrument is composite and therefore, as specified in Standing Order 24.1, because it is subject to Parliamentary procedure, does not require an Explanatory Memorandum to be laid before the National Assembly for Wales. However, I have chosen to lay this Explanatory Memorandum under Standing Order 29.2 in order to explain to Members the intent and purpose of the draft Instrument.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of The Waste (England and Wales) Regulations 2011. I also include the joint England and Wales Impact Assessment. I am satisfied that the benefits outweigh any costs.

Jane Davidson AM
Minister for the Environment, Sustainability and Housing
February 2011

1. Description

The draft Instrument partly¹ transposes Directive 2008/98/EC² on waste (“the revised Waste Framework Directive”) in England and Wales. The revised Waste Framework Directive re-enacts, revises or repeals three predecessor Directives:

- (i) the Waste Framework Directive (2006/12/EC);
- (ii) the Waste Oils Directive (75/439/EEC as amended); and
- (iii) the Hazardous Waste Directive (91/698/EEC as amended).

The laws, regulations and administrative provisions necessary to comply with these three predecessor Directives are in place. The draft Instrument transposes the revised Waste Framework Directive by revising or repealing the legislation in place to transpose the three predecessor Directives in England and Wales; and by adding new freestanding provisions to the existing legislation to ensure compliance with the revised Directive.

2. Legislative background

- 2.1 The obligations imposed by the Directive are obligations on the Welsh Ministers to the extent that they could be implemented, facilitated or complied with by the exercise of Welsh Ministers’ functions (GOWA s 80(1)).
- 2.2 The Welsh Ministers comply with the obligations imposed by the Directive by exercising their current functions in relation to Wales, with respect to the prevention, reduction and management of waste, conferred by a Designation Order (2010) made under section 2(2) of the European Communities Act 1972, and functions under the Environmental Protection Act 1990.
- 2.3 The draft Instrument is composite and subject to affirmative resolution procedure.
- 2.4 The draft Instrument and the Waste (Miscellaneous Provisions) (Wales) Regulations 2011 will together introduce legislation to transpose the revised Waste Framework Directive in Wales. The Waste (Miscellaneous Provisions) (Wales) Regulations 2011 will be made via negative procedure in order to make a number of consequential amendments to several Welsh Statutory Instruments and revoke a Wales-only instrument (the Environmental Protection (Duty of Care) (Amendment) (Wales) Regulations 2003). The amendments and revocation are needed to complete, for Wales, the transposition of the changes introduced in the revised Waste Framework Directive. These amendments, which mirror changes to equivalent English Statutory instruments in the draft instrument, are being made in a separate Wales-only instrument because they must be made bilingually and (for administrative reasons (in the context of the transposition timetable and scrutiny)) it was preferable to prepare the amendments to Wales only regulations as a separate Statutory Instrument.
- 2.5 As indicated in paragraph 1 above, the revised Waste Framework Directive re-enacts, revises or repeals three predecessor Directives. For the most part, therefore, the transposition of the revised Waste Framework Directive by the draft Instrument follows a similar legislative approach to the transposition of the predecessor Directives.

¹ The Waste (England and Wales) Regulations 2011 and the Waste (Miscellaneous Amendments) (Wales) Regulations 2011 will together introduce legislation to transpose the revised Waste Framework Directive.

² <http://ec.europa.eu/environment/waste/framework/index.htm>

2.6 Prior to the draft Instrument, most implementation of the predecessor Directives was dealt with by the following legislation:-

- The Environment Act 1990, particularly section 34 and the Environmental Protection (Duty of Care) Regulations 1991 (S.I. 1991 No. 2839 as amended), dealing with the “duty of care” on those responsible for waste and section 44A requiring a national waste strategy;
- The Control of Pollution (Amendment) Act 1989 and the Controlled Waste (Registration of Carriers and Seizure of Vehicles) Regulations 1991 (S.I. 1991 No. 1624 as amended), dealing with the registration of waste carriers;
- The Waste Management Licensing Regulations 1994 (S.I. 1994 No. 1056), dealing further with the registration of waste carriers and with the registration of dealers and brokers of waste;
- The Environmental Permitting (England and Wales) Regulations 2010 (S.I. 2010 No. 675 as amended), dealing with permitting of waste disposal and recovery operations;
- The Hazardous Waste (England and Wales) Regulations 2005 (S.I. 2005 No. 894 as amended) and the Hazardous Waste (Wales) Regulations 2005 (S.I. 2005 No. 1806 as amended) (W.138), dealing with hazardous waste; and
- The Town and Country Planning Act 1990 and the Planning and Compulsory Purchase Act 2004 and subordinate legislation made under those Acts, dealing with waste plans.

2.7 Implementation of the revised Waste Framework Directive continues to rely on most of this legislation, amended where necessary by the draft instrument. However, the draft instrument also takes the opportunity to reduce the fragmentation of waste legislation to some extent and so it streamlines and replaces some waste regulation, in particular the subordinate legislation relating to the registration of waste carriers and brokers and to the “duty of care”.

2.8 The draft instrument contains new provisions transposing those elements of the revised Waste Framework Directive which did not appear in its predecessors.

2.9 A transposition note is attached to this explanatory memorandum as **Annex 1**.

3. Purpose & intended effect of the legislation

- 3.1 The revised Waste Framework Directive was originally adopted in 1975 as Directive 75/442/EEC. The focus of the Directive's provisions at that stage was on ensuring the safe disposal of waste. The original Directive also enabled Member States to adopt their own national definitions of waste.
- 3.2 The Waste Framework Directive was the subject of substantial amendment in 1991 in Directive 91/156/EEC - taking account of the experience gained by Member States in the implementation of the original Directive. One of the major changes made in 1991 was to extend the scope of the Directive's objectives and controls from waste disposal also to cover waste recovery – with “recovery” including recycling, re-use of waste, reclamation and the use of waste as a source of energy. The amended Directive also introduced an EU-wide definition of waste “in order to improve the efficiency of waste management in the Community”.
- 3.3 The existing Waste Framework Directive (2006/12/EC³) contains provisions which have the aim of directing waste management policy and provisions which are regulatory in nature. The former includes the waste hierarchy and measures on waste prevention/reduction; the self-sufficiency and proximity principles; waste management planning; and the “polluter pays” principle. The latter includes a requirement for “establishments or undertakings” carrying out waste disposal and recovery operations to hold a permit or registered permit exemption; a requirement for professional collectors and transporters of waste, and for dealers and brokers of waste, to be registered; and a requirement for “appropriate periodic inspection” of those carrying out waste management activities.
- 3.4 The Sixth Community Environment Action Programme⁴, adopted by the European Parliament and the Environment Council of Ministers on 22 July 2002, called for the development or revision of EU waste legislation. In response, the European Commission published on 21 December 2005 “A Thematic Strategy on the prevention and recycling of waste”⁵ (“the Waste Thematic Strategy”). The Waste Thematic Strategy was published by the Commission in association with a thematic strategy on the sustainable use of natural resources and proposed action in the following areas:-
- renewed emphasis on full implementation of existing legislation;
 - introducing life-cycle thinking into waste policy;
 - promotion of waste prevention policies;
 - improving the knowledge base;
 - fostering waste recycling; and
 - simplification and modernisation of existing legislation.
- 3.5 The Commission also published a proposal for the revision of the Waste Framework Directive to give effect to the Waste Thematic Strategy. On conclusion of the co-decision process, the revised Waste Framework Directive was adopted by the European Parliament and the Council on 19 November 2008 and entered into force on 12 December 2008⁶. Member States were required to transpose the Directive by 12 December 2010.

3.6 The key objective of the revised Waste Framework Directive is to provide:-

³ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32006L0012:EN:NOT>

⁴ Decision 1600/2002/EEC, OJ L 242/1, 10.09.2002. E-link: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32002D1600:EN:HTML>

⁵ <http://ec.europa.eu/environment/waste/strategy.htm>

⁶ <http://ec.europa.eu/environment/waste/framework/index.htm>

“...measures to protect the environment and human health by preventing or reducing the adverse impacts of the generation and management of waste and by reducing overall impacts of resource use and improving the efficiency of such use.”

3.7 In one way or another, the fulfilment of the Directive’s objectives is of interest to almost everyone – householders, local authorities, businesses (including small and medium enterprises (SMEs)), non-governmental organisations (NGOs) and consumer groups. Whilst measures are in place to comply with the three existing Directives listed in section 1 above, the revised Waste Framework Directive also introduces several new provisions – some of which required government to take policy decisions before deciding on the necessary transposing legislation. The Welsh Assembly Government decided, therefore, to carry out a two-stage public consultation on the Directive’s transposition jointly with England. Section 4 below outlines the provisions that were consulted on.

3.8 This Instrument and The Waste (Miscellaneous Provisions) (Wales) Regulations 2011 will together introduce legislation to transpose the revised Waste Framework Directive. The Waste (Miscellaneous Provisions) (Wales) Regulations 2011 will amend:

- The Landfill Allowances Scheme (Wales) Regulations 2004;
- The Town and Country Planning (Local Development Plan) (Wales) Regulations 2005;
- The Environmental Damage (Prevention and Remediation) (Wales) Regulations 2009;
- The List of Waste (Wales) Regulations 2005; and
- The Hazardous Waste (Wales) Regulations 2005.

3.9 A copy of the draft Waste (Miscellaneous Provisions) (Wales) Regulations 2011 and a draft of the accompanying Explanatory Memorandum are at **Annex 4** for information.

4. Consultation

4.1 The stage one public consultation ran from 16 July to 9 October 2009 and was essentially a policy debate on the following provisions:-

- The 5-step **waste hierarchy** and its application as a priority order in waste management legislation (Article 4);
- Discretionary provisions on **extended producer responsibility** (Article 8);
- A range of provisions on the **separate collection and the recovery/recycling of waste** – including the 50% recycling target for waste from households and the 70% recovery target for non-hazardous construction and demolition waste (Article 11);
- The extension of the **principles of self-sufficiency and proximity** from disposal installations to cover also installations for the recovery of mixed municipal waste (Article 16);
- The implementation of some changes on the management of **hazardous waste** (Articles 17-20);
- The implementation of some provisions on **waste oils** (Article 21);

- Measures on **biowaste** (Article 22);
- The implementation of changes on **waste management plans** (Article 28); and
- The need to establish **waste prevention programmes** (Article 29).

4.2 There were 137 responses to the stage one consultation from England and Wales. The responses were submitted by a wide cross section of stakeholders, ranging from private individuals, public bodies, large waste management companies, small third sector organisations and campaign groups. Of these, 87 responses were from people/organisations living/operating on a Wales only basis plus those who operate on an England and Wales basis. Information about the stage one consultation, and the reports summarising the responses to that consultation, are available at <http://webarchive.nationalarchives.gov.uk/20100505154859/http://www.defra.gov.uk/corporate/consult/waste-framework/index.htm> and <http://wales.gov.uk/consultations/environmentandcountryside/wasteframework/?lang=en> respectively. The responses to the stage one consultation were considered and taken into account in the preparation of the stage two consultation proposals.

4.3 The stage two joint England and Wales public consultation was carried out from 8 July to 16 September 2010 and included:-

- A summary of the key issues;
- A consultation paper covering:-
 - A draft of the Regulations to transpose the revised Waste Framework Directive in England and Wales;
 - Draft guidance for England on the application of the waste hierarchy; and
 - An Impact Assessment.

4.4 Defra also carried out informal consultations with the revised Directive Stakeholder Group throughout the negotiation and transposition phases of the revised Waste Framework Directive. The Group comprises about 30 members covering the UK and meets under Defra's chairmanship about four times a year (**Annex 2** lists the members). Defra has also held workshops with stakeholders, including trade bodies representing SMEs, on key aspects of the revised Directive (e.g. the waste hierarchy).

4.5 The draft instrument addresses one issue which is not related directly to the transposition of the revised Waste Framework Directive. The draft instrument gives effect to a judgment made by the European Court of Justice (ECJ) in 2005 on the interpretation of Article 12 of the existing Waste Framework Directive⁷. The ECJ found that the registration of professional waste carriers must include all those who "normally and regularly transport waste, whether that waste is produced by them or others". This is different to the existing national legislation, and the associated guidance, implementing Article 12 in England and Wales. It means that government is under an obligation to amend the list of those who are currently exempt from registration and bring into the system a range of businesses not previously registered with the Environment Agency, particularly those who "normally and regularly" carry waste they produced themselves.

4.6 The draft instrument makes provision for a registration system that complies with the ECJ's judgment but is as 'light touch' as possible for businesses. Provision is made for a

⁷ Case C-270/03 involving infraction proceedings by the European Commission against Italy.

two tier system under which professional waste carriers in the higher tier will be subject to similar controls as now, and the vast majority of currently exempt businesses who carry waste “normally and regularly”, and will be brought into the registration system for the first time, will be in a new lower tier (tier 2) requiring a one-off registration.

- 4.7 There were 166 responses to the stage two consultation across England and Wales. Generally, the responses received to the consultation did not differentiate between England and Wales. A lot of the organisations who replied operate on an England and Wales basis. The responses were submitted by a wide range of stakeholders, including businesses, public bodies and trade associations. Information about the stage two consultation, and the report summarising the responses to that consultation, are available at <http://wales.gov.uk/consultations/environmentandcountryside/stage2waste/?lang=en>.
- 4.8 9 respondents covered Wales only and their comments were analysed in Chapter 5 of the Summary: these are also included in the main summary of responses. Two of the 9 respondents replied but decided not to give specific comments (Meat Promotion Wales and South West Wales Integrated Transport Consortium). The 7 respondents were: 2 from business (PHS Group Ltd and Plastics Sorting Ltd); 3 from local government (Swansea Council, a joint response from Ceredigion and Powys Councils) and 1 from the WLGA); 1 from a Trade Association (Institute of Civil Engineers, Wales); and 1 individual (Andy Gray).
- 4.9 The responses to the stage two consultation have been considered and taken into account in preparing the measures to transpose the revised WFD and contained in the draft instrument.

5. Guidance

- 5.1 In January 2010, the Welsh Assembly Government and Defra consulted jointly on draft guidance on the interpretation of the definition of waste in the existing Waste Framework Directive⁸ – which is re-enacted in the revised Directive.
- 5.2 Guidance which the Welsh Assembly Government and Defra propose to make available, after any necessary consultation, to accompany the transposing Regulations in England and Wales includes:-
- Overarching guidance on the transposing Regulations – including a revision of the guidance on the existing Waste Framework Directive provided in the context of the Environmental Permitting system.
 - An easy-to-follow guide for businesses on the transposing Regulations.
 - A post-consultation version of the guidance on the definition of waste referred to above.
 - Guidance on hazardous waste.
 - Guidance on the registration of professional waste carriers and collectors, and dealers and brokers of waste.

⁸ Available at <http://wales.gov.uk/consultations/environmentandcountryside/wastedefinition/?lang=en&status=closed> and <http://www.defra.gov.uk/corporate/consult/waste-definition/index.htm> respectively.

- A revision of the duty of care code of practice provided under section 34 of the Environmental Protection Act 1990.
- Waste hierarchy guidance.
- Guidance on the separate collection provisions of the revised Directive and the transposing Regulations.

5.3 The European Commission has confirmed its intention to provide a range of guidance to assist Member States' implementation of the revised Waste Framework Directive but to date none has been published. It is also likely that the Environment Agency, as the main "competent authority" responsible for the implementation of the transposing Regulations in England and Wales, will publish guidance to enable businesses to comply with the Directive's waste management controls as transposed.

6. Impact

- 6.1 Defra and the Welsh Assembly Government have prepared a joint Impact Assessment which examines costs and benefits on an England and Wales basis. The Impact Assessment, based on the best available information, shows that the overall impact is likely to be at least cost neutral, and may be positive, given the evidence that moving up the waste hierarchy brings both economic and environment benefits to companies and local authorities, through the reduction of amounts of waste and through reduced exposure to landfill tax. Other potential costs include meeting the requirements on recycling targets and separate collection. However, these are already being addressed through other measures such as the revision of the Wales Waste Strategy, Towards Zero Waste, the Waste (Wales) Measure and other financial support being given to local authorities through the Strategic Waste Management Grant.
- 6.2 The 2005 ruling of the European Court of Justice found that the registration of waste carriers under the Waste Framework Directive should cover not only those who have a waste carrier business, but also anyone else who carries waste "normally and regularly". This requires England and Wales to bring into registration a large number of businesses not previously registered with the Environment Agency. The draft Regulations provide for a revised waste carrier registration system that will comply with the ECJ judgment while being as 'light touch' as possible for businesses. This is achieved by introducing a new "lower tier" form of registration for businesses which have not previously had to be registered. Under the lower tier, businesses only have to make a one-off registration, and are being allowed until the end of 2013 to do so. Those businesses already registered under the old arrangements will have their registrations rolled forward into the new "upper tier", with no significant changes. Taken together, these proposals keep the costs of compliance with the ECJ ruling as low as possible, as set out in paragraphs 112 to 119 and Tables 6 and 7 of the Impact Assessment.
- 6.3 Paragraph 119 of the IA identifies the benefits of registration as raising awareness among lower tier waste carriers of their responsibilities, and improved identification of waste carriers. This is difficult to quantify, but a widening of the registration base may result in reduced opportunities for unregistered waste carriers to operate and commit waste crime. A reduction of 3-6% a year in the number of incidents of fly tipping would be sufficient for the benefits of avoided clear up costs to offset the costs of lower tier registration. This does not take account of the disamenity and health costs associated with fly tipping, which could be significant. Local authorities spent £45.8m in 2009/10 clearing 947,000 illegal fly tips.

6.4 The Impact Assessment is attached to this explanatory memorandum as **Annex 3**.

7. Regulating small business

- 7.1 The legislation applies to small business. The revised Waste Framework Directive does not include provisions enabling Member States to exclude small businesses from its requirements.
- 7.2 To minimise the impact of the requirements on firms employing up to 20 people, the approach taken is to ensure that the requirements in the draft instrument are the minimum necessary to ensure full and effective transposition of the revised Waste Framework Directive. The revised Directive applies to all producers and holders of waste, and to “establishments or undertakings” engaged in waste management activities, irrespective of their size.
- 7.3 The basis for the final decision on what action to take to assist small business has been to ensure that, in transposing the requirements of the revised Waste Framework Directive, the requirements are the minimum necessary for proper transposition; to take full advantage of derogations available under the Directive; and to ensure that where regulatory controls are necessary they are applied in a manner that is proportionate to the risk to the environment and human health. Defra has engaged in regular discussions with the Federation of Small Businesses and other representatives of small businesses throughout the negotiation and transposition of the revised Waste Framework Directive to ensure that the concerns of small businesses, and the potential impacts on such businesses, are addressed and taken into account wherever possible.

8. Monitoring & review

The effect of Article 37 of the revised Waste Framework Directive is to require Member States to submit reports on their implementation of the Directive to the European Commission every three years. The first report on the UK's implementation of the Directive will be submitted by 30 September 2013. The draft instrument will be monitored in order to prepare that report and will be reviewed in the light of the report that is submitted in compliance with Article 37.

