EXPLANATORY MEMORANDUM TO

THE WASTE MANAGEMENT (MISCELLANEOUS PROVISIONS) (ENGLAND AND WALES) REGULATIONS 2007

2007 SI No. 1156

1. This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs and is laid before Parliament by Command of Her Majesty.

2. Description

2.1. **The Waste Management (Miscellaneous) Provisions (England and Wales) Regulations 2007** ("the 2007 Regulations") amend the Waste Management Licensing Regulations 1994 ("the 1994 Regulations"). They provide further waste licensing exemptions for agricultural waste.

2.2. The Regulations also make some amendments to existing agricultural waste exemptions in Schedule 3 to the 1994 Regulations and revoke item 6 in the table in Schedule 1 to the Clean Air (Emission of Dark Smoke) (Exemption) Regulations 1969.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1. None.

4. Legislative Background

4.1. The Regulations are made in exercise of the Secretary of State's powers under section 33(3) of the Environmental Protection Act 1990 and section 2(2) of the Clean Air Act 1993.

4.2. The main purpose of the Regulations is to amend existing national legislation to make full use of powers to provide exemptions from the permit requirements of the Waste Framework Directive (WFD).

4.3. The WFD was originally adopted in 1975 and was substantially amended in 1991. The Directive's objective are set out in Article 4 and are to ensure that waste is recovered or disposed of in ways which protect the environment and human health. To fulfill this objective the Directive requires Member States to apply a range of controls to the "management" of waste – defined in the Directive as "the collection, transport, recovery and disposal of waste, including the supervision of such operations and after-care of disposal sites". Some of the requirements of the Directive are transposed in the 1994 Regulations.

4.4. Articles 9 and 10 of the WFD require anyone carrying out the waste disposal or recovery operations listed in the Annexes to the WFD to obtain a permit from the "competent authority" – the Environment Agency in England and Wales.

4.5. Article 11 of the WFD, gives Member States some discretion to provide exemptions from the permit requirements of Articles 9 and 10 for those (a) carrying out their own disposal of non-hazardous waste at the place of its production and (b) those carrying out waste

recovery operations, and only if:

"competent authorities have adopted general rules for each type of activity laying down the types and quantities of waste and the conditions under which the activity in question may be exempted from the permit requirements; and

if the types of quantities of waste and methods of disposal and recovery are such that the conditions imposed in Article 4 are complied with."

4.6. Until 15 May 2006, agricultural waste was not controlled under national waste legislation. With the introduction from this date of the Waste Management (England and Wales) Regulations 2006 (SI No. 937/2006), farmers and growers have to now ensure that agricultural waste is recovered or disposed of without endangering human health and without using processes or methods which could harm the environment. This brings the agricultural industry in line with other sectors.

4.7. The Regulations are being introduced principally to provide farmers with certain agricultural waste exemptions so they may recover or dispose of their waste safely without needing to obtain a permit for these activities.

4.8. Regulation 3 makes a minor amendment to clarify the conditions of treatment to the existing paragraph 47 of Schedule 3 to the 1994 Regulations so that under this exemption an application of waste liquid milk to land may only be made once a month.

4.9. Regulation 4 amends the existing paragraph 48 of Schedule 3 to the 1994 Regulations which allows the deposit of waste plant tissue on to agricultural land so that where the application of plant tissue to land is under a notice served under either the Plant Health (England) Order 2005 or the Plant Health (Wales) Order 2006, it must be made in accordance with any conditions imposed by the notice.

4.10. Regulation 5 inserts new paragraphs into Schedule 3 to the 1994 Regulations, to provide three new exemptions from waste management licensing for the disposal of waste pesticide solutions into a lined biobed and the treatment of the land with the biobed itself; the treatment of land with waste ash from the incineration of pig or poultry carcasses; and the treatment of land with waste dredging spoil from farm ditches.

4.11. Regulation 6 revokes item 6 in the table in Schedule 1 to the Clean Air (Emission of Dark Smoke) (Exemption) Regulations 1969.

5. Extent

5.1. The Regulations extend to England and Wales.

5.2. Scotland have already implemented some new exemptions and Northern Ireland are currently involved in a consultation exercise on new agricultural waste exemptions.

6. European Convention on Human Rights

6.1. As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy Background

7.1. As indicated in paragraphs 4.2-4.5, the objective of the WFD is to take the necessary measures to ensure that waste is recovered or disposed of without endangering human health and without using processes or methods which could harm the environment. These Regulations enable certain agricultural waste to be recovered or disposed of accordingly, whilst ensuring farmers and growers have exemptions from requiring a waste management licence, subject to registration of the exemption.

