

Explanatory Memorandum to the proposed Waste (Wales) Measure 2010

This Explanatory Memorandum has been prepared by the Department for Environment, Sustainability and Housing of the Welsh Assembly Government and is laid before the National Assembly for Wales in accordance with Standing Order 23.18.

Member's Declaration

In my view the provisions of the proposed Waste (Wales) Measure 2010, introduced by me on 22 February 2010, would be within the legislative competence of the National Assembly for Wales.

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Minister for Environment, Sustainability and Housing
Member in charge of Proposed Measure

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1. Description

- 1.1 The proposed Waste (Wales) Measure 2010 makes provision to reduce the amount of waste and litter in Wales and contributes to the development of more effective waste management arrangements in Wales. A summary of the proposals contained in each part of the proposed Measure is provided below.
- 1.2 The proposed Measure provides a power to enable the Welsh Ministers to make regulations requiring retailers to apply the net proceeds of revenues raised from the sale of single use carrier bags to specific environmental purposes or bodies. The power contained in the proposed Measure will only be used if voluntary arrangements with retailers, in relation to how they use the proceeds from the sale of single use carrier bags, are not satisfactory. The proposed Measure will complement the Welsh Assembly Government's policy on single use carrier bags.
- 1.3 The proposed Measure sets statutory targets for local authorities for the percentage of municipal waste to be recycled, prepared for re-use and composted as well as making local authorities liable to pay penalties in the event that they fail to meet these targets. The proposed Measure also enables the Welsh Ministers to establish other targets in relation to the prevention, reduction, collection, management, treatment or disposal of waste; and impose penalties for non-compliance with such targets.
- 1.4 The proposed Measure provides the Welsh Ministers with a power to ban or restrict the disposal of specified kinds of waste to landfill.
- 1.5 The proposed Measure provides the Welsh Ministers with the power to establish Site Waste Management Plans in relation to works involving construction and demolition in Wales. In particular, the proposed Measure provides a power for the Welsh Ministers to make provision for a fees and charging scheme in relation to Site Waste Management Plans.
- 1.6 Finally, the proposed Measure makes some general provision.

2. Legislative background

- 2.1 The power to make this Measure is contained in section 93 of the Government of Wales Act 2006 (c.32) and the National Assembly for Wales' competence to legislate in these areas is found in Matter 6.1, 6.3 and Matter 6.4 in Field 6 of Schedule 5 to the Government of Wales Act 2006. Matters 6.1, 6.2, 6.3 and 6.4 were added to Schedule 5 by the National Assembly for Wales (Legislative Competence) (Environment) Order 2010 (Matter 6.2 does not form the basis of competence for this particular Measure).
- 2.2 The Order provides the following competence to be conferred on the National Assembly for Wales:

“Matter 6.1

Preventing, reducing, collecting, managing, treating or disposing of waste.

This matter does not include—

- (a) regulation of any activity in the sea;*
- (b) regulation of the provision of postal services by a person who holds, or is required to hold, a licence from the Postal Services Commission authorising the person to convey letters from one place to another (whether or not the licence relates to the services).*

See below for further provision about what this matter does not include.

Matter 6.2

Disposal of waste in the sea where the waste has been collected, managed or treated on land.

This matter does not include regulation of the following activities—

- (a) depositing any substance or object in the sea or on or under the seabed from any vehicle, vessel, aircraft, marine structure or floating container;*
- (b) depositing any explosive substance or article in the sea or on or under the seabed;*
- (c) incinerating any substance or object on any vehicle, vessel, marine structure or floating container.*

See below for further provision about what this matter does not include.

Matter 6.3

Protecting or improving the environment in relation to pollution.

This matter does not include—

- (a) regulating the composition and content of fuel used in—*

- (i) a means of transport,
- (ii) non-road mobile machinery, or
- (iii) an agricultural or forestry tractor;
- (b) obligations upon persons who supply transport fuel at or for delivery to places in the United Kingdom to produce evidence showing the supply of renewable transport fuel;
- (c) making provision regarding the proportion of renewable energy consumed in transport, including the imposition of requirements relating to sustainability that determine whether any particular renewable energy is to be counted towards any renewable energy obligation or target;
- (d) provision of financial support in connection with—
 - (i) the production of renewable energy for consumption in transport, or
 - (ii) the use of that energy in transport,
 including the imposition of requirements relating to sustainability that determine whether any particular renewable energy qualifies for financial support;
- (e) regulation of oil and gas exploration and exploitation in those parts of the territorial sea that are not relevant territorial waters.

See below for further provision about what this matter does not include.

Matter 6.4

Protecting or improving the environment in relation to nuisances.

This matter does not include—

- (a) imposition of criminal or civil liability in respect of energy nuisances that consist of acts, omissions and states of affairs for which there is statutory authority, except criminal or civil liability which the Welsh Ministers have power to impose;
- (b) removal of relevant defences to, or relevant exclusions from, rules of law which impose civil or criminal liability in respect of energy nuisances, except those defences and exceptions which the Welsh Ministers have power to remove;
- (c) regulation of the emission of smoke, artificial light or noise from military premises;
- (d) regulation of gas activities, oil activities, and infrastructure that is necessary for carrying out any such activities;
- (e) regulation of oil and gas exploration and exploitation in the sea;
- (f) regulation of electronic communications and electronic communications networks.

See below for further provision about what this matter does not include.

Not included in matters 6.1, 6.2, 6.3 and 6.4

Matters 6.1, 6.2, 6.3 and 6.4 do not include any of the following—

- (a) *regulation concerning the control of major accident hazards involving dangerous substances (this exception is to be interpreted in accordance with Council Directive 96/82/EC⁽¹⁾ and it relates only to activity within the scope of that Directive);*
- (b) *regulation of the decommissioning of offshore energy installations and related infrastructure.*

Not included in matters 6.1 and 6.2

Matters 6.1 and 6.2 do not include any of the following—

- (a) *regulation of decommissioned explosives that are outside the scope of the Waste Directive by virtue of Article 2(1)(b)(v) of the Waste Directive and are or have been—*
 - (i) *held on behalf of the Crown for naval, military or air force purposes or for the purposes of the department of the Secretary of State having responsibility for defence, or*
 - (ii) *held by or for the purposes of visiting forces;*
- (b) *regulation of radioactive material that is at military premises;*
- (c) *regulation of the capture, conveyance or disposal of carbon dioxide as part of relevant carbon capture and storage.*

Not included in matters 6.3 and 6.4

Matters 6.3 and 6.4 do not include any of the following—

- (a) *regulation of the contained use of genetically modified organisms;*
- (b) *regulation of the following activities in the sea—*
 - (i) *depositing any substance or object in the sea or on or under the seabed from any vehicle, vessel, aircraft, marine structure or floating container, or any structure on land constructed or adapted wholly or mainly for the purpose of depositing solids in the sea;*
 - (ii) *scuttling any vessel or floating container;*
 - (iii) *constructing, altering or improving works in or over the sea or on or under the seabed;*
 - (iv) *using any vehicle, vessel, aircraft, marine structure or floating container to remove any substance or object from the seabed;*
 - (v) *dredging;*
 - (vi) *depositing or using any explosive substance or article in the sea or on or under the seabed;*
 - (vii) *incinerating any substance or object on any vehicle, vessel, marine structure or floating container;*
- (c) *marine licensing under Part 4 of the Marine and Coastal Access Act 2009⁽²⁾.*

⁽¹⁾ O.J. No. L10, 14.1.1997, pp. 13-33. The scope of the Directive was extended by Directive 2003/105/EC of the European Parliament and of the Council (O.J. No. L345, 31.12.2003, pp 97-105). There have been other amendments which are not relevant to this Order.

⁽²⁾ 2009 c.

3. Purpose & intended effect of the legislation

General Introduction

- 3.1 The Assembly Government's new Waste Strategy *Towards Zero Waste*³, which has recently been the subject of public consultation, sets out the general policy context for the various provisions in the proposed Waste (Wales) Measure 2010. The long term aim of the Strategy is that Wales becomes a zero waste country by 2050. A zero waste approach aims to eliminate as much waste as possible by designing products and services with waste prevention in mind. Waste that can't be eliminated needs to be re-used or recycled in closed loop systems.
- 3.2 There are a number of important drivers for this policy which include the requirement to meet EC obligations, and other legislative requirements. Of critical importance is the role that improved waste management can play in reducing Wales' ecological and carbon footprints in line with the Assembly Government's Sustainable Development Scheme⁴. The landfilling of waste is an unsustainable approach to waste management. We need to move to an approach which better enables us to live within our environmental means and ensures that we give more attention to material resource efficiency. In addition to the environmental benefits, changing the way that we deal with waste will also lead to significant opportunities to save money as well as creating high quality jobs in the environmental industry sector, in line with the Assembly Government's Green Jobs Strategy⁵.
- 3.3 The provisions in this proposed Measure will put in place policy interventions which will help Wales to develop a more sustainable approach to waste management, consistent with the waste hierarchy⁶, which is one of the fundamental principles of EC environmental law. The purpose and intended effect of the key provisions of the proposed Measure are set out below.

³ *Towards Zero Waste – A Consultation on a New Waste Strategy for Wales*, Welsh Assembly Government, 2009.

⁴ *One Wales: One Planet, a new Sustainable Development Scheme for Wales*, Welsh Assembly Government, 2009.

⁵ *Capturing the Potential: A Green Jobs Strategy for Wales*, Welsh Assembly Government, 2009.

⁶ *Towards Zero Waste – A Consultation on a New Waste Strategy for Wales*, Welsh Assembly Government, 2009, p18.

Single Use Carrier Bags

- 3.4 The proposed Waste (Wales) Measure 2010 amends Schedule 6 to the Climate Change Act 2008 to provide the Welsh Ministers with a power to require retailers to pass on the net proceeds of a charge on single use carrier bags to specified purposes or specified persons, who would need to apply the net proceeds of the charge to specified purposes.
- 3.5 This Measure provision is part of a wider Welsh Assembly Government policy to address waste and litter issues associated with single use carrier bags. Research undertaken by Keep Wales Tidy in 2006 estimated that around 490 million plastic carrier bags were being used in Wales each year and that these take around 500-1000 years to decompose.⁷ More recent evidence provided by the 7 retailers who are signed up to the existing voluntary agreement to reduce carrier bag usage⁸ indicates that, despite the efforts of this voluntary agreement, in May 2009 alone 27 million bags were still taken away by consumers in Wales. This extrapolates to 324 million bags per year. The single use carrier bag has become a symbol of our throwaway society, at a time when reusable alternatives are readily available. Single use carrier bags also require significant resources, impacting negatively on our environment. In addition, they are a visible form of litter, accounting for an estimated 2.7% of litter by weight⁹ and 2.1% of total litter on UK beaches in 2008.¹⁰
- 3.6 In order to address these issues, the Welsh Assembly Government intends to introduce a charge on single use carrier bags, to be brought forward using powers contained in the Climate Change Act 2008. The Welsh Assembly Government conducted a public consultation between June and September 2009 on proposals to introduce charges for the sale of single use carrier bags in Wales¹¹. The Welsh Assembly Government intends to consult on draft regulations in spring 2010 with the aim of introducing a mandatory charge on single use carrier bags by spring 2011.

⁷ *Plastic Bag Litter Position Paper*, Keep Wales Tidy, 2006.

http://www.KeepWalesTidy.org.uk/policy_and_research#

⁸ *Carrier Bags – 50% agreement (2009)*, WRAP.

http://www.wrap.org.uk/retail/carrier_bags/carrier_bags_50.html

⁹ *Plastic Bag Litter Position Paper*, Keep Wales Tidy, 2006.

http://www.KeepWalesTidy.org.uk/policy_and_research#

¹⁰ *Marine Conservation Society 2008 Beachwatch survey*, Marine Conservation Society, 2008.

http://www.mcsuk.org/what_we_do/Clean%20seas%20and%20beaches/Beachwatch/Beachwatch

¹¹ *Proposals for a charge on single use carrier bags*, Welsh Assembly Government, 2009

The consultation document, and associated documents, including a summary of consultation responses, is available using the attached link:

<http://wales.gov.uk/consultations/environmentandcountryside/singleusecarrierbags/?lang=en&status=closed>

- 3.7 The introduction of a charge is intended to address the environmental impacts of single use carrier bags. It is also important, in terms of securing buy-in and public commitment to the implementation of the charge, that there is transparency regarding the use to which the net receipts from a charge are put and that the receipts are applied to worthwhile purposes.
- 3.8 A number of retailers currently charge, on a voluntary basis, for carrier bags and pass on the net revenue from such charges to good causes. We want to build on this good practice and work with retailers on how the net receipts from a charge should be applied. The Assembly Government has proposed the development of a voluntary agreement with the large retailers regarding the use to which the net receipts from a charge will be put. Under such a voluntary agreement, retailers will manage the collection of the charge and its distribution, having accounted for their own administrative costs and the costs of the single use carrier bags. The net receipts would then be passed from retailers directly to environmental or other projects.
- 3.9 As part of any voluntary agreement, the Assembly Government will want to ensure, amongst other things, a high rate of participation from the retailers, the support of worthwhile projects and robust accountability to the general public on the use of receipts from the charge. The Assembly Government will be working with the retailers over the course of 2010 to develop this voluntary agreement.
- 3.10 Evidence suggest that applying the net receipts from a charge on single use carrier bags to worthwhile projects could help to ensure public buy-in and support to the implementation of the charge. In a 2008 poll, representative of the British population, 74% felt that it was right for money raised from charging for carrier bags to go to charity¹². Significantly, this view was also shared by those who disagreed with the principle of charging for bags. 64 respondents (67% of all responses) to the recent Welsh Assembly Government consultation who responded about the use of proceeds were in favour of the funds raised going to environmental projects or purposes¹³.
- 3.11 This view is also supported by lessons from the Irish experience of placing a levy on plastic bags. The advertising and information campaigns introducing the levy in Ireland explicitly stated that all revenues would be used for explicitly environmental purposes and commentators have seen this, and the establishment of a

¹² *Consumers Oppose Nanny State On Plastic Bags*, Ipsos poll, 2008.

<http://www.ipsos-mori.com/researchpublications/researcharchive/poll.aspx?oltemId=2365>

¹³ *Proposals for a charge on single use carrier bags: consultation summary*, Welsh Assembly Government, 2009.

<http://wales.gov.uk/consultations/environmentandcountryside/singleusecarrierbags/?lang=en&status=closed>

hypothecated fund, as central to increasing consumer acceptance of the levy¹⁴.

- 3.12 The National Assembly for Wales' Sustainability Committee considered these and other matters during its Inquiry in response to Petition P-03-63 Banning Plastic Bags. This petition came from the winning idea in a BBC public competition, 'If I ruled Wales', in 2007¹⁵. The Sustainability Committee's report recommended, among other things that:

"...any monies raised by the charge should be used by an arms length body in an open and transparent way to fund environmental projects within Wales."¹⁶

- 3.13 If the proposed voluntary agreement does not deliver satisfactory outcomes, particularly in terms of ensuring that net receipts are passed on to appropriate worthwhile projects, the Welsh Ministers would be able to propose regulations under the power conferred by this Measure provision. (The powers in the Climate Change Act 2008 enable the Welsh Ministers to require retailers to keep records setting out, amongst other things, the uses to which the net proceeds from the charge have been put. However the Climate Change Act 2008 does not give the Welsh Ministers the power to ensure that the net receipts from a charge are applied to specified purposes or persons). Regulations made under this proposed Measure would require retailers to pass the net proceeds from the charge on single use carrier bags to specified purposes or persons. Under the proposed Measure, the specified purposes to which the net proceeds from a charge can be applied will be limited to those which relate to specific Matters set out under Field 6 of Schedule 5 of the Government of Wales Act 2006.

¹⁴ *The most popular tax in Europe? Lessons from the Irish plastic bags levy*, Frank Convery et al, 2007, *Environmental and Resource Economics* (38), pp. 1-11.

¹⁵ *Plastic bag ban wins popular vote*, BBC Wales, 2007.

<http://news.bbc.co.uk/1/hi/wales/6288798.stm>

¹⁶ *Report on the Sustainability Committee's Inquiry into Petition P-03-63 Banning Plastic Bags*, National Assembly for Wales, 2008.

www.assemblywales.org/plastic_bag_report_final.pdf

Waste targets

3.14 The proposed Waste (Wales) Measure 2010 establishes statutory targets for the percentage of a local authority's municipal waste to be recycled, prepared for re-use and composted. The proposed Measure will also provide Welsh Ministers with the power to establish other waste targets to be met by local authorities and to establish financial penalties which could be imposed on local authorities in the event that they fail to meet targets set under the proposed Measure.

3.15 To help move towards a zero waste approach, *Towards Zero Waste* proposes a medium term aim of Wales becoming a high recycling society by 2025. Significant improvements have been achieved across Wales over the past decade in terms of the recycling, re-use and composting of waste. For instance, the rate of local authority collected municipal waste being recycled, re-used or composted has increased from 15% in 2003/04 to approximately 40% in 2009/10, in line with targets set under the Wales Waste Strategy *Wise About Waste*¹⁷. However, we recognise that Wales, as with the rest of the UK, has historically low levels of recycling, re-use and composting. More needs to be done if we are to achieve a truly sustainable approach to managing our waste. After waste prevention, recycling and preparing waste for re-use are the most sustainable ways to manage waste in line with the waste hierarchy¹⁸. It is the policy of the Welsh Assembly Government to drive waste up the hierarchy wherever possible. Better resource efficiency also helps to save scarce resources.

3.16 We also need to be mindful of other drivers, and in particular, ensure that Wales meets its obligations under EC law. For instance, Article 5 of the Landfill Directive 1999/31/EC sets targets for the reduction of biodegradable municipal waste going to landfill. Also of particular relevance is the revised Waste Framework Directive 2008/98/EC aims to help move the EC closer to a "recycling society" with a high level of resource efficiency

3.17 *Towards Zero Waste*¹⁹ therefore proposes a range of new targets with the aim of ensuring that Wales becomes a high recycling society (70% recycling across all sectors) by 2025. The proposed minimum levels for the recycling, re-use and composting of municipal waste by local authorities are as follows:

- 2012/13 – 52%
- 2015/16 – 58%
- 2019/20 – 64%
- 2024/25 – 70%

¹⁷ *Wise About Waste – The National Waste Strategy for Wales*, Welsh Assembly Government, 2002.