Revised Waste Framework Directive Transposition Note (England and Wales)

<u>Provision Of Directive</u>	<u>Provision Of Regulations</u>	<u>Comment</u>
<i>Article 1</i> Subject matter and scope	<ul style="list-style-type: none"> • Regulation 5(a) • Regulation 8(2)(a) • Schedule 1 paragraph 1. 	Article 1 is transposed in the provisions relating to waste management plans and waste prevention programmes, as required by Article 28(1) and Article 29(1).
<i>Article 2</i> Exclusions from the scope	<p>Article 2(1) to (3)</p> <ul style="list-style-type: none"> • Regulation 2 • Regulation 47 • Schedule 2 paragraph 1 • Schedule 3 paragraphs 2, 4(2), 6 to 8, 13 • Schedule 4 paragraphs 2 and 3(6). <p>Article 2(4) does not need to be transposed.</p>	<p>The Regulations do not apply to waste that is excluded from the scope of the Directive under Article 2(1) to (3). The exception to this is certain radioactive waste which is exempt from the requirement for an environmental permit under a specified order. The effects of regulation 47 and the related amendments to other legislation are to ensure that such radioactive waste is treated as waste for the purposes of the Regulations and the other legislation that is amended in this way.</p> <p>The Regulations amend other legislation to give effect to the exclusions in Article 2(2) and (3).</p>
<i>Article 3</i> Definitions	<ul style="list-style-type: none"> • Regulation 3(2) • Schedule 2 paragraphs 2(1) and 5(b) • Schedule 3 paragraphs 2(a) and 11 to 14 • Schedule 4 paragraphs 2, 3(6), 8(a), 14(b), 15(b), 18(b), 21(a) and(b) and 22(b). 	<p>Unless specifically defined in the Regulations, the Directive's definitions are imported into the Regulations by regulation 3(2).</p> <p>The Regulations make consequential amendments to definitions in other legislation to bring them into line with the Directive definitions.</p>
<i>Article 4</i> Waste hierarchy	<ul style="list-style-type: none"> • Regulation 5(a) • Regulation 8(2)(a) • Regulation 12 • Regulation 15 • Regulation 22(b)(i) • Regulation 35(2)(d) • Schedule 1, Part 1, paragraph 2 • Schedule 3 paragraph 9(a). 	<p>Article 4 is transposed through the existing planning system through:</p> <ul style="list-style-type: none"> • amendments to Planning Policy Statement 10 in England and Technical Advice Note 21 (TAN 21) in Wales; • amendments to environmental permitting legislation; • a duty on appropriate authorities with regard to offshore licensing functions; • a duty on waste producers and other holders (see the entry for Article 15 for more detail on this). <p>The Article is also transposed in the provisions relating to waste management plans and waste prevention programmes as required by Articles 28 and 29.</p>
<i>Article 5</i> By-products	<p>Article 5(1) is transposed through the definition of waste.</p> <p>Article 5(2) does not need to be transposed.</p>	<p>In the Regulations, "waste" has the meaning it bears in the Directive, which is in Article 3(1). Article 5(1) operates to clarify the definition of waste in Article 3(1) and this therefore carries through to the Regulations. This also applies to other legislation where waste is given the meaning it bears in Article 3(1).</p> <p>Article 5(2) is a power for the Commission to adopt measures.</p>
<i>Article 6</i> End-of-waste status	Article 6 does not need to be transposed.	<p>Article 6(1) and (2) specifies the Commission's power to develop end-of-waste criteria for certain waste streams. Article 6(3) describes the effect of adopted criteria on recovery and recycling targets in other Directives. Article 6(4) enables Member States to determine end-of-waste criteria where criteria have not been set at</p>

		Community level under Article 6(1) and (2).
<i>Article 7</i> List of waste	Article 7(4)- <ul style="list-style-type: none"> Schedule 2 paragraph 7(b) and 8(a). <p>Article 7(7) does not need to be transposed.</p>	With the exception of Article 7(4) and 7(7), this Article is transposed in England and Wales by the Hazardous Waste (England and Wales) Regulations 2005 and the Hazardous Waste (Wales) Regulations 2005.
<i>Article 8</i> Extended producer responsibility	Article 8 does not need to be transposed.	Article 8 confers a discretion on Member States in respect of extended producer responsibility measures.
<i>Article 9</i> Prevention of waste	Article 9 does not need to be transposed.	This Article requires the Commission to produce reports on waste prevention as described in the Article.
<i>Article 10</i> Recovery	Article 10(1)- <ul style="list-style-type: none"> see entries for transposition of Articles 4 and 13. <p>Article 10(2)- <ul style="list-style-type: none"> Regulation 13; Regulation 14. <p>There is also a power in Regulation for the appropriate authority to give guidance on the discharge of the duties in regulations 13 and 14.</p> </p>	Article 10(1) is transposed by the same provisions of the Regulations implementing Article 4 and Article 13– see the entries for those Articles. Article 10(2) contains a requirement for the separate collection of waste, which has to be read with paragraphs 2 and 3 of Article 11(1). It also prohibits the mixing of separately collected waste with other waste. These duties apply from 1 January 2015 as per paragraph 3 of Article 11(1).
<i>Article 11</i> Re-use and recycling	Article 11(1) first paragraph- <ul style="list-style-type: none"> Regulation 8(2)(b) Schedule 1 paragraph 10 <p>Article 11(1) second and third paragraphs- <ul style="list-style-type: none"> Regulation 8(2)(b) Regulation 13 Schedule 1 paragraph 8. <p>Article 11(2)- <ul style="list-style-type: none"> Regulation 8(2)(b) Schedule 1 paragraph 11. <p>There is no need to transpose Article 11(3) to (5).</p> </p></p>	Article 11(1) and Article 11 (2) are transposed in the Regulations in the provisions relating to separate collection and waste management plans.
<i>Article 12</i> Disposal	<ul style="list-style-type: none"> See entry for transposition of Article 13. 	Article 12 is transposed by the same provisions of the Regulations transposing Article 13 – see entry below.
<i>Article 13</i> Protection of human health and the environment	<ul style="list-style-type: none"> Regulation 8(2)(a); Regulation 18(a) Regulation 22(c) Schedule 1 paragraph 3 Schedule 3 paragraph 9(a) Partly transposed by existing legislation. 	The Regulations transpose the Article 13 requirement as follows:- <ul style="list-style-type: none"> as an objective in waste management plans; as a duty on planning authorities in the exercise of their planning functions; as a duty on the “appropriate authority” in relation to deposits at sea and the exercise of offshore licensing functions; as a duty on the environmental permitting regulator in the exercise of relevant functions by amending the Environmental Permitting (England and Wales) Regulations 2010. <p>Article 13 is also transposed through existing legislation in section 33 of the Environmental Protection Act 1990.</p>
<i>Article 14</i> Costs	There is no need to transpose Article 14.	
<i>Article 15</i> Responsibility for waste management	Article 15(1)- <ul style="list-style-type: none"> Regulation 12 Regulation 35(2)(d). 	Article 15(1) is partly transposed by the existing duty of care provisions in section 34 of the Environmental Protection Act 1990.

	<p>There is no need to transpose Article 15(2) and (3).</p>	<p>In addition to this, regulation 12 introduces a new duty on waste producers and other holders in relation to the waste hierarchy. Regulation 35(2)(d) requires a declaration on the waste transfer note confirming compliance with the regulation 12 duty.</p> <p>Article 15(4) is transposed by the existing duty of care provisions in section 34 of the Environmental Protection Act 1990.</p>
<p><i>Article 16</i> Principles of self-sufficiency and proximity</p>	<ul style="list-style-type: none"> • Regulation 8(2)(a) • Regulation 18(b) and (c) • Schedule 1 paragraph 4. <p>The second paragraph of Article 16(1) does not need to be transposed.</p>	<p>Article 16 is transposed through the requirements relating to waste management plans and the exercise of planning functions.</p>
<p><i>Article 17</i> Control of hazardous waste</p>		<p>Article 17 is transposed by the existing Hazardous Waste (England and Wales) Regulations 2005, the Hazardous Waste (Wales) Regulations 2005 and the Environmental Permitting (England and Wales) Regulations 2010. The traceability requirement is transposed by Part 6 of the respective Hazardous Waste Regulations.</p>
<p><i>Article 18</i> Ban on the mixing of hazardous waste</p>	<p>Article 18(1)-</p> <ul style="list-style-type: none"> • Schedule 2, paragraph 8(a). <p>Article 18(2)-</p> <ul style="list-style-type: none"> • Regulation 22(e)(i) • Schedule 3, paragraph 9. <p>Article 18(3)</p> <ul style="list-style-type: none"> • Schedule 2, paragraph 10(b). <p>Also transposed by existing legislation.</p>	<p>The Regulations and the Waste (Miscellaneous Provisions) Regulations 2011 make the necessary amendments to the existing mixing ban and derogations included in the Hazardous Waste (England and Wales) Regulations 2005 and the Hazardous Waste (Wales) Regulations 2005 and the Environmental Permitting (England and Wales) 2010.</p> <p>There is also a duty in the Regulations relating to the exercise of off-shore licensing functions.</p>
<p><i>Article 19</i> Labelling of hazardous waste</p>		<p>This Article is transposed by the existing Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2009 and the Chemicals (Hazardous Information and Packaging for Supply) Regulations 2009.</p>
<p><i>Article 20</i> Hazardous waste produced by households</p>		<p>There is no need to transpose the first sentence of Article 20 as there is nothing in the existing legislation which applies Articles 17, 18, 19 and 35 to mixed waste produced by households.</p> <p>The second sentence of Article 20 is transposed by the Hazardous Waste (England and Wales) Regulations 2005 and Hazardous Waste (Wales) Regulations 2005.</p>
<p><i>Article 21</i> Waste oils</p>	<p>Article 21(1)(a)-</p> <ul style="list-style-type: none"> • Transposed by existing legislation. <p>Article 21(1)(b)-</p> <ul style="list-style-type: none"> • See entries above for transposition of Articles 4 and 13. <p>Article 21(1)(c)-</p> <ul style="list-style-type: none"> • Schedule 2, paragraph 9(c). <p>There is no need to transpose Articles 21(2) and (3).</p>	<p>The Hazardous Waste (England and Wales) Regulations 2005 and the Hazardous Waste (Wales) Regulations 2005 provide for the separate collection of hazardous waste the prohibition on mixing.</p> <p>Articles 21(2) and (3) are discretionary.</p>
<p><i>Article 22</i> Bio-waste</p>	<p>Article 22(a)-</p> <ul style="list-style-type: none"> • Schedule 1 paragraph 9. 	

	<p>Article 22(b) and (c)-</p> <ul style="list-style-type: none"> • See entry above for transposition of Article 13. 	
<p><i>Article 23</i> Issue of permits</p>	<p>Article 23(1)-</p> <ul style="list-style-type: none"> • Regulation 22(d); • Schedule 3 paragraph 9. <p>Article 23(2)-</p> <ul style="list-style-type: none"> • Existing legislation permits this. <p>Article 23(3) and (4)</p> <ul style="list-style-type: none"> • Regulation 22(e)(ii) • Schedule 3 paragraph 9. <p>Article 23(5)-</p> <ul style="list-style-type: none"> • Existing legislation permits this. 	<p>The Environmental Permitting (England and Wales) Regulations 2010 provide for renewable and single-site permits.</p>
<p><i>Article 24</i> Exemptions from permit requirements.</p>	<p>Transposed by existing legislation.</p>	<p>This Article is a discretionary provision enabling Member States to provide exemptions from the Article 23 permit requirement. The discretion available under Article 11 of Directive 2006/12/EC has been used to provide a range of permit exemptions for waste operations, which include general rules and conditions, in Schedules 2 and 3 to the Environmental Permitting (England and Wales) Regulations 2010. These provisions were notified to the Commission and will continue in force.</p>
<p><i>Article 25</i> Conditions for exemptions</p>	<p>Article 25(1) and (2)-</p> <ul style="list-style-type: none"> • Transposed by existing legislation. <p>There is no need to transpose Article 25(3).</p>	<p>See the previous entry. In relation to notification of general rules under Article 25(3), see final sentence of the previous entry.</p>
<p><i>Article 26</i> Registration</p>	<p>Article 26(a)</p> <ul style="list-style-type: none"> • Part 8. <p>Article 26(b)</p> <ul style="list-style-type: none"> • Part 8. <p>Article 26(c).</p> <ul style="list-style-type: none"> • Transposed by existing legislation. 	<p>In respect of Article 26(a) and (b), registration is required by section 1 of the Control of Pollution (Amendment) Act 1989 and supporting provisions are made by Part 8 of the Regulations.</p> <p>The requirement for registration under Article 26(c) is transposed in the Environmental Permitting (England and Wales) Regulations 2010, regulation 4 and Schedule 2.</p>
<p><i>Article 27</i> Minimum standards</p>	<p>There is no need to transpose Article 27.</p>	
<p><i>Article 28</i> Waste management plans</p>	<ul style="list-style-type: none"> • Regulation 7. • Regulation 8. • Schedule 1 Parts 1, Part 2 (paragraphs 5 to 7) and Part 3. 	
<p><i>Article 29</i> Waste prevention programmes</p>	<p>Article 29(1) to (3)-</p> <ul style="list-style-type: none"> • Regulation 4 • Regulation 5 • Regulation 6 • Schedule 1 Part 1. <p>There is no need to transpose Article 29(4) and (5).</p>	
<p><i>Article 30</i> Evaluation and review of plans and programmes</p>	<p>Article 30(1)-</p> <ul style="list-style-type: none"> • Regulation 10(1). <p>There is no need to transpose Article 30(2).</p>	
<p><i>Article 31</i> Public participation</p>	<ul style="list-style-type: none"> • Regulation 10(2). • Regulation 11. 	

	<ul style="list-style-type: none"> Schedule 1, Part 4. 	
<i>Article 32</i> Cooperation	There is no need to transpose Article 32.	
<i>Article 33</i> Information to be submitted to the Commission	There is no need to transpose Article 33.	
<i>Article 34</i> Inspections	<p>Article 34(1)-</p> <ul style="list-style-type: none"> Partly transposed by existing legislation Regulation 23 Regulation 34(1). <p>Article 34(2)-</p> <ul style="list-style-type: none"> Regulation 34(2). <p>There is no need to transpose Article 34(3).</p>	<p>Regulation 34(2) of the Environmental Permitting (England and Wales) Regulations 2010 already provides for inspection of waste operations.</p> <p>Regulation 56 of the Hazardous Waste (England and Wales) Regulations 2005 and Hazardous Waste (Wales) Regulations 2005 requires the inspection of producers of hazardous waste.</p>
<i>Article 35</i> Record keeping	<p>Article 35(1)-</p> <ul style="list-style-type: none"> Regulation 22(e)(iii) Schedule 2 paragraphs 19 and 20 Schedule 3 paragraph 9. <p>Article 35(2)-</p> <ul style="list-style-type: none"> Transposed by existing legislation. <p>There is no need to transpose Article 35(3).</p>	Article 35(2) is transposed by the Hazardous Waste (England and Wales) Regulations 2005 and the Hazardous Waste (Wales) Regulations 2005, regulations 49 and 50.
<i>Article 36</i> Enforcement and penalties	<p>Article 36(1)-</p> <ul style="list-style-type: none"> Transposed by existing legislation. <p>Article 36(2)-</p> <ul style="list-style-type: none"> Partly transposed by existing legislation Part 10. 	<p>Article 36(1) is transposed by section 33 of the Environmental Protection Act 1990 and regulation 12 of Environmental Permitting (England and Wales) Regulations 2010.</p> <p>Part 10 of the Regulations provides for enforcement of the duties in Part 5 and regulation 25.</p> <p>Article 36(2) is also transposed through section 1 of the Control of Pollution (Amendment) Act 1989, regulations 65, 69 and 70 of the Hazardous Waste (England and Wales) Regulations 2005 and Hazardous Waste (Wales) Regulations 2005, regulations 38 and 39 of the Environmental Permitting (England and Wales) Regulations 2010 and sections 9 and 21 of the Food and Environment Protection Act 1985.</p>
<i>Article 37</i> Reporting and reviewing	There is no need to transpose Article 37.	
<i>Article 38</i> Interpretation and adaptation to technical progress	There is no need to transpose Article 38.	
<i>Article 39</i> Committee procedure	There is no need to transpose Article 39.	
<i>Article 40</i> Transposition	There is no need to transpose Article 40.	
<i>Article 41</i> Repeal and transitional provisions	There is no need to transpose Article 41.	
<i>Article 42</i> Entry into force	There is no need to transpose Article 42.	
<i>Article 43</i> Addressees	There is no need to transpose Article 43.	

Annex 2 - Revised WFD Stakeholder Group

This group meets about 4 times a year and the stakeholders involved are as follows:

Agricultural industries Confederation
Arc21
Association for Organics Recycling
Association of Electricity Producers
British Aggregates Association
British Chambers of Commerce
British Metals Recycling Association
British plastics Federation
British Property Federation
Chartered institution of Wastes Management
Chartered institution of Water and Environmental Management
Chemical Industries Association
Confederation of British Industry
Construction Products Association
Corus Group
Convention of Scottish Local Authorities (CoSLA)
EEF Manufacturers' Organisation
Environmental Industries Commission
Environmental Services Association
European Environmental Bureau
Federation of Small Businesses
Food and Drink Federation
Friends of the Earth
Green Alliance
House Builders Federation
Local Authority Recycling Advisory Committee (LARAC)
Local Government Association (England, Northern Ireland and Wales)
Metal Packaging Manufacturers Association
Mineral Products Association Ltd*
National Farmers' Union
Non-Ferrous Alliance
North West Region Waste Management Group
Oil Recycling Association
Planning Officers Society
Royal Town Planning Institute
Southern Waste Management Partnerships
The packaging Federation
UK Renderers Association
Water UK
WRAP

Corresponding

British Glass
Scotch Whisky Association

Organisations from Northern Ireland are in *italics*

*Formerly the Quarry Products Association and "Corresponding" the British Cement Association

ANNEX 3 – IMPACT ASSESSMENT

Title: Impact Assessment of the Transposition of the Revised Waste Framework Directive (Directive 2008/98/EC) Lead department or agency: Department for Environment, Food and Rural Affairs Other departments or agencies: Welsh Assembly Government	Impact Assessment (IA)
	IA No: Defra 1012
	Date: 23/11/2010
	Stage: Development/Options
	Source intervention: Domestic
	Type of measure: Secondary legislation
Contact for enquiries: John MacIntyre Tel: 020 7238 4353	

Summary: Intervention and Options

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

The recovery and disposal of waste has the potential to harm the environment and human health if unregulated. The revised European Waste Framework Directive (WFD) seeks to tackle the environmental/health externalities that result from certain types of waste management across the EU (such as the greenhouse gas impacts of landfilling relative to recycling) by requiring Member States by law to intervene to reduce the adverse impacts of waste generation and management. The revised WFD re-enacts, repeals or revises three existing Directives - the existing WFD, the Waste Oils Directive and the Hazardous Waste Directive - but also introduces several new provisions which potentially will have an impact both on the way waste is managed in England and Wales, and on the costs involved in doing so.

What are the policy objectives and the intended effects?

The objectives are to reduce the adverse impacts of the generation of waste and the overall impacts of resource use by: (1) introducing a household waste recycling target and construction and demolition recovery target, (2) to ensure that the four specified materials are collected separately by 2015, (3) taking measures as appropriate to promote the re-use of products and preparing for re-use activities; (4) applying the waste hierarchy as a priority order in waste prevention and management legislation and policy; (5) extending the self-sufficiency & proximity principles to apply to installations for recovery of mixed municipal waste from households, (6) revising the scope and content of waste management plans and (7) establishing waste prevention programmes.

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

This second stage consultation and impact assessment covers 10 provisions of the revised WFD. The policy options considered are extensively covered in the Evidence Base. Where additional actions are taken, the costs and benefits of the options are appraised relative to the implicit do nothing baseline, and are presented in the summary tables throughout the document. Measures have been taken only where necessary to comply with the minimum requirements of the revised WFD. Table 1 covers the set of preferred options which is also what is covered in the Summary Sheet overleaf.

When will the policy be reviewed to establish its impact and the extent to which the policy objectives have been achieved?	It will be reviewed 12/2012
Are there arrangements in place that will allow a systematic collection of monitoring information for future policy review?	Yes

Ministerial Sign-off For consultation stage Impact Assessments:

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

Signed by the responsible Minister: Date.....

Summary: Analysis and Evidence

Policy Option 1

Description:

This summary represents the summary for the preferred set of policy options in the IA. Detailed CBA for each of the policy options can be found within the IA.

Price Base Year 2010	PV Base Year 2010	Time Period Years 10yr	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate: £0

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	£28.5m	£1.6m	£40.5m
High	£51.0m	£3.9m	£81.3m
Best Estimate	£39.7m	£2.7m	£60.9m

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

Many of the provisions incur no additional costs, but there are 4 areas where costs may be incurred in the preferred set of policy options - Waste Hierarchy, Hazardous Waste, Waste Management Plans and Carriers. These are discussed in detail in Table 1. The largest component of the costs, are the one-off costs to business of reading and understanding the guidance under Stage 3 of the Waste Hierarchy actions.

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

There are no key non-monetised costs within this IA.

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

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

Estimating monetary benefits of implementing the waste hierarchy is challenging so switching point analysis assesses the level of incentivisation up the waste hierarchy required for these proposals to be cost neutral. This is discussed further in the IA, it is judged that actions could feasibly be cost neutral. For example if incentivisation up the waste hierarchy reduces food waste by businesses by 0.3-0.5% and increases paper/card recycling by 2-4% over 10 yrs, low by historical trends.

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

The new approaches outlined here serve to reinforce the need for sustainable waste management, through measures to protect human health and the environment, including more reduction, recycling and recovery of waste and using the disposal of waste as a last resort. This is to achieve environmental benefits of reduced GHG emissions and reduced use of virgin materials. Lower tier carrier registration could reduce flytipping and associated disamenity costs but has not been monetised.