7.2. Agricultural waste became controlled waste on 15 May 2006 and has therefore been brought into line with other industry sectors, which are already regulated and benefit from existing licensing exemptions, as the waste has been controlled for approximately 10 years. In laying the 2006 Regulations before Parliament, the then Parliamentary Secretary, Ben Bradshaw said in a statement:

"A wide range of licensing exemptions will be available to farmers. As a result of discussions with the Agricultural Waste Stakeholders' Forum and public consultation, we have identified proposals for more licensing exemptions for agricultural waste…We propose to carry out a supplementary consultation exercise on these proposals during the 12-month transitional period before the Regulations come fully into force."

7.3. Following this consultation, the 2007 Regulations enable farmers to register, free of charge, new agricultural waste exemptions to carry out waste disposal or recovery operations on their farm without the need for a full waste management licence, which would be costly and burdensome. These Regulations will further assist farmers and growers to comply with waste legislation.

7.4. The Government set up the ***Agricultural Waste Stakeholders' Forum*** (AWSF) to advise on the development of the 2006 Regulations and the subsequent 2007 Regulations. The Forum's membership and terms of reference are available on the Environment Agency's website at:- http://www.environment-agency.gov.uk/business/444304/1224648/660279/241420/1387789/1448871/. The Forum advised on the proposals which were issued for consultation.

7.5. The Clean Air (Emission of Dark Smoke) (Exemption) Regulations 1969 conflict with the 2006 Regulations as they exempt emissions of dark smoke caused by the open burning of containers lightly contaminated with pesticides, or with any toxic substances used for veterinary or agricultural purposes. The exemption is therefore being revoked.

7.6. A draft of the Regulations was the subject of a public consultation exercise between 25 September 2006 and 15 December 2006. Over 200 organisations were consulted including, the National Farmers Union, Environment Agency and other agricultural stakeholders. 14 responses were received. The outcome of the consultation responses was very positive, with 71% of the respondents supporting the proposals. The other 29% either had no comments to make or their comments were outside the scope of agricultural waste. All responses were considered and the Regulations revised where appropriate, for example the maximum limit for spreading dredging spoil from a farm ditch onto agricultural land has

been increased . The summary of comments and the Department's responses are being made available for viewing, according to **Cabinet Office Guidelines** on the Departments website.

7.7. The Environment Agency is the regulatory authority for these Regulations. Guidance will be produced as part of a series of agricultural waste guidance and developed with the AWSF. The Department's Environmentally Sensitive Farming programme provides advice through workshops, seminars and farm walks to farmers and growers on waste regulation across all regions. There is also an agricultural waste helpline run by the Environment Agency.

7.8. The Department is currently engaged in the Environmental Permitting Programme. This will help to deliver a commitment in the Department's Five Year Strategy (Delivering the Essentials of Life) to create "a modernised permitting system, in line with EU requirements and sound environmental policy as well as the Government's principles of good regulation". The Programme is also a constituent element of the Department's initial regulatory Simplification Plan (Lifting the Burden), which sets out how the Department is cutting red tape and simplifying Regulations.

7.9. The Environmental Permitting Programme will establish a common permitting and compliance platform for the future. It is intended to consolidate the existing Pollution Prevention Control (PPC) permitting system and the waste management licensing system to provide a single, streamlined environmental permit for operations currently subject to PPC and waste management licensing control in England and Wales. The Programme is currently the subject of a third consultation exercise – available on the Department's website at http://www.defra.gov.uk/corporate/consult/envpermitprog3/index.htm

7.10. A review of all the exemptions listed in Schedule 3 of the 1994 Regulations is underway. Proportionate risk-based regulation will be delivered through the development of standard rules and bespoke permits under the Environmental Permitting Programme, complemented by a revised suite of exemptions from the need for a permit that combine to produce a spectrum of regulatory control that is proportionate to the environmental risk. Operators will be able to identify where they fit in this spectrum and be able to make choices about the size and scale of their waste management activities and be able to see clearly what they need to achieve in order to operate and migrate within the regulatory regime.

8. Consultation and Impact

8.1. The final Regulatory Impact Assessment for the Regulations is attached at Annex 1 to this Memorandum.

8.2. There will be minimal impact on the public sector.

9. Contact

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Annex 1

Final Regulatory Impact Assessment

Agricultural waste exemptions-
The Waste Management (Miscellaneous) Provisions (England and Wales) Regulations 2007



Llywodraeth Cynulliad Cymru
Welsh Assembly Government



Department for Environment
Food and Rural Affairs

(March 2007)

Agricultural waste exemptions - The Waste Management (Miscellaneous) Provisions (England and Wales) Regulations 2007