¹⁸ *Towards Zero Waste – A Consultation on a New Waste Strategy for Wales*, Welsh Assembly Government, 2009, p18.

¹⁹ *Towards Zero Waste*, p.31.

- 3.18 These targets have been informed by a detailed study commissioned by the Welsh Local Government Association in conjunction with the Assembly Government²⁰. This study considered a range of potential trajectories for increasing the recycling of local authority collected municipal waste and identified the targets set out above as the ones which cost-effectively maximised sustainable development outcomes.
- 3.19 These are realistic but stretching targets for local authorities. The Assembly Government is providing significant financial support to local authorities to help them achieve these targets. This includes a total of £330.5mn allocated through its Sustainable Waste Management Grant (SWMG) since 2001. The Assembly Government is also committed to providing strategic leadership to support the implementation of *Towards Zero Waste*, and will be developing detailed plans with each sector.
- 3.20 The proposed Measure will establish these targets on a statutory footing (the targets are currently non-statutory). The term “re-use” has now been replaced for the purposes of the targets set under the proposed Measure with the term “preparing for re-use” to reflect terminology used in EC legislation.
- 3.21 The purpose of placing these targets on a statutory footing is to give a clear signal of the importance of local authorities increasing the rate of recycling, preparing for re-use and composting of municipal waste. The establishment of statutory targets will also provide certainty to local authorities about the longer-term nature of the targets and enable them to plan ahead and take appropriate measures, including infrastructure investment, to ensure compliance. Moreover, without statutory targets there is a strong risk that local authorities will place too much reliance on options with less sustainability benefits. This could include sending waste which could be recycled or prepared for re-use to energy from waste plants.
- 3.22 The proposed Measure clarifies that the target levels established in particular years continue to apply to subsequent years until a new target level is established. For instance, the 52% target established in 2012/13 will also apply to 2013/14 and 2014/15. This aims to ensure that local authorities maintain improvements in recycling, preparation for re-use and composting rates until a new statutory target takes effect.
- 3.23 In order to support the aims of achieving the higher rates for recycling, preparing for re-use and composting, local authorities will be liable to financial penalties for non-compliance with the statutory targets. There are currently no existing powers to establish such sanctions. Potential financial liability for failure to meet statutory targets will further ensure that local authorities work towards the achievement of the relevant

²⁰ *Scoping New Municipal Waste Targets for Wales*, Eunomia, 2007.

targets. For instance, in 2006/07, 5 out of 22 local authorities failed to meet the recycling, re-use and composting target of 25%. In contrast, all local authorities have, to date, met their statutory targets in relation to the landfill allowance scheme, under the Landfill Allowances Scheme (Wales) Regulations 2004. Failure to meet these targets would have made a local authority liable to the imposition of a financial penalty.

- 3.24 It is proposed that the form of a financial penalty for a local authority's failure to meet a recycling, preparing for re-use or composting target would mirror the provisions of the Landfill Allowances Scheme. Under the Landfill Allowances Scheme in Wales, the current penalties are set at £200 per tonne for each tonne of excess over an annual allowance expressed in absolute tonnes. The penalties in relation to this proposed Measure will apply to the amount of waste which falls short of the statutory target, as calculated from the percentage shortfall.
- 3.25 The proposed Measure will give the Welsh Ministers the power to vary, through subordinate legislation, the amount of financial penalty to be imposed for failure to meet the recycling, preparing for re-use and composting targets.
- 3.26 The proposed Measure will also give Welsh Ministers the power to amend the statutory targets for the recycling, preparing for re-use and composting of municipal waste, or the years to which these targets apply. This power acknowledges that the targets cover a longer period of time, and that unforeseen circumstances may necessitate the amendment of the targets or the target years.
- 3.27 The proposed Measure also provides the Welsh Ministers with a power to establish other statutory waste targets for local authorities and to make them liable to financial penalties if such targets are not met. The introduction of other waste targets, for instance in relation to source separated food waste or maximum levels of energy from waste, may help to drive changes in waste management in line with the Assembly Government's overall approach²¹.
- 3.28 The Waste (Wales) Measure 2010 will complement the regulatory framework established by the Local Government (Wales) Measure 2009. The Local Government (Wales) Measure 2009 reformed the statutory basis for service improvement and strategic planning by local authorities in Wales and the consequential regulatory, reporting, audit, support and intervention requirements. The Measure links well-being and community planning with service improvement. It is the Assembly Government's intention that this framework should apply to any targets established under the proposed Waste (Wales) Measure 2010. Any targets made under the proposed Waste (Wales) Measure 2010 will therefore also be established as statutory targets under the Local

²¹ *Towards Zero Waste*, p.18.

Government (Wales) Measure 2009. The Local Government (Wales) Measure 2009 includes the power to establish statutory Performance Indicators and Performance Standards. Performance Indicators are factors of performance against which a Welsh improvement authority's performance will be measured. In addition, Welsh Ministers may by Order specify Performance Standards in respect of the Performance Indicators set by them. Performance Standards would be the mechanism by which the statutory waste targets under the proposed Waste (Wales) Measure 2010 would be established under the Local Government (Wales) Measure 2009.

- 3.29 This dual approach in relation to regulatory frameworks will provide flexibility in dealing with issues of potential or actual non-compliance with statutory waste targets. The Assembly Government intends to establish the first statutory target for recycling, preparing for re-use and composting waste, of 52% by 2012/13, in a Statutory Instrument in April 2010 using its powers under Section 8 of the Local Government (Wales) Measure 2009.

Landfill

- 3.30 The proposed Waste (Wales) Measure 2010 will provide the Welsh Ministers with a power to ban or restrict the deposit of specified kinds of waste in a landfill in Wales.
- 3.31 The broad aspirations of *Towards Zero Waste* set out the general policy rationale for the landfill provisions under the proposed Measure. Disposing of waste by landfilling is a poor environmental option, being the least sustainable way of managing waste and the least favourable option under the waste hierarchy²². In particular, landfilling has an extremely negative effect on climate change as the breakdown of biodegradable waste releases methane which is a harmful greenhouse gas 23 times more potent than carbon dioxide. 61% of both municipal and industrial and commercial waste that is landfilled is biodegradable²³²⁴.
- 3.32 It is also the case that much waste currently landfilled is a valuable resource, either as a recyclate or for high efficiency energy generation (which is the Assembly Government's preferred treatment for residual waste). Many products landfilled have a high embedded energy, and in many cases a considerable amount of raw materials were wasted during the production of the product. Thus there is an even greater hidden waste of resources associated with landfilling, not just the immediate waste of the resource that is landfilled.
- 3.33 In 2007, Wales produced 5.1 million tonnes of household, commercial and industrial waste. 48% of this was reused, recycled or recovered, but 44% was still landfilled. Overall, landfill has fallen by 29% since 2000/01. Although landfilled waste is decreasing, it remains a significant proportion of the waste produced in Wales. The percentage of waste being landfilled by each waste sector in 2007 was as follows:
- 68% of household waste (1.01 million tonnes)
 - 51% of commercial waste (0.84 million tonnes)
 - 29% of industrial waste (0.55 million tonnes)
 - 11% of construction and demolition waste (1.27 million tonnes)
 - 21% of all wastes (3.68 million tonnes)²⁵
- 3.34 These figures compare poorly with other European States, many of whom have used restrictions or bans to divert wastes from landfill.

²² *Towards Zero Waste*, p.18

²³ *Wales Construction and Demolition Waste Arising Survey 2005-06*, Environment Agency, 2008.

²⁴ *Composition of Municipal and Solid Waste in Wales*, MEL, Waste Research, WRc, AEA Technology, 2003.

²⁵ Household waste figures calculated using WasteDataFlow quarterly data. Commercial and industrial waste figures calculated using the Environment Agency *Industrial and Commercial Waste Survey 2007*. Construction and Demolition waste figures calculated using the Environment Agency *Construction and Demolition Waste Survey 2005-06*.

Austria, Finland, Germany, Hungary, Italy, Flanders, Denmark, France, Netherlands, Sweden, Czech Republic, Estonia and Slovenia have all implemented bans or restrictions in different forms.

- 3.35 The disposal of waste to landfill has become more critical for Wales and the United Kingdom as a whole as existing landfill sites are reaching their full capacity. Wales and the UK have relied far more on landfill than many other EU states and still have the largest rates of landfill. In 2007 it was estimated that 41 million cubic metres of remaining landfill capacity was left available in Wales at commercial non-hazardous sites based on current input rates. If we continue to generate waste on today's levels, our landfill sites will be filled to capacity within just 8 years²⁶.
- 3.36 The purpose of the landfill provisions of the proposed Measure is to address the various environmental issues resulting from the landfilling of waste by giving the Welsh Ministers the power to ban or restrict the deposit of specified kinds of waste from landfill in Wales. Ensuring that particular kinds of waste are recycled or reused, or, in the case of residual waste, used for high efficiency energy generation, will deliver a number of environmental benefits and ensure that more preferable options under the waste hierarchy are used to manage our waste.
- 3.37 The provisions under the proposed Measure would address gaps in the current powers of the Welsh Ministers. The deposit of waste in landfill is currently regulated (in part) by the Environmental Permitting Regulations (England and Wales) 2007. Those regulations are made under section 2 of the Pollution Prevention and Control Act 1999. One of the general purposes of the 1999 Act is (among other things) to regulate activities that are capable of causing environmental pollution. Some of the kinds of waste which might be subject to a ban or restriction are inert materials which are unlikely to be capable of causing environmental pollution in landfill, for example certain types of glass. The Assembly Government's policy aims in relation to proposed bans or restrictions of kinds of waste from landfill extend beyond the control of pollution and we are therefore of the view that a new enabling power is required which will help to address the wider aims of better resource efficiency and the development of more sustainable waste management practices. The purpose of this power therefore is to prohibit or otherwise regulate the deposit of waste in a landfill whether or not the deposit of any particular type of waste in any particular circumstances is capable of causing environmental pollution.
- 3.38 Biodegradable waste from households which goes to landfill is already being progressively reduced through the implementation of the targets contained within the EC Landfill Directive (1999/31/EC) for the landfilling of biodegradable municipal waste, which is also driving up

²⁶ Data available on the Environment Agency's website at:
<http://www.environment-agency.gov.uk/research/library/data/97852.aspx>

recycling and composting levels²⁷. The EC Landfill Directive targets are now being extended in the UK to cover the landfilling of most biodegradable commercial waste. There are no such legal controls on the landfill of industrial, commercial and construction and demolition waste not collected by local authorities. The regulation-making powers in the proposed Measure will address this matter and would assist in the compliance of our obligations under EC law.

- 3.39 The introduction of bans or restrictions on particular kinds of waste is one of a number of policy levers which may help Wales to meet the ambitious targets for recycling, preparation for reuse and composting set out in *Towards Zero Waste* and this proposed Measure. The reliance on landfill in Wales has led to a lack of development of other recycling and recovery options. There is currently a lack of infrastructure capacity for the processing of these wastes. It is important to have market certainty as to the availability of these wastes to potential developers and to drive recycling forward. Bans or restrictions on the landfilling of particular kinds of waste will help to provide this certainty and should help contribute to the development of infrastructure capacity which will assist Wales in developing a more sustainable approach to waste management.
- 3.40 The proposed Waste (Wales) Measure 2010 will provide the Welsh Ministers with a power to enable them to introduce a ban or restriction on the deposit of specified kinds of waste to landfill in Wales. The exact nature of any proposed ban or restriction will be informed by the outcomes of joint work between Wales, DEFRA and the other devolved administrations into the benefits and practicalities of banning or restricting particular wastes from landfill. This study is being undertaken by Eunomia Consulting and is managed by the Waste Resource Action Programme. The aim is to conduct a feasibility study regarding the practicalities and impacts of introducing landfill bans for biodegradable and recyclable/ recoverable materials (above and beyond arrangements currently in place in the four devolved administrations). In particular, the study seeks to discover the costs and benefits of different landfill bans or restrictions and the practical issues associated with implementation and enforcement. Key materials being considered include food, green, paper and card, textiles, wood, glass, metals, plastics, waste electrical and electronic equipment (WEEE) and biodegradable waste.
- 3.41 The Welsh Assembly Government and DEFRA will be undertaking a policy consultation in 2010 on possible landfill bans or restrictions. Should the Welsh Assembly Government want to ban or restrict particular kinds of waste from landfill as a result of this or other studies, the power provided to the Welsh Ministers under this proposed Measure would enable them to propose regulations to that end. Regulations would be subject to the National Assembly's affirmative

²⁷ Implemented in Wales through the Landfill Allowances Scheme (Wales) Regulations 2004.

procedure and would need to be accompanied by a full Regulatory Impact Assessment.

Site Waste Management Plans

- 3.42 The proposed Waste (Wales) Environment Measure 2010 provides the Welsh Ministers with the power to make regulations about fees and charging schemes in relation to Site Waste Management Plans (SWMPs) which will be introduced for the construction and demolition (C&D) sector in Wales (section 12(2)(e)). This provision also restates the existing powers of the Welsh Ministers under section 54 of the Clean Neighbourhoods and Environment Act 2005 (CNEA) to make regulations requiring SWMPs.
- 3.43 The purpose of SWMPs is to help companies in the C&D sector to think and plan to prevent, minimise and recycle the waste being produced and divert waste away from landfill. Addressing waste issues in the C&D sector is important for a number of reasons.
- 3.44 Firstly, a significant amount of waste generated by the C&D sector is currently landfilled. Latest 2008/9²⁸ figures from waste operator returns submitted to the Environment Agency show that 31% of the waste that was disposed to landfill was composed of inert and C&D waste.
- 3.45 Other data from a survey by the Environment Agency Wales on the waste arising in the C&D sector in 2005/06²⁹ show that 12.2 million tonnes of C&D waste arose in 2005/06. The survey results show that the C&D sector recycle and re-use 85% of its waste. However, even with a high recycling and re-use rate, the survey results highlighted that the C&D sector landfilled 1.27 million tonnes of waste, the highest volume of waste being landfilled across all of the waste sectors. Most of the waste produced by the civil engineering sector (8.0 million tonnes) was recycled or re-used. If the data from civil engineering activities are excluded, the recycling rate for the C&D sector is much lower and provides a more difficult challenge for small and medium enterprises, which comprise of 99% of companies in Wales³⁰.
- 3.46 Secondly, improved recycling and re-use in the C&D sector will help to improve material efficiency and reduce the sector's carbon footprint. Every year, the C&D sector consumes over 420 million tonnes of materials³¹ in the UK, mostly primary materials such as virgin aggregates and wood. The sector also generates a significant contribution to our carbon footprint, transporting waste and materials across large distances.

²⁸ *Wales Waste Data Information 2008*, Environment Agency, 2008.

<http://www.environment-agency.gov.uk/research/library/data/111408.aspx>

²⁹ *Wales Construction And Demolition Waste Arising Survey 2005-06*, Environment Agency, 2008.

<http://www.environment-agency.gov.uk/research/library/publications/33979.aspx>

³⁰ *Business structure analysis by detailed size band, Wales and UK (2006)*, Stats Wales
<http://www.statswales.wales.gov.uk/TableViewer/tableView.aspx?ReportId=1693>

³¹ *The Construction Industry Mass Balance: resource use, wastes*, Transport Research Laboratory, 2002.

- 3.47 Finally, more effective waste management practices in the C&D sector will help minimise pollution arising from waste and improve the management of hazardous waste. The C&D sector produced around 880,000 tonnes of hazardous waste across England and Wales in 2008, of which 88% of this waste was landfilled³². There are no hazardous merchant landfills in Wales. Inert and C&D sector waste is a major source of pollution. In 2008 inert and C&D waste was the largest source of serious land pollution incidents in Wales, accounting for 36% of the total³³. Similarly, inert and C&D waste was responsible for 16% of serious water incidents³⁴.
- 3.48 There were more than 55,300 incidents of fly-tipping on local authority land in Wales last in 2008/09, that cost approximately £3 million to clean up³⁵. Construction, demolition and excavation waste is the third largest waste type reported in fly-tipping incidents after household black bags and other household waste. Around 3,120 incidents involving construction, demolition and excavation were reported in 2008/09³⁶. Around 188 fly-tipping incidents of asbestos waste were reported in the same period³⁷.
- 3.49 In summary, the preparation of SWMPs should help the C&D sector to:
- Improve waste management practices and make it easier to process waste and reduce at source, thus avoiding the high costs of waste disposal;
 - Measure the amount of waste produced;
 - Encourage the recycling and re-use of materials, reduce demand for primary materials and increase take-up of secondary/recycled C&D materials;
 - Design waste out at the design stage, making it easier for companies to work to specification. In turn this will also reduce the potential of waste on-site; and
 - Ensure compliance with existing waste management legislation, re-enforcing the Duty of Care.
- 3.50 The Welsh Ministers currently have powers in the CNEA, which enables them to make regulations requiring the preparation of, and

³² *Wales - hazardous waste data 2008*, Environment Agency.

<http://www.environment-agency.gov.uk/static/documents/Research/EWHaz08.xls>

³³ Pollution incidents Graph comparison. Data available on request from Environment Agency Wales, MAR.

³⁴ Pollution incidents Graph comparison. Data available on request from Environment Agency Wales, MAR.

³⁵ *Fly-tipping in Wales 2008/9*, Statistics for Wales, 2009.

<http://wales.gov.uk/topics/statistics/headlines/env2009/hdw20091001/?lang=en>

³⁶ *Fly-tipping in Wales 2008/9*, Statistics for Wales, 2009.

<http://wales.gov.uk/topics/statistics/headlines/env2009/hdw20091001/?lang=en>

³⁷ *Fly-tipping in Wales 2008/9*, Statistics for Wales, 2009.

<http://wales.gov.uk/topics/statistics/headlines/env2009/hdw20091001/?lang=en>

adherence to, SWMPs. A cost-benefit analysis and Regulatory Impact Assessment (RIA) on SWMPs are currently being prepared, with public consultation expected later in 2010.