Key assumptions/sensitivities/risks

Discount rate (%) 3.5%

The assumptions in the modelling of costs are discussed in detail in relevant sections

Impact on admin burden (AB) (£m):		Impact on policy cost savings (£m):	In scope
New AB:	AB savings:	Policy cost savings: n/a	Yes/No
	Net:		

Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?	England and Wales				
From what date will the policy be implemented?	01/04/2011				
Which organisation(s) will enforce the policy?	EA lead				
What is the total annual cost (£m) of enforcement for these organisations?	n/a				
Does enforcement comply with Hampton principles?	Yes				
Does implementation go beyond minimum EU requirements?	No				
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)	Traded:		Non-traded:		
Does the proposal have an impact on competition?	No				
What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?	Costs:		Benefits:		
Annual cost (£m) per organisation (excl. Transition) (Constant Price)	Micro	< 20	Small	Medium	Large
Are any of these organisations exempt?	No	No	No	No	No

Specific Impact Tests: Checklist

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

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

Does your policy option/proposal have an impact on...	Impact	Page ref within IA
Statutory equality duties¹? Equality and Human Rights Commission: General guidance	No	35

Economic impacts		
Competition? Competition Impact Assessment	Yes	35
Small firms? Small Firms Impact Test	Yes	35

Environmental impacts		
Greenhouse gas assessment? http://www.defra.gov.uk/environment/index.htm	Yes	35
Wider environmental issues? Guidance has been created on the Defra site	Yes	35

Social impacts		
Health and well-being? Health: Health Impact Assessment	No	35
Human rights? Ministry of Justice: Human Rights	No	35
Justice?	No	35
Rural proofing? Commission for Rural Communities	No	35

Sustainability? Defra: Think sustainable	No	35
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¹ Race, disability and gender Impact assessments are statutory requirements for relevant policies. Equality statutory requirements will be expanded 2011, once the Equality Bill comes into force. Statutory equality duties part of the Equality Bill apply to GB only. The Toolkit provides advice on statutory equality duties for public authorities with a remit in Northern Ireland.

Evidence Base (for summary sheets) – Notes

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

References

Include the links to relevant legislation and publications, such as public impact assessment of earlier stages (e.g. Consultation, Final, Implementation).

No.	Legislation or publication
1	http://www.defra.gov.uk/corporate/consult/waste-framework/consultation.pdf
2	
3	
4	

+ Add another row

Evidence Base

Ensure that the information in this section provides clear evidence of the information provided in the summary pages of this form (recommended maximum of 30 pages). Complete the **Annual profile of monetised costs and benefits** (transition and recurring) below over the life of the policy (use the spreadsheet attached if the period is longer than 10 years).

The spreadsheet also contains an emission changes table that you will need to fill in if your measure has an impact on greenhouse gas emissions.

Annual profile of monetised costs and benefits* - (£m) constant prices

	Y ₀	Y ₁	Y ₂	Y ₃	Y ₄	Y ₅	Y ₆	Y ₇	Y ₈	Y ₉
Transition costs		31.2		8.6						
Annual recurring cost		2.2	2.2	3.2	3.2	3.2	3.2	3.2	3.2	3.2
Total annual costs		33.4		11.8						
Transition benefits										
Annual recurring benefits										
Total annual benefits										

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

Annual costs relate both to (a) one off costs of reading guidance of the waste hierarchy and lower tier carrier registration incurred on new businesses at the time of start up and (b) on-going annual costs saving to existing business.

Annualised equivalent net cost to businesses is calculated instead of admin burdens in line with new requirements.

NPV of costs to businesses £39.4m to £80.2m. AER of £4.7m - £9.6m.

Evidence Base (for summary sheets)

Background

1. At the Environment Council on 28 June 2007, the Council reached political agreement on a proposed revision of the Waste Framework Directive (WFD). The Presidency, acting on behalf of the Council, reached a compromise agreement with the Rapporteur on the European Parliament (EP)'s proposed amendments to the revised WFD, and the EP voted to adopt the compromise agreement at its plenary session on 17 June 2008. The text of the Common Position, as amended by the Parliament, was adopted when the Environment Council met on 20 October 2008.
2. The revised WFD (2008/98/EC) was published on 19 November 2008 and the effect of Article 42 is to provide that it enters into force on 12 December 2008. Article 40 requires Member States to "bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 12 December 2010."

Purpose and Intended Effect

3. The revised WFD re-enacts, repeals or revises three existing Directives:
 - (i) the existing WFD²;
 - (ii) the Waste Oils Directive³; and
 - (iii) the Hazardous Waste Directive⁴.

The UK already has in place the necessary laws etc. to comply with these three Directives. However, the revised WFD also introduces several new provisions.

4. The main changes introduced by the revised WFD may be summarised as follows:-
 - Greater emphasis on resource efficiency and waste prevention as an objective of waste policy alongside protection of the environment and human health.
 - The "waste hierarchy" is now a "priority order" in policy and legislation (prevention; preparing for re-use; recycling; recovery (e.g. energy recovery); and disposal) but Member States may depart from it if doing so results in a better environmental outcome.
 - Member States must put in place "waste prevention programmes" by the end of 2013. The Commission must report on progress in waste prevention by 2011 and by the end of 2014 has to set waste prevention and decoupling objectives for 2020.
 - Member States must achieve a target of re-using or recycling 50% of household waste (including paper, metal, plastic and glass) by 2020; and achieve a target of re-using, recycling or recovering 70% of construction and demolition waste by the same date.

² Directive 2006/12/EC available at:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:114:0009:0021:EN:PDF>

³ Directive 75/439/EEC (as amended) available at:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31975L0439:EN:HTML>

⁴ Directive 91/698/EEC (as amended) available at:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31991L0689:EN:HTML>

- Member States must set up separate collection for at least paper, metal, plastic and glass by 2015, “where technically environmentally and economically practicable and appropriate”. The Regulation make clear that co-mingled collection is a form of separate collection.
- to give effect to a 2005 judgment of the European Court of Justice (ECJ) to require registration of all those that “normally and regularly transport waste, whether the waste is produced by them or others”. In line with a previous consultation in 2008, the rWFD consultation proposed a two tier system.

Rationale for Government Intervention

5. The recovery and disposal of waste imposes externalities on UK society, ranging from the greenhouse gas impacts of landfilling waste to the potential health impacts of hazardous wastes. The rationale for Government waste policy is therefore to tackle such externalities and their adverse impacts, thereby improving environmental and health outcomes in the UK. This is done in particular through:
 - reducing the impact of waste on climate change; and
 - reducing risks to health and the environment from potentially harmful substances within waste.

Options

6. The WFD is already part of UK law. Not adopting the revisions to it into UK law would be illegal and would inevitably result in infraction proceedings by the European Commission against the UK and the consequential imposition of significant fines by the European Court of Justice (ECJ). This does not mean however that costs or benefits can be assumed and there still needs to be a full assessment of the costs and benefits associated with each option, including the status quo option of doing nothing, which might in some instances represent the preferred option. The purpose of this IA is to lay out all the evidence surrounding the options and to act as a basis for decision making.
7. The European Court of Justice (ECJ) is able to impose financial sanctions on any Member State which fails to implement a judgement from the ECJ establishing an infringement of Community law. The Commission has warned that it will usually recommend both a penalty for each day between the judgement of the Court that there has been an infringement and compliance with the Directive, together with a lump sum penalising the continuation of the infringement between the first judgement on non-compliance and the judgement delivered under Article 228 of the European Community (EC) Treaty. Annex 4 provides information on the potential size of these fines from infractions of other Directives.
8. Defra has considered the Specific Impact Tests (SITs) taking into account responses from the second stage consultation. The result of the SITs are in the annex.
9. Article 1 of the revised WFD explains that the Directive’s objective is to lay down measures:-

“...to protect the environment and human health by preventing or reducing the adverse impacts of the generation and management of waste and by reducing overall impacts of resource use and improving the efficiency of such use.”

10. Within the framework set by this objective, the consultation paper invited views on the transposition in England and Wales on the following provisions:-

- **Article 4: The waste hierarchy** and its application as a priority order in waste prevention and management legislation and policy.
- **Article 8: Extended producer responsibility** and whether the discretion available to Member States should be used to strengthen the re-use, prevention and recycling/recovery of waste.
- **Article 11: Re-use, recycling and collection** – which introduces the following range of provisions:-
 - o **Article 11(1)**: The taking of measures, as appropriate, to promote the re-use of products and preparing for re-use activities, notably by encouraging the establishment and support of re-use and repair networks, the use of economic instruments, procurement criteria, quantitative objectives or other measures.
 - o **Article 11(1)**: The setting up of separate collections of waste where technically, environmentally and economically practicable and appropriate to meet the necessary quality standards for the relevant recycling sectors – including by 2015 separate collection for at least paper, metal, plastic and glass⁵.
 - o **Article 11(2)(a)**: A household waste recycling target – the preparing for re-use and the recycling of waste materials such as at least paper, metal, plastic and glass from households and possibly other origins as far as these waste streams are similar to waste from households, must be increased to a minimum of 50% by weight by 2020.
 - o **Article 11(2)(b)**: A construction and demolition waste recovery target – the preparing for re-use, recycling and other material recovery⁶ of non-hazardous construction and demolition waste⁷ must be increased to a minimum of 70% by weight by 2020.
- **Article 16: Principles of self-sufficiency and proximity**. These principles previously applied only to waste disposal installations, but Article 16 of the revised WFD extends them to apply also to installations for the recovery of mixed municipal waste collected from private households.

⁵ Subject to Article 10(2) of the revised WFD, which provides that, where necessary to ensure that waste undergoes recovery operations and to facilitate or improve recovery, waste shall be collected separately if technically, environmentally and economically practicable and shall not be mixed with other waste or other material with different properties.

⁶ Including backfilling operations using waste to substitute other materials.

⁷ Excluding naturally occurring material defined in category 17 05 04 of the European Waste Catalogue.

- **Articles 17-20: Hazardous Waste.** The revised WFD repeals and re-enacts the existing Hazardous Waste Directive. However, the revised WFD also makes some changes which could impact on the management of hazardous waste.
 - **Article 21: Waste Oils.** The revised WFD repeals the Waste Oils Directive. However, some of the provisions of the Waste Oils Directive are re-enacted in the revised WFD.
 - **Article 22: Bio-waste** and the taking of measures to encourage (a) the separate collection of bio-waste with a view to its composting and digestion; (b) the treatment of bio-waste in a way that fulfils a high level of environmental protection; and (c) the use of environmentally safe materials produced from bio-waste.
 - **Article 28: Waste management plans.** Article 28 revises the scope and content of waste management plans and it will be necessary to transpose these revised requirements.
 - **Article 29: Waste prevention programmes.** Member States are required to establish waste prevention programmes not later than 12 December 2013. They should not only describe existing waste prevention measures but also evaluate the usefulness of 16 example measures set out in Annex IV to the revised WFD.
11. The Impact Assessment takes account of points raised by consultees about the costs associated with (a) the waste hierarchy and permitting, (b) the application of the waste hierarchy to waste producers, and (c) the registration of waste carriers affected by an ECJ judgement. Defra has worked closely with the Environment Agency and BIS to ensure that a light touch approach has been taken to transposing the Directive, with full consideration of the impact on businesses and minimising the costs to businesses, local authorities and individuals to the maximum extent possible consistent with meeting EU obligations.

Costs and Benefits

12. The following sections describe the costs and benefits associated with the implementation of the revised WFD. Many of the Articles considered here, in Government's view, do not require additional action in terms of new policy, and there are therefore no costs and benefits associated with those Articles.
13. For the whole IA, it is challenging to analyse benefits in any quantifiable sense, as the impacts of the proposed policy actions are not certain. The benefits have therefore been analysed using switching point analysis, i.e. in order that the costs are justified, what level of incentivisation up the waste hierarchy would we need to see. All businesses, particularly SMEs need to consider other factors such as landfill costs (incl tax) that are set to continue rising and how they could save themselves money as well as reduce GHG by thinking about ways to avoid waste e.g. through better procurement, planning and even simple things like printing double-sided.
14. In general, although there are likely to be costs relating to waste management and prevention as a consequence of application of the waste hierarchy by waste producers there are also likely to be significant benefits resulting from low cost measures in waste prevention and recycling. WRAP has examples of a number of case studies which illustrate the potential savings from implementing the waste

hierarchy for medium sized businesses, and the balance between costs and benefits. In the case of a hotel, a commitment to eliminate, reduce, re-use and recycle as much waste as possible resulted in costs savings of £10,000 per annum. These benefits mainly resulted from a change in the supply of toiletries (e.g. using refillable pump dispensers), laundry treatment and purchasing habits which did not incur significant costs and in a number of cases, reduced costs.

15. A further case study of a pharmaceuticals company which focused on eliminating waste at source showed implementation of the waste hierarchy resulted in costs savings of £72,606 per year, mainly from a reduction in hazardous raw material usage and associated carrier costs, with further potential savings of up to £150,000 a year.
16. A salad manufacturer reduced costs by £65,279 per year as a result of the savings from diverting waste from landfill and improved packaging management. These case studies document the private cost savings to a company and they may underestimate the social benefits of implementation of the waste hierarchy when account is taken of the avoided GHG emissions from the extraction of virgin materials.
17. Although the measures described above have resulted in net benefits for the companies, they had not been undertaken due to lack of information and it may take some time for the financial benefits to offset the costs. Not all the benefits of waste reduction and prevention benefit the individual company financially and this may also reduce the incentive to act. Guidance on the waste hierarchy and informational resource such as WRAP can address some of these issues.
18. For this IA, the levels of benefits in terms of waste prevention and an increase in recycling needed to justify the costs are considered achievable, and therefore the IA considers the impacts as cost neutral at least. In the switching point analysis, the benefits of food waste prevention are an estimated value of £2,000 per tonne from WRAP which is based on best available knowledge and has not been peer reviewed. A reduction in food waste of 18,000 to 30,000 tonnes, equivalent to 0.3–0.5% over the whole 10 year period seems achievable. The increase in paper/card recycling of 2-4% over 10 years is equivalent to an increase of 0.2-0.4% per year. This figure looks achievable when compared to the progress made from an increase in waste recycling to 58% (from the interim C&I survey for 2009/10) in 2009 from 43% in 2002. These figures gives an indication of the potential benefits of incentivisation up the waste hierarchy. Other figures for specific types of waste prevention may give different level of benefits. Actual measures by each company can lead to a wide range of net benefits and therefore it is difficult to make estimates of the actual benefit to cost ratio on an aggregate basis.

Table 1: Summary table presenting the preferred set of options (excluding those articles where there is no additional action)

ARTICLE	PREFERRED OPTION	COSTS	BENEFITS
Waste Hierarchy Stage 1: Applying the WH through existing strategies and frameworks	WH applied through LA plans, PPS10 or RWP	Additional minimal costs on public sector	<p>It is challenging to estimate the benefits of such a Directive, with many components cumulatively achieving incentivisation up the waste hierarchy. Therefore we have opted for an analysis based on the level of benefits we would need to observe in order to make the IA cost neutral.</p> <p>Taking a combination of prevention of food waste and increased paper/card recycling as an example, achieving a level of cost neutrality in the IA means that we would need to incentivise up the waste hierarchy to something equivalent of an extra 18,000-36,000 tonnes of food waste prevented and 54,000-116,000 tonnes of paper/card recycled over the 10 year policy period for benefits to exceed the high range. This represents 0.3% to 0.5% of the estimated food waste by businesses and 2-4% of the total tonnes of paper/card recovered from England and Wales municipal waste streams in 2007/08. It therefore looks achievable, especially as this is considering a 10 year cycle.</p> <p>This switching point analysis of the benefits will vary by material, and these figures are illustrative. Examples of the benefits of application of the waste hierarchy are in the IA.</p> <p>Non-monetised environmental benefits of include reduced GHG emissions and reduced use of virgin materials.</p>
Waste Hierarchy Stage 2: Applying WH through environmental permitting regime	New condition for new or significantly varied environmental permits to ensure that businesses take appropriate measures to minimise the waste generated by the operation and to ensure, where waste is generated, that it is treated in accordance with the hierarchy	<p>Annual costs of £40,300 to £80,600 for businesses to use guidance and apply to the permitting regime.</p> <p>Costs to public sector £40,300</p>	
Waste Hierarchy Stage 3: Applying WH to individual waste producers and waste holders	Waste producers to read and understand guidance. Declaration in Waste Transfer Note	<p>One-off cost of £21.9m to £38.4m to all businesses not requiring a permit of reading and understanding the guidance.</p> <p>On-going costs of £2.6m to £4.6m to new businesses of reading and understanding guidance</p>	
Hazardous Waste Consignment Procedures	Waste Note Allow for the use of an amended standard (single) consignment note, which includes a round number, as a multiple note.	<p>Dependent on assumptions, impacts vary from annual cost savings to business of £3.0m to cost additions of £3.0m.</p> <p>One off costs of £445,333 to £450,333 to businesses and public sector</p>	<p>This will result in an annual estimated reduction in costs of £1.5m to businesses and a reduction in the amount of paperwork needed to be used by operators carrying out multiple consignment notes.</p> <p>The improved cradle to grave monitoring, which is a factor of option 3 will enable the Environment Agency to verify that businesses have handled and dealt with their hazardous waste properly in order to prevent it from harming the environment. The improved tracking will have the benefit of removing the risk of infraction proceedings an adverse judgment of which could result in fines of up to £70,000 a day and/or a lump sum of up to £20m.</p>
Waste management plans	Waste management plans to include details of existing major disposal and recovery installations	One-off cost of £304,000 to LAs	<p>This will allow waste producers to identify sites suitable for managing the wastes they produce.</p> <p>Including this in waste management plans helps us to understand both the local and national picture on waste infrastructure, both in terms of what is in existence and what capacity is likely to be required in the coming years. Married with data on waste arisings, this helps us to assess whether we have the right levels of capacity in different types of infrastructure to meet our needs. It also helps to provide clarity for investment decisions in waste infrastructure.</p>
Waste management plans	Waste management plans to include assessment of the need to close existing waste installations, using LA plans	One-off cost of £304,000 to LAs	

ARTICLE	PREFERRED OPTION	COSTS	BENEFITS
Carriers	Registration of lower tier carriers	One off costs of £5.5m - £11.5m to lower tier carriers. Ongoing costs of £0.6m - £1.4m for new businesses to register.	The wider registration will raise awareness of lower risk carriers and their responsibilities, and have the potential to reduce illegal fly tipping activities. Switching point analysis estimated a 3-6% reduction in fly tipping, based on direct clear up costs would make this measure cost neutral. This potential benefit remains non-monetised due to uncertainty. However, the main driver is to comply with EU law and reduce the risk of infraction for this part of the Directive.

Article 4: The waste hierarchy

19. Article 4 of the Directive requires Member States to apply the new waste hierarchy set out below, as a priority order in waste prevention and management **legislation** and **policy**.
- (a) *waste prevention*
 - (b) *preparing for re-use*
 - (c) *recycling*
 - (d) *other recovery, including energy recovery*
 - (e) *disposal*

20. We are proposing to apply the waste hierarchy in **policy** through national waste strategies, and the waste prevention plan which is required under Article 29 of the revised Directive. These activities will be subject to their own Impact Assessment and are not covered here.

'Business as usual' option

21. The 'business as usual' option would be to not transpose the new waste hierarchy. Our existing legislation would not cover the requirements of the revised Directive, and therefore the UK would be exposed to a significant infraction risk. All options are appraised relative to this business as usual option.

Transposition proposals

22. To ensure that the waste hierarchy is transposed into **legislation**, we are proposing a tiered approach:
1. Applying the hierarchy in England through updates to national planning policy (currently PPS10) and therefore to the preparation of Waste Development Frameworks, and in Wales through TAN 21, Regional Waste Plans, the National Waste Strategy (including the Sector Plans).
 2. Applying the hierarchy through the environmental permitting regime. (This would **only** apply to new permits or significant variations).
 3. Application of the hierarchy by individual waste producers or waste holders.
23. In the light of favourable consultation responses, we have decided that the **Hierarchy should be applied through LAs plans, or where those plans do not yet exist or are out of date, through PPS10 (England) and Tan 21 and Regional Waste Plans**

(Wales). The waste hierarchy under article 3(1) of the previous Directive is already embedded in the planning system through PPS10 and TAN 21, and in the national waste strategies in England and Wales. In England, local authorities must have regard to both documents in the preparation of local development frameworks, and PPS10 is capable of being a material consideration in determining individual planning applications. This option would therefore not involve any additional burdens on businesses, though it could impose additional small costs on the public sector.

24. In England, this option could have a small impact on the 152 waste planning authorities (many of whom work together in consortiums on joint waste plans) who draw up Waste Development Frameworks (or Local Development Frameworks with a waste element). Current figures show that there are currently around 100 waste plans (including 70 core strategies and 30 development plan documents) at different stages of preparation in England. (*An average of 11 per region*).
25. In Wales, would impact the management of Regional Waste Plans which are put together by regional groups of local authorities, led by “lead” local planning authorities. We estimate that this is undertaken by around 11.5 members of staff in lead planning authorities and the Environment Agency Wales. The role of Regional Waste Plans will be reviewed as part of the forthcoming consultation on the Collection, Infrastructure and Markets Sector Plan. There are 25 local planning authorities (22 unitary authorities and 3 National Park Authorities). There are 14 adopted UDPs, with 1 further UDP close to adoption and 2 adopted LDPs. A further 21 LDPs are in preparation, with 5 currently at an advanced (deposit) stage. We estimate that on average 1 member of staff per authority works on waste planning
26. In both England and Wales, this option would require these members of staff to familiarise themselves with the new Regulations or updated national planning policy/TAN21, and adapt their thinking when plans are being made to the principles of the hierarchy.