Purpose and intended effect

(i) The objective

1.1. The main controls on the management of waste in England and Wales are set out in Part II of the Environmental Protection Act 19901 ("the 1990 Act") and apply to "controlled waste". Until 15 May 2006, section 75(7)(c) of the 1990 Act excluded from the definition of controlled waste:-

> "….waste from any mine or quarry and waste from premises used for agriculture within the meaning of the Agriculture Act 1947 …"2

1.2. The Waste Management (England and Wales) Regulations 2006 (SI No. 937) – and the associated Commencement Order (No.934 (C.27)) – repealed section 75(7)(c) of the 1990 Act. The effect of doing so extended to agricultural waste, and to non-mineral waste from mines and quarries, the national controls already in place to fulfil the requirements of the Waste Framework Directive3 ("the WFD") and the Landfill Directive4. These controls have applied to all other sectors of industry and types of waste since May 1994 in the case of the WFD and since June 2002 in the case of the Landfill Directive.

1.3. The Government announced its intention to consult on the Regulations in the ***Action Plan For Farming*** and confirmed that, in doing so, it would:-

> (a) "Start from the position that the Directive does not apply to manure and other natural, non-dangerous substances used on farms for agricultural benefit;
> (b) Ensure that, where controls are necessary, they will be proportionate to the environmental and human health risk;
> **(c) Make full use of powers to provide licensing exemptions – especially for the re-use and recycling of waste – without charges;**
> **(d) Ensure that registration schemes for exemptions and waste carriers are as simple as possible; and**
> (e) Provide that farmers carrying waste as an incidental part of their businesses are exempt from the requirement to register."

1.4. The Waste Management (England and Wales) Regulations 2006 came into force on 15 May 2006 and put in place a 12 month transitional period so farmers and growers, provided they carried out the activities before 15 May 2006, do not need to apply or register for a waste management licence or

1 And related Regulations.
2 The definition of "agriculture" is re-produced at Annex 1 to this RIA.
3 75/442/EEC as amended by 91/156/EEC and Commission Decision 96/350/EC.
4 1999/31/EC.

exemptions until 15 May 2007.

1.5. The objective of these regulations is to deliver the Government's commitment and provide further exemptions for farmers and growers that will enable them to continue with various waste activities without having to apply for a full waste management licence but instead simply register a waste management exemption without charges. The timing of these regulations allow for the registration of the proposed new exemptions before the end of the current transitional period.

1.6. **Devolution:** The Regulations will apply in England and Wales only. Similar exemptions are under consideration or have been provided in Scotland and Northern Ireland.

(ii) The Background

1.7. **The WFD** was originally adopted in 1975 and was subject to substantial amendment in 1991. Member States were required to transpose and implement the amended WFD by April 1993. The amendments to national legislation necessary to comply with the WFD were (in part) made in the Waste Management Licensing Regulations 19945 ("the 1994 Regulations"). These controls have applied to all sectors of industry and types of waste – other than those excluded under section 75(7)(c) of the 1990 Act - since 1 May 19946.

1.8. **Infraction Proceedings:** The United Kingdom ("the UK") was subject to infraction proceedings by the European Commission under Article 226 of the Treaty of Rome ("the Treaty") in relation to the transposition of the WFD. On 14 February 2003 the Commission lodged an application with the European Court of Justice ("ECJ") requesting a declaration from the Court that the UK is in contravention of Articles 1(a), 1(e), 1(f), 2(1)(b), 3, 4, 5, 7, 8, 12, 13 and 14 of the WFD7. The exclusion of mines and quarries waste and agricultural waste in section 75(7)(c) of the 1990 Act is the subject of infraction in relation to Articles 1(a) and 2(1)(b). The ECJ issued an adverse judgment on the Article 226 infraction on 16 December 20048.

1.9. The prolonged exclusion in section 75(7)(c) of the 1990 Act was also the subject of infraction proceedings in relation to the Hazardous Waste Directive and the Landfill Directive – see paragraph 2.1 below.

1.10. **Requirements Of The WFD:** The objectives and main requirements of the WFD are:-

(a) **Objectives:** The WFD's objectives are set out in Article 4 and are:-

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5 S.I. 1994 No. 1056.

6 The controls were applied to the recovery of scrap metal and the dismantling of end-of-life vehicles with effect from 1 April 1995.

7 Case C-62/03. The application was published in the *Official Journal of the European Union* on 26 April 2003 (C 101/19).

8 Case C-62/03 available on the ECJ website at http://curia.eu.int/jurisp/cgi-bin/form.pl?lang=en&Submit=Submit&docj=docj&numaff=C-62%2F03&datefs=&datefe=&nomusuel=&domaine=&mots=&resmax=100

"to ensure that waste is recovered or disposed of without endangering human health and without using processes or methods which could harm the environment, and in particular:

without risk to water, air, soil and plants and animals,
without causing a nuisance through noise or odours,
without adversely affecting the countryside or places of special interest."