- 3.51 To ensure effective compliance with the SWMP regulations, the enforcement authority/authorities will need to put in place appropriate monitoring and enforcement mechanisms to process applications, monitor implementation and if necessary undertake enforcement action. One option for resourcing this work is to introduce a fees and charges scheme. This is essentially a charging system, whereby fees are tied to the processing or checking of a SWMP and/or charges are levied to recover costs of any monitoring of compliance with SWMP provisions. The provisions in the CNEA do not provide a power to make regulations about fees and charging schemes. Accordingly, it is proposed that the Measure will give the Welsh Ministers the power to make regulations about fees and charging schemes. The Welsh Assembly Government will consult about fees and charges when it consults on SWMP regulations later in 2010.
- 3.52 A fees and charging scheme, if introduced, would accord with the 'polluter pays' principle in other pieces of environmental legislation as well as with other regulatory functions undertaken by various enforcement authorities, such as the operation of planning and building regulations by each local authority. Other enforcement activities are undertaken on a national basis such as by the Environment Agency.
- 3.53 In addition to providing the Welsh Ministers with the power to establish a fees and charging scheme, the proposed Waste (Wales) Measure 2010 restates the existing provisions contained within section 54 CNEA.
- 3.54 Restating the existing powers, with some modification for the purposes of the Measure, ensures that the relevant legal provisions in relation to SWMPs are codified in one piece of legislation. An alternative approach would have been to add a new Wales-only section to the CNEA in relation to a fees and charging scheme. The free-standing nature of the Measure provisions is preferred on the basis that it will ensure greater accessibility, ease of reference and transparency in relation to the law on SWMPs compared to an approach which sought to add a new Wales-only section to the CNEA. It also has the benefit of ensuring that the law in relation to SWMPs is available bilingually.

4. Consultation

- 4.1 The development of the proposed Measure has been informed by consultation on the policy objectives which underpin the provisions of the Measure. This includes consultation on the proposals surrounding single use carrier bags; the proposals contained with the new Waste Strategy for Wales and also through stakeholder engagement on the policy proposals contained in the proposed Measure. A summary of these consultations is provided below.

Single Use Carrier Bags

- 4.2 The Assembly Government held a full 12 week public consultation between June and September 2009 on proposals to introduce charges for single use carrier bags. A total of 211 written responses were received as part of the consultation exercise. A summary of responses to the consultation on the proposals relating to single use carrier bags can be accessed here:

<http://wales.gov.uk/consultations/environmentandcountryside/singleusecarrierbags/?lang=en&status=closed>

- 4.3 The consultation sought views on a range of issues, including on the broad principle of where the funds raised from the charge should go. There was general support from consultation respondents for any revenue raised from the charge to go to environmental projects.
- 4.4 Prior to the consultation, Assembly Government officials had discussions with several stakeholders. These included environmental groups, consumer groups, retailers and their representatives, manufacturers of bags and the Welsh Local Government Association.
- 4.5 As part of the consultation process, several events were held. Two public consultation events took place: the first was held in Llandudno on 10th September and the second in Swansea on 17th September. An event with business representatives and retailers was held on 13th July and a small workshop was carried out with SMEs on 10th July. A stand providing information about the consultation was also present at the Royal Welsh Show on 20th-23rd July. Further meetings with trading standards/local government officials, carrier bag manufacturers and Community Pharmacy Wales were held during the consultation period.
- 4.6 The Assembly Government also commissioned focus group research into consumer views on charging. Focus group sessions with Consumers and SMEs in Wales were held during the summer and this work has now reported. Copies of these reports can also be accessed via the link to the Welsh Assembly Government's website above.

- 4.7 The consultation and engagement with stakeholders have helped to inform the development of the proposals contained in the proposed Measure.

Waste Management provisions

- 4.8 The proposed Measure gives effect to a number of the essential components of the new Waste Strategy for Wales *Towards Zero Waste*. This strategy sets out how the Welsh Assembly Government proposes to build on *Wise About Waste – The National Waste Strategy for Wales* (published in 2002) and sets out the long term aims for waste management and resource efficiency until 2050. The new Waste Strategy for Wales sets the direction of travel for the actions that are being proposed in relation to the waste management aspects of the proposed Measure.
- 4.9 *Towards Zero Waste* was launched by the Minister for Environment, Sustainability and Housing on 29th April 2009 and was subject to a 12 week public consultation which ended on 22nd July 2009. There were a total of 94 consultation responses.
- 4.10 Independent facilitators, on behalf of the Welsh Assembly Government, also provided a youth version of the consultation document. This was developed by an organisation specialising in young people's participation and making information accessible to young people, children and families, and therefore sought to involve young people in the development of the new Waste Strategy.
- 4.11 As part of the consultation process, the Assembly Government held three events across Wales: in Swansea on 20th May, in Aberystwyth on 4th June and in Llandudno on 17th June. The purpose of these events was to give participants an opportunity to examine, review and discuss the policy and strategic context as well as to discuss the specific content of *Towards Zero Waste*. A total of 114 people attended the three events.
- 4.12 A report has been produced by the independent facilitators, on behalf of the Welsh Assembly Government, which provides a summary of the issues and themes emerging from the events, the written consultation and the consultation with young people. This includes a summary of the responses to the new Waste Strategy and includes an analysis of the key issues raised in the responses to each of the consultation questions. This is available on the Welsh Assembly Government's website through the following link.
<http://wales.gov.uk/consultations/environmentandcountryside/wastestrategy/?lang=en&status=closed>

Waste targets

- 4.13 There has been extensive engagement with local government over the intention to introduce statutory targets. Proposed targets were published in *Future Directions for Municipal Waste Management in Wales - A Paper for Discussion* published in October 2007 and updated on several occasions since then³⁸. Although the Future Directions paper was not subject to formal consultation, a response was provided by the Welsh Local Government Association. This response raised a number of issues including: that waste prevention should be the priority; that the focus need to be on sustainable development not environmental sustainability; issues around the achievability of targets; the concern about targets as a means of driving policy; that national targets do not accommodate regional diversity; the need for further funding to meet the targets; and also the role of energy from waste.
- 4.14 The proposed targets for the percentage of waste recycled, prepared for re-use and composted were included in the consultation on the new Waste Strategy *Towards Zero Waste*. A summary of the responses to this consultation is available on the Welsh Assembly Government's website through the following link:
<http://wales.gov.uk/consultations/environmentandcountryside/wastestrategy/?lang=en&status=closed>
- 4.15 The first target of 52% in 2012/13 is being placed on a statutory basis from April 2010 via an Order under the provisions of the Local Government (Wales) Measure 2009. The intention to establish this first statutory target was included as part of the consultation, primarily aimed at local authorities, on the statutory performance indicators for 2010/11 which was undertaken between November 2009 and January 2010. The consultation also signalled the Assembly Government's intention to establish the remaining targets (58% by 2015/16; 64% by 2019/20 and 70% by 2024/25) in due course. Only one local authority specifically responded on the proposed statutory target. The authority welcomed the target and in particular noted that long-term targets were helpful in planning services. It also set out a number of issues for consideration including the need for detail on the consequences for failure to meet the target; the need for flexibility to amend long-term targets; an understanding of the proposed sector plans; and clarity about the definitions around municipal waste.

Landfill

- 4.16 The proposed Measure provides the Welsh Ministers with a power by regulations to make provision for and in connection with prohibiting or

³⁸ *Future Directions For Municipal Waste Management in Wales – A Paper for Discussion*, Welsh Assembly Government, 2007.

otherwise regulating the deposit of specified kinds of waste of waste in landfill sites in Wales. This may include a ban or a restriction on the landfill of biodegradable and recyclable/ recoverable material. The Welsh Assembly Government and Defra will be consulting publicly on options for landfill bans in 2010. The consultation includes the results of a project undertaken by WRAP (Waste Resources Action Programme), commissioned by the Devolved Administrations and Defra, to look at the potential for landfill bans or restrictions across the UK published. The final report includes an initial assessment of the costs and benefits and will be used to determine possible options for landfill bans or restrictions of particular materials in Wales.

- 4.17 The detail of any subsequent landfill bans or landfill restriction will be taken forward in the context of regulations brought forward under the provisions of the proposed Measure. This will be subject to thorough consultation and Regulatory Impact Assessment at the appropriate time.

Site Waste Management Plans

- 4.18 The provisions relating to SWMPs in Wales have been developed through informal, pre-consultation dialogue with relevant stakeholders, including a workshop held in July 2008 involving local authorities and companies; and a second workshop in January 2009 with trade and construction organisations. The main themes that emerged from the workshop included the need for SWMPs to begin at an early stage of design and planning; that careful consideration was needed on the threshold that triggered the requirement to undertake SWMP; and that SWMPs should be made available to all construction projects, especially those with demolition activities. This pre-consultation also identified that a charging scheme was needed to enable effective monitoring and enforcement duties of SWMPs to be carried out.
- 4.19 A cost-benefit analysis and RIA on SWMPs are currently underway, with consultation on SWMP Regulations expected later in 2010. The details of proposals for any charging scheme will be informed by this detailed programme of work.
- 4.20 More detailed consideration of the impact on sectors such as business, local government and voluntary sector is set out as part of the RIA in Part 2.

5. Power to make subordinate legislation

- 5.1 The proposed Measure contains enabling powers for the Welsh Ministers to make subordinate legislation. In some cases, the subordinate legislation will contain considerable detail which is likely to be subject to periodic review and amendment. It would be cumbersome, and take up considerable amounts of the National Assembly's time, if these amendments had to be done by Measure, and therefore it is considered to be more appropriate that these provisions are contained within subordinate legislation rather than on the face of the proposed Measure. In other cases, the power to make subordinate legislation will enable the Welsh Ministers to introduce or amend the detail of the Measure to cover developments that are unknown at this stage. This avoids the need to bring forward an amending Measure each time such changes are required.
- 5.2 Further description of each of the powers to make subordinate legislation is provided below.

Single Use Carrier Bags

- 5.3 Section 1 of the proposed Waste (Wales) Measure 2010 contains a power for the Welsh Ministers to make regulations requiring retailers, who will be obliged to charge a minimum amount for single use carrier bags under regulations to be made in 2011, under the Climate Change Act 2008, to pay the net receipts from a charge on single use carrier bags to specific purposes or bodies.
- 5.4 In parallel with the introduction of the minimum charge for single use carrier bags, the Welsh Ministers will be working with retailers to develop a voluntary agreement regarding the use to which the net receipts from a charge will be put. Under this agreement, retailers will manage the collection of the charge and its distribution to environmental or other projects. The regulations referred to in section 1 of the proposed Measure will only be made if voluntary arrangements with retailers in relation to how they use the proceeds do not deliver satisfactory outcomes. The provision gives a wide discretion to the Welsh Ministers to enable them to make regulations to require retailers to apply the net proceeds of the charge to specified purposes and give the net proceeds of the charge to specified persons, if the regulations also require those persons to apply the proceeds to specified purposes.
- 5.5 The proposed procedure for making the first set of regulations under Schedule 6 to the Climate Change Act 2008, as amended by the Measure provision, is the affirmative resolution procedure. This is line with the procedure for making regulations for the charge itself under the Climate Change Act 2008. Section 77(4) of that Act also provides that regulations imposing or providing for the imposition of new civil sanctions; regulations which increase the amount or maximum amount

of a monetary penalty or change the basis on which such an amount or maximum is to be determined, or amend or repeal a provision of an enactment contained in primary legislation are subject to the affirmative procedure. Otherwise, regulations made under Schedule 6 to the Climate Change Act 2008 will be subject to the negative procedure.

Waste targets

- 5.6 Section 3 (4) of the proposed Measure provides the Welsh Ministers with a power to amend, by order, the table provided under subsection (3) in relation to the recycling, preparation for re-use and composting targets and the target financial years in which they apply. This will provide flexibility in the event that any of the targets or periods need to be amended. Taking account of the potential impact on local authorities of amending the targets, it is proposed that any statutory instrument amending the table would be subject to the National Assembly's affirmative procedure.
- 5.7 Under section 3 (6) the Welsh Ministers have a power to make provision by order to establish whether waste is recycled; prepared for re-use; or composted for the purposes of the targets under this section. As this is a technical issue, it is envisaged that any statutory instrument brought forward under this power would be subject to the National Assembly's negative procedure.
- 5.8 Under section 3 (8) (c) the Welsh Ministers have a power to specify by Order other waste that may be included in the definition of local authority municipal waste for the targets under section 3. As this is a technical issue it is proposed that any order would be brought forward using the negative procedure.
- 5.9 Section 4 provides the Welsh Ministers with a power to make regulations to specify other waste targets, in addition to those set under section 3, relating to the prevention, reduction, collection, management, treatment or disposal of waste. The Welsh Ministers may also specify performance indicators in order to measure a local authority's achievement of any targets set under section 4. The section also provides the Welsh Ministers with a power to impose financial penalties on local authorities in the event that a waste target is not met. As these powers are concerned with the establishment of other statutory waste targets, which would be legally binding on local authorities, the Assembly Government considers that the regulations should be subject to the affirmative resolution procedure.
- 5.10 Section 5 provides the Welsh Ministers with a power to make provision by regulations about monitoring and auditing compliance with targets established by or under sections 3 and 4 of the proposed Measure. Under paragraphs (a) to (f), these regulations would be able to make provision about the method of assessing compliance; the

arrangements for monitoring and auditing; powers of entry and inspection for those auditing compliance; a requirement for local authorities to maintain records and provide information; and the publication of information in relation to the targets. These are technical issues involving the monitoring and compliance of the targets. The proposed procedure for making these regulations is therefore negative.

- 5.11 Section 5 (1) (g) provides the Welsh Ministers with the power to make provision by regulations to impose liability on a local authority to pay a penalty if it fails to comply with any requirement of the regulations made under section 5. As the power potentially enables the Welsh Ministers to impose additional financial burdens on local authorities for failure to comply with regulations about monitoring and auditing compliance with the targets, it is proposed that the procedure for making the regulations is affirmative. This is consistent with the powers contained under section 6 (see below) which enables the Welsh Ministers to make regulations about penalties.
- 5.12 Section 6 (2) provides the Welsh Ministers with a regulation-making power to impose penalties on local authorities for failure to meet the recycling, preparation for re-use and composting targets under section 3 or other waste targets under section 4. This includes the power to specify the amount of penalty, rules for calculating the amount of penalty and other aspects in relation to the penalty regime. These powers concern detailed matters which will require periodic review and amendment, and therefore sit more appropriately in subordinate legislation than on the face of the Measure. Moreover, it is the intention that the proposals to establish penalties for failure to meet the targets will be subject to consultation in due course. As the powers potentially enable the Welsh Ministers to impose additional financial burdens on local authorities for failure to meet the targets, this merits more thorough scrutiny by the National Assembly. It is therefore proposed that these powers would be subject to the affirmative resolution procedure.

Landfill

- 5.13 Section 9 (1) provides the Welsh Ministers with the power by regulations to make provision for and in connection with prohibiting or otherwise regulating the deposit of specified kinds of waste in landfill sites in Wales. In this instance, a broad enabling power is being sought. Section 10 specifies that the power to make regulations in section 9 includes a power to provide for civil sanctions in respect of offences created under section 9.
- 5.14 Any proposals relating to a landfill ban or restriction would be informed by, amongst other things, the planned consultation by the Welsh Assembly Government and Defra on options around the possible introduction of landfill restrictions. This consultation builds on the work undertaken by the Waste and Resources Action Programme (WRAP)

on behalf of the UK Government and Devolved Administrations to consider the environmental, economic and practical impacts of landfill bans. Any proposed ban or restriction on landfill would also be informed by the proposed Collection, Infrastructure and Market Sector Plan. This Sector Plan is being prepared by the Welsh Assembly Government alongside the new Waste Strategy for Wales *Towards Zero Waste* and will identify and assess the waste collection, infrastructure and markets required to meet the targets in that Strategy.

- 5.15 Given the breadth of the power being sought and the importance of the provisions that will be made by subordinate legislation, which may potentially lead to banning or restricting certain materials from landfill, it is proposed that the relevant procedure would be the affirmative resolution procedure.

Site Waste Management Plans

- 5.16 Section 54 of the Clean Neighbourhoods and Environment Act 2005 (c.16) enables the Welsh Ministers and the Secretary of State to make regulations about SWMPs. The proposed Measure amends that provision so that it applies in relation to England only, and makes particular provision in relation to SWMPs. The proposed Measure provision restates much of section 54, but also includes a power for the Welsh Ministers to make regulations about the making of fees and charges schemes as a means of recovering the reasonable costs incurred by the enforcing authority in performing its functions in relation to the plans.
- 5.17 Section 12 (1) of the proposed Measure provides a power for the Welsh Ministers to make regulations to require persons of a specified description to prepare plans for the management and disposal of waste created in the course of specified works in Wales involving construction and demolition. The regulations can also require those obliged to make the plans to adhere to them. Subsection (2) sets out the types of provisions which may be made by the regulations and subsection (3) enables the regulations to apply to projects by reference to cost or other factors.
- 5.18 Section 13 provides the Welsh Ministers with a power to make regulations in relation to offences and penalties for breaches of the requirements established in regulations made under section 12.
- 5.19 A project is currently underway to provide a cost-benefit analysis and Regulatory Impact Assessment in relation to SWMPs. A consultation document with draft regulations and the completed Regulatory Impact Assessment is likely to be issued for public consultation later in 2010. Any fees and charging scheme for SWMPs therefore needs to reflect the decisions taken in relation to SWMPs more generally in light of the outcomes of the above policy development. The broad nature of the

power contained in the proposed Measure is therefore deemed appropriate in light of these circumstances.

- 5.20 The proposed procedure for any regulations for SWMPs brought forward under the provisions of the proposed Measure is negative resolution procedure. This is consistent with the existing powers contained under the Clean Neighbourhoods and Environment Act 2005.

6. Regulatory Impact Assessment (RIA)

- 6.1 A Regulatory Impact Assessment has been completed for this proposed Measure and is provided at Part 2 of this Memorandum.

PART 2 – REGULATORY IMPACT ASSESSMENT

7. Options

- 7.1 There are a number of options for the delivery of the policy aims behind each of the provisions contained with the proposed Measure. These are set out below:

Single Use Carrier Bags

- **Option 1** - Do nothing/ status quo.
- **Option 2** – Through the proposed Measure, impose a duty on retailers to take part in an accredited scheme.
- **Option 3** – Through the proposed Measure, impose a duty on retailers to pay the money to specified purposes or bodies.
- **Option 4** – Establish a voluntary agreement with retailers to pass the money to environmental and other projects (such as those that promote sustainability or well-being).

Waste targets

- **Option 1** – Do nothing/ status quo.
- **Option 2** – Through the proposed Waste Measure, make the recycling, preparation for re-use and composting targets statutory and make local authorities that fail to meet the targets liable to financial penalties.