Second stage – This involves applying the hierarchy through the environmental permitting regime.

27. In 2009/10 the EA received a total of 2015 permit applications in England and Wales, (does not include permits where EA have initiated permit modifications, transfers and permit hold). We are therefore using this as our population size for estimating the costs. We do not have accurate information on the number of permits delivered by Local Authorities.
28. We propose that the EA and local authorities introduce a permit condition for new permits or significant variations to existing permits. This would require permit holders to take appropriate measures to minimise the waste generated by their operation and to ensure that, where waste is generated, it is treated in accordance with the hierarchy.
29. Businesses will be able to adapt their operations - if necessary - during the permitting application process or in advance of a permit review. In this way, they can take the hierarchy into account at least cost to them, e.g. by building any changes to processes or contracts into their normal operations over time. In terms of administrative burdens, we are assuming that it may take 1 hour to digest the relevant guidance on applying the waste hierarchy, which would result in estimated annual costs of £40,300 to £80,600 depending on the wages of employees. We

have extended the wage range, in response to consultation feedback, to £20-£40 an hour. The guidance has also been significantly shortened following responses to the second stage consultation. Estimated time taken to read and understand guidance has been reduced in accordance.

30. Annual administrative costs to the public sector are likely to be £40,300 assuming similar time to process the new permit condition.
31. We are not currently proposing to impose conditions on activities covered by an exemption, as exemptions primarily deal with low risk waste recovery operations.

Third stage – This would involve application of the hierarchy by individual waste producers and waste holders.

Option (a) – Modifying Waste Transfer Notes (WTNs) to add a declaration and a narrative about how the waste hierarchy has been considered (alongside a duty in the Regulations to take the hierarchy into account in consigning decisions).

32. Waste producers would be required to read and understand the relevant guidance on the waste hierarchy. It is a legal requirement that waste producers have to have regard to the guidance when they sign the Duty of Care declaration. This had not been accounted for in the consultation stage IA and following second stage consultation responses, we now assume this applies to all private enterprises⁸. Given the significantly shortened guidance, as a response following the consultation, sole proprietorships are estimated to take 15 minutes and enterprises consisting of more than one employee are assumed to take 15 minutes to 1 hour. Sole proprietorships, roughly 75% of private enterprises are expected to take significantly less time to read the now significantly shortened guidance. It will, however act as an estimated wage cost of £5.00 for companies with no other employees. Transition costs to business are estimated £21.9m to £38.3m.
33. In addition, it is assumed all new waste producing enterprises are required to read and understand guidance. We assume 12.2% rate of new enterprise formation (taken from demographics for new businesses (IDB data)), average of last 5 years) and this rate is assumed constant across all businesses regardless of size. Taking away the number who will read guidance through the permitting regime per year (assume permits likely to be required by companies with one employee or more) the on-going costs of the requirements, incurred by new businesses are estimated £2.6m - £4.6m. These costs are not annual recurring costs to existing businesses, but are the on-going costs of the regulations. They are categorised as annual costs in the summary sheet, but relate to a one off cost to new businesses. This cost, although very low, will have an impact on the costs of starting up a business.

34. Waste holders and producers who transfer waste would be required to.

⁸ (4.3m, 2008 data <http://stats.bis.gov.uk/ed/sme/smestats2008-ukspr.pdf>).

- a) confirm they have read the relevant guidance on the waste hierarchy, and
- b) explain, in no more than 200 words, how they have made their choice of how the waste being consigned is being treated (e.g. recycling/composting, or other types of recovery, or disposal) in the context of the hierarchy.

35. The EA estimates that annually 20 million waste transfer notes and 2 million consignment notes are issued in England and Wales. Many businesses are expected to take advantage of a “season ticket” approach. This allows them to fill in a Waste Transfer Notes (WTN) at the start of a contract, and not every time waste is collected (as long as the content remains broadly constant), thus minimising the administrative burden.
36. The estimated cost of filling in a WTN ranges from £0.70 to £1.22. The obligation to produce a waste transfer note or consignment note rests as much on the producer of the waste as on the collector / carrier of that waste. In practice, waste contractors often handle the paperwork (sometimes for a fee) on behalf of the business producing the waste.
37. The cost of the total time to complete the narrative for each waste transfer note and consignment note is estimated as £59.2m. We anticipate that as waste holders and producers become familiar with the new WTNs, they would take much less time to complete.

Option (b) – duty in the Regulations to take the hierarchy into account in consigning decisions, backed up by a standard declaration certifying that waste holders and producers have done so included in Waste Transfer Notes.

38. As with option (a), costs to business would include a one-off cost of reading and understanding the guidance for each registered waste carrier, however, for this option we expect that the additional time required to sign the declaration would be nil and would be the less burdensome approach for businesses. This is why option (b) is the preferred option (table 2), to meet the requirements of the revised WFD in a cost effective manner.
39. The number of prosecutions for offences relating to the Duty of Care are used to estimate the number of prosecutions arising from failure to apply the waste hierarchy. It assumed that there are 11 cases per year and prosecution costs are £700 per case. Further details are in the Justice Impact Test in Annex 5.
40. The cumulative costs of the preferred set of options include one-off costs between £21.9m to £38.3m to businesses and on-going costs between £156,976 and £235,464. These costs need to be appraised relative to the benefits, which are more difficult to gauge and were discussed in the opening sections. See Table 1 above.

Table 2: Summary Table of the tiered transposition proposals for Article 4 on the Waste Hierarchy (with implicit Do Nothing option)

STAGE	OPTIONS	COSTS	BENEFITS	ADDITIONAL NOTES
1. Applying the WH through existing strategies and frameworks	a. WH applied through LA plans, PPS10 or RWP's	Additional minimal costs on public sector	It would be difficult to quantify the benefits of the individual stages of the proposed transposition system, because there will be a high degree of interaction.	This is the preferred option.
2. Applying WH through the environmental permitting regime	New condition for new or significantly varied environmental permits to ensure that businesses take appropriate measures to minimise the waste generated by the operation and to ensure, where waste is generated, that it is treated in accordance with the hierarchy.	Annual £40,300 to £80,600 to businesses applying for a permit of reading guidance and disseminating Costs to public sector of £40,300	In addition, the relative benefits of each of the options within the three tier of the proposed system would not be very different.	This is the preferred option.
3. Applying WH to individual waste producers and waste holders	a. declaration + narrative in WTNs	One off costs of £21.9m to £38.3m to all businesses of reading guidance. On-going costs of £2.6m - £4.6m to new businesses of reading and understanding guidance Annual cost of £59.2m to complete the declaration and narrative.	However, transposing the waste hierarchy would underpin a whole host of other policies which aim to shift waste management up the hierarchy so that environmental benefits are maximised. The analysis of the benefits is discussed more in paragraph 11.	
	b. Declaration in WTN (without a narrative)	One off costs of £21.9m to £38.3m to all businesses of reading guidance. On- going costs of £2.6m - £4.6m to new businesses of reading and understanding guidance Costs of sanctions		This is the preferred option

irrespective of the effect of other instruments such as the Landfill tax etc.

Article 8: Extended producer responsibility

41. Defra and the Welsh Assembly Government do not propose to take forward any additional Producer Responsibility (PR) schemes under Article 8 of the revised WFD at this time. Several of the waste streams suggested are already subject to PR schemes and working to strengthen and improve these schemes, as some respondents suggested, would enable lessons to be learned for the benefit of any future schemes. The EU Directive on Waste Electrical and Electronic Equipment (WEEE) is currently being renegotiated and will no doubt result in changes to the UK's existing PR scheme for WEEE which Defra and the Welsh Assembly Government can learn from.
42. Several of the suggested waste schemes are also subject to voluntary action among industry, for example, waste clothing/textiles and paint, and it would be prudent to assess the success of these initiatives before considering the need for Regulation. There is also limited information on many of the waste streams suggested, and life

cycle assessments, as well as research on the environmental and economic impacts of introducing PR for these streams, would need to be undertaken to assess whether this would be the right option.

43. Nevertheless, PR remains a valuable policy tool in reducing the impacts of waste products on the environment and Defra and the Welsh Assembly Government will keep the need for and suitability of additional PR schemes under review, or for extending existing PR schemes.

Article 11(1): Re-use and Preparing For Re-Use Activities

44. Article 11(1) requires Member States to 'take measures, as appropriate, to promote the re-use of products and preparing for re-use activities, notably by encouraging the establishment and support of re-use and repair networks, the use of economic instruments, procurement criteria, quantitative objectives or other measures.'
45. It is a key objective of Defra and WAG to put more emphasis on waste prevention and reuse, and there are a number of measures currently being taken to promote the re-use of products and preparing for reuse activities. The first stage consultation set out the existing measures and the view that they are sufficient to comply with the requirements of this part of the Article and proposed no further measures at this stage. There was broad consensus with this approach from respondents. Following on from that, we therefore propose no further measures will be required to transpose the requirements of Article 11(1) covering reuse and preparing for reuse.
46. The Waste and Resources Action Programme (WRAP) are continuing to promote reuse and are working on a number of activities to realise the benefits of reuse and preparing for reuse. WRAP have an established programme of work to increase the third sector's capacity to operate in the waste and recycling sector and to strengthen the capacity and efficiency of the network and their enterprise culture.

Costs and Benefits

47. As no further action is proposed for transposing the requirements of Article 11(1) covering re-use and the prevention of re-use, there are no costs and benefits associated with this part of the Article.

Article 11(1): Separate Collections of Waste

48. In this section the options are focused on separate household waste collection for different types of plastics, as it is assumed that separate collection will already be provided for paper, metal and glass by 2015. Plastics is defined as plastic bottles in option 1 and all plastics in option 2. Option 2 would include plastic bottles, other rigid plastics such as pots and tubs, and plastic films. A key assumption under the preferred option here is that present trends continue in relation to paper, metal, glass and plastic bottles.

Option One: Reserve judgement on requiring any additional separate collection by local authorities above and beyond what is driven by other measures

49. This is the preferred option as it allows for further development of the recycling market for mixed plastics and consideration of the respective costs and benefits before confirming the approach, including any additional regulations or costs. In England and Wales, only one local authority does not currently provide for the separate collection of paper, metal and glass, whether by kerbside collection or the provision of bring banks. All Welsh local authorities currently provide for separate collection of plastic bottles, but 7 English local authorities do not provide, or have no plans currently to introduce, the separate collection of plastic bottles.
50. It is assumed that those authorities currently providing a separate collection will continue to provide this service through to 2015 and beyond, and if anything will expand or improve on this service. In addition the small number of local authorities that currently do not provide a separate collection for plastic bottles may introduce such a service by 2015. It is likely that any authority not providing such a service will need to be able to provide convincing evidence that this is not technically, environmentally and economically practicable and appropriate to meet the quality standards necessary for recycling.

Option Two: Require all local authorities to provide for the separate collection of **all** plastics by 2015 where this is technically, environmentally and economically practicable.

51. This option would require all local authorities to introduce separate collection of mixed plastics (rigid plastics and plastic films), in addition to plastic bottles, by 2015. The analysis presented below provides an initial analysis of the additional costs in requiring all local authorities to provide separate collection of mixed plastics by 2015. Our current view is that it is unlikely to be technically, environmentally and economically practicable for all local authorities to provide such a service by 2015. This is supported by the findings of the WRAP⁹ report “Landfill bans: Feasibility research” (March 2010). This states that the additional financial costs of collecting and reprocessing plastics appear to exceed the associated environmental benefits of reduced GHG emissions associated with disposal and processing virgin materials—there is currently a net cost to society. However, the collection, sorting and recycling of mixed plastics is still in the relatively early stages of development. The situation may have moved on considerably by 2015 and it can be anticipated that other drivers on local authorities to increase their levels of recycling will drive increased provision of separate collection for mixed plastics. Therefore, further work is needed on the relative costs and benefits of mixed plastics collection before this option can be pursued. The intention is to provide separate guidance on what is considered “technically, environmentally and economically practicable” in light of further information. The relative costs and benefits of the interpretation provided for in the guidance will need to be subject to a more detailed impact assessment at the time.
52. In Wales it is anticipated that most local authorities will have to introduce collection systems for mixed plastics in order to meet the 52% recycling target proposed for 2012/13, and the 58% target proposed for 2016/17. All local authorities in Wales provide for collection of plastic bottles and some for other plastics. Some 9% of Welsh MSW is plastic with 6% being dense and 3% film. New infrastructure for reprocessing plastic bottles is coming on line and there are initiatives to look at the

⁹ http://www.wrap.org.uk/downloads/FINAL_Landfill_Bans_Feasibility_Research.6af3f2a2.8796.pdf

recycling of rigid plastics. Some local authorities collect plastic carrier bags and others will do so in future as plastic film collections are introduced more widely. Collection of mixed plastics must be predicated on post collection sorting of polymer types and the approach in Wales is to make mixed plastics collections align with the sorting and reprocessing infrastructure being established.

53. Costs vary between local authorities according to many factors, including contract costs, vehicle efficiencies, mix of housing stock, infrastructure and gate fees for recyclates. The calculations in this section are based on the assumptions and findings of WRAP project *the financial costs of collecting mixed plastics packaging* (June 2009)¹⁰. The costs of this option will also depend on the type of separate collection introduced:
- Co-mingled collection (in which all recyclates are collected together and separated out for recycling later): between £3.36 and £4.92 per household per year
 - Two-stream collection (in which recyclates are separated into two broad streams by the householder, and fully separated for recycling later): between £1.45 and £3.81 per household per year
 - Kerbside sort (in which recyclates are separated by collection operatives before transportation):
 - Weekly collection: between £3.27 and £5.69 per household per year
 - Fortnightly collection: between £2.01 and £4.16 per household per year
54. At present only 71 local authorities have some provision to collect mixed plastics, out of a total of 375 across England and Wales, therefore the cost of this option is based on the additional costs of introducing mixed plastic collection in the 304 authorities. Calculations are made based on the costs for a 'generic' local authority of 50,000 households, in line with the assumption made in the source report.
55. For simplicity, we have amalgamated co-mingled and two-stream collections, and both frequencies of kerbside sort. Figures are the total cost per year across England and Wales.
- If all additional separate collection provided through a co-mingled collection: between £22m and £74.8m per year
 - If all additional separate collection provided through kerbside sort: between £30.6m and £86.5m per year
56. Local authority provision is currently split approximately 50/50 between the two types of collection. Assuming that all authorities continue to use their current model of collection and add mixed plastics to this collection, the overall cost is estimated to be between **£26.3m and £80.6m per year**. This figure is purely the cost of the adding the separate collection of mixed plastics and does not account for the benefits of such a service.

¹⁰ Found at:

http://www.wrap.org.uk/downloads/The_Financial_Costs_of_Collecting_Mixed_Plastics_Packaging.949434a8.7205.pdf

57. In addition separate collection through the adequate provision of bring banks is an acceptable approach to fulfilling the requirements of Option 2. The cost of bring bank provision is between £42.42 and £150.45 per tonne for mixed plastics (WRAP, 2009). This compares to a household collection cost of £150-217 per tonne. More research is currently being carried out on determining the circumstances where provision is lower costs than alternative collection systems.
58. However, this impact assessment has not attempted to model the likely balance of provision of separate collection for mixed plastics from the kerbside as opposed to bring banks that local authorities may choose to provide. Therefore, this aspect has not been included in the estimated national costs for comprehensive provision of separate collection for mixed plastics.
59. The key conclusion here is that option 1 is our preferred option at this time due to lack of data on the potential benefits of option 2, but we do not believe the additional benefits to be large enough to justify option 2 which is more costly.

Table 3: Summary table of the costs and benefits associated with the options relating to Article 11(1) on separate collections of waste

OPTION	COSTS	BENEFITS	ADDITIONAL NOTES
1. Reserve judgement on requiring any additional separate collection by LAs above and beyond what is driven by existing measures (DO NOTHING)	No additional costs	No additional benefits as the situation is expected to occur by 2015 anyway.	This is the preferred option. Separate collection is already (more or less) being done for paper, metal, glass and plastic bottles by 2015.
2. Require all LAs to provide for the separate collection of mixed plastics by 2015	<p>Collection from households: £26.3m - £80.6m per year</p> <p>Collection via bring banks is likely to have significantly lower costs but we do not have the data to quantify these at this time.</p>	<p>The additional benefits of recycling mixed plastics, over and above plastic bottles would need to be greater than the cost range of £26.3m to £80.6m in order for this option to be preferable to option 1. Given that the net benefits of plastics recycling are deemed low this is not expected to be achievable and this option is inferior to option 1.</p> <p>It is assumed that the level of benefit derived from the provision of bring banks will be lower as the volume of recyclates collected will be lower. However, further work is needed to understand the relative benefits of the different approaches.</p> <p>There are environmental benefits from recycling mixed plastics. These include reduced GHG emissions, reduced use of virgin materials and reduced methane emissions from landfill .</p>	

60. Following analysis of the consultation responses, officials now recommend that rather than linking the separate collection requirement directly to the carrier or permitting regime, we should actually link it to duties modelled on the duty of care legislation to enforce separate collections of Commercial and Industrial (C&I) waste .
61. These duties in relation to separate collection are desirable as it is largely a self-regulatory system that fits with the aim of compliance-based regulation. In terms of sanctions, given the lack of enthusiasm for penalty based civil sanctions, breach of the new duties in relation to separate collection, would instead trigger the ability to serve compliance, stop or restoration notices. It is proposed that only when these notices are breached that the ability to take a prosecution would be triggered.
62. Those who are served with a notice would be able to appeal to the first-tier tribunal. This should limit the number of prosecutions. On prosecution, conviction would give the Environment Agency power to revoke registration. The notice procedure is a built-in safeguard against criticism that the Agency could revoke a carrier's registration for what might be a minor breach. Officials believe this is a pragmatic and low burden solution, but we are awaiting feedback from Ministry of Justice (MoJ) on these proposals.
63. Using current trends in the Duty of Care offences as detailed in the annex 5, it is estimated that 11 prosecution cases occur every 2 years and £2,820 prosecution costs for each case incurring an estimated annual cost £15,510. Further details are in the Justice Impact Test in annex 5.

Article 11(2)(a): Household Waste Recycling Target

64. Article 11(2)(a) of the revised WFD sets out a household waste recycling target for the first time. Member states are required to take the necessary measures designed to achieve the following target:-

“(a) by 2020, the preparing for re-use and the recycling of waste materials such as at least paper, metal, plastic, and glass from households and possibly from other origins as far as these waste streams are similar to waste from households, shall be increased to a minimum of overall 50% by weight.”

65. The 2007 Waste Strategy for England had set a domestic target for recycling and composting of household waste of at least 40% by 2010, 45 % by 2015 and 50% by 2020.
66. Responses from the first stage consultation demonstrated there was agreement with the proposed approach of implementing the 50% target with no further measures in England, given the Local Authority Waste Recycling Recovery and Disposal (LAWRRD) modelling showed the target will be met by 2020 with current measures. Following on from this, we have rerun an updated version of the LAWRRD model which incorporates more recent information. This IA covers England and Wales, however the LAWRRD model covers only English authorities. For further information on the LAWRRD model please see Annex 2.