(b) **Waste**: Article 1(a) of the WFD provides that:-

" 'waste' shall mean any substance or object……which the holder discards or intends or is required to discard."

(c) Permits: Articles 9 and 10 require anyone carrying out the waste disposal or recovery operations listed in the Annexes to the WFD to obtain a permit from the competent authority – the Environment Agency in England and Wales9.

(d) Permit Exemptions: Article 11 gives Member States some discretion to provide exemptions from the permit requirements of Articles 9 and 10 for those (a) carrying out their own disposal of non-hazardous waste at the place of its production and (b) those carrying out waste recovery operations.

(e) Registration: (i) Article 11 requires establishments or undertakings . operating under a permit exemption to be registered with the competent authority. And (ii) Article 12 requires anyone who collects or transports waste on a professional basis, or who arranges the disposal or recovery of waste on behalf of others (dealers or brokers), to be registered with the competent authority

(f) Inspections: Article 13 requires anyone who is carrying out waste disposal or recovery operations – under a permit or a permit exemption – and anyone who collects or transports waste, or acts as a broker, to be subject to "appropriate periodic inspections" by the competent authority.

(g) The Duty Of Care: Article 8 imposes what is known in England and Wales as "the duty of care"10. It requires anyone holding waste either (i) to have it handled by someone authorised under the WFD or (ii) to recover or dispose of it himself in accordance with the WFD.

(h) The "Polluter Pays" Principle: Article 15 applies the "polluter pays" principle and requires that:-

"…the cost of disposing of waste must be borne by:

- the holder who has waste handled by a waste collector

9 The lists of waste disposal and recovery operations which require a permit are re-produced in Annex B to this RIA.

10 Section 34 of the 1990 Act.

or by an undertaking as referred to in Article 9,

and/or

the previous holders or the producer of the product from

which the waste came".

1.11. If the Government decides to do nothing, then it will face criticism for a) going back on its commitment in the Action Plan for Farming 2000 (see paragraph 1.3); b) creating obstacles for current low risk farming waste activities to be carried out under exemptions; c) burdening farmers with the need to apply for a full waste management licence that is costly and time consuming; and therefore d) potentially creating more waste for landfill sites.

2. Options

2.1. The UK was subject to an adverse ECJ judgment on infraction proceedings on the WFD and related infraction proceedings on section 75(7)(c) of the 1990 Act. It is the Government's policy to fulfil its legal obligations to transpose and implement EU Directives – in a manner proportionate to the risk and without "gold plating" and in response to the infractions, the Government gave its commitment to the European Commission to repeal the exclusions in section 75(7)(c) of the 1990 Act and to make the Regulations necessary to extend to agricultural waste, and to non-mineral waste from mines and quarries, the national waste management controls in place to comply with the WFD and the Landfill Directive. (These controls have applied to all other sectors of industry and types of waste since May 1994 in the case of the WFD; and since June 2002 in the case of the Landfill Directive.)

2.2. The necessary regulations were made and laid before Parliament on 30 March 2006 and came into force on 15 May 200611. As From 15 May 2006, farmers and growers now have the responsibility to dispose of their waste in a fit and proper way without polluting the environment or causing harm to human health. Because farmers were excluded from controls that have applied to other sectors of industry since 1994, they have not been able to evolve with waste management controls as time has gone on and accordingly face the difficulty in modernising their waste management activities to comply with requirements of the WFD.

2.3. However, EU Member States have discretion under Article 11 of the WFD to provide exemptions from the permit requirements of Articles 9 and 10 of the Directive – see paragraph 1.10 above. One option available, therefore, is the nature and scope of any permit/licence exemptions provided by the Secretary of State under Article 11.

2.4. The main purpose of Article 11 exemptions is to encourage the recovery of waste. In this context, Article 11(1)(b) enables Member States to provide

11 SI No 937

exemptions from the permit requirements of Article 10 for "establishments or undertakings" carrying out the recovery of non-hazardous waste. An exemption may apply only:-

> "…if the competent authorities have adopted general rules for each type of activity laying down the types of and quantities of waste and the conditions under which the activity in question may be exempted from the permit requirements, and
>
> if the types of waste and methods of…recovery are such that the conditions imposed by Article 4 are complied with."

2.5. Article 11(2) of the WFD requires establishments or undertakings operating under the general rules of an exemption to be registered with the competent authority – the Environment Agency in England and Wales. And Article 11(3) requires the general rules under which exemptions are provided to be notified to the European Commission.