Landfill

- **Option 1** - Do nothing/ status quo.
- **Option 2** – Using the proposed Measure, provide a power for the Welsh Ministers to ban or restrict certain kinds of waste from landfill.

Site Waste Management Plans

- **Option 1** - Do nothing/ status quo.
- **Option 2** – Through the proposed Waste Measure, provide the Welsh Ministers with a power to establish a fees and charging scheme for a simple SWMP regime.
- **Option 3** – Through the proposed Waste Measure, provide the Welsh Ministers with a power to establish a fees and charging scheme for a comprehensive SWMP regime.

- 7.2 The costs and benefits of the above options are set out in the next section of the RIA (section 8).

Consideration of options

7.3 The options taken forward as part of the cost-benefit analysis represent the outcome of a thorough assessment of the most appropriate method of delivering the proposed policy aims. As part of the policy work which informed the development of the Measure, a range of options were identified to potentially deliver the policy aims of each of the four areas contained in the proposed Measure, including alternatives to legislation. In summer 2009 two workshops, involving a range of Assembly Government policy officials, carried out a qualitative assessment of all these possible options. This involved scoring each option based on an agreed set of criteria and their respective weightings. The highest ranked options were taken forward as part of the cost-benefit analysis and RIA for quantitative analysis and more detailed consideration. These options are set out in greater detail under section 8 of this Explanatory Memorandum (EM).

Single Use Carrier Bags

7.4 The policy aim of applying the proceeds from a charge on single use carrier bags is to achieve transparency on the operation of a charge and public support as to its implementation. A range of options were considered at the qualitative assessment stage, in addition to those set out under paragraph 7.1 and in the Cost and Benefits section of this EM. These various options focused largely on different mechanisms that could be used to collect the proceeds from the charge on single use carrier bags. A number of options were considered in the initial analysis including:

- Local authorities collect the revenues from the charge and spend the money in their areas;
- A third party body collects the revenues, administers and spends the revenue; and
- The Welsh Assembly Government collects the proceeds and pass the money onto a third party to administer and spend.

7.5 The Assembly Government believes that voluntary agreements (Option 4) with retailers to pass on the net proceeds from a charge to environmental and other projects is the most appropriate method of achieving the policy aims and would achieve the most effective balance between potential costs and benefits. However, the Assembly Government also believes that it would be appropriate for the Welsh Ministers to have the power, through this proposed Measure, to impose a duty on retailers to pass on the net proceeds from a charge (Option 3) should a voluntary agreement fail to deliver satisfactory outcomes.

Waste Targets

7.6 The policy aim in relation to the waste targets elements of the proposed Measure is to ensure greater recycling, preparation for re-

use and composting and the development of more sustainable waste management practices. There are already a number of policy interventions in place to support these policy aims, including the provision of financial support for the development of recycling facilities, the Sustainable Waste Management Grant, the Landfill Allowances Scheme (Wales) Regulations 2004 and the Landfill Tax. In addition to the two options set out under paragraph 7.1 and section 8 of the EM, the qualitative assessment of policy options also considered the provision of additional funding and other non-statutory mechanisms to encourage compliance with the proposed targets.

- 7.7 The Do Nothing/Status Quo option would mean that the Assembly Government would continue to rely on existing policy interventions to achieve substantial increases in recycling and composting rates for municipal waste. Furthermore, the Assembly Government could establish statutory targets for recycling and composting under the Local Government (Wales) Measure 2009, albeit without any sanctions for non-compliance. The Assembly Government favours the second option as this would ensure that statutory waste targets would be supplemented by appropriate sanctions for non-compliance. As set out above, statutory targets should be seen as part of a suite of interventions designed to achieve the Assembly Government's policy aim of transforming the way that we manage our waste.

Landfill

- 7.8 The broad policy aims underlying the Landfill provisions in the proposed Measure are similar to those for the statutory recycling, preparation for re-use and composting targets, these being amongst other things the development of a more sustainable approach to waste management and improved material resource efficiency. As is the case with the provisions on waste targets, there are already a number of policy interventions in place which further these policy aims. Against this background, the Assembly Government considered a range of approaches at the qualitative assessment stage, in addition to those set out under paragraph 7.1 and section 8 of this EM, to deliver the policy aims in question. These included:
- Providing grants to stimulate the development of reprocessing facilities;
 - Increasing the financial support to service providers, thus increasing their capacity to provide advice;
 - Directing the Environment Agency to ensure that materials to landfill are restricted.
- 7.9 Under the Do Nothing/ Status Quo option, the Assembly Government would continue to rely on existing interventions such as the provision of financial support for the development of recycling facilities, the Landfill Allowances Scheme regulations and the Landfill Tax. In addition, the Assembly Government could ban or restrict the deposit of waste that is capable of causing environmental pollution from landfill using powers

under section 2 of the Pollution Prevention and Control Act 1999. However, some kinds of waste which might be subject to a ban or restriction would not be capable of causing environmental pollution and the Assembly Government's policy aims extend beyond pollution control. The Assembly Government considers that the second option, the power to ban or restrict specified kinds of waste from landfill will further promote recycling, help to develop a more sustainable approach to waste management and encourage greater material resource efficiency. Such an approach would complement and support the current range of policy interventions in this area.

Site Waste Management Plans

- 7.10 The policy aim of the SWMP provisions is to ensure that an increased amount of waste from the construction and demolition sector is recycled and diverted away from landfill. A number of policy interventions already work to support this aim. These include landfill tax drivers for hazardous/non-hazardous and inert wastes. Additionally, the Assembly Government funds bodies to promote waste minimisation and recycling in the construction and demolition (C&D) sector. These bodies work together to help increase the take-up of SWMP (currently on a voluntary basis) and aid the development of recycling infrastructure for C&D waste. Other policy initiatives are underway through the development of the C&D Sector Plan by the Assembly Government.
- 7.11 In addition to the above, the Welsh Ministers already have the power, under the Clean Neighbourhoods and Environment Act 2005, to make SWMP regulations in Wales. These would require certain construction and demolition sites to prepare Plans setting out how they will plan, minimise and recycle waste. The Assembly Government will shortly be consulting on proposals regarding the make-up of SWMP regulations and how they would work in Wales. The Clean Neighbourhoods and Environment Act 2005 does not provide the Welsh Ministers with the power to introduce a fees and charging scheme, thus restricts the options available to ensure that the monitoring and enforcement functions of the enforcing authority are effectively resourced.
- 7.12 Under the Do nothing/Status Quo option, SWMPs could be introduced in Wales but in the absence of a fees and charging scheme, there will be inadequate resources to ensure compliance with such schemes through effective monitoring and enforcement arrangements. The second and third options are to provide the Welsh Ministers with the power to introduce a fees or charging scheme. This would provide an additional policy option in relation to resourcing the monitoring and enforcement of SWMPs if a decision was made by the Assembly Government to introduce these Plans. The Assembly Government favours the option of the proposed Measure providing the Welsh Ministers with the power to make regulations about fees and charging schemes (options 2 and 3).

8. Costs & benefits

The costs and benefits of the different options are set out below for each of the four main parts of the proposed Measure.

8.1 Single Use Carrier Bags

Background

- 8.1.1 The Welsh Assembly Government is proposing to introduce a charge for all single use carrier bags. The charge, which is expected to be between 5p and 15p per bag, is aimed at reducing the environmental impact of single use carrier bags and to help encourage wider behavioural change whereby consumers re-use and recycle products.
- 8.1.2 This provision is concerned with what happens to the net revenue from any single use carrier bag charge. A separate Regulatory Impact Assessment is being prepared looking at the costs and benefits associated with introducing an actual charge.
- 8.1.3 Data from the Inter-Departmental Business Register (IDBR) suggests that there are approximately 8,500 retailers in Wales and the majority of these are believed to provide free single use carrier bags to customers. Of the 8,500 retailers, approximately 250 are classified as large businesses (more than 50 employees). The remaining 8,250 retailers are classified as small and medium enterprises. This figure is an underestimate of the number of businesses affected since the IDBR only covers those businesses that are above the VAT threshold (turnover of £68,000 per annum).

Purpose and Intended Effect

- 8.1.4 This Measure provision is part of a wider Welsh Assembly Government policy to address waste and litter issues associated with single use carrier bags.

Rationale for Government Intervention

- 8.1.5 Single use carrier bags impose externalities on UK society in the form of Greenhouse Gas emissions during their production and transportation and litter when they are discarded. The charge on single use carrier bags is intended to address this externality.

Policy options that are being considered

8.1.6 Four options have been considered:

- i. Do Nothing;
- ii. Through the proposed Measure, impose a duty on retailers to take part in an accredited scheme.
- iii. Through the proposed Measure, impose a duty on retailers to pay the money to specified purposes or bodies.
- iv. Establish a voluntary agreement with retailers to pass the money to environmental and other projects (such as those that promote sustainability or well-being).

Option 1 - Do Nothing

8.1.7 Under this option, retailers will be able to retain any revenue generated from the charge on single use carrier bags and use that revenue as they see fit.

Option 2 - Through the proposed Measure, impose a duty on retailers to take part in an accredited scheme

8.1.8 The Assembly Government will specify broad parameters and standards covering, for example, how retailers may allocate the net revenue from any charge, what proportion of the net revenue has to be spent on projects in Wales and the amount of the money to be spent on scheme administration.

8.1.9 Retailers or retail organisations would be expected to design and submit plans for schemes that satisfy these parameters to the Assembly Government (or independent organisation) for accreditation. Retailers would have the option of submitting their own scheme, linking with other retailers and submitting plans for a joint scheme or simply join an existing accredited scheme. There is a realisation that there would need to be some element of 'business-matching' to enable retailers not wishing to design their own scheme to identify an appropriate scheme to join.

Option 3 - Through the proposed Measure, impose a duty on retailers to pay the money to specified purposes or bodies

8.1.10 This option will provide the Welsh Ministers with the powers to establish a duty requiring retailers to pass the net revenue from the charge on single use carrier bags to specified purposes or bodies.

Option 4 - Establish a voluntary agreement with retailers to pass the money to environmental and other projects (such as those that promote sustainability or well-being)

8.1.11 Under this option, retailers would be encouraged to pass any net revenue from the charge to environmental or other projects, for example, registered charities or NGOs.

Costs

8.1.12 There is some evidence on the costs and benefits associated with carrier bag charging from studies of the Irish Plastax, the RIA of the proposed Environmental Levy on Plastic Bags in Scotland and an impact analysis of a proposed carrier bag levy in Australia. However, none of the options for the collection and allocation of the revenue that were considered (or at least analysed) in those countries are the same as the options being considered in this RIA.

8.1.13 In Ireland, the levy is collected by the Revenue Commissioners through an electronic debiting system that was in place prior to the introduction of the carrier bag levy. A similar system was proposed in Australia. In Scotland, the proposal was for the charge to be collected by local authorities or to establish a 'central billing body' to administer the charge on behalf of all Scottish Authorities.

8.1.14 Therefore, while there is some information on the costs of various different systems for collecting and allocating the money raised through the charge, none are directly related to the options being considered here. The following costs are therefore based on the available information and a number of assumptions and are intended to provide an illustration of the broad magnitude of the costs of the various options. They reflect the administrative, compliance and other costs associated with the options in the Cost and Benefit Analysis, including the approach in the proposed Measure (Options 3).

Option 1 - Do Nothing

8.1.15 This is the baseline option and therefore there are no additional costs associated with the option. Retailers will be required to introduce a charge for single use carrier bags (the costs and benefits of this will be covered in a separate RIA) but will be able to use the revenue from the charge as they wish. This could include retailers keeping the revenue for their own purposes.

Option 2 - Through the proposed Measure, impose a duty on retailers to take part in an accredited scheme.

8.1.16 The cost of this scheme is highly uncertain due to the difficulty of predicting how many retailers would opt to design their own scheme, how many would instead join another retailer's scheme and how many would simply not comply with the requirement at all. Furthermore, the parameters that a scheme should meet have not yet been set.

8.1.17 The Office of Fair Trading has initiated a number of accredited schemes, although these tend to be aimed at protecting consumers as opposed to delivering environmental benefits. Nevertheless, an evaluation of one OFT scheme, the Consumer Codes Approval Scheme, provides some indication of the cost to business of designing and submitting accredited scheme proposals. The evaluation suggests that the up-front cost associated with designing and submitting scheme is between £1,000 and £2,500.

- 8.1.18 As noted above, it is difficult to predict the number of retailers who will choose to design a scheme and how many will simply 'sign-up' to another retailer's scheme or ignore the requirement altogether. It is assumed that larger retailers are more likely to have the resource and expertise required to design/submit an appropriate scheme than small and medium retailers. For illustrative purposes, if we assume that 25% of large retailers and 5% of medium sized retailers and 1% of small retailers opt to design and submit a scheme for accreditation, then the cost to retailers associated with scheme design is estimated to be between £155,000 and £385,000. Given that the scheme design may need to include some method for accepting the net charge revenue from other retailers (those that do not submit a scheme themselves) the cost may well lie towards (or even above) the upper end of this range.
- 8.1.19 In addition to the above, there would be a cost to the remaining retailers associated with identifying a suitable scheme to join and a transaction charge associated with submitting the net revenue from the charge on single use carrier bags to the scheme operator, this is estimated to be approximately £495,000. The total cost to retailers of this option is therefore assumed to be between £650,000 and £880,000 in the first year.
- 8.1.20 In later years it is assumed that the scheme administrative costs are similar to those for environmental projects and purposes in the duty option (see below).
- 8.1.21 Once the schemes have been submitted, the Assembly Government (or an independent organisation) will have to assess each scheme and verify that the proposed plans meet the established parameters. Assuming that this task will require a full-time HEO and one quarter of the time of a G7, the resource cost associated with this requirement is estimated to be approximately £60,000 per annum.
- 8.1.22 Retailers will need to be made aware of the scheme approach and, as noted above, there will need to be some method of matching retailers to schemes which have received accreditation. This could be done through a dedicated website page providing information and guidance about the scheme or through information packs. It is estimated that the cost of informing retailers about what should happen with the net revenue from the charge will be up to £80,000. This figure is based on 10% of the £800,000 budget that was provided to local authorities in relation to the smoking ban which included an element of funding to raise awareness of the proposed legislation among businesses.
- 8.1.23 Finally, there is the cost associated with monitoring and enforcing retailer participation in the schemes. Monitoring costs are expected to be higher under this scheme than under the duty or voluntary options due to the greater difficulty in enforcing the option. Those responsible

for enforcing the schemes will need to ensure that retailers are a) part of a scheme and b) are actually following the terms of the scheme. There is a risk that retailers not part of a retailer organisation or not sufficiently large enough to set-up their own scheme may simply not comply. In this scenario, enforcement would have to be concentrated on the numerous small businesses (at a cost) or there would have to be an acceptance that many smaller retailers may simply retain any revenue from the charge. The monitoring and enforcement role in relation to the charge is expected to be undertaken by local authorities in conjunction with their trading standards (weights and measures) activities. The Welsh Local Government Association has been approached to provide information on the potential cost of delivering this function and are currently considering the cost implications. Assuming that the enforcement role takes up 20% of a local authority officer's time in each of the 22 authorities then the total cost is estimated to be approximately £175,000.

Option 3 - Through the proposed Measure, impose a duty on retailers to pay the money to specified purposes or bodies

- 8.1.24 This option will provide the Welsh Ministers with the powers to establish a duty requiring retailers to pass the net revenue from the charge on single use carrier bags to specified purposes or bodies.
- 8.1.25 It is assumed that the specified bodies will already be established and as such no set-up costs will be incurred. There may however be on-going administrative costs associated with receiving and then allocating the money received from the retailers.
- 8.1.26 The magnitude of these costs depends upon whether the work associated with receiving and allocating the carrier bag charge can be incorporated into existing activities or whether additional administrative resources would be required. Sources such as 'Charity Finance' and 'Charity.org' suggest that typical management and administrative costs for charities are between 5% and 13% of proceeds (this does not include the cost of fundraising activities). Adopting this range suggests an administrative cost of between £130,000 and £385,000 for the net revenue from single use carrier bags. It is not intended that this duty will impose any additional costs on the specified bodies, rather they will be able to deduct any administrative expenses from the net revenue received.
- 8.1.27 The Climate Change Act 2008 already includes a power to require retailers to record any revenue collected from the charge on carrier bags and the uses to which the net revenue has been put. The only costs on retailers in this provision will be that associated with identifying and selecting a project, charity or organisation to pay the money to and the transaction cost involved in transferring the money.
- 8.1.28 It is assumed that large retailers would have sufficiently sophisticated till systems to record the number of single use bags provided, thus

making the task of calculating the net revenue to be sent to the project/charity/NGO relatively simple. Small and medium enterprises on the other hand are not expected to have such systems meaning that they may have to manually record bag provision and calculate the revenue to be forwarded to a charity, project or NGO. A fee of £15 per 'return' per large retailer and £30 per 'return' per small and medium retailer has been assumed (NB. these are conservative estimates compared to the figures included in the Scottish RIA). It is further assumed that retailers will be expected to make 2 'returns' (to the body of their choice) per annum. On this basis the cost to retailers of a statutory duty to pass the net revenue from the charge to specified purposes or bodies would be approximately £505,000.

8.1.29 Introducing a duty on retailers to pass the net revenue from the charge to specified purposes or bodies will impose a number of costs on the Assembly Government. Firstly, there will be the costs associated with monitoring and enforcing the scheme. It is anticipated that local authorities would be involved in monitoring and enforcing the charge but either option is likely to require additional funding from the Welsh Assembly Government. Assuming that monitoring and enforcing the payments were to take 5% of a FTE in each local authority then the cost would be approximately £44,000 per annum. Collaborative working between local authorities could potentially reduce this cost. Secondly, there will be some communication costs associated with the proposal, particularly in terms of working with retailers and possible recipients of the net proceeds from the charge. These are estimated to be around £40,000 in the first year.

8.1.30 Finally, there is the cost to the Welsh Assembly Government associated with drawing up the legislation introducing this duty. Although, the work may be undertaken by existing staff it still represents an opportunity cost since those members of staff could have been doing other work. The total staff cost associated with introducing the carrier bag charge has been estimated as £180,000. An upper estimate of the cost of introducing the legislation introducing this duty is approximately one quarter of the total staff cost. On that basis the cost of drawing up the legislation introducing this duty is approximately £45,000.