67. In Wales, the Welsh Assembly Government has brought forward the proposed Waste (Wales) Measure 2010 that includes the setting of statutory municipal waste recycling targets to a level of 70% by 2024/25 (64% for 2020).
68. The IA considers the additional cost of meeting the Article 11(2)(a) requirement. Recycling in England has increased from 11.2% of the household stream in 2000/01 to 30.9% in 2006/07, 34.5% in 2007/08 and 37.6% in 2008/09. The Municipal Waste Statistics¹¹ for 2009/10 were released on 4 November and showed that the recycling rate for England is 39.7%. If the recycling rate continued to increase in a similar trend, the household recycling rate would well exceed the 50% target. Recycling in Wales has increased from around 7% of household waste in 2000-01 to 32% in 2007-08, 36% in 2008-09 and 40% for the first three quarters of 2009-10. For the first three quarters in 2009-10, the municipal recycling rate is also 40%. Both the municipal and household recycling rates in Wales are expected to exceed targets set in WFD in line with ambitious Wales's waste strategy recycling targets.
69. The modelling for this IA includes the most recent landfill tax rate announcements in the April 2009 Budget announcement to continue the £8/tonne per annum escalator to a rate of £72/tonne in 2013/14. The March 2010 Budget included an announcement to continue this to £80/tonne in 2014/15 but as this was not included in the accompanying Finance Bill (the rate is set each year in the Finance Bill) therefore this last increase has not been included in the modelling. The Coalition Government also made a commitment to an £80 floor under this tax rate until 2020. Please see Annex 2 for the remaining assumptions.
70. As detailed in Annex 2, the model adjusts the recycling pressure factor to fit past data. To take account of this, scenarios were thus generated from varying the recycling pressure factor from the LAWRRD model. Scenario A is the baseline and assumes the effect of previous unquantified factors/preference towards recycling rates remain the same for future years. Scenario B, C and D assume such preferences towards recycling decline over time at varied rates, i.e. to 80%, 50% and for Scenario D to have no effect at all.
71. The recycling rates in 2020 for the four scenarios are now as follows
- Scenario A:** Recycling rate of 56% (default modelling assumptions).
 - Scenario B:** Recycling rate of 55%.
 - Scenario C:** Recycling rate of 52%.
 - Scenario D:** Recycling rate of 51%.
72. All modelling scenarios produce a recycling rate in excess of 50%. The sensitivity scenarios which were included to take into account modelling uncertainties also now meet the target.
73. Given the modelling results, England is not proposing to introduce any further measures at this time, though will keep household waste recycling rates under review going forward.

¹¹ http://www.defra.gov.uk/evidence/statistics/environment/wastats/download/mwb200910_statsrelease.pdf

74. For Wales, policy measures have been outlined in the Proposed Waste (Wales) Measure 2010¹² and an IA has been produced. This includes a detailed analysis of the costs and benefits (both financial and environmental) of establishing the higher recycling rates of 70% by 2024/25, compared to a baseline of 52%. The IA, which is based on detailed studies involving complex modelling scenarios, indicates that achieving a higher recycling rate of 70% will provide financial savings compared to maintaining current rates, as well as providing significant environmental benefits.

Article 11(2)(b): Recovery Target For Non-Hazardous Construction And Demolition Waste

75. Article 11(2)(b) of the revised WFD establishes, for the first time, a construction and demolition waste recovery target, as follows:

“(b) by 2020, the preparing for re-use, recycling and other material recovery, including backfilling operations using waste to substitute other materials, of non-hazardous construction and demolition waste excluding naturally occurring material defined in category 17 05 04 in the list of waste shall be increased to a minimum of 70 % by weight.”

76. The proposal is to transpose this requirement directly into the WFD implementing regulations, on the basis of our assessment that we are already meeting this target in England and Wales. The Waste and Resources Action Programme (WRAP) has recently conducted a research project into the Construction, Demolition and Excavation Waste (CD&E) arisings in England in 2008. This concluded that 89% of CD&E waste arisings in 2008 was recovered or beneficially re-used (including backfilling operations and engineering at landfill sites) without further processing, while 11% was landfilled as waste. These figures include volumes of naturally occurring material defined in category 17 05 04 (soils and stones) which are excluded from the WFD target. Analysis of data in the WRAP report suggests that this category accounts for around 65% of the CD&E waste landfilled as waste, but comprises a much smaller proportion of the total waste arisings. On this basis, when the naturally occurring material defined in category 17 05 04 in the list of waste is removed from the calculation, we would expect the 89% recovery rate to increase, thus making it even clearer that this target is already being met.
77. A survey of construction and demolition waste in Wales in 2005/06, carried out by Environment Agency Wales, showed that 85% of the 12.2 million tonnes of construction and demolition (C&D) waste was re-used and recycled, while 10% was landfilled. These figures include volumes of naturally occurring material defined in category 17 05 04 (soils and stones) which are excluded from the WFD target. The survey concluded that soils and stones made up 40% of the total C&D waste arisings. However, they accounted for only 110,000 tonnes of the 1.2 million tonnes of CD&E waste sent to landfill that year. Removing category 17 05 04 soils and stones from the survey figures for the calculation suggests that 1.16 million tonnes out of a total of 7.27 million tonnes of waste were sent to landfill in 2005/06, or 16%

¹² A link to the Proposed Waste (Wales) Measure 2010 is available at: <http://www.assemblywales.org/bus-home/bus-legislation/bus-leg-measures/business-legislation-measures-waste.htm>

The information is on page 49 & 50 on the Explanatory Memorandum at: <http://www.assemblywales.org/ms-ld7924-em-e.pdf>

landfilled. The re-use and recycling rate is 79% which, again, confirms the view that this target is currently being met in England and Wales.

78. The position will be reviewed regularly, at least every three years as required under Article 11(5) of the revised WFD, and further consideration given at these points as to whether additional policy measures are required.

Article 16: Principles of self-sufficiency and proximity

79. Article 16(1) includes the requirement from the original WFD for Member States to create an integrated and adequate network of waste disposal installations, but extends the requirement to installations for the recovery of mixed municipal waste collected from private households, including where such collection also covers such waste from other producers (hereafter referred to as mixed MW). Article 16(2) requires that the network shall be designed to enable the European Community (EC) as a whole to become self sufficient in waste disposal, and in the recovery of mixed MW and for Member States to move towards that aim individually.
80. As all exports of waste for disposal from the EC are prohibited by the EC Waste Shipments Regulation (1013/2006/EC) (WSR), and all imports and exports of waste for disposal to and from the UK are generally prohibited by the UK Plan for Shipments of Waste, no further domestic transposition of this provision is required. Furthermore, Article 3(5) of the WSR requires that shipments of mixed MW for recovery shall be subject to the same provisions as shipments for disposal.
81. In England and Wales, the waste planning system already requires local authorities to plan for an adequate network of facilities for managing waste at all steps in the hierarchy. The proximity principle is recognised through an objective in waste planning guidance that communities take more responsibility for their own waste, and enable sufficient and timely provision waste management facilities to meet the needs of their communities, although this objective must be balanced against other considerations.
82. Overall, the Government considers that current policy already implements requirements of Article 16, and that any required change to national planning guidance will be minimal.

Costs and benefits

83. As no further action will be required to transpose the requirements of Article 16 of the revised WFD, there are no costs and benefits associated with this Article.

Articles 17-20: Hazardous Waste

84. The Hazardous Waste Regulations 2005 “the Regulations” require that where someone collects hazardous waste from multiple premises on a single journey, they must use the format of paperwork laid in Schedule 6 of the Regulations. This applies to England and Wales.
85. We need to fully implement the requirements of the revised Waste Framework Directive which are intended to ensure that movements of hazardous waste are fully tracked from cradle to grave. As noted in the accompanying consultation document, it has become apparent the current system for tracking multiple consignments does not

fully meet the cradle to grave requirements. Cradle to grave monitoring enables the Environment Agency to verify that businesses have handled their hazardous waste properly to prevent it from harming the environment, have only passed it to someone authorised to deal with it and have correctly entered the details of the waste on the consignment note so as to help others know how to handle it.

86. Option 3 below is the preferred option as it implements the requirements of the revised WFD is the least costs option and is estimated to result in costs savings to businesses.
87. The admin costs in this IA relate mainly to variations in the amounts of paperwork that people moving hazardous waste will need to print out as a result of a revised multiple consignment system. We anticipate there will be other costs as some businesses using IT-based systems may need to adapt them to the revised paperwork. There may also be a slight variance in the time required to complete the revised forms. We have detailed estimates received from the consultation responses in the costs set out below.

Analysis of proposed options

88. **Option 1:** Do nothing – no changes to any wording in the regulations relating to consignment note format or procedures.
89. This option maintains the status quo. e.g. no changes would be made to the current multiple consignment provisions of the Regulations. There are two sub options under Option 1. Option 1A is the multiple consignment system currently stipulated by the Regulations, hitherto referred to as the “regulatory procedure, Option 1B, an adaptation of the “regulatory procedure” system used by some businesses in the industry, hitherto referred to as the “M procedure”. Currently businesses are following one of these two options.
90. Option 1B does not meet the minimum standard of cradle-to-grave auditing of hazardous waste, which is a fundamental requirement of the overarching European legislation. It could therefore be reasonably supposed that maintaining the status quo would increase the risk of EC infraction proceedings. Recent case law indicates that an adverse judgment in an infraction case could result in fines of up to £70,000 a day and/or a lump sum of up to £20m.
91. **Option 2:** Make the use of multiple consignment notes, as they are presently formatted, mandatory where the reduced charge is claimed by consignees. This option should have a neutral effect on printing costs for those operators currently using the “regulatory procedure” as this should be the same as under option 1, but will impose additional costs on those currently using the 1B option.
92. **Option 3:** Allow for the use of an amended standard (single) consignment note, which includes a round number, as a multiple note (but only when round number field is completed and that note forms part of a multiple collection as specified in the regulations).
93. This option proposes amending the current single note to enable it to also be used to track movements that form part of a multiple consignment round. An extra field added to the current single note will contain a box that can be completed with a unique

“round” identifier only for those movements that form part of a multiple consignment round. This round identifier would ensure that each carrier and consignee can uniquely identify the collections on a round. A transition time of 6 months will be given to allow users to continue to use the existing notes.

94. Costs and benefits of options: The figures in Table 4 are based on a typical business carrying out 40000 multiple consignment rounds per annum (based on replies from the Industry in a previous consultation) with an average of 3 collections per multiple collection round (based on EA figures). Detailed information on the methodology and assumptions used to inform this analysis is found in Annex 3.

Option 1: It is estimated that a typical business carrying out 40,000 visits per year incurs £9,600 printing costs using option 1a, the “regulatory procedure”. The corresponding cost to a typical business using option 1b, the “M procedure” would be £6,000 per year. Environment Agency data indicates that 846 businesses reported multiple collections in 2008/2009. Projecting typical business costs nationally results in a national yearly cost of £8,121,600 for those using the “regulatory procedure” (£9,600 x 846 businesses) and £5,076,000 for those using the “M” procedure (£6,000 x 846 businesses) under option 1. Option 1 costs have been analysed so that the costs for option 2 and 3 can be assessed as those additional costs, i.e. relative to the baseline of option 1 (do nothing). These additional costs are presented in Table 4.

Option 2: has a neutral cost impact on typical businesses currently using the “regulatory procedure”. However, there is no option to use the “M” procedure under option 2 meaning that businesses currently using the “M” procedure would see their printing costs rise from £6,000 to £9,600. The national increase for those currently using the “M” procedure will be £3,045,600, which is the difference between £8,121,600 and £5,076,000. There will be no change for those currently using the “regulatory procedure”.

Option 3: This is the preferred option. It is estimated that this option will reduce printing costs from £9,600 to £6,000 for a typical business currently using the statutory “regulatory procedure”. Projecting this to the 846 businesses reporting multiple collections, will result in a national cost reduction of £3,045,600, i.e. the difference between £8,121,600 and £5,076,000. More detail on the calculations can be found in Annex 3. Even taking account of the costs of IT to businesses, estimated at £435,333, this option will result in costs savings to businesses.

95. One-off IT and training costs are estimated following responses from the second stage consultation and are detailed further in Annex 3.

Table 4: Additional costs per year relative to baseline option 1

	Costs	Benefits	Additional Notes
Option 2	<p>- no impact on businesses already following the regulatory procedure</p> <p>- 60% annual cost increase on businesses that currently follow the M procedure, leading to national costs between £3million and £1.5million, depending on what proportion of businesses currently use the M procedure (estimates use 100% to 50% in order to represent higher order estimates)</p>	<p>If the regulatory procedure is correctly used, it would assist producers, carriers and consignees in their duty of care requirements. The Environment Agency will be able to verify that businesses have handled their hazardous waste properly to prevent it from harming the environment, have only passed it to someone authorised to deal with it and have correctly entered the details of the waste on the consignment note so as to help others know how to handle it.</p>	
Option 3	<p>- 38% annual cost decrease on businesses that currently use the regulatory procedure. This leads to national cost savings up to 3.0 million if we assume all businesses currently use the regulatory procedure</p> <p>No change in costs on businesses that currently use the M procedure.</p> <p>If we assume 50/50 proportions of businesses in these two groups we can assume an annual reduction in costs of £1.5m to businesses.</p> <p>One off IT costs to businesses of £435,333</p> <p>One off costs to EA of £10,000 - £15,000</p>	<p>Potential for net cost savings under certain circumstances.</p> <p>It is a requirement of the revised WFD that Member States take actions to ensure traceability from production to final destination and control of hazardous waste in order to safeguard environmental protection. This option will enable the Environment Agency to identify multiple collection rounds where the correct procedure has been used and so meet that obligation and avoid costly EC infraction proceedings. It will also result in a reduction in the amount of paperwork needed to be used by operators carrying out multiple consignments.</p>	<p>This is the preferred option</p>

Article 21: Waste Oils

96. Defra and the Welsh Assembly Government do not intend to propose any measures prescribing that waste oils must be regenerated if technically feasible. There are, therefore, no costs and benefits associated with this Article.

Article 22: Bio-waste

97. Defra and the Welsh Assembly Government do not intend to specifically propose any additional measures in the transposing regulations but rather that any new measures to encourage the separate collection of bio-waste should be set out in national waste policies. Any additional measures will need to be considered in the context of, and consistent with, other initiatives being undertaken and on their own merits. The draft regulations therefore consist of a requirement for the national waste management

plan (in practice this will be Defra's and the Welsh Assembly Government's respective Waste Strategies) to set out measures, as appropriate, to encourage the separate collection of bio-waste. There are no costs and benefits associated with this provision in the Directive. Any future measures taken will be accompanied by their own individual impact assessments.

Article 28: Waste management plans

98. Article 28 of the revised Directive carries forward a number of provisions from Article 7 of the existing Directive. However, the new obligations imposed on Member States are more elaborate. It requires Member States to draw up one or more waste management plans that cover its entire geographical area. Waste management plans must contain the information listed in Article 28(3) and may contain the information listed in Article 28(4). Waste management plans must be made in accordance with the waste hierarchy; the protection of the environment and human health; and the principle of self-sufficiency and proximity.
99. England and Wales have already implemented the predecessor of Article 28 through a tiered system of plans, including both national waste strategies and local planning documents. These include:
- The Waste Strategy for England 2007
 - The Wales Waste Strategy "Wise about Waste" (the new overarching waste strategy document, Towards Zero Waste, is due to be published on 21st June 2010.)
 - Regional Waste Plans (Wales) – required under Technical Advice Note (TAN) 21, but not statutory
 - The Municipal Waste Management Strategy for Greater London; and
 - Local authority waste plans (Development Plans in Wales)
100. Where feasible we are adopting a similar, tiered approach to transposition of Article 28. This will use the National Waste Strategy and a mix of national and local plans required under the spatial planning regime (in England) and TAN 21 (in Wales) to meet our revised obligations. However, the requirements of Article 28 are more elaborate and so other forms of implementation will be required. Throughout the text below the term "waste management plan" can therefore refer to any document depending on the method of implementation. We have tried to be clear which it refers to for each provision under discussion.
101. Furthermore, the Government proposes to set out in legislation the requirements to comply with Article 28 of the Directive. This is intended to increase the transparency of the transposition of the Article.
102. Articles 28(2) and 28(3) set out the specific requirements which must form part of the waste management plans. One advantage of adopting a tiered approach to implementing the requirement is that not every requirement will be needed at each level of waste management plan. Some elements will be best dealt with at national level in for example the National Waste Strategy while others will be best addressed

in local spatial plans produced by local authorities (hereafter “local waste plans” or “local authority waste plans” or “local development plans in Wales”).

103. Taking each of the requirements and their impacts in turn:

Article 28(2) requires waste management plans to “set out an analysis of the current waste management situation in the geographical area concerned, as well as the measures to be taken to improve environmentally sound preparing for re-use, recycling, recovery and disposal of waste and an evaluation of how the plan will support the implementation of the objectives and provisions” of the Directive. In England we propose to satisfy this requirement through the National Waste Strategy, which we regularly review, or other national level documents. In Wales, the analysis of the current situation will be set out in the overarching strategy for Wales “Towards Zero Waste” and in a series of Sector Plans which are directed by the Strategy. In particular, the Municipal, Construction and Demolition and Collection, Infrastructure and Markets Sector Plans will provide this analysis. We therefore do not expect there to be additional costs with this provision.

Article 28(3)(a) requires waste management plans to include the type, quantity and source of waste generated, waste likely to be shipped from or to the national territory, and an evaluation of the development of waste streams in the future. In England, we propose to satisfy this requirement through the National Waste Strategy and the national level Waste Management Plan for Exports and Imports. In Wales it will be set out in the overarching strategy for Wales “Towards Zero Waste” and the series of Sector Plans directed by the Strategy. We therefore do not expect there to be additional costs with this provision.

Article 28(3)(b) contains three particular requirements. Firstly it requires waste management plans to include details of existing waste collection schemes. The National Waste Strategies will cover collection mechanisms at a national level. We also expect this to be supported by an assessment at local level by Waste Collection Authorities in their municipal waste management strategies. We would expect the additional cost to be minimal but welcome further views as part of this consultation. In Wales, details of existing collection schemes will be provided in the Collection, Infrastructure and Markets Sector Plan that will be published for consultation in December 2010.

Secondly it requires waste management plans to include details of existing major disposal and recovery installations. Local planning authorities already provide most of this information through a combination of local waste plans and Annual Monitoring Reports (which are required under the Planning and Compulsory Purchase Act 2004), more specifically Core Indicator W1 asks for details of capacity of new waste management facilities granted throughout the year. However, not all local planning authorities have a comprehensive list of existing capacity and their plans will need to be updated to reflect this. In Wales, details of existing major disposal and recovery installations will be provided in the Collection, Infrastructure and Markets Sector Plan that will be published for consultation in December 2010.

We expect the new burden on local planning authorities from this second requirement would be minimal. CLG have estimated that this cost could be £2,000 per authority depending on the quality of existing information. There are

152 local planning authorities giving a total cost of £304K. We expect this to be a maximum figure as assuming that all LAs need to do this additional work.

Finally, Article 28(3)(b) requires waste management plans to also include special arrangements for waste oils, hazardous waste or waste streams addressed by specific Community legislation. The special arrangements for certain wastes are already made for in existing legislation, such as WEEE and the Hazardous Waste Regulations, or in national level plans. The forthcoming hazardous waste national policy statement will also satisfy the special arrangements for larger hazardous waste facilities. We therefore do not expect there to be additional costs for this element of the provision.

Article 28(3)(c) also contains three specific requirements. Firstly, it requires waste management plans to include an assessment of the need for new collection schemes. The National Waste Strategy will cover collection mechanisms at a national level. We also expect this to be supported in England by an assessment at local level by Waste Collection Authorities in their municipal waste management strategies. We expect the additional cost to be minimal. In Wales, details of existing collection schemes will be provided in the Collection, Infrastructure and Markets Sector Plan that will be published for consultation in December 2010.

Secondly, it requires waste management plans to include assessment of the need for the closure of existing waste installations. We anticipate that this could be done in one of two ways. Option (a) is to place a requirement on the Environment Agency to assess the need for closure. The Agency is a suitable candidate in that it is required to inspect a number of waste installations as part of the permitting regime, and would be able to identify those facilities which might be suitable for closure either because, for example, it is aware that certain facilities might not be able to comply with the requirements of the permit, or because it is able to keep track of capacity of landfill facilities. This option would place a burden on the Environment Agency, but not on businesses or local authorities.

Option (b), the preferred option (see table 5), is to place this requirement on local planning authorities as part of their Annual Monitoring Report. However, for local authorities to meet this obligation they will need to liaise closely with the Environment Agency to obtain information on the continuing suitability of existing installations to operate. CLG have estimated that this cost could be £2,000 per authority depending on the quality of existing information. There are 152 local planning authorities giving a maximum total cost of £304K, assuming all planning authorities need to do this.

Finally, it requires waste management plans to include an assessment of the need for additional waste installation infrastructure, having particular reference to the need to comply with Article 16. This is something that is already required of the existing planning system as well as through other documents such as the proposed National Policy Statements under the Planning Act 2008, TAN 21 (Wales) the National Waste Strategy and Packaging Strategy, so we do not anticipate any additional burden from this part of the provision.

Article 28(3)(d) requires waste management plans to include sufficient information on the location criteria for site identification and on the capacity of future disposal or major recovery installations. The first part of this requirement – on identification of suitable locational criteria – will be met through the proposed National Policy Statements under the Planning Act 2008, as well as a combination of an updated national Planning Policy (England), TAN 21 (Wales), the Collection, Infrastructure and Markets Sector Plan (Wales) and local waste plans. The second part of this requirement will be met largely from the combination of an updated national Planning Policy (England), the Collection, Infrastructure and Markets Sector Plan (Wales) and local waste plans as part of consideration of future need for waste management facilities. As these provisions are already required of local planning authorities by the existing Planning Policy Statement 10 (England) and TAN 21 (Wales) there will be no additional burdens from this provision.