2.6. Under Article 11 of the WFD, Schedule 3 of the 1994 Regulations provides existing permit/licence exemptions numbered 1 – 49. The general rules of the majority of existing exemptions are provided by the UK under Article 11 and are set out in regulation 17 and Schedule 3 of the 1994 Regulations. Not all of the existing exemptions are directly relevant to the farming industry. However, in the 2006 Regulations it was deemed appropriate to extend to agricultural waste a number of existing exemptions to assist farmers and growers with the new controls on agricultural waste. At the time the 2006 Regulations were made it was announced that further processes for exemptions relevant to the agricultural industry, could be considered in a second consultation. The exemptions that were consulted on in this second consultation are listed below:-

- Land treatment of ash from pig and poultry carcasses from on-farm incineration (Non SRM).
- Land treatment of dredging spoil from farm ditches
- Disposal of pesticide washings into a lined biobeds and the recovery of the biobed material

2.7. **Option 1**- Is to provide additional permit/licence exemptions for agricultural waste listed in paragraph 2.6. The Agricultural Waste Stakeholders' Forum – see paragraph 5.1 below - provides a means by which the agricultural and related industries may propose the provision of additional permit/licence exemptions within the discretion provided by, and subject to the requirements of, Article 11 of the WFD. By using this option, not only will it encourage the recovery of agricultural waste but also it is a deregulatory option as farmers and growers will be able to register exemptions for a number of low risk waste activities rather than have to apply for a full waste management licence/permit for each activity. In the case of waste pesticide washings, an exemption is provided for an environmentally-friendly means of disposal by means of a biobed, under which the biobed material, is recovered for the treatment of land that results in a benefit to agriculture and ecological

improvement.

2.8. **Option 2-** Is to do nothing. If we adopt the do nothing approach, farmers will face extra burdens, both economically and socially. They will be required to go through a complicated and lengthy process and pay for a licence. This also runs against the Governments commitment, in the Action Plan for farming (see paragraph 1.3), to:-

- Make full use of powers to provide licensing exemptions – especially for the re-use and recycling of waste – without charges;
- Ensure that registration schemes for exemptions and waste carriers are as simple as possible.

By doing nothing, the Government will be creating obstacles for farmers and growers to carry out beneficial waste activities and therefore potentially diverting more waste to landfill sites. The application for a waste management licence is a costly, burdensome and a lengthy process. It would encourage farmers and growers to send waste to landfill sites, as this would be the cheaper option.

3. Benefits

Business Sectors Affected

3.1. **The effect of the Regulations will be to extend existing waste management licensing exemptions to further include new exemptions for agricultural waste.**

3.2. **Agricultural Industry:** This is the main business affected. There are around 137,000 agricultural holdings in England and about 25,000 in Wales giving a total of 162,000 for England and Wales12. The activities covered include: horticulture; fruit and seed growing; livestock breeding and keeping; grazing land; market gardens and nursery grounds – see definition at Annex A.

3.3. Table **1** shows the number of farmers that could potentially register for one of the new exemptions.

12 Source: June 2004 Agricultural Census, Defra and the Welsh Assembly. This figure excludes holdings with no economic output.

Table 1. Figures taken from Defra and Welsh Assembly Agricultural Survey

Type of Farmer	Exemption	Number of Potential Farmers
Pig and poultry	Land treatment of ash from on-farm incineration of pig and poultry carcasses	7699
Cereals, General cropping, Horticulture, Mixed	Disposal of pesticides washings in a lined biobed	52872
All farm types	Land treatment of ditch dredgings to agricultural land	162,000
Cereals, General cropping, Horticulture, Mixed	Plant Health outbreak	52872

Option 1

3.4. The extension of waste management licensing exemption to agricultural waste will result in the benefits outlined below.

3.5. **Encouraging Recovery of Waste:** Article 3 of the WFD provides that:-

> "Member States shall take appropriate measures to encourage:-
> …the recovery of waste by means of recycling, re-use or reclamation or any other process with a view to extracting secondary raw materials"

3.6. Now that agricultural waste is "controlled" waste, farmers will have more of an incentive to recover and recycle their waste. For example the cost of disposal of ash from on-farm incineration of pig and poultry carcasses will provide an incentive for farmers and growers to use their ash beneficially and with lined biobeds, the new exemption is a better disposal route than allowing the washings to be soaked away by groundwater authorisations.

Option 2

3.7. There are no benefits. By doing nothing, the Government will be creating obstacles for farmers and growers to carry out beneficial waste activities and therefore potentially diverting more waste to landfill sites.

4. Costs

Option 1

4.1. The new exemptions will not bear any charges for the farmer. The Government's commitment in the Action Plan for Farming, to register a exemption for agricultural waste, is free of charge. see paragraph1.3.