Option 4 - Establish a voluntary agreement with retailers to pass the money to environmental and other projects (such as those that promote sustainability or well-being)

8.1.31 Since this is a voluntary option it is difficult to predict how many retailers will submit the net revenue from the scheme to environmental or other projects (for example, those that promote sustainability or well-being). This uncertainty means that it is difficult to accurately estimate the scale of costs involved.

8.1.32 There will be a cost on retailers from this option associated with identifying and selecting a project to pay the money to and the

transaction cost involved in then transferring the money. The cost per retailer is assumed to be identical to that in the duty option (i.e. £15 per return per large retailer and £30 per return per small or medium retailer), however, since this is a voluntary option and not all retailers are expected to participate, the total cost is expected to be lower than under the duty option. In addition, some retailers may already have some existing relationships with charities or other bodies and will therefore avoid the additional costs associated with identifying relevant projects or carrying out transactions. For illustrative purposes, if we assume that 80% of large retailers and 25% of small and medium retailers opt to donate the net revenue from the charge, the cost will be approximately £130,000 per annum. If all retailers were to opt to donate the net revenue from the charge then the estimated cost would be the same as under the duty option (i.e. approximately £505,000 per annum). Clearly, if no retailer opted to donate the money to environmental projects or purposes then the cost would be zero.

- 8.1.33 Any voluntary option which seeks to 'encourage' the largest 20-50 retailers in Wales to donate the net revenue from carrier bags to a project will minimise the cost to retailers (and in particular small and medium sized retailers) but have less of an impact on the amount of net revenue donated for environmental purposes.
- 8.1.34 As with the duty option, it is assumed that the projects will already be established and as such no set-up costs will be incurred. There may however be on-going administrative costs associated with receiving and then allocating the money submitted by the retailers. As noted above, it is suggested that typical management and administrative costs for a charity is between 5% and 13%. Large retailers are, in general, expected to be more likely to donate the net revenue from the charge to bodies such as charities. This suggests that the annual administrative cost increases for the projects may not be very different to that in the duty option. If all retailers opt to donate the net revenue from the charge then administrative costs would be the same as under the duty option. Conversely, if no retailer donated the net revenue then the additional administrative costs for charities and projects etc. will be zero. The annual administrative costs in this option are therefore estimated to be between £0 and £385,000.
- 8.1.35 While there may still be some monitoring of the level of revenue donated to environmental projects, the costs are unlikely to be as high as the previous options. Enforcement costs are expected to be zero, on the basis that there is no need to 'police' what is a voluntary scheme.
- 8.1.36 It is assumed that under the voluntary option, a proportion of the total communication budget will have to be allocated to encouraging retailers to pass the net revenue from a charge on carrier bags to environmental projects, charities or NGOs. Again, this cost is assumed to be £80,000.

Summary of Costs

8.1.37 The following table presents a summary of the administrative, compliance and other costs which each option would give rise to. As has been noted above, a number of assumptions have been made to produce these estimates which are intended to illustrate the broad magnitude of the cost of each option. The range of costs for the voluntary option are relatively broad, reflecting the high degree of uncertainty surrounding how many retailers would opt to forward the net revenue from a carrier bag charge to environmental or other projects. At the higher end (i.e. assuming near to 100% of retailers forward the money to a project), the costs are similar to the duty option, the only differences being monitoring and enforcement costs and the cost of introducing the legislation.

Table 1: Summary Cost Table – 1st Year Costs

£ '000s	Do Nothing	Accredited Scheme	Duty Option	Voluntary Option
Compliance/Administrations Costs for Businesses/Projects				
Retailer cost	-	650 - 880	505	0 – 505
Charity/Project Cost	-	-	150 - 385	0 – 385
Public Sector Administration/Other Costs				
WAG administration	-	40	45	-
WAG Communications	-	80	40	-
Monitoring/Enforcement by Local Authorities	-	175	45	-
Total	-	945 - 1,145	740 – 975	0 – 890
Net Present Value (£m)	-	10.0 – 12.8	8.3 – 11.1	0 – 10.6

8.1.38 The final line of the table shows the Net Present Value of the options discounted over a 15 year period. The HM Treasury central discount rate of 3.5% has been used in the calculations.

8.1.39 For illustrative purposes, if, under the voluntary option, 80% of large retailers and 25% of small & medium retailers were to forward the net revenue and if this net revenue constituted 75% of the total under the duty option, then the NPV would be approximately £4.7m.

8.1.40 In terms of ongoing or steady-state costs, it is reasonable to expect, drawing on the experience of other countries, that the retailer cost (which can be netted off the proceeds from the charge) will gradually reduce over time as the number of single-use carrier bags sold by retailers decreases. Charity/Projects costs (which can also be netted off) are also likely to decrease gradually. The administrative costs for the Assembly Government and the communication costs would decrease considerably after the first year. However, the Monitoring and Enforcement costs, the functions for which would be undertaken

by Local Authorities, would probably remain at a level similar to those identified for the 1st Year Costs.

Benefits

8.1.41 Modelling work undertaken in relation to the introduction of a charge on single use carrier bags has indicated that the charge will generate revenue of between £1million and £3million (depending upon the amount charged per bag and the impact of the charge on the demand for bags). From the gross revenue collected, retailers will be able to deduct any costs incurred in charging for single use carrier bags (for example in having to change till lines). It is the remaining net revenue that this RIA is concerned with.

8.1.42 Retailers retaining the net revenue as profit is a benefit to the UK economy (assuming that the retailers are not foreign owned or that they do not repatriate that profit) just the same as if the net revenue is used for environmental projects and purposes in the UK. This suggests that the potential benefit to UK society from each of the options is similar. The net benefit to UK society for each of these options then would be the difference between the net revenue from the charge on single use carrier bags and the cost of distributing that net revenue.

8.1.43 On this basis, it is the lowest cost option which will generate the largest benefit to the UK economy. Based on the quantified analysis, this would be the 'Do Nothing' option since it does not generate any additional costs. However, there are a number of reasons why this might not necessarily be the case:

- a. If the potential for excess profits attenuates the drive for efficient operation – there might be a desire on the part of retailers to promote the use of single use carrier bags and increase their profits, thus generating the negative externalities associated with single use carrier bags in the process;
- b. If the spending on environmental projects generates positive externalities – at this stage it is not clear what any money donated to a project would be used for. However, the expectation would be that properly conceived environmental projects would generate positive environmental benefits. If this is the case then it would justify attaching a higher weight to the expenditure in the options where the net revenue from the charge is forwarded for environmental or other projects;
- c. Equity weighting – in general terms, business profits tend to accrue to more affluent groups of society. If there was evidence that the spending on environmental projects had a greater impact on disadvantaged or poorer groups of society, then the benefit should be adjusted to reflect this.

Conclusion

- 8.1.44 On the face of it, the potential benefit to UK society from each option is similar because the net revenue from the charge will either be directed to an environmental project or purpose or retained by the retailer as profit. As such the option which generates the highest benefit for the UK economy would be the lowest cost option, Do Nothing/Status Quo (Option 1).
- 8.1.45 However, this may not necessarily be the case since the charge may provide retailers with an incentive to promote single use carrier bags which would generate negative environmental externalities. The case for intervention would be further supported if there was evidence that directing the net revenue from the charge to environmental (or other) projects generated positive environmental externalities. As is noted above, the expectation would be that properly conceived environmental or other projects would generate these additional environmental or other benefits and as such there would be justification for attaching a higher weight to the expenditure in the intervention options.
- 8.1.46 Of the remaining options, the voluntary approach (Option 4) appears to represent the lowest cost option. If under the voluntary option, efforts were concentrated on encouraging the largest 20-50 retailers to 'donate' the net revenue from carrier bags to environmental projects then the overall cost to retailers (and in particular small and medium sized retailers) would be relatively small but the proportion of net revenue from the charge that would be made available for environmental (or other) projects would remain relatively large.

Specific Impact Tests

Competition Assessment

We do not expect there to be any significant impacts on competition from this provision.

Small Firms Impact Test

Data from the IDBR shows that there are approximately 8,125 small retailers that could be affected by this provision. As is noted in the analysis, the impact on individual small firms is expected to be minimal.

Legal Aid

We do not consider that this provision will have any impact on the workload of the courts or on legal aid.

Sustainable Development

This provision may contribute to the principles of sustainable development by encouraging greater resource efficiency.

Carbon Assessment

By directing money towards environmental projects or purposes, this provision may indirectly contribute to a reduction in Greenhouse Gas emissions. At this stage it is not possible to estimate the potential scale of these impacts.

Other Environment

By directing money towards an environmental projects or purposes, this provision may indirectly contribute to an improvement in environmental conditions. At this stage it is not possible to estimate the potential scale of these impacts.

Health Impact Assessment

We do not consider that this provision will have a significant impact on human health or lifestyle or that it will give rise to a significant demand on health and social care services.

Race Equality

We do not consider that this provision is relevant to the Government's responsibilities under the race equality duty.

Disability Equality

We do not consider that this provision will have significant disability equality impacts.

Gender Equality

We do not consider that this provision will have significant gender equality impacts.

Human Rights

We have considered the human rights implications flowing from this provision and have concluded that it does not infringe the European Convention of Human Rights.

Rural Proofing

We do not consider that this provision will have a significantly different impact in rural areas.

8.2 Waste targets

Background

- 8.2.1 The proposed Waste (Wales) Measure 2010 will establish statutory targets for local authorities for the percentage of municipal waste recycled, prepared for re-use and composted (including any other form of transformation by biological processes). (For ease of reference, the term “recycling” used in this RIA covers all these operations). The statutory targets are designed to ensure, amongst other things, that Wales meets its obligations under EC law. The Landfill Directive 1999/31/EC set targets for the reduction of biodegradable municipal waste to landfill. The provisions of the Directive were transposed into UK law through the Waste and Emissions Trading Act 2003, with further effect being given, in Wales, through The Landfill Allowances Scheme (Wales) Regulations 2004. The revised Waste Framework Directive 2008/98/EC which aims to help move the EU closer to a “recycling society” with a high level of resource efficiency.
- 8.2.2 This RIA is based on the impact assessment undertaken by Eunomia on behalf of the Welsh Assembly Government in relation to the recycling, preparation for re-use and composting targets³⁹.

Purpose and Intended Effect

- 8.2.3 The targets are expected to ensure that in meeting its obligations under the Landfill Directive, municipal waste in Wales is managed in a way that delivers the most beneficial environmental outcome. In the context of rising costs for treatment / disposal, the targets are expected also to lead to less costly management of waste from the perspective of local authorities (and hence, taxpayers) through avoiding these costs.

Rationale for Government Intervention

- 8.2.4 Whilst externalities associated with landfill disposal are already internalised in the costs of landfilling, the negative externalities associated with other residual waste treatment methods are not internalised in any government policy. Furthermore, the positive externalities associated with recycling are not reflected in any associated subsidy. The targets are intended to make clear to local authorities that high rates of recycling are desirable in a context where the appropriate incentives are not in place. As such, the targets are intended to be a proxy for what might otherwise be considered optimal from the perspective of society.

³⁹ *Wales Targets Impact Assessment*, Eunomia, 2010.

Options

8.2.5 Two different options were modelled for comparison. These are:

Option 1 - Baseline

8.2.6 Under this scenario it is assumed that municipal waste recycling rates peak and plateau at 52% in 2012/13. This is consistent with the progress made by local authorities in the recent past in respect of recycling and the modelling work into achieving higher recycling rates. The scenario assumes that no targets are implemented beyond those already in place.

Option 2 - Through the proposed Waste Measure, make the recycling, preparation for re-use and composting targets statutory and make local authorities that fail to meet the targets liable to financial penalties

8.2.7 Under this scenario it is assumed that municipal waste recycling rates increase incrementally in line with the targets set out in the new Waste Strategy for Wales, *Towards Zero Waste*. These are outlined in Table 2 below.

8.2.8 An earlier report undertaken by Eunomia scoped new municipal targets for Wales⁴⁰. There are a wide range of results presented in the Eunomia report, including an analysis of the component costs of achieving different recycling targets. The full report should be consulted to gain a better understanding of how achieving different recycling rates affects all Wales costs. The report considered the changes in costs required to meet different recycling targets by 2024/25 (in real 2006/07 terms). The key findings of the report are that achieving a 40% target has a higher whole system cost than achieving 50% (both over £90m). Achieving 60% shows the biggest financial savings (whole system cost changes of less than £80m). The 70% target gives a lower cost (whole system cost changes of less than £90m) than 40% or 50% targets, but higher cost than 60% target. An 80% target has a whole system cost change of about £90m.

8.2.9 Two paragraphs from the report below illustrate the key findings:

"The results indicate that there would be clear benefits in moving recycling rates to a higher level. However, the degree to which 80% recycling could be achieved at an all-Wales scale does remain questionable IF one assumes the composition of waste does not change. On the other hand, composition undoubtedly will change, the key issue being how to influence this change in a positive manner. Therefore, an 80% target as an aspiration for the long-term might not be so foolish."

⁴⁰ Scoping New Municipal Waste Targets for Wales, Eunomia, 2007.

"It would appear, given the cost profiles examined here, that pushing for higher recycling rates in the revised Waste Strategy is a sensible approach, and one which, if it is supported by policy changes which are likely to be conducive to high capture rates for a wide range of materials, will deliver savings relative to lower cost recycling systems."

8.2.10 In parallel with this report, the Environment Agency modelled the environmental (including climate change) impacts of achieving different recycling targets. These showed that the environmental benefits increase as recycling targets increase.

8.2.11 Policy discussions took into account the findings of both the Eunomia and Environment Agency reports. In terms of the balance of achievability, whole system cost savings and environmental benefits it was decided that a target of 70% by 2024/25 would be the best for promoting the right balance of sustainable development outcomes.

8.2.12 The current financial climate that has affected the global economy since 2007 will have affected the scale of the financial benefits of high recycling, but does not alter the fact that financial benefits will result from high recycling. It should also be noted that the fluctuations in materials prices, fuel costs and other factors have not affected the ranking of the different recycling targets in terms of financial benefits.

Table 2: Wales Recycling Targets

Year	2009/10	2012/13	2015/16	2019/20	2024/25
Recycling Target	40%	52%	58%	64%	70%

8.2.13 It is noted here that in both scenarios:

1. The recycling targets include recycling of bottom ash (a type of ash that is found at the bottom of the combustion chamber in an incinerator). This is assumed to be around 3% in 2024/25, bringing the figure for recycling through means other than bottom ash down to 67% in 2024/25; and
2. The recycling targets do not include the recycling of inert waste from construction and demolition activities. This may change in future, but the current position (and that used in previous work undertaken by Eunomia for the Welsh Assembly Government⁴¹) has been adopted; and
3. The definition of municipal waste, for the purpose of this analysis, is taken to be the waste collected by, or on behalf of, local authorities. It is recognised that this definition has changed recently, and that a

⁴¹ *Scoping New Municipal Waste Targets for Wales*, Eunomia, 2007.

broader definition now applies. However, the proposed Measure is seeking to target wastes under the control of local authorities.

4. The change in waste arisings was assumed to be -1.0% per annum reflecting recent trends. It should be noted that this assumption merely influences the absolute magnitude of the effects considered below, not the issue of whether or not there are net costs or net benefits to society.

Data Manipulation and Assumptions

8.2.14 The differentials between the two policy options – in terms of both financial and environmental costs and benefits – were measured and formed the basis of the analysis.

8.2.15 Costs were modelled in two different ways:

- An 'orthodox' cost benefit analysis in line with HM Treasury's Green Book methodology; and
- An alternative approach whereby taxes and subsidies were included in the analysis, to represent costs actually faced in the market.

8.2.16 Two different approaches to modelling the environmental aspects were also adopted, varying on the basis of the following key assumptions:

- Additional waste recycled would otherwise be landfilled; and
- Additional waste recycled would otherwise be incinerated.

8.2.17 Costs and benefits were projected out to 2024/25 in both modelling scenarios. Data on the base year were sourced from Welsh Assembly Government statistics on materials collected in Wales in the year 2008/09. The composition categories were then altered to reflect the standardised composition used in the 2007 study.⁴² Further, recycling and total arisings were split into the following categories:

- Household;
- Household Waste Recycling Centre;
- Litter;
- Street sweepings;
- Bulky waste; and
- Trade waste.

8.2.18 Tonnages associated with recyclate recovered at residual waste treatment facilities were ignored, because these quantities were dealt with separately within the model of residual waste treatments. Bulky waste recycling was also assumed to be negligible.

⁴² *Scoping New Municipal Waste Targets for Wales*, Eunomia, 2007.

8.2.19 The waste composition used for each stream was based on that provided in the 2007 study, with some adjustments made as capture rates for some recyclables amounted to over 100% in comparison with the baseline. These figures were then cross checked against compositional Welsh Assembly Government data based on the first season analysis, were found to be acceptable, and therefore assumed to act as a good proxy overall.

8.2.20 Capture rates were subsequently altered for the different waste streams in the following order of preference, in order to meet the recycling targets modelled:

- Household Waste Recycling Centre;
- Household;
- Trade;
- Bulky; and
- Litter and Street Sweepings.

8.2.21 This ordering reflects the ease at which capture rates can be increased from each of the different streams.

8.2.22 For the environmental modelling, data on the environmental benefits of recycling certain materials are scarce. As such, the following assumptions / groupings were made:

- Food and kitchen waste was assumed to include 'other organics' and 50% of the 'fines';
- Portable batteries were assumed to account for 50% of 'other potentially hazardous waste'; and
- 'Other miscellaneous non-combustibles' were assumed to be similar in nature (and environmental benefit) to construction and demolition waste.

Cost Modelling

Financial Costs

8.2.23 Costs were modelled for two cost sensitivities:

1. Social costs (weighted average costs of capital set equal to the discount rate 3.5%, all taxes and subsidies excluded i.e. landfill taxes are not taken into account as they are regarded as transfer payments); and
2. Private costs (taxes and subsidies included, weighted average cost of capital reflecting figures typical of the private sector in this area).

8.2.24 Under HM Treasury's Green Book guidance, greater weighting should be attached to the social costs as this is the metric that is used in government decision making. Private costs are relevant to affordability, which is particularly important from the perspective of local authorities in relation to landfill tax.