Article 28(3)(e) requires waste management plans to include general waste management policies, including planned waste management technologies and methods, or policies for waste posing specific management problems. These are issues best addressed at a national level and will be included in the National Waste Strategies. There will therefore be no additional burdens from this provision.

Article 28(4) contains a number of aspects that waste management plans may contain: it does not *require* them to do so. We are not making any of these aspects mandatory. As such there will be no additional burden from this provision.

Article 28(5) continues the requirement of waste management plans containing certain provisions with respect to packaging waste and the need to conform to the strategy for reducing biodegradable waste going to landfill. We consider that these issues are capable of being addressed through the National Waste Strategies and the Packaging Strategy for packaging waste, and through the National Waste Strategies for reducing biodegradable waste. We see no additional burden from this provision.

Costs

104. There will be an increased burden on local planning authorities, and possibly Waste Collection Authorities and Waste Disposal Authorities, as they revise their existing local waste plans to comply with the new, additional requirements of Article 28. Those costs will arise from new requirements to include:

- details of existing waste collection schemes in their areas
- details of existing major disposal and recovery installations (total estimate £304K)
- an assessment of the need for new collection schemes
- an assessment of the need for the closure of existing waste installations (possible estimate £304K depending on implementation mechanism)

Benefits

105. The new approaches outlined above serve to reinforce the need for sustainable waste management - through measures to protect human health and the environment, including more reduction, recycling and recovery of waste and using the disposal of waste as a last resort - and ensuring the timely delivery of new waste infrastructure to deliver the desired outcomes.
106. Up-to-date waste plans, along with sound monitoring arrangements, provide significant financial and environmental benefits. These plans are critical in providing clarity for investment decisions in waste facilities: they help integrate waste management with the wider need to cut greenhouse gas emissions, and are an essential component in meeting our legal requirements under European law.
107. The approaches lined up above will facilitate a step-change in the way waste is handled and significant new investment in modern waste management facilities. Positive planning provides the framework for new waste management facilities of the right type, in the right place and at the right time. They will ensure that there is a clear vision and plan in place to facilitate effective co-ordination between planning and waste management, and reduces barriers to attracting capital investment in new facilities and should lead to a reduction in the amount of landfill tax paid out.
108. There are also strong environmental benefits, as up-to-date waste plans can make a significant contribution to tackling climate change, and giving proper consideration to the provision and siting of such facilities through waste planning will deliver sound climate change benefits.
109. Having up to date information on existing collection schemes and assessments on whether new schemes are needed in any given area will promote more environmentally beneficial treatment of waste by encouraging the recycling, recovery and beneficial uses of waste. It will help divert waste from landfill and potentially reduce greenhouse gas emissions from landfill sites.

Table 5: Summary table of costs and benefits associated with the options around waste management plans (excluding those with no additional requirements)

ARTICLE	REQUIREMENT	COSTS	BENEFITS	ADDITIONAL NOTES
28(3)(b)	1. WMPs to include details of existing waste collection schemes	Minimal as many Waste Collection Authorities already have municipal waste management strategies in place.	Helps put the right collection mechanisms in place thereby promoting more environmentally beneficial treatment of waste. Lead to increased recycling and recovery rates and divert more waste from landfill.	
	2. WMPs to include details of existing major disposal and recovery installations	Some LAs do not already include this info and will have to update their plans at an additional cost. Estimate of £2000 per LA, 152 LAs, giving a one off total maximum cost of £304,000.	Contributes to positive waste planning arrangements by setting a framework of existing waste management facilities, so as to enable consideration of the need for future facilities of the right type, in the right place and at the right time. Provides clarity for investment decisions in waste facilities.	

ARTICLE	REQUIREMENT	COSTS	BENEFITS	ADDITIONAL NOTES
28(3)(c)	1. WMPs to include an assessment of the need for new collection schemes	Minimal as many Waste Collection Authorities already have municipal waste management strategies in place.	Helps put the right collection mechanisms in place thereby promoting more environmentally beneficial treatment of waste. Lead to increased recycling and recovery rates and divert more waste from landfill.	
	2. WMPs to include assessment of the need to close existing waste installations	Option a) to use EA. No additional burden on businesses or local authorities and minimal costs as EA already inspects premises as part of the permitting regime. Option b) to use Local Authority plans. Estimate of £2000 per LA, 152 LAs, giving a one off total cost of £304,000.	Provide clarity for investment decisions in waste facilities. Contributes to positive waste planning arrangements by setting a framework of existing waste management facilities, so as to enable consideration of the need for future facilities of the right type, in the right place and at the right time.	Option b is preferred

Article 29: Waste Prevention Programmes

110. Article 29(1) requires Member States to establish waste prevention programmes by December 2013.
111. The costs and benefits of such programmes will depend on the objectives and policy measures proposed, and will be subject to a separate Impact Assessment.

Carriers

112. The registration of lower tier carriers to comply with the European Court of Justice Ruling was consulted on in detail in 2008 as part of the rWFD consultation. The consultation proposed a two tier system, under which existing registered waste carriers would move into an upper tier with a requirement to re-register every year, and with most of the businesses currently exempt from registration (including those carrying their own waste) being brought into a lower tier requiring one-off registration.
113. Respondees to both rWFD consultations accepted that the UK has an obligation to amend its domestic legislation in the light of the ECJ's judgment and recognised that the two tier system provided a method of meeting the terms of the judgment whilst seeking to minimise the burden on industry. Some consultees, including small business interests, expressed concern about the additional administrative burden of annual re-registration for those in the upper tier. As a result the proposals were amended to require upper tier re-registration every three years in line with the current registration system. The final IA for the transposition of the regulations relating to the Waste Framework Directive includes the registration of lower tier carriers.
114. The IA was consulted on and has been updated to reflect new information on the population of businesses that would be likely to 'normally and regularly' carry waste. The methodological details are in the previous IA. The figures have been updated to figures from the 2008 Interdepartmental business register (IDBR). The classifications and inclusions of businesses have changed since the previous IA. The main impact is a significant rise in the number of health related businesses from 37,800 to 124,610. This increases the number of businesses estimated to be within the scope of the ruling from 100,000 to 388,000 to a new range of 219,370 to 461,263. It is likely this range includes human health related activities that were not previously included. Further detail can be found in the table below.
115. The time required for businesses to register is estimated to be 20-25 minutes and wages are assumed to be £24.57. The EA now estimates that the cost of lower tier

registration may be £15 for online registration and £20 for off-line (telephone or paper applications) registrations. This is lower than the £30 assumed in the consultation stage IA and reduces the burden imposed on lower tier waste carriers.

116. The transitions costs are calculated based on the expected number of new registrations required. This is estimated to incur £5.4m to £11.4m to businesses to register (admin and regulatory costs). In addition, the EA estimates one off IT costs will be £140,000.

117. On-going costs are estimated in this IA to reflect the impact on new businesses. Assuming the new business formation rate of 12.2% (average over the past 5 years) is constant across industry classifications, the on-going costs to new businesses categorised as lower tier carriers each year is £0.6m to £1.4m (26,762 – 56,334 new businesses per year).

Table 6: Registration of lower tier carriers

Costs to businesses of registration	Transition costs of £5.4 to £11.1m to businesses carrying waste 'normally and regularly' On-going costs of £0.6m to £1.4m of registration per year for new businesses carrying waste 'normally and regularly'
Costs to Environment Agency	One off IT costs of £140,000 to EA

Table 7: Potential number of waste carriers affected by ECJ ruling

SIC	Description of classification		potential number of new waste carriers			
class		total no. of businesses	Assumption (decision rules)	No. Of businesses	Assumption (survey)	No. Of businesses
A,B	Agriculture	106,790	20%	21,358	20%	21,358
C	Mining and quarrying	1,685	0%	-	0%	-
D	Manufacturing	115,530	5%	5,777	10%	11,553
E	Utilities	20,230	varies	801	8%	1,618
F	Construction	252,750	50%	126,375	50%	126,375
G	Motor trade, trade, etc	435,875	varies	3,561	23%	100,251
H	Hotels and catering	150,920	5%	7,546	35%	52,822
I	Transport and coms	219,420	varies	52,056	19%	41,690
J	Finance	58,885	0%	-	8%	4,711
K	Propoerty and business	565,250	varies	1,044	25%	141,313
M	Education	58,265	0%	-	13%	7,574
N	Health	124,610	100%	124,610	21%	26,168
L,O,P,Q	Public admin and other services	186,445	varies	2,617	28%	52,205
	TOTAL			345,745		587,638
	Minus construction (should already be registered)			219,370		461,263

118. Upper tier carriers are not expected to see any changes in the registration process.
119. This option is the minimal required to comply with the ECJ ruling. The benefits of lower tier registration are expected to raise awareness of lower risk carriers and their responsibilities. Improved identification on waste carriers through the registration process may result in reduced opportunities for waste crime by making it more difficult for unregistered waste carriers to operate. Local authorities spent £45.8m in 2009/10 clearing 947,000 illegal fly tips. Using switching analysis, an estimated reduction in fly tipping of 3-6% per year would offset the costs of lower tier registration. This does not take account of the disamenity and health costs associated with fly tipping, which could be significant.

Annexes

Annex 1 should be used to set out the Post Implementation Review Plan as detailed below. Further annexes may be added to provide further information about non-monetary costs and benefits from Specific Impact Tests, if relevant to an overall understanding of policy options.

Annex 1: Post Implementation Review (PIR) Plan

A PIR should be undertaken, usually three to five years after implementation of the policy, but exceptionally a longer period may be more appropriate. A PIR should examine the extent to which the implemented regulations have achieved their objectives, assess their actual costs and benefits and identify whether they are having any unintended consequences. Please set out the PIR Plan as detailed below. If there is no plan to do a PIR please provide reasons below.

<p>Basis of the review: [The basis of the review could be statutory (forming part of the legislation), it could be to review existing policy or there could be a political commitment to review];</p> <p>The basis of the review is to review the transposing legislation on the revised WFD by December 2012, to tie in with the Commission’s timetable for review of the implementation of the revised WFD.</p>
<p>Review objective: [Is it intended as a proportionate check that regulation is operating as expected to tackle the problem of concern?; or as a wider exploration of the policy approach taken?; or as a link from policy objective to outcome?]</p> <p>To ensure that the transposing legislation is compliant with the revised WFD</p>
<p>Review approach and rationale: [e.g. describe here the review approach (in-depth evaluation, scope review of monitoring data, scan of stakeholder views, etc.) and the rationale that made choosing such an approach]</p> <p>The review approach is expected to monitor/evaluate the transposing Regulations to ensure compliance with the revised WFD</p>
<p>Baseline: [The current (baseline) position against which the change introduced by the legislation can be measured]</p> <p>The baseline for the review is the provisions for Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives</p>
<p>Success criteria: [Criteria showing achievement of the policy objectives as set out in the final impact assessment; criteria for modifying or replacing the policy if it does not achieve its objectives]</p> <p>The objectives are to reduce the adverse impacts of the generation of waste and the overall impacts of resource use by:(1) introducing a household waste recycling target and construction and demolition recovery target, (2) to ensure that the specified four materials are collected separately by 2015, (3) taking measures as appropriate to promote the re-use of products and preparing for re-use activities; (4) applying the waste hierarchy as a priority order in waste prevention and management legislation and policy, (5) extending the self-sufficiency & proximity principles to apply to installations for recovery of mixed municipal waste from households, (6) revising the scope and content of waste management plans and (7) establishing waste prevention programmes. Success will show achievement of these objectives.</p>
<p>Monitoring information arrangements: [Provide further details of the planned/existing arrangements in place that will allow a systematic collection systematic collection of monitoring information for future policy review]</p> <p>To be completed</p>
<p>Reasons for not planning a PIR: [If there is no plan to do a PIR please provide reasons here]</p> <p>N/A</p>

Annex 2: Additional Assumptions for Household Waste Recycling Target

- (i) The rate of waste growth (and therefore the level of waste arisings) is assumed to be the same across the different recycling scenarios. The underlying assumption here is that the level of recycling that is occurring does not impact on the level of waste arisings. This may be a slight simplification, although in the absence of strong evidence on the relationship between recycling rates and waste arisings growth it is a reasonable assumption.
- (ii) As in the England Waste Strategy 2007 central case, the rate of waste growth is assumed to be 0.75% per annum. Although, on average, household waste arisings have decreased by -0.88% in the last 5 years, and by -2.85% in the last 2 years, this is attributable in part to external drivers such as macro factors and behavioural change, all of which may differ in future years. In the absence of more robust forecasts of household waste arisings we take a more conservative approach around this parameter. In any case, the recycling rate does not appear to be particularly dependent upon the level of arisings.
- (iii) Targets on diverting biodegradable municipal waste from landfill (from the Landfill Directive) are met, via the Landfill Allowance Trading Scheme. This is set as a constraint in our modelling.
- (iv) We take as our base the most recent recyclate prices and apply inflationary increases in future years.
- (v) The LAWRRD model runs only to 2020, which is the target year for this Article.
- (vi) Although the model considers the possibility of delays in planning, and allows for the possibility of an increase in the cost of facilities as demand for facilities begins to stretch supply, it does not specifically consider the possibility of a lack of infrastructure delivery in order to meet Landfill Directive targets in 2010, 2013 and 2020 (i.e. it does not include the impact of short-term factors such as current credit market conditions).

Annex 3: Methodology for estimating administrative burdens associated with Hazardous Waste Consignment Note Procedures

- A typical business is assumed to be one carrying out approximately 40,000 visits per annum. Multiple collections on these visits would typically consist of three collections per round.
- The paper costs in the IA are the estimated costs for printing a page of paperwork, which a key stakeholder has calculated at £0.05 per page. It does not factor the actual cost of the paper itself.
- There were approximately 1,381,776 multiple consignment movements in the country in the period 2008/2009.
- 846 businesses reported movements using multiple consignments in the period 2008/2009.
- The multiple consignment system currently stipulated by the Regulations is hitherto referred to as the “regulatory procedure”.
- An adaptation of the “regulatory procedure” system used by some businesses in the industry is hitherto referred to as the “M procedure”.

Costs and Benefits

Option 1

A multiple consignment round consisting of 3 collections using the “regulatory procedure” and where producer or holder is the same as the consignor for all collections would require 14 sheets of paper to be printed (5 notes and 9 annexes).

It costs a typical business £0.70 in printing costs for a multiple collection round consisting of 3 collections. The printing cost per visit would therefore be $\text{£}0.70/3 = \text{£}0.24\text{p}$. The annual cost to a typical business in the industry currently carrying out around 40000 visits per annum is approximately £9,600 in printing costs [i.e 40000 visits x £0.24].

The most recent figures indicate that 846 businesses reported multiple collections in 2008/2009. So based on data for a typical business, the current cost to the industry of printing paperwork for a multiple collection round consisting of 3 collections under the “regulatory procedure” is $846 \times 9600 = \text{£}8,121,600$.

- (i) A multiple consignment round consisting of 3 collections using the “M procedure” and where the producer or holder is the same as the consignor for all collections would require 9 sheets of paper. The printing costs for the paper generated on this round would be £0.45. The printing cost per visit would be £0.15.

This procedure currently costs a typical business in the industry carrying out 40000 visits per annum approximately **£6,000** per year in printing costs [i.e 40000 visits x £0.15].

Option 2

This option should not affect the printing costs for those operators currently using the “regulatory procedure” as this should be the same as under option 1. So, as in option 1, the printing costs for a typical multiple consignment round consisting of 3 collections using the “regulatory procedure” and where producer or holder is the same as the consignor for will cost a typical business in the industry approximately **£9,600** per year in printing costs.

This main impact of this option will be the obligation for all operators, including those currently using the “M procedure”, to use the “regulatory procedure”.

Option 3

- (i) A multiple consignment round consisting of 3 collections using the “regulatory procedure”, where the producer or holder is the same as the consignor for all collections and where no summary sheet is left with the holder or consignor would require the use of 9 sheets of paper (9 notes and no summary sheets). The cost of printing paper generated on this round to a typical business will be less than the **£0.55 previously estimated**. The cost per visit will be £0.15.
- (ii) The cost to a typical business carrying out around 40000 visits per year will be approximately **£6,000** per year in printing costs i.e (40000 visits x £0.15).
- (iii) Costs to changes to IT and training costs are estimated using figures from industry sources. The sources account for 15% of consignment notes annually and they estimate costs to be £65,300. This figure is scaled up to estimate a cost to business of £435,333.

Annex 4: Fines levied by the Court of Justice of the European Union on non-compliant Member States

1. Under Articles 258 and 260(3) of the Treaty on the Functioning of the European Union (TFEU), the European Commission may bring the failure of a Member State to notify measures transposing a directive before the Court and in doing so, it may specify the amount of lump sum or penalty payment to be paid by the Member State concerned. No fines have yet been imposed under Article 260(3). The Commission's approach will be guided by three fundamental criteria:
 - The seriousness of the infringement
 - Its duration
 - The need to ensure that the sanction itself is a deterrent to further infringements.The Commission is due to publish a communication on the implementation of Article 260(3), in particular on its approach to seeking lump sum and penalty payments.
2. In three cases of Member States being fined since 2000 under the predecessor provisions in the EC Treaty, substantial and progressively greater penalties were imposed. In the first case, a fine of €20,000 was imposed for each day of delay in implementing measures required by a Directive. The second case resulted in a fine of €624,150 per year and per 1% of bathing areas not conforming to the Bathing Waters Directive for the year in question. In the third case, the fine was €57,761,250 for each period of six months from the date of the judgement, together with a lump sum penalty of €20,000,000.
3. Although difficult to be precise about the likely size of any possible fine, which is based on a case by case basis, we anticipate that the costs may range similar to the examples provided above.

Annex 5

Specific impact tests

Statutory Equality duties

The regulations are not expected to have an impact on statutory equality duties

Economic impacts

Competition Impact Test

The regulations, have been applied with a light touch approach, and are not expected to significantly affect competition between businesses. The application of the waste hierarchy is assumed to affect all businesses, both existing and new. Other changes are required to existing processes but these have been kept to a minimum to comply with the revised WFD and some changes result in costs savings. The costs of application of the waste hierarchy to all waste producers and requirement for lower tier carrier registration will act as a very small increase in costs for new business start ups. To the extent that application of improved waste management could lead to lower costs for businesses, the net impact may be a lowering of overall on-going costs.

Small Firms Impact Test

As detailed above, the costs of application of the waste hierarchy and the requirement for registration as a lower tier carrier will result in a small increase in costs for new businesses. The registration proposals have been discussed with small business interests including the Federation of Small Businesses and BIS. There was general acceptance of the need for registration to be extended to comply with the ECJ judgment and recognition that the proposals aimed to minimise the additional burden on businesses.

The guidance for the application of the waste hierarchy has been significantly shortened in response to the second stage consultation. It is a legal requirement that waste producers have to have regard to the guidance when they sign the Duty of Care declaration. The burden of reading and understanding the guidance is now estimated to be limited for those companies that have no employees. The time taken to disseminate the waste hierarchy is expected to rise in companies with more than one employee. Small businesses and representative organisations were consulted on several occasions and the length of the guidance and costs of application of the hierarchy were discussed. Estimates of alternative costs for its application were not received. As noted above, the application of these measures, although slightly increasing the regulatory burden on small businesses in particular, may lead to lower resource costs and result in a net benefit to businesses.

Other regulatory measures may affect small businesses but many of the articles do not require additional action so it is unlikely that small businesses will be significantly negatively affected.

Small companies that currently operate in the waste management sector may be affected by the changes to the regulations, but we do not have sufficient information from responses to consultation to identify specific impacts.

Environmental impacts

The transposition of the revised Waste Framework Directive reinforces the need for sustainable waste management, that should lead to reduced GHG emissions and reduced use of virgin materials. Quantifying the actual environmental impacts is not possible due to the unknown impact of the measures taken. The application of the waste hierarchy is likely to lead to a reduction in waste generation with a beneficial impact on natural resource use. Any incentivisation up the hierarchy is also likely to lead to a reduction in GHG emissions for the same amount of waste generated.

Social Impacts

Health and well-being

The regulations are expected to reduce the risks to health from potentially harmful substances within waste.

Human Rights

There are not expected to be any significant impacts on human rights.

Justice impact test

Please see attached Justice Impact Test.

Rural proofing

There are not expected to be any significant impacts on rural communities.

Sustainability

Sustainable Development Impact Test

Stage 1

1. Environmental Standards

1a. Are there any significant environmental impacts of your policy proposal (see Wider Environment Specific Impact Test)?

Yes

If the answer is 'yes' make a brief note of the impacts below:

The measures in this IA relate to reinforcing the need for sustainable waste management through applying the waste hierarchy and reduction, recycling and recovery of waste. This should lead to environmental benefits of reduced GHG emissions and reduced use of virgin materials.