4.2. These new licensing exemptions will in fact, save the farmers from paying for a full waste management licence, which would be the case for the activities outlined in paragraph 2.6 if these exemptions are not approved.

4.3. Risk Based Inspection: All sites that have registered exemptions are subject to inspection as required by Article 13 of the WFD – see paragraph 1.10 above. The Environment Agency will be monitoring compliance and enforcement of agricultural waste exemption which will be included as part of an Integrated Farm visit. The Integrated Regulation of Agriculture Project (IRAP) has developed a tool "OPRA" (Operator and Pollution Risk Appraisal), to prioritise farm visits on the basis of the risk they pose.

4.4. **Charges**: There are no charges to register a licensed exemption for agricultural waste.

Option 2

4.5. If Government decides on the "do nothing" (option 2) approach then farmers and growers will have to, for most of the new exemptions, apply for a full waste management licence for these activities and will be charged accordingly. The Environment Agency which is the regulatory body for these Regulations will charge according to their charging scheme. Although the current charges for waste management licences are not designed to cover the activities that we are consulting on, the licensed costs have been estimated below, by the Environment Agency, if the option 2 route is chosen:-

Type of Waste Activity	Application Cost	Subsistence Cost	No of potential farmers affected
• **Land treatment of ash from on-farm pig and poultry carcasses incinerators**	**£5,500**	**£2,200**	**7699**
• **Land treatment of dredging from farm ditches**	**No charge but annual re-registration**	**No charge but annual re-registration**	**162,000**

• **Disposal of pesticide washings in a lined biobed**	**£4994 (<5000 tonnes per annum) to maximum of £10,102 per site (taking 75,000 > tonnes per annum)**	**£2807** **£5833**	**52872**

(ii) Other costs

4.6. The new Regulations (option 1) will significantly reduce the administrative burden on the farmer and grower. If, however option 2 is taken forward then farmers and growers who choose to carry out the waste activities mentioned in this document will have the burden of filling out waste management licensing forms which are lengthy and complicated.

4.7. Costs will also be incurred in preparing and implementing the Regulations. The Environment Agency will also face additional costs in terms of extra administration, monitoring and enforcement. Enforcement costs are funded by a Grant In Aid ("GIA") from central Government.

Equity and fairness

4.8. The Regulations will correct a current inequality. That is to say, that as waste management controls did not apply to the agricultural industry when the existing exemptions were created for the rest of industry. The existing regulations did not take into account agricultural waste and therefore many of the current exemptions are not aimed at agricultural waste activities. Now that waste management controls apply to agricultural waste, these new Regulations will ensure that the agricultural industry has appropriate low risk activities covered by licensing exemptions.

5. The Small Firms' Impact Test

5.1. The Agricultural Waste Stakeholders' Forum has been consulted on the Regulations and issues raised are appropriately reflected in the assessments made in the RIA. The main factors determining the impact on businesses of the Regulations are the types and quantities of waste which they produce, recover or dispose of – not the size of the business as such. The Forum's membership and terms of reference are set out on the Department's website at:-
www.defra.gov.uk/environment/waste/agforum/index.htm

6. Competition Assessment

6.1. The application of the Regulations will affect mainly the agricultural sector. The sector includes a large number of separate agricultural markets each of which will be affected to a varying degree if they choose to register the new licence exemptions. However, the affect of the Regulations will be positive, as there will be no extra financial cost to farmers therefore, there will be no disproportionate affect at all on different farming markets.

6.2. As indicated by Table 2 below, an assessment of the new exemptions against the competition filter suggests the impacts will be minimal and hence there is no requirement for a more detailed competition assessment.

Table 2. Competition filter assessment

Question	Answer Yes/No
Q1: In the market(s) affected by the new regulation, does any firm have more than 10% market share?	No
Q2: In the market(s) affected by the new regulation, does any firm have more than 20% market share?	No
Q3: In the market(s) affected by the new regulation, do the largest three firms together have at least 50% market share?	No
Q4: Would the costs of the regulation affect some firms substantially more than others?	No
Q5: Is the regulation likely to affect the market structure, changing the number or size of firms?	No
Q6: Would the regulation lead to higher set-up costs for new or potential firms that existing firms do not have to meet?	No
Q7: Would the regulation lead to higher ongoing costs for new or potential firms that existing firms do not have to meet?	No
Q8: Is the sector characterised by rapid technological change?	No
Q9: Would the regulation restrict the ability of firms to choose the price, quality, range or location of their products?	No

7. Enforcement and sanctions

7.1. The Environment Agency is prescribed as a "competent authority" for the purposes of the WFD and the Landfill Directive and will administer and enforce the waste management controls for agricultural waste. These deregulatory Regulations are optional for the farmer, but it would be in the farmers best interest to register a listed exemption if they are carrying out such waste activities. If they do register, they must comply with the general conditions of the exemption. The Environment Agency will carry out risk based inspections and advise the farmer or grower if they are not complying with the conditions of the exemption.