- 8.2.25 Costs were also modelled for two alternative possibilities for the treatment of residual waste:
1. Where the additional material being recycled is assumed to have otherwise been landfilled; and
 2. Where the additional material being recycled is assumed to have otherwise been incinerated.
- 8.2.26 The methodological approach largely paralleled that of the previous work.⁴³ End-point recycling rates, however, are slightly lower reflecting the inclusion of the recycling of bottom ash within the calculation of performance. A positive side effect of this has been that the need, in order to meet specified targets, to capture materials which would seem, *a priori*, difficult to recycle (from e.g. litter and street sweepings) has not been necessary in this work.
- 8.2.27 The costs of Option 2 have been modelled relative to Option 1. Some key assumptions are as follows:
- Landfill tax is assumed to be maintained in real terms once it reaches a nominal level of £72 per tonne in 2013/14.
 - All costs are in real 2009/10 sterling terms. GDP deflators have been used to uplift costs from the earlier work as appropriate.

Environmental Costs

- 8.2.28 The modelling of environmental benefits has been based upon work undertaken by Eunomia on behalf of Defra and the devolved administrations which looks at the costs and benefits of landfill bans in the UK. The environmental costs have been assessed in line with HM Treasury and Defra Guidance. The main impacts which have been monetised are:
- Changes in greenhouse gas emissions;
 - Changes in conventional air pollutants; and
 - Changes associated with the application of compost / digestate to land.
- 8.2.29 The analysis does not include (owing to the absence of satisfactory evidence, for example, in respect of environmental costs, or relevant information across all facilities, for example, the disamenity associated with compost plants) valuation of the following environmental effects:
- Changes in the level of disamenity experienced;
 - Changes in emissions to land;
 - Changes in emissions to water; and
 - Changes in emissions of non-conventional air pollutants (for example, bioaerosols).

⁴³ *Scoping New Municipal Waste Targets for Wales*, Eunomia, 2007.

8.2.30 We have little reason to believe that the analysis would be compromised by these emissions. On the contrary, where other studies have included these, the suggestion is that incineration in particular might be negatively affected by their inclusion, especially where disamenity (as assessed through changes in local housing values) and emissions to land (for example, from air pollution control residues) are concerned.

8.2.31 One assumption we have made relates to material categories for which there are no known verified estimates in terms of environmental cost savings. These are:

- Carpet and underlay;
- Lead/acid batteries;
- Oil; and
- Other potentially hazardous.

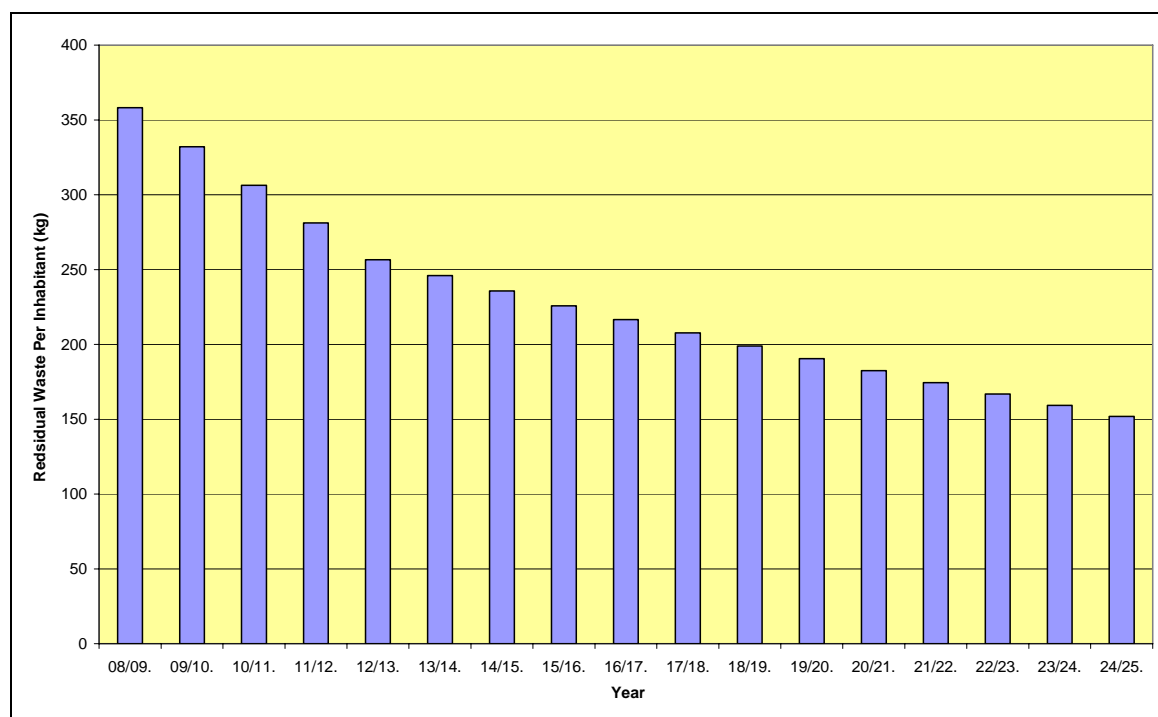
8.2.32 For these materials, we have used nominal values for benefits of £5 per tonne, which is much lower than for the other materials. This is due to the fact that no credible studies could be found which would enable us to calculate the external costs of recycling these materials, but given their non-biodegradable nature, we anticipate benefits arising from these.

Results

8.2.33 The following analysis of the costs and benefits apply to Option 2 (recycling rates increase incrementally towards a 70% rate in 2024/25) and are relative to the baseline under Option 1 (recycling rates peak and plateau at 52% in 2012/13).

8.2.34 Figure 1 displays residual waste data taken from the model. It shows that in Option 2, residual waste in Wales reduces concurrent with the new recycling targets, to 150 kg per inhabitant in 2024/25, in line with current aspirations.

Figure 1: Residual Waste in Wales per Inhabitant (kg) 2008/09 – 2024/25



Financial Costs

Summary of Financial Costs

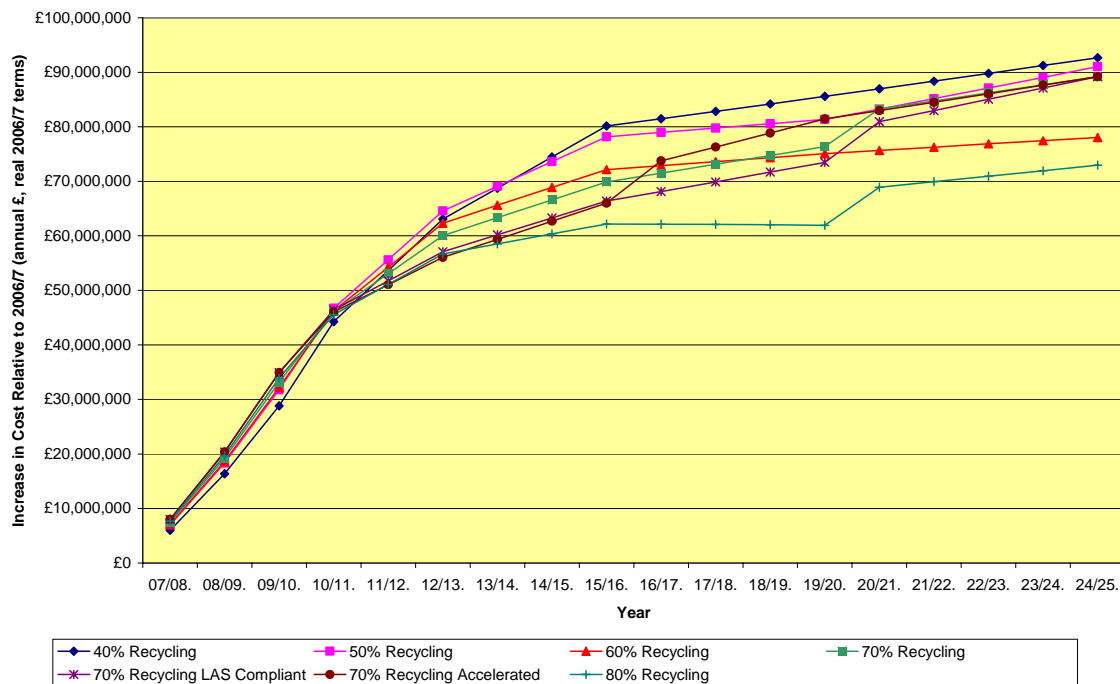
Compliance Costs

8.2.35 The Assembly Government has commissioned two reports from Eunomia which help to set out the compliance costs of reaching the 70% target for recycling, preparing for re-use and composting by 2024/25. Both reports use a similar methodology but the modelling exercises address slightly different issues. The first report, published in 2007, scoped new municipal waste targets in Wales, including the costs of meeting various rates for recycling, preparing for re-use and composting municipal waste. This was done from a baseline of 25% recycling, preparation for re-use and composting of municipal waste in 2006/07. The costs are therefore projected over a period of 18 years. The all Wales cost trajectories, from a 2006/07 baseline, are set out in Figure 2 below. According to this analysis, the cost of recycling at a 40% rate (the current recycling rate) is higher than at a 70% rate. By 2024/25, the 40% recycling cost will be around £94m per annum whereas the cost of recycling at a 70% rate will be approximately £89m. Working towards and achieving a 70% rate by 2024/25, from a 2010/2011 baseline, will result in £81m savings compared with recycling at the current rate of 40%. There are a number of reasons for this. Waste which is recycled will provide additional income which would not be the case if waste was landfilled or incinerated. Furthermore, financial savings can be made by local authorities if

waste is recycled rather than landfilled as they will not have to make landfill tax payments and gate fees. In summary, the adoption and achievement of a 70% recycling rate will result in compliance cost-savings for local authorities, as well as generating wider environmental benefits for society, compared to an approach of maintaining the current rates of recycling, preparing for re-use and composting of municipal waste.

8.2.36 The compliance costs of transforming the way that we manage our waste and become a high recycling society would effectively fall to local authorities. In practice, the Assembly Government is providing the majority of the targeted funding required to enable local authorities to make the appropriate transformational changes in their waste management approaches to enable them to achieve the target rates.

Figure 2: Cost Trajectories for Municipal Waste Targets by 2024/25 relative to 2006/7 (annual increase in real £ 2006/7)



8.2.37 Whilst some of the costs set out in the 2007 report and Figure 2 may have changed, the ranking of the various targets in terms of their cost trajectories has not changed. It is worth noting that the 2007 report assumed a gradual increase in municipal waste. In practice, the volume of municipal waste has been declining which suggests that the cost trajectories have been over-estimated. It is also worth emphasising that the 2007 report was published before the 2009 announcement of increases in the rate of landfill tax. As a result of these increases, the lower target rates for recycling municipal waste

become more costly compared with the higher target rates for recycling.

8.2.38 The second report, which forms the basis of this Costs and Benefits Analysis, considers, amongst other things, the costs of meeting the 70% recycling, preparation for re-use and composting rate from a 52% baseline (the target for 2012/13). The 52% rate for recycling, preparation for re-use and composting is used as the baseline on the basis that recycling rates would peak and plateau at this level as a result of existing interventions such as the investment in waste infrastructure and incentivizations to recycle such as landfill taxes. The financial costs of meeting the 70% target rate, from a 52% baseline, are set out in Table 3 of this RIA. Under the social metric, the net costs of recycling the additional 18% of municipal waste to reach the 70% target range would range from £7.8m to a maximum of £35.9m (depending on whether the recycled waste would have been sent to landfill or incinerated), the costs being spread over a period of around 12 years. Under the private metric, however, which reflects the cost of landfill taxes, there would be a compliance cost-saving of up to £40m. This figure does not include the environmental benefits to be accrued from higher recycling rates. The cost of complying with these targets would fall to local authorities, albeit with the benefit of targeted funding provided by the Assembly Government to enable them to meet this target rate. In practice, and as noted above, pursuing these higher recycling rates should result in long-term cost savings.

8.2.39 The Welsh Ministers will have a discretionary power to impose financial penalties on local authorities in the event that they fail to meet targets set under the proposed Measure. Failure to reach the targets could therefore potentially result in additional costs being placed on local authorities. The detail of any penalty regime will need to be set out in regulations and be approved by the National Assembly. The policy intention is for regulations to establish a financial penalty of £200 / tonne of shortfall. This is the same amount as the financial penalty for failure to meet targets under the Landfill Allowances Scheme (SI 2004/1490 [W.155] Landfill Allowances Scheme (Wales) Regulations 2004). No penalties have been imposed under the Landfill Allowances Scheme as local authorities have in practice met the targets under the Scheme and financial penalty is seen as a sanction of last resort. The earliest that the statutory targets and penalties could apply would be in relation to the 2012/13 (52%). The financial penalty would apply consistently to all authorities but the differing amount of waste collected by various local authorities across Wales mean that a failure to meet a statutory target by, for instance, 1% would have different implications for different local authorities. Based on the collected waste data for 2007/08, penalties for failing to meet the statutory target by 1% would range from £69,930 (for Merthyr Tydfil, the authority collecting the least amount of waste) to £363,542 (for Cardiff, the authority which collects the most waste).

Administration and other Costs

8.2.40 In terms of administration costs, the collection and reporting of data in relation to recycling, preparation for re-use and composting of waste is already undertaken by local authorities as part of the WasteDataFlow system. There are therefore no additional costs, either to Local Authorities or the Assembly Government, associated with the collection and reporting of data in relation to the statutory targets in the proposed Measure.

8.2.41 There may be enforcement costs associated with the provisions on Waste Targets. Any policy or legal work associated with enforcement would be internalised by the Welsh Assembly Government. The main cost would be in relation to the preparation of the appropriate written documentation setting out the liability of a particular local authority to a penalty and the amount due. This could be estimated at 1 day for a G7 policy official at a cost of approximately £240 a day and 1 day for a G7 lawyer, also at a cost of approximately £240 a day.

Detailed Assessment of Financial Costs of reaching 70% target from a 52% baseline

8.2.42 The changes in financial costs between the two modelling scenarios are shown in Table 3. Both the Net Present Value (NPV) and the Annualised NPV are given (note, negative values denote negative costs, i.e. net benefits).⁴⁴

Table 3: Financial Costs

	Social Costs		Private Costs	
	Avoided Disposal as Landfill	Avoided Disposal as Incineration	Avoided Disposal as Landfill	Avoided Disposal as Incineration
NPV 2009/10 - 2024/5	£35,894,377	£7,801,984	-£40,234,261	-£38,269,539
ANNUALISED NPV	£2,967,920	£645,106	-£3,326,763	-£3,164,310

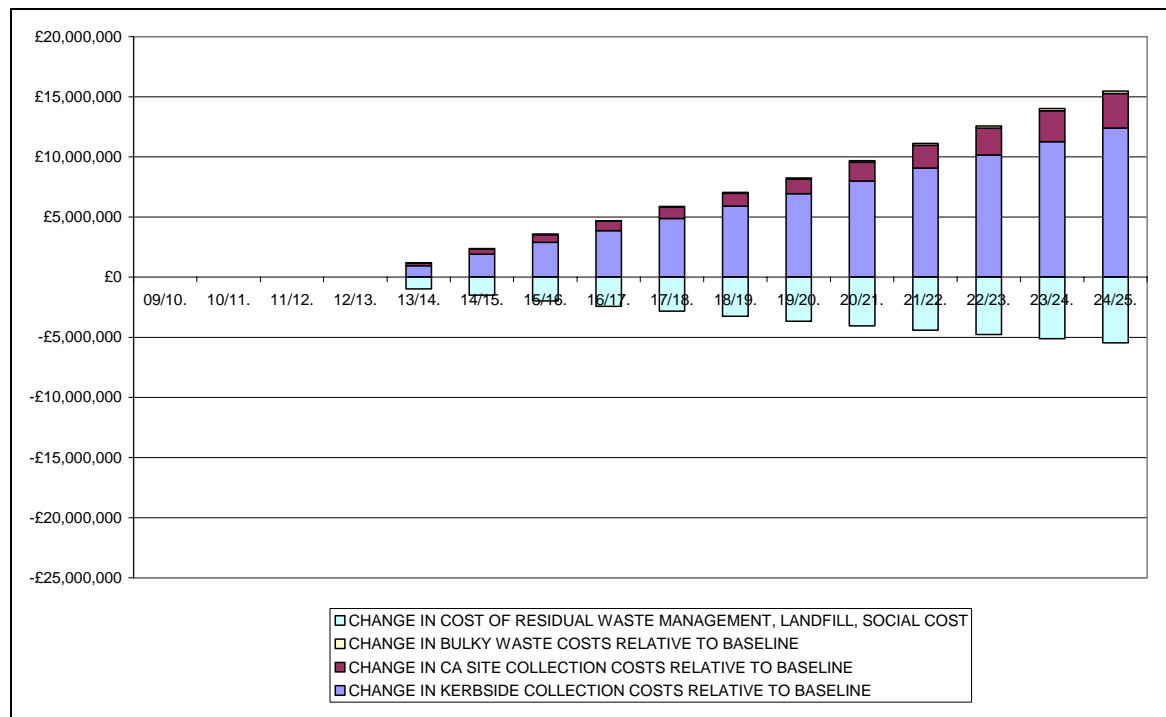
8.2.43 The model suggests that under the social metric, additional financial costs will be incurred as a result of implementation of the recycling targets. These additional costs are relatively high for the case where waste is landfilled since the costs of landfill are very low if one excludes the landfill tax from the analysis (which is the case under the social metric). The costs are far more marginal under the case where waste is incinerated.

⁴⁴ The annualised NPV is effectively the total NPV converted into a constant annuity using the 3.5% discount rate.

8.2.44 Conversely, under the private metric, financial cost savings will be realised. Where the private cost metric is used, the savings are similarly large irrespective of disposal route.