1b. If you answered 'yes' to 1a., are the significant environmental impacts relevant to any of the legal and regulatory standards identified?

No

If the answer is 'yes' make a brief note of the relevant standards below:

If you answered 'yes' to 1b, have you:

1c. Notified the Government Department which has legal responsibility for the threshold and confirmed with them how to include the impacts appropriately in the analysis of costs and benefits?

1d. Informed ministers where necessary?

1e. Agreed mitigating or compensatory actions where appropriate?

2. Intergenerational impacts

2a. Have you assessed the distribution over time of the key monetised and non-monetised costs and benefits of your proposal? This assessment can be included in your Evidence Base or put in an annex.

Yes

2b. Have you identified any significant impacts which may disproportionately fall on future generations? If so, describe them briefly.

No

If you answered 'yes' to 2b. , have you:

2c. Informed ministers where necessary? If so, provide details.

2d. Agreed mitigating or compensatory actions where appropriate? Provide details.

Stage 2

3. The purpose of the second stage is to bring together the results from the impact assessment with those from the first stage of the SD test. The following questions are intended to reflect the uncertainties in the cost benefit analysis and help you consider how to proceed in the light of further evidence from the first stage of the SD test.

3a. Indicate in the appropriate box whether the balance of monetised costs and benefits is:				
Strongly positive	Moderately positive	Roughly neutral / finely balanced	Moderately negative	Strongly negative
		x		

3b. Indicate in the appropriate box whether the balance of non-monetised costs and benefits is likely to be:				
Strongly positive	Moderately positive	Roughly neutral / finely balanced	Moderately negative	Strongly negative
	x			

3c. Indicate in the appropriate box whether the results of the SD questions 1-3 are, on balance, likely to be:				
Strongly positive	Moderately positive	Roughly neutral / finely balanced	Moderately negative	Strongly negative
	x			

3d. Indicate in the appropriate box whether, overall, the balance of the monetised and non-monetised costs and benefits and the sustainability issues is considered to be:				
Strongly positive	Moderately positive	Roughly neutral / finely balanced	Moderately negative	Strongly negative
	x			

3e. Provide an explanation of the final result from 3d, explaining, for example, how you have compared monetised and non-monetised costs and benefits and how you have resolved any conflicts between the cost-benefit results and the SD results.

The monetised costs are compared to the monetised benefits of an increase in incentivisation up the waste hierarchy. This is discussed in the IA, but as an indication, the level of waste recycling or waste prevention could be sufficient to make this IA cost neutral. Embedding sustainable waste management could achieve greater long term benefits in terms of reduced greenhouse gas emissions, reduced use of virgin materials and health protection from hazardous waste than figures calculated over the time frame of this IA.

ANNEX 4: The draft Waste (Miscellaneous Provisions) (Wales) Regulations 2011 and the accompanying Explanatory Memorandum

2011 No. (W.)

**ENVIRONMENTAL
PROTECTION, WALES**

EXPLANATORY NOTE

(This note is not part of the Order)

These Regulations are supplementary to the Waste (England and Wales) Regulations 2011 (“the England and Wales Regulations”). They make amendments to several Welsh statutory instruments for the purposes of transposing, in relation to Wales, Directive 2008/98/EC of the European Parliament and of the Council on waste (OJ No. L 312, 22.11.2008, p3). They also revoke, for the same purpose, one Welsh statutory instrument.

A full impact assessment of the effect that the provisions of the England and Wales Regulations and these Regulations will have on business, the voluntary sector and the public sector is available from the Waste Programme, Department for Environment, Food and Rural Affairs, Ergon House, Horseferry Road, London SW1P 2AL.

2011 No. (W.)

**ENVIRONMENTAL
PROTECTION, WALES**

Made ***

Laid before the National Assembly for Wales

Coming into force ***

The Welsh Ministers are designated⁽¹⁾ for the purposes of section 2(2) of the European Communities Act 1972 in relation to the prevention, reduction and management of waste.

The Welsh Ministers make these Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972.⁽²⁾

Title, commencement and extent

1.—(1) The title of these Regulations is the Waste (Miscellaneous Provisions) (Wales) Regulations 2011.

(2) These Regulations—

- (a) come into force on []; and
- (b) apply in relation to Wales.

Amendment of the Hazardous Waste (Wales) Regulations 2005

2. The Schedule, which provides for amendment of the Hazardous Waste (Wales) Regulations 2005⁽¹⁾, has effect.

⁽¹⁾ S.I. 2010/1552.

⁽²⁾ 1972 c.68. Where the Welsh Ministers have been designated in relation to a matter or purpose, they may then exercise the powers conferred by section 2(2) in relation to that matter or purpose; see section 59(2) of the Government of Wales Act 2006 (c.32).

Amendment of the Landfill Allowances Scheme (Wales) Regulations 2004

3. In regulation 2(1) of the Landfill Allowances Scheme (Wales) Regulations 2004⁽²⁾, in the definition of “waste facility” (“*cyfleuster gwastraff*”), for “Article 1(e) and (f) of Council Directive 75/442/EEC on waste”, substitute “Article 3(19) and (15) of Directive 2008/98/EC of the European Parliament and of the Council on waste”.

Amendment of the List of Wastes (Wales) Regulations) 2005

4.—(1) The List of Wastes (Wales) Regulations 2005⁽³⁾ are amended as follows.

(2) In regulation 2—

(a) for sub-paragraph (a) of paragraph (1), substitute—

““the Waste Directive” (“*y Gyfarwyddeb Gwastraff*”) means Directive 2008/98/EC of the European Parliament and of the Council on waste”;

(b) for sub-paragraph (c) of paragraph (1), substitute—

“(c) a reference to hazardous properties is a reference to the properties set out in Annex III to the Waste Directive.”;

(c) for sub-paragraph (b) of paragraph (2), substitute—

“(b) “the List of Wastes” (“*y Rhestr Wastraffoedd*”) means the list of Wastes set out in the Annex to the List of Wastes Decision and a reference to the List of Wastes includes a reference to its introduction (“the Introduction to the List”).”.

(3) In regulation 4—

(a) before “properties”, insert “hazardous”;

(b) omit “of Annex III”.

(4) Omit paragraphs 1 and 2 of Schedule 2.

Amendment of the Town and Country Planning (Local Development Plan) (Wales) Regulations 2005

5. In regulation 2(1) of the Town and Country Planning (Local Development Plan) (Wales)

⁽¹⁾ S.I. 2005/1806 (W.138) amended by S.I. 2006/937, 2007/3538, 2009/2861 and, 2010/675.

⁽²⁾ S.I. 2004/1490, to which there are amendments not relevant to these Regulations.

⁽³⁾ S.I. 2005/1820 (W. 148).

Regulations 2005⁽¹⁾, for the definition of “Waste Strategy for Wales” (“*Strategaeth Wastraff Cymru*”) substitute—

““Waste Strategy for Wales” (“*Strategaeth Wastraff Cymru*”) means the national waste management plan within the meaning of the Waste (England and Wales) Regulations 2011, known by that name and prepared by the Welsh Ministers;”.

Amendment of the Environmental Damage (Prevention and Remediation) (Wales) Regulations 2009

6. In Schedule 2 to the Environmental Damage (Prevention and Remediation) (Wales) Regulations 2009⁽²⁾, in paragraph 3(1), for the words from “Directive 2006/12/EC” to the end, substitute “Directive 2008/98/EC of the European Parliament and of the Council on waste”.

Revocation of the Environmental Protection (Duty of Care) (Amendment) (Wales) Regulations 2003

7. The Environmental Protection (Duty of Care) (Amendment) (Wales) Regulations 2003⁽³⁾ are revoked.

Name

Title of Minister, one of the Welsh Ministers

Date

⁽¹⁾ S.I. 2005/2839 (W.203).
⁽²⁾ S.I. 2009/995 (W. 81).
⁽³⁾ S.I. 2003/1720 (W.187)

Amendments to the Hazardous Waste
(Wales) Regulations 2005

PART 1

Amendments

1. The Hazardous Waste (Wales) Regulations 2005⁽¹⁾ are amended as follows.

2. For regulation 2, substitute—

“The Waste Directive and the meaning of waste

2.—(1) For the purposes of these Regulations—

- (a) “the Waste Directive” (“*Gyfarwydddeb Wastraff*”) means Directive 2008/98/EC of the European Parliament and of the Council on waste;
- (b) “waste” (“*gwastraff*”) means anything that—
 - (i) is waste within the meaning of Article 3(1) of the Waste Directive; and
 - (ii) subject to regulation 15, is not excluded from the scope of that Directive by Article 2(1), (2) or (3).

(2) In these Regulations, a reference to the Waste Directive conditions is a reference to the conditions set out in Article 13 of that Directive, that is to say, to ensure that waste management is carried out without endangering human health, without harming the environment and, in particular—

- (a) without risk to water, air, soil, plants or animals;
- (b) without causing a nuisance through noise or odours; and
- (c) without adversely affecting the countryside or places of special interest.”.

3. For regulation 3, substitute—

⁽¹⁾ S.I. 2005/1806 (W.138) amended by S.I. 2006/937, 2007/3538, 2009/2861, 2010/675.

“Annex III to the Waste Directive

3. A reference in these Regulations to—

- (a) Annex III is a reference to Annex III (properties of waste which render it hazardous) to the Waste Directive, as that Annex is set out in Schedule 3;
- (b) hazardous properties is a reference to the properties in Annex III.”.

4. In regulation 4(1), in the definition of “the List of Wastes” (“*y Rhestr Wastraffoedd*”), omit from “, being the list” to the end.

5. In regulation 5—

(a) in paragraph (1)—

(i) for the definition of “consignment note” (“*nodyn traddodi*”), substitute—

““consignment note” (“*nodyn traddodi*”), in relation to a consignment of hazardous waste, means the identification document which is required to accompany the hazardous waste when it is transferred pursuant to Article 19(2) of the Waste Directive.”,

(ii) in the appropriate place, insert—

““domestic waste” (“*gwastraff domestig*”) means waste produced by a household;”,

(iii) for the definition of “multiple collection” (“*amlgasgliad*”), substitute—

““multiple collection” (“*amlgasgliad*”) means a journey made by a single carrier which meets the following conditions—

- (a) the carrier collects more than one consignment of hazardous waste in the course of the journey;
- (b) each consignment is collected from different premises;
- (c) all the premises from which a collection is made are in Wales; and
- (d) all consignments collected are transported by that carrier in the course of a journey to the same consignee;”,

(iv) omit the definition of “multiple collection consignment note” (“*nodyn traddodi amlgasgliad*”);

(b) for paragraph (2), substitute—

“(2) In these Regulations—

“broker” (“*[cymraeg]*”) means an undertaking arranging the recovery or disposal of waste on behalf of others, including such brokers who do not take physical possession of the waste;

“collection” (“*casglu*”) means the gathering of waste, including the preliminary sorting and preliminary storage of waste for the purposes of transport to a waste treatment facility;

“dealer” (“*[cymraeg]*”) means any undertaking which acts in the role of principal to purchase and subsequently sell waste, including such dealers who do not take physical possession of the waste;

“disposal” (“*gwaredu*”) means any operation which is not recovery even where the operation has as a secondary consequence the reclamation of substances or energy (Annex I of the Waste Directive sets out a non-exhaustive list of disposal operations)

“holder” (“*deiliad*”) means the producer of the waste or the person who is in possession of it ;

“management” (“*rheoli*”) means the collection, transport, recovery and disposal of waste, including the supervision of such operations and the after-care of disposal sites, and including actions taken as dealer or broker;

“producer” (“*cynhyrhydd*”) means anyone whose activities produce waste (original waste producer) or anyone who carries out pre-processing, mixing or other operations resulting in a change in the nature or composition of the waste;

“recovery” (“*adfer*”) means any operation the principal result of which is waste serving a useful purpose by replacing other materials which would otherwise have been used to fulfil a particular function, or waste being prepared to fulfil that function, in the plant or in the wider economy (Annex II of the Waste Directive sets out a non-exhaustive list of recovery operations);

“waste oil” (“*olew gwastraff*”) means any mineral or synthetic lubrication or industrial oil which has become unfit for the use for which it was originally intended, such as used combustion engine oils and gearbox oils, lubricating oils, oils for turbines and hydraulic oils,

and cognate expressions must be construed accordingly.”;

- (c) in paragraph (3)(c), for “, schedule of carriers or multiple collection consignment note”, substitute “or schedule of carriers”.

6. In regulation 8(1), for “Annexes I, II and III”, substitute “Annex III”.

7. In regulation 9—

- (a) in paragraph (1)—
 - (i) for “Annexes I, II and III”, substitute “Annex III”;
 - (ii) omit “to the Hazardous Waste Directive”;
- (b) after paragraph (1), insert—

“(1A) The power at paragraph (1) to decide that waste be treated as non-hazardous does not apply to waste which has been diluted or mixed with the aim of lowering the initial concentrations of hazardous substances to a level below the thresholds for defining waste as hazardous.”.

8. In regulation 18—

- (a) after the words “it has been”, insert “diluted or has been”;
- (b) after paragraph (a), insert—

“(aa) in the case of hazardous waste comprising waste oil, waste oil of different characteristics;”.

9. In regulation 19—

- (a) in paragraph (1), for “(2) and (3)”, substitute “(2), (3) and (4)”;
- (b) in paragraph (3), omit “or a registered exemption”;
- (c) after paragraph (3), insert—

“(4) Paragraph (1) applies to the mixing of waste oil—

 - (a) only to the extent that the prohibition in that paragraph is technically feasible and economically viable; and
 - (b) only where such mixing would impede the treatment of the waste oil.”.

10. In regulation 20(1)(a), omit “or a registered exemption”.

11. In regulation 35—

- (a) in paragraph (1)(a) for “(3)” substitute “(2)”;
- (b) omit paragraphs (1)(c) and (4);
- (c) in paragraph (5)—
 - (i) for “consignment note, schedule of carriers or multiple collection consignment note”, substitute “consignment note or schedule of carriers”,

(ii) for “Schedule 4, 5 or 6”, substitute “Schedule 4 or 5”;

(d) after paragraph (5), insert—

“(6) Until the end of the period of 6 months beginning with the day on which the Waste (Miscellaneous Provisions) (Wales) Regulations 2011 are made—

(a) a carrier may elect to use the multiple collection procedure which applied immediately before the coming into force of those Regulations; and

(b) the forms set out in these Regulations as originally enacted, or forms requiring the same information is substantially the same format, may be used instead of those substituted by the Waste (Miscellaneous Provisions) (Wales) Regulations 2011.”.

12. In regulation 36(1), for “38” substitute “39”.

13. Omit regulation 38.

14. In regulation 42(2)—

(a) in paragraph (1), for “regulations 43 and 44” substitute “regulation 43”;

(b) in paragraph (2), omit “38(6)(b) and (c),”.

15. In regulation 43(1), omit “other than a case to which regulation 44 applies”.

16. Omit regulation 44.

17. In regulation 47—

(a) after paragraph (5)(b), omit “and”;

(b) in paragraph (5)(c), at the beginning, insert “subject to paragraph (5A),”;

(c) after paragraph (5), insert—

“(5A) If the person required to make or retain a register has a waste permit pursuant to which the site is operated, the period for retention of a consignment note required to be kept by regulation 51(2)(a) is—

(a) for 5 years after the deposit of the waste; or

(b) if the permit authorises disposal of waste in a landfill, until the permit is surrendered or revoked.

(5B) In paragraph (5A), “landfill” has the meaning given in Article 2(g) of Council Directive 1999/31/EC on the landfill of waste, but does not include any operation excluded from the scope of that Directive by Article 3(2).”.

18. In regulation 48—

- (a) in paragraph (3)(c), for “Annex IIA or IIB of the Waste Directive”, substitute “Annex I or II of the Waste Directive (as the case may be)”;
- (b) in paragraph (6)(a), omit “and”;
- (c) in paragraph (6)(b), at the beginning, insert “subject to paragraph (6A),”;
- (d) after paragraph (6), insert—

“(6A) If the person required to make or retain a register has a waste permit pursuant to which the site is operated, the period for retention of a consignment note required to be kept by regulation 51(2)(a) is—

- (a) for 5 years after the disposal or recovery of the waste; or
- (b) if the permit authorises disposal of waste in a landfill (in addition to other treatment), until the permit is surrendered or revoked.

(6B) In paragraph (6A), “landfill” has the meaning given in Article 2(g) of Council Directive 1999/31/EC on the landfill of waste, but does not include any waste excluded from the scope of that Directive by Article 3(2).”.

19. In regulation 49—

- (a) in paragraph (1), for “consignor of hazardous waste”, substitute “consignor or broker of, or dealer in, hazardous waste”;
- (b) for paragraph (3), substitute—

“(3) Any person required to keep a record by paragraph (1) must preserve it—

- (a) while the person is a holder of the waste or (if not a holder) has control of the waste; and
 - (b) for 3 years after the date on which the waste is transferred to another person.”
- ;

- (c) in paragraph (4)—
 - (i) after “holder”, insert “, dealer, broker”;
 - (ii) after “recorded”, insert “chronologically”;
- (d) in paragraph (5)—
 - (i) after the first occurrence of “holder”, insert “, dealer, broker”;
 - (ii) in sub-paragraph (b), before “consignor”, insert “dealer, broker or”.

20. In regulation 50(3), after “entered”, insert “chronologically”.

- 21.** In regulation 51(2)(a)—
- (a) omit “multiple consignment notes and”;
 - (b) omit “or 44”;
 - (c) after “pursuant” insert “to”.
- 22.** In regulations 52(1) and 55(3), for “Annex IIA or Annex IIB”, substitute “Annex I or Annex II”.
- 23.** Omit regulation 57.
- 24.** In regulation 60—
- (a) in paragraph (1), for “Article 5”, substitute “Article 16”;
 - (b) omit paragraph (2).
- 25.** In regulation 65(c), for “44” substitute “43”.
- 26.** In the table in regulation 65A(1), omit the row commencing “regulation 44”.
- 27.** In regulation 69(1)(e), for “44” substitute “43”.
- 28.** Omit Schedules 1, 2 and 6.
- 29.** For Schedule 3, substitute the Schedule set out in Part 2.
- 30.** For Schedule 4, substitute the Schedule set out in Part 3.
- 31.** In paragraph 4(3)(a) of Schedule 7, for “43 or 44” substitute “36 or 43”.
- 32.** In paragraph 1 of Schedule 7, for “paragraph 7” substitute “paragraph 6”.
- 33.** In paragraph 6 of Schedule 7—
- (a) in paragraph (1), for “regulation 38(1)”, substitute “the definition of “multiple collection” (“*amlgasgliad*”) in regulation 5(1)”;
 - (b) in paragraph (2), omit all the words after “these Regulations”;
 - (c) omit paragraph (3).
- 34.** In Schedule 11, omit paragraphs 5 to 8 and 11 to 25.

PART 2

The new Schedule 3

“SCHEDULE 3 Regulation 3

Annex III to the Waste Directive

Properties of waste which render it hazardous

- H1 “Explosive”: substances and preparations which may explode under the effect of flame or which are more sensitive to shocks or friction than dinitrobenzene.
- H2 “Oxidizing”: substances and preparations which exhibit highly exothermic reactions when in contact with other substances, particularly flammable substances.
- H3-A “Highly flammable”
- liquid substances and preparations having a flash point below 21°C (including extremely flammable liquids), or
 - substances and preparations which may become hot and finally catch fire in contact with air at ambient temperature without any application of energy, or
 - solid substances and preparations which may readily catch fire after brief contact with a source of ignition and which continue to burn or be consumed after removal of the source of ignition, or
 - gaseous substances and preparations which are flammable in air at normal pressure, or
 - substances and preparations which, in contact with water or damp air, evolve highly flammable gases in dangerous quantities.
- H3-B “Flammable”: liquid substances and preparations having a flash point equal to or greater than 21°C and less than or equal to 55°C.
- H4 “Irritant”: non-corrosive substances and preparations which, through immediate, prolonged or repeated

- contact with the skin or mucous membrane, can cause inflammation.
- H5 “Harmful”: substances and preparations which, if they are inhaled or ingested or if they penetrate the skin, may involve limited health risks.
- H6 “Toxic”: substances and preparations (including very toxic substances and preparations) which, if they are inhaled or ingested or if they penetrate the skin, may involve serious, acute or chronic health risks and even death.
- H7 “Carcinogenic”: substances and preparations which, if they are inhaled or ingested or if they penetrate the skin, may induce cancer or increase its incidence.
- H8 “Corrosive”: substances and preparations which may destroy living tissue on contact.
- H9 “Infectious”: substances and preparations containing viable micro-organisms or their toxins which are known or reliably believed to cause disease in man or other living organisms.
- H10 “Toxic for reproduction”: substances and preparations which, if they are inhaled or ingested or if they penetrate the skin, may induce non-hereditary congenital malformations or increase their incidence.
- H11 “Mutagenic”: substances and preparations which, if they are inhaled or ingested or if they penetrate the skin, may induce hereditary genetic defects or increase their incidence.
- H12 Waste which releases toxic or very toxic gases in contact with water, air or an acid.
- H13(*) “Sensitizing”: substances and preparations which, if they are inhaled or if they penetrate the skin, are capable of eliciting a reaction of hypersensitization such that on further exposure to the substance or preparation, characteristic adverse effects are produced.