8. Implementation and delivery plan

8.1. The measure will be implemented in sufficient time to allow for the registration of the new licensing exemptions before the end of the current transitional period (15 May 2007).

9. Monitoring and post-implementation reviewing

9.1. Currently there is no cost to farmers and growers to register exemptions. Defra will continue to monitor the impact of the Regulations on farming practices and income.

9.2. The Agricultural Waste Stakeholders' Forum together with the Environment Agency and the Department have commissioned two stages of a "Farmers' Awareness and Understanding of New Waste Regulations" research survey. Stage one was designed to act as an initial benchmark for the following two stages. Stage two examined awareness and understanding amongst farmers of the then forthcoming waste regulations and to gauge views of the potential implications these new waste regulations will have on the farming community. The third and final stage is proposed to be carried out once the transitional period for the 2006 Regulations have expired and will measure and monitor the effectiveness of both regulations, the understanding and awareness of farmers post-regulations and compliance.

10. Consultation

(i) Within Government

10.1. The Agricultural Waste Stakeholders' Forum and its Sub-groups has enabled the Department to consult with the Department for Communities and Local Government, the Department of Trade and Industry, the Welsh Assembly Government and the Scottish Executive. The DTI's Small Business Service has also been kept informed.

(ii) Public Consultation

10.2. The Agricultural Waste Stakeholders' Forum – see paragraph 5.1 above – has been consulted through out the process of these Regulations. In line

with the Cabinet Office Code on Consultation, a wide-ranging 12 week public consultation exercise was carried out on the draft of the Regulations between 25 September 2006 and 15 December 2006. Over 200 organisations were consulted including, the National Farmers Union, Environment Agency and other agricultural stakeholders. 14 responses were received. The outcome of the consultation responses was very positive, with 71% of the respondents supporting the proposals. The other 29% either had no comments to make or their comments were outside the scope of agricultural waste. All responses were considered and the Regulations revised accordingly, The summary of comments and the Department's responses are being made available for viewing, according to **Cabinet Office Guidelines** on the Departments website.

11. Summary and recommendation

11.1. The Waste Management (England and Wales) Regulations 2006 came into force 15 May 2006. These Regulations were necessary to repeal section 75(7)(c) of the 1990 Act and to apply the requirements of the WFD and the Landfill Directive to agricultural waste, which are not excluded from the scope of the WFD by Article 2(1)(b). This past exclusion is still part of a UK infraction proceeding under Article 226 of the Treaty.

11.2. As agricultural waste had been excluded from national waste controls for over 10 years, the existing Waste Management Licensing Regulations 1994 ("1994") were not aimed at agricultural waste. The 1994 Regulations contain a list of 49 waste licensing exemptions, many of which are not relevant to the agricultural industry. Therefore for farmers and growers to carryout their low risk waste activities, farmers will have to, in most case, apply for a full waste management licence which would be costly and burdensome and disproportionate to the risk proposed by those activities. The Regulations amends the 1994 Regulations to include a number of exemptions aimed at the agricultural industry -see paragraph 2.6.

11.3. By amending the 1994 Regulations, the Government will be following through with its commitment in the Action Plan for Farming to:-

a) "Start from the position that the Directive does not apply to manure and other natural, non-dangerous substances used on farms for agricultural benefit;
b) Ensure that, where controls are necessary, they will be proportionate to the environmental and human health risk;
c) Make full use of powers to provide licensing exemptions – especially for the re-use and recycling of waste – without charges;
d) Ensure that registration schemes for exemptions and waste carriers are as simple as possible; and
e) Provide that farmers carrying waste as an incidental part of their businesses are exempt from the requirement to register."

11.4. The Regulations are deregulatory, they enable the farmer to register a Waste Management Licensing Exemption free of charge, to carry out low risk waste recovery activities on their farm without the need of a full Waste

Management Licence which would be expensive, time consuming and a general burden.

Summary of costs and benefits

11.5. **Table 3 shows the intensity of the impacts of each option.**

Table 3. Impacts of the possible options

	Social		*Economic*		*Environmental*	
Option	Negative	Positive	Negative	Positive	Negative	Positive
1		**XX**		**XXX**		**XXX**
2	**XX**		**XXX**		**XXX**	

The number of (X) indicates the intensity of the specific option. One (X) being less intense than three(X).