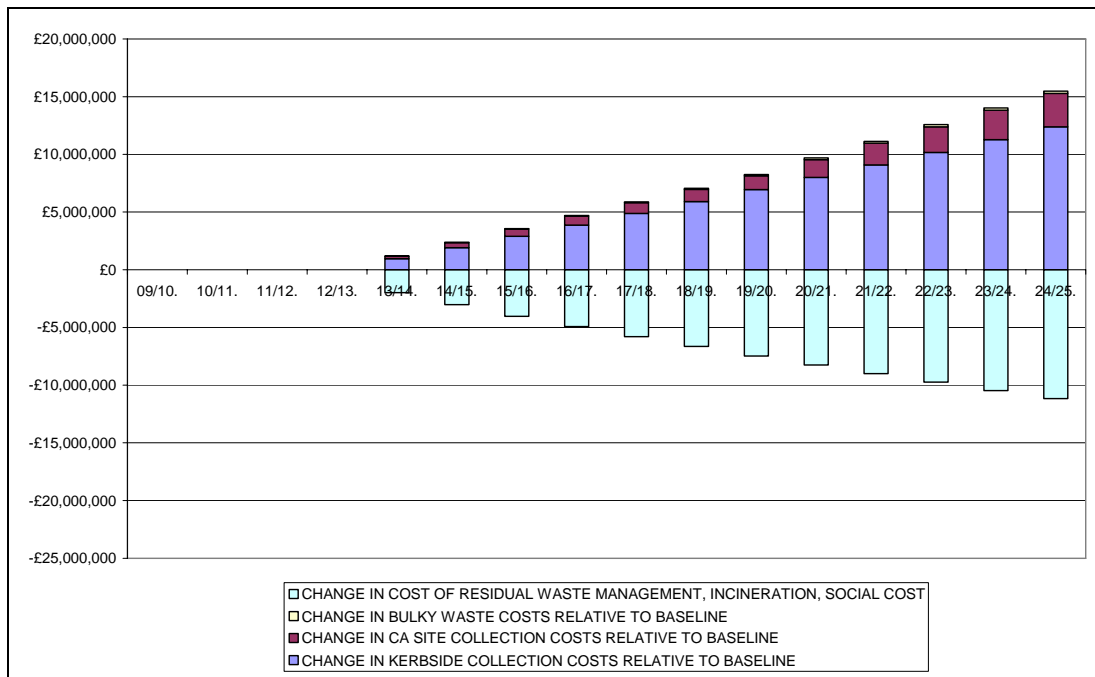
8.2.45 A breakdown of the financial costs under the social metric is given in Figure 3 and 4 which show the costs of the additional recycling for cases where the waste would otherwise have been landfilled or incinerated, respectively. It is evident that by comparing the graphs (which are plotted on the same axes), the divergence in net costs is entirely accounted for by the impact associated with the different method of residual waste management. The higher financial cost of incineration offsets a greater proportion of the additional costs of collection when material is diverted away from this management method.

Figure 3: Financial Costs Under Social Metric where Avoided Disposal is Landfill



Note: positive figures (above the axis) imply costs, negative figures (below the axis) indicate savings.

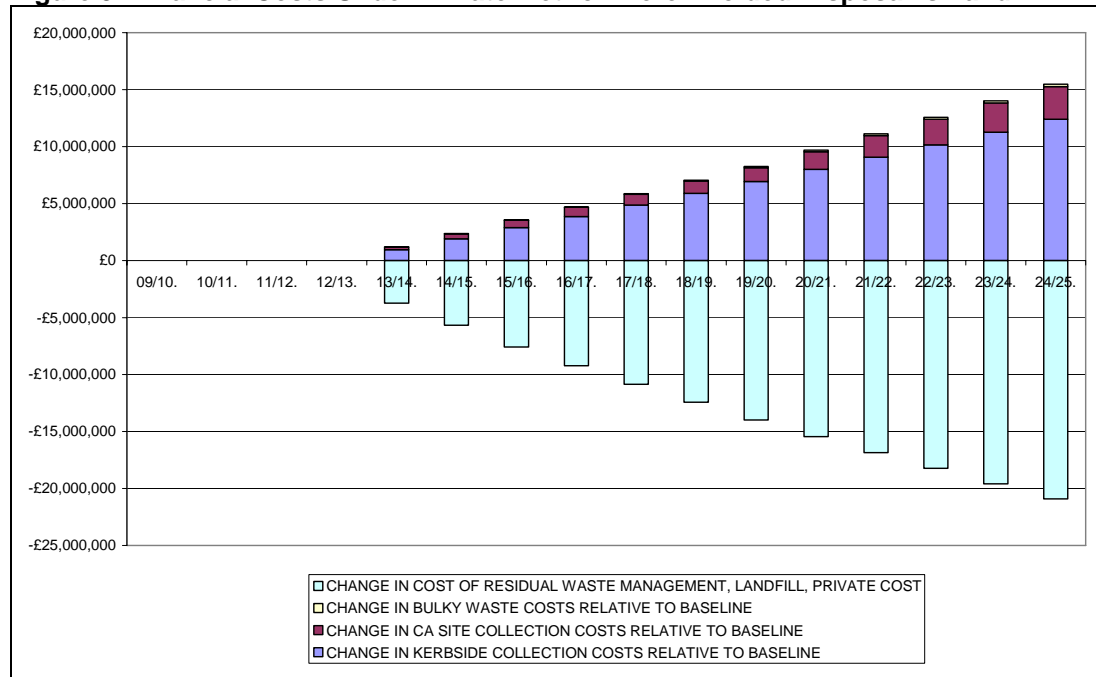
Figure 4: Financial Costs Under Social Metric where Avoided Disposal is Incineration



Note: positive figures (above the axis) imply costs, negative figures (below the axis) indicate savings.

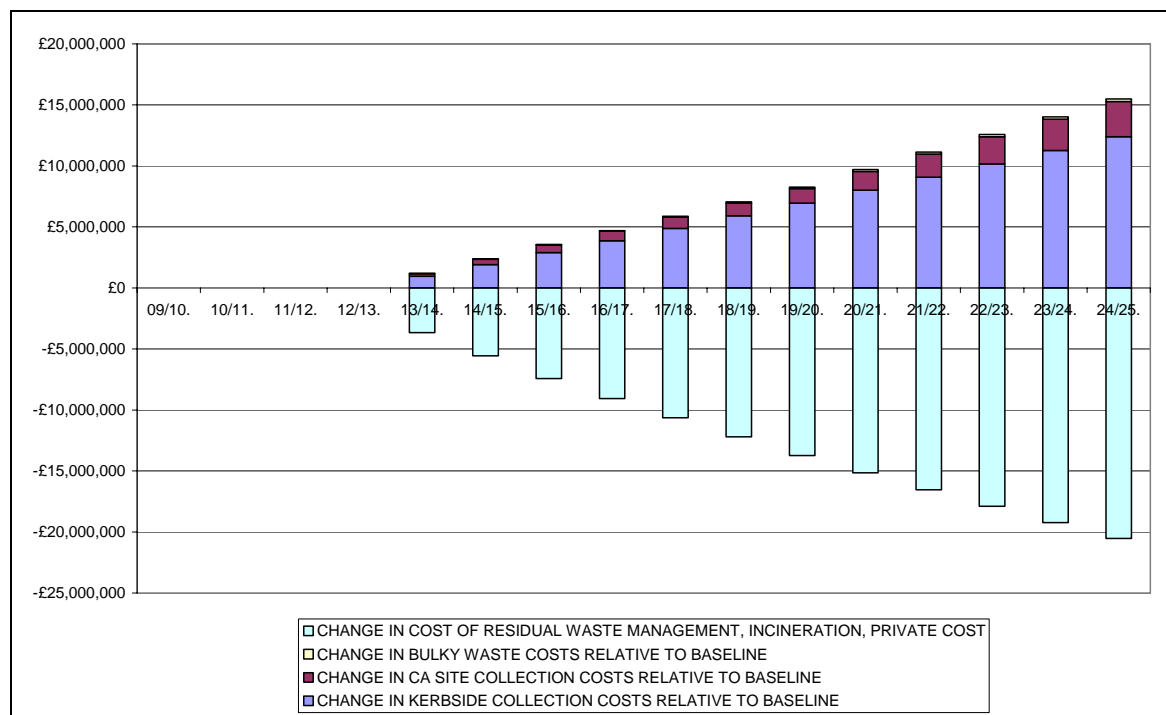
8.2. 46 Figure 5 and Figure 6 show the same breakdown under the private metric. Consistent with Table 3, the net costs are largely invariant between the two scenarios.

Figure 5: Financial Costs Under Private Metric where Avoided Disposal is Landfill



Note: positive figures (above the axis) imply costs, negative figures (below the axis) indicate savings.

Figure 6: Financial Costs Under Private Metric where Avoided Disposal is Incineration



Note: positive figures (above the axis) imply costs, negative figures (below the axis) indicate savings.

Environmental Costs

8.2.47 Environmental costs to society are provided in Table 4. Values are shown for scenarios whereby biogas from anaerobic digestion of food waste is utilised as electricity and where it is used as a transport fuel.

8.2.48 In contrast to the financial costs (provided in Table 2), net benefits (negative costs) will be realised if the recycling targets in question are implemented.

8.2.49 The modelling results indicate that the net benefits are greater in the scenario whereby the additional recycling would otherwise have been landfilled.

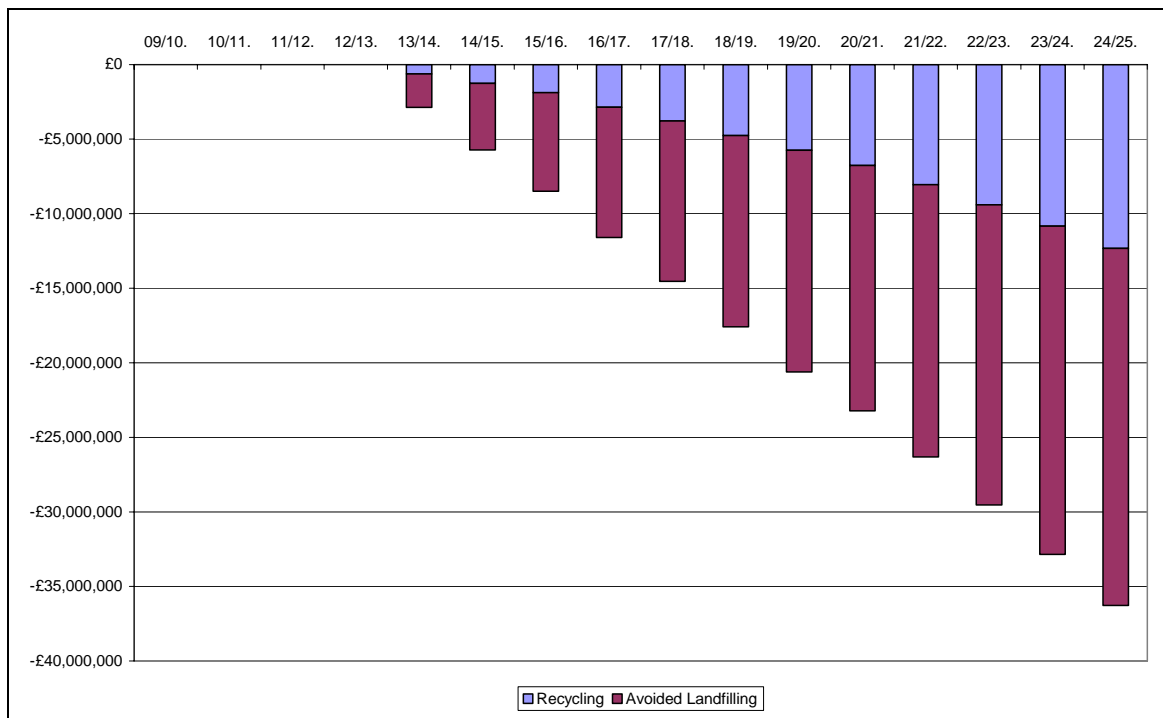
8.2.50 The proportion of these benefits arising from recycling and the proportion accounted for by the avoided residual waste disposal / treatment route are shown in Figure 7 and Figure 8. These denote that for both the avoided landfilling and avoided incineration scenarios, a significant proportion of the negative costs can be attributed to the benefits of avoided residual waste treatment / disposal.

Table 4: Environmental Costs (Including Biogenic Carbon)

		Social Costs	
		Avoided Disposal as Landfill	Avoided Disposal as Incineration
AD: Electricity	NPV 2009/10 - 2024/5	-£102,917,391	-£71,656,164
	Annualised NPV	-£8,509,707	-£5,924,878
AD: Compressed Biogas used in Vehicles	NPV 2009/10 - 2024/5	-£106,474,887	-£73,243,735
	Annualised NPV	-£8,803,858	-£6,056,146

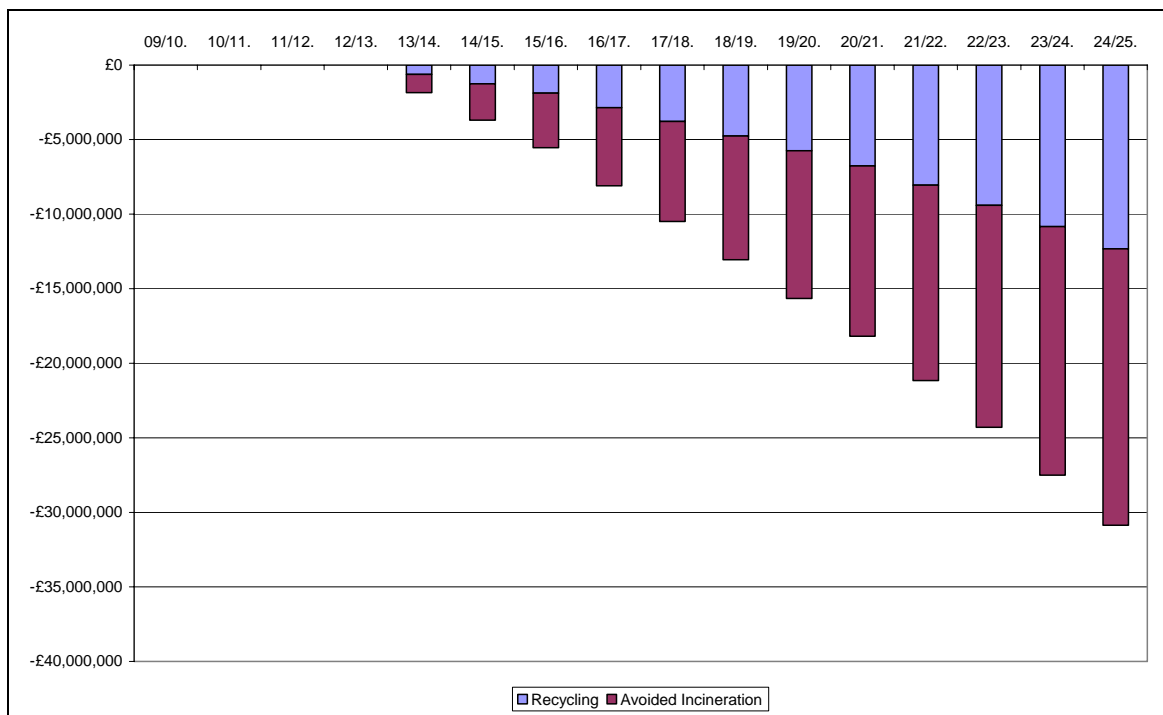
Note: positive figures imply costs, negative figures indicate benefits.

Figure 7: Environmental Costs Breakdown where Avoided Disposal is Landfill



Note: positive figures imply costs, negative figures indicate benefits.

Figure 8: Environmental Costs Breakdown where Avoided Disposal is Incineration



Note: positive figures imply costs, negative figures indicate benefits.

Conclusion

- 8.2.51 Net social costs are the sum of the financial and the environmental costs. These are shown in Table 5. Properly, from the perspective of a cost benefit analysis, one should consider the sum of the two only where the costs are estimated through the social metric. However, for transparency, results for both the private and social metrics are set out, not least because impact assessments generally seek information regarding 'market costs'. It should be noted that the costs assessed under the private metric include the effects of measures such as landfill tax and the renewables obligation which are designed to internalise some of the environmental costs / benefits associated with specific activities. As such, adding the environmental costs to the financial costs under the private metric implies an element of double counting of environmental benefits.
- 8.2.52 The results of the modelling indicate significant reductions in net social costs (or significant social benefits) for both social and private cost metrics arising from a realisation of the Welsh Assembly Government's recycling targets relative to the baseline scenario. Under the social cost metric, there is very little difference in the net social benefits between the case where the residual waste is landfilled and where it is incinerated. The reasons for this are clear to see from the Table: the financial costs are higher where the avoided management route is landfill, but this is offset by greater environmental benefits. Avoiding incineration, on the other hand, incurs lower additional costs, but also, less environmental benefit. The net position is similar for the two treatment options.⁴⁵
- 8.2.53 Evidently, if one looks at the private cost metric, it appears that the overall benefits to society are greater in the scenario where the additional material recycled would otherwise have been landfilled, than if it were otherwise incinerated. This is, however, somewhat artificial, since it merely reflects the fact that the environmental costs of landfilling are far more effectively internalised in current market prices than are the externalities of incineration. In other words, the landfill

⁴⁵ It should be noted that this is entirely consistent with the general literature in this area. The case, on grounds of net social costs, for landfill or incineration generally comes down to one of whether the additional environmental benefit of incineration is justified by the additional (under social metrics) cost. Several studies have suggested that this is not always the case. References:

External Costs of Landfill and Incineration: Final Report to the European Commission; COWI, 2000.

Combining the Government's two health and environment studies to calculate estimates for the external costs of landfill and incineration, HM Customs & Excise, 2004.

Burn or bury? A social cost comparison of final waste disposal methods, E. Dijkgraaf, and H. Vollebergh, *Ecological Economics*, 50, pp.233-247, 2004.

Literature review of social costs and benefits of waste disposal and recycling, E. Dijkgraaf and H. Vollebergh in *Rethinking the Waste Hierarchy*, EAI: Copenhagen, pp. 80-98, 2005.

Combining the Government's Two Health and Environment Studies to Calculate Estimates for the External Costs of Landfill and Incineration, HM Customs & Excise, 2004.

case includes a high degree of double counting of the environmental benefit from avoiding landfill.

Table 5: Financial, Environmental and Net Social Costs (where Environmental Costs Reflects Anaerobic Digestion to Electricity Only)

	Social Costs		Private Costs	
	Avoided Disposal as Landfill	as Avoided Disposal as Incineration	Avoided Disposal as Landfill	as Avoided Disposal as Incineration
NPV 2009/10 – 2024/25				
Financial Costs	£35,894,377	£7,801,984	-£40,234,261	-£38,269,539
Environmental Costs	-£102,917,391	-£71,656,164	-£102,917,391	-£71,656,164
Net Social Costs	-£67,023,015	-£63,854,180	-£143,151,652	-£109,925,703
Annualised NPV				
Financial Costs	£2,967,920	£645,106	-£3,326,763	-£3,164,310
Environmental Costs	-£8,509,707	-£5,924,878	-£8,509,707	-£5,924,878
Net Social Costs	-£5,541,787	-£5,279,772	-£11,836,470	-£9,089,188

Specific Impact Tests

Competition Assessment

We do not expect there to be any significant impacts on competition from the targets.