(*) As far as testing methods are available.

- H14 “Ecotoxic”: waste which presents or may present immediate or delayed risks for one or more sectors of the environment.
- H15 Waste capable by any means, after disposal, of yielding another substance, e.g. a leachate, which possesses any of the characteristics above.

Notes

1. Attribution of the hazardous properties “toxic” (and “very toxic”), “harmful”, “corrosive”, “irritant”, “carcinogenic”, “toxic to reproduction”, “mutagenic” and “ecotoxic” is made on the basis of the criteria laid down by Annex VI, to Council Directive 67/548/EEC of 27 June 1967 on the approximation of laws, regulations and administrative provisions relating to the classification, packaging and labelling of dangerous substances.

2. Where relevant the limit values listed in Annex II and III to Directive 1999/45/EC of the European Parliament and of the Council of 31 May 1999 concerning the approximation of laws, regulations and administrative provisions of the Member States relating to the classification, packaging and labelling of dangerous preparations shall apply.

Test methods

The methods to be used are described in Annex V to Directive 67/548/EEC and in other relevant CEN-notes.”

Part C CARRIER'S CERTIFICATE
Rhan C TYSTYSGRIF Y CLUDWR

(If more than one carrier is used, please attach Schedule for subsequent carriers. If schedule of carriers is attached tick here).

(Os defnyddir mwy nag un cludwr, amgawch Atodlen ar gyfer cludwyr dilynol. Os amgaeir atodlen o gludwyr, ticiwch fan hyn).

I certify that I today collected the consignment and that the details in A2, A4 and B3 are correct and I have been advised of any specific handling requirements. Yr wyf yn ardystio fy mod heddiw wedi casglu'r llwyth a bod y manylion yn A2, A4 a B3 yn gywir a fy mod wedi cael fy hysbysu o unrhyw ofynion trafod arbennig.

Where this consignment forms part of a multiple collection, the round number and collection number are: Pan fo'r llwyth hwn yn ffurfio rhan o amlgasgliad, rhif y cylch casglu a rhif y casgliad yw:	/
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- Carrier Name:
Enw'r Cludwr:

On behalf of (name, address, postcode, telephone, e-mail, facsimile):
Ar ran (enw, cyfeiriad, cod post, ffôn, e-bost, ffacs):
- Carrier registration no./ reason for exemption:
Rhif cofrestru'r cludwr / rheswm dros esemptiad:
- Vehicle registration no.(or mode of transport, if not road):
Rhif cofrestru'r cerbyd (neu'r cyfrwng cludo os nad ar ffordd)

Signature/ Llofnod

Date/ Dyddiad at/ am hrs/ o'r gloch

Part D CONSIGNOR'S CERTIFICATE
Rhan D TYSTYSGRIF Y TRADDODWR

I certify that the information in A, B and C above has been completed and is correct, that the carrier is registered or exempt and was advised of the appropriate precautionary measures. All of the waste is packaged and labelled correctly and the carrier has been advised of any special handling requirements. I confirm that I have fulfilled my duty to apply the waste hierarchy as required by regulation 12 of the Waste (England and Wales) Regulations 2011.

Yr wyf yn ardystio bod yr wybodaeth yn A, B ac C uchod wedi ei chwblhau ac yn gywir, bod y cludwr wedi ei gofrestru neu'n esempt a'i fod wedi cael ei hysbysu o'r mesurau rhagofalu priodol. Cafodd yr holl wastraff ei becynnu a'i labelu yn gywir a chafodd y cludwr ei hysbysu o unrhyw ofynion trafod arbennig. Yr wyf yn cadarnhau fy mod wedi cyflawni fy nyletswydd i ddefnyddio'r hierarchaeth wastraff fel y mae'n ofynnol gan reoliad 12 o Reoliadau Gwastraff (Cymru a Lloegr) 2011.

- Consignor Name:
Enw'r Traddodwr:

On behalf of (name, address, postcode, telephone, e-mail, facsimile):
Ar ran (enw, cyfeiriad, cod post, ffôn, e-bost, ffacs):

Signature/ Llofnod

Date/ Dyddiad at/ am hrs/ o'r gloch

Part E CONSIGNEE'S CERTIFICATE (where more than one waste type is collected all of the information given below must be completed for each EWC)

Rhan E TYSTYSGRIF Y TRADDODAI (os cesglir mwy nag un math o wastraff rhaid cwblhau'r holl wybodaeth a roddir isod ar gyfer pob EWC)

Individual EWC code(s) received Cod(au) EWC unigol a dderbyniwyd	Quantity of each EWC code received (kg) Cyfaint pob cod EWC a dderbyniwyd (kg)	EWC Accepted/Rejected Cod EWC a dderbyniwyd/ a wrthodwyd	Waste Management operation (R or D code) Gweithrediad Rheoli Gwastraff (cod R neu D)

- I received this waste at the address given in A4 on (date) at hrs o'r gloch
Daeth y gwastraff hwn i law yn y cyfeiriad ar roddir yn A4 ar am o'r gloch

- Vehicle registration no. (or mode of transport, if not road):
Rhif cofrestru'r cerbyd (neu'r cyfrwng cludo os nad ar ffordd)

- Where waste is rejected please provide details:
Os gwrthodir y gwastraff, rhowch y manylion isod:

I certify that environmental permit/registered exemption no(s). authorises the management of the waste described in B at the address given in A4.

Where the consignment forms part of a multiple collection, as identified in Part C, I certify that the total number of consignments forming the collection is

Yr wyf yn ardystio bod y drwydded rholi gwastraff/ caniatâd/ esemptiad a awdurdodwyd sy'n dwyn y rhif(au) yn awdurdodi rheoli'r gwastraff a ddisgrifir yn B yn y cyfeiriad a roddir yn A4.

Pan fo'r llwyth yn ffurfio rhan o amlgasgliad, fel a ddynodir yn Rhan C, yr wyf yn ardystio mai cyfanswm y llwythi sy'n ffurfio'r casg

Name/ Enw
On behalf of (name, address, postcode, telephone, e-mail, facsimile):
Ar ran (enw, cyfeiriad, cod post, ffôn, e-bost, ffacs):

Signature/ Llofnod

Date/ Dyddiad at/ am hrs/ o'r gloch

Explanatory Memorandum to The Waste (Miscellaneous Provisions) (Wales) Regulations 2011.

This Explanatory Memorandum has been prepared by Department for Environment and Sustainability and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 24.1.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of The Waste (Miscellaneous Provisions)(Wales) Regulations 2011. I am satisfied that the benefits outweigh any costs.

JANE DAVIDSON AM
Minister for the Environment, Sustainability and Housing
MARCH 2011

1. Description

These Regulations are supplementary to The Waste (England and Wales) Regulations 2011. They make amendments to several Welsh Statutory Instruments, and revoke one Welsh instrument, for the purposes of transposing for Wales, EC Directive 2008/98/EC on Waste, known as the revised Waste Framework Directive (rWFD).

2. Matters of special interest to the Constitutional Affairs Committee

The 21-day rule has not been complied with in the making of these Regulations. The Minister for Business and Budget has written to the Presiding Officer notifying him of the reasons pertinent to the breach.

In summary, it was necessary, in order to provide a timely, consistent and complete transposition of the rWFD, for these Regulations to contain references to provisions of (and to be made and to come into force at the same time as) the Waste (England and Wales) Regulations 2011. As those Regulations have been made under the affirmative procedure, but it would not have been appropriate to apply that procedure to these Regulations, it has followed that simultaneous making and coming into force could only be achieved by breach of the 21 day rule.

3. Legislative background

The Regulations are made in exercise of the powers conferred by section 2(2) of the European Communities Act 1972. Section 59(2) of the Government of Wales Act 2006 empowers the Welsh Ministers to exercise the section 2(2) powers if they have been appropriately designated for the purposes of section 2(2). The Welsh Ministers have been designated in relation to the prevention, reduction and management of waste. The relevant Designation Order is SI 2010/1552. By virtue of section 59(3) of the 2006 Act, the Welsh Ministers are to determine whether an instrument made in exercise of the section 2(2) powers is to be subject to the negative or affirmative procedure. As the Regulations make provision for supplementary consequential amendment and revocation, and do not amend an Act of Parliament, the Welsh Ministers have determined that the Regulations are to be subject to the negative procedure.

4. Purpose & intended effect of the legislation

The rWFD is being transposed principally through a composite SI, The Waste (England and Wales) Regulations 2011. The Waste (England and Wales) Regulations 2011 (“the 2011 England and Wales Regulations”) are subject to the Affirmative Resolution Procedure. They were laid in draft before the Assembly on [] 2011 and, following debate in Plenary and approval by the Assembly on the 8 March 2011 were made on []. They came into force on []. These Regulations transpose in England and Wales the revised WFD and in addition revise or repeal existing legislation in place which transposed the original WFD.

The Waste (Miscellaneous Provisions)(Wales) Regulations 2011 are required in order to make a number of consequential amendments to Welsh SI's, revoke The Environmental Protection (Duty of Care) (Wales) (Amendment) Regulations 2003 and to transpose changes introduced in the rWFD to the Hazardous Waste Directive. The provision made by the Regulations is equivalent in effect to provision made by the 2011 England and Wales Regulations in relation to England-only legislation. Separate legislation is required for Wales as provision in relation to Welsh instruments must be made bilingually, and the UK Government, for administrative reasons in the context of the transposition timetable, were unwilling to include such amendments in the 2011 England and Wales Regulations. The Regulations are therefore supplemental to the 2011 England and Wales Regulations and should be considered alongside them.

The Waste (Miscellaneous Provisions)(Wales) Regulations 2011:

1. Amend the Landfill Allowances Scheme (Wales) Regulations 2004,
2. Amend the Town and Country Planning (Local Development Plan) (Wales) Regulations 2005,
3. Amend the Environmental Damage (Prevention and Remediation) (Wales) Regulations 2009
4. Amend the List of Waste (Wales) Regulations 2005
5. Amend the Hazardous Waste (Wales) Regulations 2005,
6. Revoke the Environmental Protection (Duty of Care) (Amendment) (Wales) Regulations 2003

The amendments to the regulations listed at 1-4 are minor, essentially substituting references to the original WFD with references to the "new" rWFD and (in the Town and Country Planning (Local Development Plan)(Wales) Regulations 2005) to substitute a new definition of "Waste Strategy for Wales" so as to align it with the requirements for Waste Management Plans contained in the rWFD.

The revocation at 6 is consequential to the revocation, by the 2011 England and Wales Regulations, of the Environmental Protection (Duty of Care) Regulations 1991. The 2003 Regulations, which are revoked, made provision only to amend the 1991 Regulations in relation to Wales. The equivalent England-only instrument (the Environmental Protection (Duty of Care) (England) (Amendment) Regulations 2003) is revoked by the 2011 England and Wales Regulations.

The changes to the Hazardous Waste Regulations 2005 are required because whilst the rWFD repeals and re-enacts the Hazardous Waste Directive and the Waste Oils Directive, it also introduces some changes which impact on the management of hazardous waste. The Hazardous Waste (England and Wales) Regulations 2005 and the Hazardous Waste (Wales) Regulations 2005 already transpose the Hazardous Waste Directive and are largely effective to transpose all the requirements of the provisions in relation to the management of Hazardous Waste in the rWFD. However some amendments are required to the Hazardous Waste Wales Regulations. These amendments

are the same in England and Wales. The 2011 England and Wales Regulations will make the necessary Hazardous Waste amendments for England and these Regulations will make the Hazardous Waste amendments for Wales. The amendments made by these Regulations are of necessity technical and fragmented in nature. They comprise various minor amendments to update references and definitions, but in addition some more substantive amendments are made: the following paragraphs describe their nature and effect:-

Article 17 of the rWFD requires Member States to *“take the necessary action to ensure that the production, collection and transportation of hazardous waste...including action to ensure traceability from production to final destination...”*. (i.e. cradle to grave tracking).

Cradle to grave tracking enables the Environment Agency to verify that businesses have handled their hazardous waste properly to prevent it from harming the environment, to have passed it only to someone authorised to deal with it and to have correctly entered the details of the waste on the consignment note so as to help others know how to handle it. These provisions are currently transposed in the Hazardous Waste (England and Wales) Regulations 2005 (in relation to England) and the Hazardous Waste (Wales) Regulations 2005 (in relation to Wales). However, where hazardous waste is collected from multiple premises on a single journey, it has become apparent that the system of associated paperwork provided for in the 2005 Regulations does not provide the Environment Agency with a fully effective cradle to grave tracking system format in the context of the rWFD requirements. The Regulations therefore amend the procedures in the current system for tracking multiple consignments by providing for a revised multiple consignment system which removes the requirement for a multiple collection summary note. This is because post-consultation research has confirmed that the summary note is not an essential requirement for cradle-to-grave monitoring movements of hazardous waste – however, the new requirement for a round number to be included on the consignment note and in the consignee returns will ensure the requisite cradle-to-grave tracking of hazardous waste.

Article 4(1) of the rWFD requires the application of a five step waste hierarchy as a priority order. To assist in meeting this requirement, the Regulations provide for the revised consignment notes to include a declaration to ensure that, when hazardous waste is transferred between owners, the person transferring the waste confirms they have applied the waste hierarchy as a priority order when taking their decision on the treatment option to which the waste is being consigned.

The new consignment note is provided at Part 3 of the Schedule to the Regulations.

Article 18 : Ban on the mixing of hazardous waste

The controls on hazardous waste in the rWFD are similar to those in the existing Hazardous Waste Directive. However, Article 18(2) of the rWFD introduces an additional condition that must be met to allow a derogation from the ban on mixing hazardous waste, which is that the mixing operation must conform to best available techniques.

The rWFD also provides that the reclassification of hazardous waste as non-hazardous waste may not be achieved by diluting or mixing the waste with the aim of lowering the initial concentrations of hazardous substances to a level below the thresholds for defining waste as hazardous. Although Part 4 of the Hazardous Waste (Wales) Regulations 2005 bans the mixing of hazardous waste unless it is permitted as part of a disposal or recovery operation, it does not account for diluting waste with the intention of lowering the initial concentrations of hazardous substances to a level below the thresholds for defining waste as hazardous.

The Regulations therefore amend the 2005 Regulations to transpose the new dilution requirements and it is proposed to issue, jointly with the UK, revised guidance on dilution.

The Hazardous Waste (Wales) Regulations 2005 are also amended to transpose the requirement of Article 21(1)(c) of the rWFD so that where technically feasible or economically viable, waste oils are not mixed with other kinds of waste or substances, if such mixing impedes their treatment.

Article 20 : Hazardous waste produced by households

The rWFD uses the term “hazardous waste produced by households” whereas the Hazardous Waste (Wales) Regulations 2005 refer to “domestic waste”. The Assembly Government and the UK Government consider the two terms to be equivalent and the 2005 Regulations will maintain the term “domestic waste”. However, the Regulations insert into the 2005 Regulations a definition to the effect that “domestic waste” means “waste produced by a household”. Guidance will be produced to avoid the potential for confusion with the wider definition of “household waste” which includes waste from universities, schools and hospitals.

Dealers and brokers

Article 35 of the rWFD sets out record keeping requirements. These are similar to those set out in the Hazardous Waste (Wales) Regulations 2005. However, the requirement now extends to hazardous waste dealers and brokers. They are now required to keep records of the quantity, nature and origin of the waste, and, where relevant, the destination, frequency of collection, mode of transport and treatment method foreseen in respect of the waste, and to make that information available, on request, to the competent authorities. To transpose this new requirement, the Regulations amend regulation 49 of the Hazardous Waste (Wales) Regulations 2005.

The Environment Agency currently handles brokers in the same way as it handles carriers. They can register with the Agency either as a carrier, carrier/broker or broker. Where dealers/brokers register as carriers or carrier/brokers, they can consign waste on behalf of the producer and where they do this are required to keep a copy of the relevant documentation for 3 years at their principal place of business. In such cases the new requirement may make little practical difference, but the overall impacts of this change are not yet known. The view of the Assembly Government and the UK Government, which is shared with the Environment Agency, is that for the time being it will be sufficient to adopt a pragmatic monitoring approach towards the implementation of this new requirement in order to ensure a proportionate application of Article 35.

Retention of consignment notes

In the Hazardous Waste (Wales) Regulations 2005, operators and transfer stations are required to keep consignment notes for the life of the site. This means that they are accumulating large quantities of notes. The Assembly Government and the UK Government consider that there is no reason for these types of facilities to keep the notes for such a length of time. The Regulations therefore amend the 2005 Regulations so that the period for which all treatment facilities (i.e. facilities carrying out disposal or recovery of hazardous waste), except landfills, are required to retain consignment notes is 5 years rather than the life of the site.

There are some recovery operations that can take place at the site of a landfill, and for which the permit may be consolidated. Where this is the case, the time limit in relation to recovery will require retention of the consignment note for the life of the permit.

Hazardous Waste Properties

Annex III to the rWFD also introduces changes to hazardous properties. These changes are given effect by these Regulations.

Risks

There are risks if this instrument is annulled. Member States are required to transpose the rWFD by 12 December 2010. The UK has not met that deadline and the European Commission is likely to begin infraction proceedings early in 2011, which if successful carry the risk of substantial fines being awarded against the UK (of which the Assembly Government would be expected to meet a proportionate part in accordance with its responsibilities for transposition and failure to do so). The UK Government and the Assembly Government are transposing the rWFD, through the 2011 England and Wales Regulations 2011 and these Regulations. It follows that although these Regulations comprise only a limited element of the transposition, they are essential to it and their annulment would amount to a substantive transposition failure. Moreover, in a domestic context, annulment of these Regulations would result in an incomplete and ineffective regime and

thus cause substantive prejudice to business, public authorities and other sectors.

5. Consultation

Two consultations were held on the transposition of the rWFD: the second consultation included the proposed amendments to the Hazardous Waste Regulations in England and Wales.

There were 87 responses to the stage one consultation from people/organisations living/operating on a Wales only basis plus those who operate on an England and Wales basis. The responses were submitted by a wide cross section of stakeholders, ranging from private individuals, public bodies, large waste management companies, small third sector organisations and campaign groups. Information about the stage one consultation, and the report summarising the responses to that consultation, are available at: <http://wales.gov.uk/consultations/environmentandcountryside/stage2waste/?language=en>

The responses to the stage one consultation were considered and taken into account in the preparation of the stage two consultation proposals.

There were 166 responses to the stage two consultation across England and Wales. Generally, the responses received to the consultation did not differentiate between England and Wales. Many of the organisations who replied operate on an England and Wales basis. The responses were submitted by a wide range of stakeholders, including businesses, public bodies and trade associations. 9 respondents covered Wales only. Information about the stage two consultation, and the report summarising the responses to that consultation, are available at: <http://wales.gov.uk/consultations/environmentandcountryside/stage2waste/?language=en>

The responses to the stage two consultation have been considered and taken into account in preparing the 2011 England and Wales Regulations and these Regulations.

6. Regulatory Impact Assessment (RIA)

These Regulations are supplemental to the regulations that are principally responsible for transposing the rWFD i.e. the 2011 England and Wales Regulations, which are being made on a composite basis with England. The Impact Assessment of the 2011 England and Wales Regulations has been progressed and completed on an England and Wales basis and sets out the costs and benefits associated with the policy options adopted in relation to the entirety of the transposition of the rWFD. Accordingly, an RIA has not been completed for these Regulations because the costs and benefits of the policy options covered by their provisions have been assessed in the Impact

Assessment of the 2011 England and Wales Regulations and were consulted on as detailed above in section 5.

The Impact Assessment indicates that the impact on business, charities and voluntary bodies is limited because the revised WFD principally re-enacts existing waste management controls and there are no additional costs for businesses etc in continuing to comply with these controls.

In terms of the proposed change, within the Hazardous Waste regulations, to the use of a standard single consignment note to track movements of hazardous waste that form part of a multiple consignment round, the Impact Assessment indicates that there will be reduced costs for a typical business currently using the statutory regulatory procedure. It follows that making the changes through these Regulations to a single consignment note will result in a reduction of administration costs to a typical business. If this is projected to the 846 businesses across England and Wales reporting multiple collections this will result in a national cost reduction of £3,045,600.