11.6. Option 1 is to amend the 1994 Regulations to provide additional permit/licence exemptions for agricultural waste. This is a deregulatory option, as farmers and growers will be able to register exemptions for a number of activities rather than have to apply for a full waste management licence/permit. They will not only have access to existing exemptions, where some are relevant to the farming industry but also to the new exemptions that are specifically designed for farmers and growers. These Regulations will encourage the recovery of agricultural waste therefore, contributing to the Government's Sustainable Development (SD) goal and its commitment to the agricultural industry in the Action Plan for Farming to ensure the registration scheme for exemptions are as simple as possible and without charges .

11.7. Option 2 is to do nothing. This would mean, farmers have the burden of paying for a full waste management licence, for the majority of these activities, and go through annual registration to use their dredgings as a recovery activity, filling in lengthy forms, and could very well decide that it is cheaper to landfill the waste rather than recover it. This would not be meeting the Governments commitment on both SD and the Action Plan for Farming.

11.8. In summary, It is recommended that the best option is the deregulatory approach (Option 1) and to make the Regulations to include further waste management exemptions relevant to the agricultural industry. By doing this, Government is following through on its commitment in the Action Plan for Farming and delivering the Governments SD agenda.

12.Declaration

I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs.

Signed……Ben Bradshaw
Date 28th March 2007

13. Contact points

13.1. **Contact points** on the RIA and for more general enquires on the agricultural waste exemptions, are shown below:-

RIA Contact Point
James Vause
Environmental Protection Economics Division
Department for Environment, Food and Rural Affairs
Zone 5/F6
Ashdown House
123 Victoria Street
LONDON SW1E 6DE

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General Enquiries
Rajnika Patel
Waste Management Division
Department for Environment, Food and Rural Affairs
Zone 6/E7
Ashdown House
123 Victoria Street
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Tel: 020 7082 8866
Fax: 020 7082 8764
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Waste Framework Directive Unit
Waste Management Division
Department for Environment, Food and Rural Affairs (Defra)
March 2007

Annex A

The Agriculture Act 1947

"'**Agriculture** includes:-

> horticulture, fruit growing, seed growing, dairy farming and livestock breeding and keeping, the use of land as grazing land, meadow land, osier land, market gardens and nursery grounds, and the use of land for woodlands where that use is ancillary to the farming of land for other agricultural purposes, and 'agriculture' shall be construed accordingly."

Annex B

Waste Disposal Operations

1. Deposit into or onto land (e.g. landfill, etc.) (D1);

2. Land treatment (e.g. biodegradation of liquid or sludgy discards in soils, etc.) (D2);

3. Deep injection (e.g. injection of pumpable discards into wells, salt domes or naturally occurring repositories, etc.) (D3);

4. Surface impoundment (e.g. placement of liquid or sludgy discards into pits, ponds or lagoons, etc.) (D4);

5. Specially engineered landfill (e.g. placement into lined discrete cells which are capped and isolated from one another and the environment, etc.) (D5);

6. Release into a water body except seas/oceans (D6);

7. Release into seas/oceans including sea-bed insertion (D7);

8. Biological treatment not specified elsewhere in this Annex which results in final compounds or mixtures which are discarded by means of any of the operations numbered D 1 to D 12 (D8);

9. Physico-chemical treatment not specified elsewhere in this Annex which results in final compounds or mixtures which are discarded by means of any of the operations numbered D 1 to D 12 (e.g. evaporation, drying, calcination, etc.) (D9);

10. Incineration on land (D10);

11. Incineration at sea (D11);

12. Permanent storage (e.g. emplacement of containers in a mine, etc.) (D12);

13. Blending or mixing prior to submission to any of the operations numbered D 1 to D 12 (D13);

14. Repackaging prior to submission to any of the operations numbered D 1 to D 13 (D14);

15. Storage pending any of the operations numbered D 1 to D 14 (excluding temporary storage, pending collection, on the site where it is produced) (D15).

Waste Recovery Operations

1. Use principally as a fuel or other means to generate energy (R1);

2. Solvent reclamation/regeneration (R2);

3. Recycling/reclamation of organic substances which are not used as solvents (including composting and other biological transformation processes) (R3);

4. Recycling/reclamation of metals and metal compounds (R4);

5. Recycling/reclamation of other inorganic materials (R5);

6. Regeneration of acids or bases (R6);

7. Recovery of components used for pollution abatement (R7);

8. Recovery of components from catalysts (R8);

9. Oil re-refining or other reuses of oil (R9);

10. Land treatment resulting in benefit to agriculture or ecological improvement (R10);

11. Use of wastes obtained from any of the operations numbered R 1 to R 10 (R11);

12. Exchange of wastes for submission to any of the operations numbered R 1 to R 11 (R12);

13. Storage of wastes pending any of the operations numbered R 1 to R 12 (excluding temporary storage, pending collection, on the site where it is produced) (R13).