

John Griffiths AC /AM
Gweinidog yr Amgylchedd a Datblygu Cynaliadwy
Minister for Environment and Sustainable Development



Llywodraeth Cymru
Welsh Government

Eich cyf/Your ref: CLA 124
Ein cyf/Our ref: SF/JG/1573/12

David Melding AM
Chair – Constitutional and
Legislative Affairs Committee
National Assembly for Wales
Cardiff Bay
Cardiff
CF99 1NA
CLA.committee.business@Wales.
gsi.gov.uk

4 May 2012

Dear David,

CLA124 - The Controlled Waste (England and Wales) Regulations 2012

Thank you for your letter of 26 April regarding the Constitutional and Legislative Affairs Committee report on the Controlled Waste Regulations 2012. You have asked me to consider the report and to respond to the points made.

I note the general point on merits scrutiny and that the draft instrument gives rise to issues of public policy likely to be of interest to the Assembly. With regard to scrutiny, the proposals were of course subject to full public consultation. The response from local authorities in particular indicated that it was necessary to bring the legislation up to date and address the anomaly whereby certain waste producers were in effect being provided by a free waste disposal service at the expense of local tax payers. The changes which give local authorities the power to charge for these services if they think it appropriate, will also encourage waste producers to reduce the amount of waste they send for disposal.

On the other two matters regarding the instrument being made in both English and Welsh and following the negative rather than affirmative procedure please see my advice as follows. In relation to the technical point under Standing Order 21.2 (ix), that the instrument was not made bilingually, the regulations update earlier joint England and Wales regulations. As European requirements to manage waste sustainably in accordance with the waste hierarchy and the issues facing local authorities in Wales are substantially the same as in England a decision was made to revise the regulations on a composite basis. The regulations are therefore subject to approval by both the National Assembly for Wales and by Parliament. It was therefore not considered reasonably practicable for this Instrument to be made bilingually.

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1NA

Wedi'i argraffu ar bapur wedi'i ailgylchu (100%)

English Enquiry Line 0845 010 3300
Llinell Ymholiadau Cymraeg 0845 010 4400
Correspondence.John.Griffiths@wales.gsi.gov.uk
Printed on 100% recycled paper

In relation to the question raised in the penultimate paragraph of your letter, seeking clarification as to why the negative Assembly procedure was followed, the regulations were made in reliance on enabling powers conferred by both a designation of the Welsh Ministers (in relation to the prevention, reduction and management of waste) under section 2(2) of the European Communities Act 1972 (ECA1972), and powers exercisable by the Welsh Ministers, under sections 45(3), 75(7)(d) and (8), and 96(2)(b) of the Environmental Protection Act 1990 (EPA1990).

The provision to introduce the ability of waste collection authorities to charge for disposal of waste from certain sources was enacted solely in reliance on the enabling powers in the EPA1990, specifically section 75(8). Section 161 of that Act (Regulations, orders and directions), in effect requires that a statutory instrument containing regulations under that Act, is to be subject to the negative procedure. The 1990 Act does not, therefore, provide for any choice in relation to Assembly procedure.

The part of the regulations made under the powers under section 2(2) ECA is a relatively minor transposition of certain provisions of the Waste Framework Directive 2008, for example, in relation to animal by-products as being a type of waste excluded from the scope of the Directive. Whilst Welsh Ministers in exercise of powers pursuant to a designation under section 2(2) of ECA 1972 have a choice as to the Assembly procedure in the circumstances it was considered appropriate to follow the negative procedure in relation to these regulations.

Yours sincerely,

A handwritten signature in cursive script, appearing to read 'John Griffiths', written in dark ink.

John Griffiths AC / AM

Gweinidog yr Amgylchedd a Datblygu Cynaliadwy
Minister for Environment and Sustainable Development