Small Firms Impact Test

We do not expect there to be any significant impacts on small firms from the targets. Indeed, this may reduce costs to businesses to the extent that those businesses using local authority collections may find that costs are reduced where they engage fully with a comprehensive recycling service.

Legal Aid

We do not consider that the targets will have any impact on the workload of the courts or on legal aid.

Sustainable Development

The targets clearly contribute to the principles of sustainable development by encouraging greater resource efficiency.

Carbon Assessment

The valuation of benefits associated with greenhouse gas emissions has been included in the above assessment of environmental benefits. The effects of the targets are positive in this respect, as shown in Table 6, which apply to the end year of 2024/25.

Table 6: Greenhouse Gas Emissions Savings (tonne CO₂ equ 2024/25)

	Excluding Biogenic Carbon	Including Biogenic Carbon
Savings from Avoided Landfilling	1,670,275	2,790,497
Savings from Avoided Incineration	488,253	1,834,457

Other Environmental Impacts

The valuation of benefits associated with other environmental effects (than greenhouse gas-related ones) has been included in the above assessment of environmental benefits. The effects of the targets are positive in this respect. It should be noted that the monetised environmental effects do not include matters such as changes in biodiversity and impacts on soil and water quality.

Health Impact Assessment

We do not consider that this provision will give rise to a significant demand on health and social care services.

Race Equality

We do not consider that the targets are of relevance to the Government's responsibilities under the race equality duty. Local authorities are already familiar with seeking to communicate to households from diverse ethnic backgrounds and are expected to continue (in the baseline as well as where the proposed targets are implemented).

Disability Equality

We do not consider that the targets will have any disability equality impacts. Local authorities are expected to continue to take such factors into account in the specific design of services for those affected by various disabilities.

Gender Equality

We do not consider that the proposed targets will have any relevant gender equality impacts.

Human Rights

We have considered the human rights implications flowing from this provision and have concluded that it does not infringe the European Convention of Human Rights.

Rural Proofing

In principle, there may be issues of relevance to whether or not targets can be met in different situations in Wales. However, international evidence suggests that it is more likely that targets would be met in rural and suburban areas than in urban ones⁴⁶. Hence, the targets are not likely to place rural areas at a relative disadvantage.

In terms of costs, although there is a view that rural areas face higher collection costs than urban ones, the evidence for the suggestion that the cost of achieving specific rates of recycling is higher in rural areas than in urban ones is actually rather weak. The cost of meeting recycling targets has to be considered against a counterfactual where these targets are not met, but where collection services are still operated. The evidence suggests that the increase in collection costs is unlikely to be significantly greater in rural than in urban areas as long as services are efficiently designed. Furthermore, rural areas may find that avoided costs of disposal are higher than they would be in urban areas, especially as landfill becomes less viable (not to mention, desirable from an environmental perspective) as an option.

Consequently, we expect the effects on rural areas to be such that the incremental costs of achieving the targets are unlikely to be higher than in urban areas (and in cases where they are, not significantly so), whilst the likelihood of achieving the targets is, if anything, greater in rural than in urban areas. The international (and UK) evidence in respect of this latter point is particularly strong.

⁴⁶ *High Diversion of Municipal Waste: Is It Achievable?*, David Davies Associates, 2003, Resource Recovery Forum.

8.3 Landfill

Background

8.3.1 Managing the production and disposal of waste is one of the most significant environmental challenges. Table 7 sets out the amount of waste produced in Wales and the way it is managed.

Table 7 – Waste Produced and Managed in Wales

Waste sector (million tonnes)	Recycled / re-used / composted	Energy recovery	Landfilled	Other treatment	Unknown (including transfer)	Total
Household, 2007/08	0.49	0.03	1.01	-	-	1.53
Commercial, 2007	0.63	0.02	0.84	0.05	0.14	1.68
Industrial, 2007	1.13	0.01	0.55	0.16	0.05	1.90
Construction & demolition, 2005/06	10.29	-	1.27	0.02	0.58	12.17
Total	12.53	0.05	3.68	0.23	0.77	17.27
% of total	72.6	0.3	21.3	1.3	4.5	100.0

Note: For “-“the data item is not exactly zero, but estimated as zero or less than half the final digit shown

Source: Household waste figures calculated using WasteDataFlow quarterly data.

Commercial and industrial waste figures calculated using the Environment Agency Industrial and Commercial Waste Survey 2007

Construction and Demolition waste figures calculated using the Environment Agency Construction and Demolition Waste Survey 2005/06.

8.3.2 In terms of each waste sector:

- 66% of household waste was landfilled
- 51% of commercial waste was landfilled
- 29% of industrial waste was landfilled
- 10% of construction and demolition waste was landfilled
- 21% of all wastes were landfilled

8.3.3 The landfilling of wastes is problematic, resulting in the emission of harmful greenhouse gases and wasting valuable resources. There is also a need to address the threat of infraction with regard to the implementation of Article 5 of the Directive 1999/31/EC on the Landfill of Waste (“the Landfill Directive”).

8.3.4 Landfill bans and restrictions are a potential tool for switching wastes from all sectors away from landfill and thereby helping to achieve the key policy aims of the Welsh Assembly Government as set out in the

*Environment Strategy for Wales*⁴⁷ and the new Waste Strategy for Wales entitled *Towards Zero Waste*.

Purpose and intended effect of intervention

8.3.5 The overall objective of this proposal is to reduce the amount of waste going to landfill. A landfill ban or restriction would also:

- Reduce greenhouse gas emissions.
- Reduce Wales' ecological footprint
- Save valuable and increasingly scarce resources
- Be a critical policy tool in switching biodegradable and recyclable waste materials to more sustainable management routes (e.g. Recycling)
- Support the principles and delivery of the Revised Waste Framework Directive.
- Support the principles and delivery of the Landfill Directive.
- Support delivery of the current Waste Strategy for Wales (*Wise about Waste*) and the proposed new Waste Strategy (*Towards Zero Waste*).
- Stimulate the development of alternative waste management infrastructure.

Rationale for Government Intervention

8.3.6 The recovery and disposal of waste imposes externalities on society in the form of Greenhouse Gas emissions from landfill. The rationale for the Assembly Government's waste policy is to tackle such externalities and their adverse impacts, thereby improving environmental outcomes across Wales.

Policy options that are being considered

8.3.7 This provision will allow Ministers to make regulations regarding the banning or restricting of landfill of waste. The type of materials that could be covered by a landfill ban or restriction include food and drink waste, paper and card, wood metals and plastic. The options that are being considered are:

- Option 1 - Do Nothing/ status quo;
- Option 2 - Using the proposed Measure, provide a power for the Welsh Ministers to ban or restrict certain kinds of waste from landfill.

Costs & benefits

8.3.8 In 2010, WRAP (Waste Resources Action Programme) will be publishing the results of a project, commissioned by the Devolved Administrations and Defra, to look at the potential for landfill bans or

⁴⁷ *Environment Strategy for Wales*, Welsh Assembly Government, 2006.

restrictions across the UK. The final report includes an initial assessment of the costs and benefits at an UK level. In conjunction with the publication of this report, the Assembly Government and Defra will be undertaking a policy consultation on possible options for landfill bans or restrictions of specific kinds of waste. Should the Assembly Government, as a result of this consultation and associated research, want to ban or restrict particular kinds of waste from landfill, the power provided to the Welsh Ministers under this proposed Measure would enable them to propose regulations to that end.

8.3.9 Any regulations proposed under the powers provided by the landfill provisions of the proposed Measure would be subject to the affirmative procedure and would therefore need to be debated and approved by the National Assembly. Any draft regulations proposing the banning or restricting of specific kinds of waste from landfills in Wales will be accompanied by a full Regulatory Impact Assessment. The regulatory impact assessment will need to look specifically at the costs and benefits of banning or restricting particular kinds of waste, such as glass or plastics, and will include an estimate of any administrative, compliance and other costs associated with any ban or restriction. The Assembly Government will need to consult on any proposed regulations and accompanying RIAs.

8.3.10 A general cost and benefits analysis of the two main policy options is set out below. This sets out the type of administrative, compliance and other costs likely to be incurred as a result of introducing a ban and also identifies where the costs would fall. No estimates of potential costs have been included as no detailed bans or restrictions have been proposed at this stage. As noted above, the Assembly Government has been working closely with the UK Government and the other Devolved Administrations to look at the potential for landfill bans and restrictions. A report will be published on this issue in spring 2010 which will set out, amongst other things, an assessment of the costs and benefits of landfill bans at an UK level. The costs and benefits vary considerably depending on the exact waste material in question. In conjunction with this report, Defra and the Assembly Government will be conducting a public consultation on possible options for landfill bans or restrictions. As a result of this work, the Assembly Government will be undertaking more detailed work on the cost of banning or restricting particular types of waste from landfill at a Welsh level. Such assessments will, in particular, need to consider potential outlets for banned or restricted waste materials as well as implications for waste management infrastructure in Wales. Given the clear sequence of policy developments in this area, we believe it would be inappropriate to set out very general estimates of costs, based on UK level data, of banning or restricting particular types of waste from landfill. Such estimates of costs may be misleading. We believe that it would be more appropriate for estimates of costs to be fully reflected in the RIAs which would accompany any draft regulations.

Option 1 - Do Nothing/ Status Quo

8.3.11 There are not expected to be any additional costs or benefits associated with the “do nothing” option.

Option 2 –Using the proposed Measure, provide a power for the Welsh Ministers to ban or restrict certain kinds of waste from landfill

8.3.12 A number of costs are likely to be incurred as a result of any proposed landfill ban or restriction of particular materials.

8.3.13 The main cost under this scenario reflects a difference in the cost of the different waste treatment options (i.e. whether waste is sent to landfill or recycled). Local authorities would be expected to experience increased costs in terms of infrastructure and collection systems. This would vary depending on the nature of any proposed ban or restriction and the composition of the waste, the collection and processing methods used and the location of the waste (there are different waste collection costs in urban and rural areas). This has to be set against the large financial investment from the Welsh Assembly Government in municipal recycling since 2001.

8.3.14 There are also likely to be increased costs to the regulator, in terms of guidance, training, regulation and the enforcement of any ban or restriction. These would vary depending upon the bans or restrictions introduced. Businesses may be expected to experience increased waste collection costs. There would be increased management of their wastes either on-site (if banned or restricted materials were source segregated) or off-site (if a greater degree of waste treatment were required). This cost will vary depending on the type of ban or restriction introduced, the composition of the waste, the collection and processing methods used and the location of the waste (there are different waste collection costs in urban and rural areas).

8.3.15 Landfill Operators would be expected to have to change their operations and re-train staff. They may also experience a significant drop in income from reduced trade. Dependant upon the type of ban introduced, increased testing costs for incoming wastes may be incurred by operators.

8.3.16 Any ban or restriction would require a significant lead-in time. The WRAP study suggests a lead-in time of 5 years for introducing a ban or restriction on individual types of recyclable or recoverable waste.

8.3.17 A ban or restriction on landfilling particular materials could be expected to result in a number of broad benefits.

8.3.18 Landfilling is a poor environmental option which has an extremely negative effect on climate change. The breakdown of biodegradable

waste in landfill releases methane which is a harmful greenhouse gas 23 times more potent than carbon dioxide. Approximately 61% of both municipal and 61% of industrial and commercial waste that is landfilled is biodegradable^{48,49}. Reduction in the amount of biodegradable waste landfilled would result in the reduction of greenhouse gas emissions from landfill.

8.3.19 In addition to a reduction in greenhouse gas emissions, reducing the amount of waste sent to landfill is also expected to generate disamenity benefits (or a reduction in disamenity costs). (Disamenity is a disadvantage or drawback, particularly in terms of location). Landfill sites are assumed to impose disamenity costs on local residents due to the associated noise, dust, odour, litter, vermin and visual impact. There may also be other environmental impacts associated with landfill sites such as groundwater quality from landfill leaching. Reducing the amount of waste sent to landfill will reduce the impact of the above factors.

8.3.20 The reliance on landfill has led to a lack of development of other recycling and recovery options. This is in contrast to other EU Member States who have introduced legal and economic instruments such as the banning of the landfilling of certain wastes, extended producer responsibility for waste recycling and recovery, high taxes on landfill, and direct charging for the disposal of household waste. Landfill bans or restrictions may help to stimulate the development of alternative waste management infrastructure and generate market certainty as to the availability of materials.

8.3.21 Landfill bans or restrictions will assist the delivery of the Welsh Assembly Government's Green Jobs Strategy⁵⁰ which encourages businesses and organisations in Wales both to improve their own environmental performance and also take advantage of business opportunities that arise as society moves towards more resource efficient, climate-conscious living and working. The development of recycling and recovery infrastructure that results from diversion of materials from landfill should lead to the increased employment in the waste sector.

8.3.22 Landfill bans or restrictions may help to save valuable and increasingly scarce resources. For instance, plastic is made from finite oil reserves. There is increasing concern regarding the security of supply and cost of oil. Similarly, certain high value metals are becoming scarcer, with only a few countries controlling their supply. Artificial fertiliser is becoming ever more expensive as energy prices increase, and there is

⁴⁸ *Composition of Municipal and Solid Waste in Wales*, MEL, Waste Research, WRc, AEA Technology, 2003.

⁴⁹ *Determination of the Biodegradability of Mixed Industrial and Commercial Waste Landfilled in Wales*, SLR Consulting, 2007.

⁵⁰ *Capturing the Potential: A Green Jobs Strategy for Wales*, Welsh Assembly Government, 2009.

evidence that phosphate mineral supplies are dwindling – meaning that biowaste could become an important source of replacement fertiliser and phosphate.

Conclusion

8.3.23 Sending waste to landfill results in harmful Greenhouse Gas emissions and the loss of potentially valuable resources. One option for reducing these impacts is a ban/restriction on sending certain materials to landfill. Any power for Welsh Minister to ban/restrict waste being sent to landfill could result in some additional costs to local authorities, regulators, business and landfill operators, depending on the type of ban or restriction that is introduced. On the other hand, the regulation making power under the proposed Measure could result in considerable environmental benefits. These could include a reduction in greenhouse gases; an increase in disamenity benefits; the development of alternative waste management infrastructure; and also the protection of valuable and scarce resources. A full analysis of the relative costs and benefits associated with landfill bans/restrictions has been commissioned. This analysis will inform the final decision on whether to introduce landfill bans/restrictions in Wales in the future.

Specific impact tests

8.3.24 The specific impact tests cannot be carried out until the Regulatory Impact Assessment for any proposed regulations introduced under this Measure provision is completed.

8.4 Site Waste Management Plans

Background

- 8.4.1 The proposed Waste (Wales) Measure restates the existing powers of Welsh Ministers under section 54 of the Clean Neighbourhoods and Environment Act (CNEA) 2005 to make regulations requiring SWMPs. The proposed Measure also provides the Welsh Ministers with the power to make regulations about the making of fees and charging schemes in relation to SWMPs.
- 8.4.2 Ensuring effective compliance with SWMP regulations will require monitoring by a regulator who in turn will require resources to carry out such duties. One option for resourcing this work is to introduce a fees and charges scheme. This is essentially a charging system, whereby fees are tied to the processing or checking of a SWMP and/or charges are levied to recover costs of any monitoring of compliance with SWMP provisions.
- 8.4.3 The Welsh Assembly Government is proposing to consult on a fees and charges system as part of the main consultation on SWMP Regulations in Wales at the end of 2010. The Assembly Government is currently conducting a cost benefit analysis (CBA) and impact assessment (IA) on the options to take forward for the consultation of SWMP Wales' regulations.
- 8.4.4 A separate Impact Assessment (IA) has been prepared looking into the costs and benefits associated with introducing charges. This separate IA has been carried out at an early stage of the CBA work to give some background for the introduction of a charging provision within the measure. The policy options on SWMPs, the mechanism for cost recovery and how a fees and charges scheme would work have not been set yet. As such, the options and the data contained within this RIA are broad estimates associated with introducing a charging scheme. Both the options and data will be further refined as the cost benefit analysis and the impact assessment progresses to completion in April 2010.

Purpose and Intended Effect

- 8.4.5 A fees and charges scheme would make provision for recovering the costs of monitoring, enforcement and other general activities specified by the requirements of section 54 of the CNEA 2005. A charging scheme would set out to achieve:-
- a) A cost recovery approach to enable the regulator to carry out monitoring and enforcement duties effectively, i.e. to process SWMPs and monitor progress of the regulations' aims to reduce waste and divert waste away from landfill with a good degree of accuracy;

- b) Enable the regulator to enforce, when and where necessary when companies fail to comply with SWMPs, in accordance with the Polluter Pays principle.

Options

8.4.6 To give an indication of costs that a charging scheme might introduce, three broad options have been considered for the charging IA:

Option 1 - Do Nothing;

Option 2 - Through the proposed Waste Measure, provide the Welsh Ministers with a power to establish a fees and charging scheme for a simple SWMP regime; and

Option 3 - Through the proposed Waste Measure, provide the Welsh Ministers with a power to establish a fees and charging scheme for a comprehensive SWMP regime.

Option 1 - Do Nothing Option

8.4.7 Under this option, no charging scheme would be introduced to resource the regulation of any SWMP regulations that are introduced.

Option 2 - Through the proposed Waste Measure, provide the Welsh Ministers with a power to establish a fees and charging scheme for a simple SWMP regime

8.4.8 It is expected that this scheme will result in the smallest regulatory costs for the Assembly Government and the regulator. Under the simple charging scheme, we have modelled two options: a scheme regulated by local authorities, and secondly, a scheme regulated by the Environment Agency. We have not modelled the option of having two regulators to regulate the scheme as is currently the case in SWMP Regulations in England.

8.4.9 Modelling on a threshold similar to the English SWMP Regulations (£300,000⁵¹) companies involved in the Construction and Development (C&D) sector would be expected to prepare, update and implement a SWMP where they are involved in a construction or Demolition project with a value of more than £300K. Any C&D project on one site above that value must, before work begins, prepare a SWMP and submit it to the regulator. At this point, a charge would be levied which will recover the costs of reviewing the SWMP and any subsequent monitoring work carried out by the regulator.

8.4.10 The plan must be implemented and then updated as construction work proceeds. It is anticipated that a greater level of detail is required for large sized projects. This includes recording types and quantities of waste produced, with all waste recorded or referenced in the plan to

⁵¹ The cost benefit analysis and impact assessment will look at thresholds to apply to SWMP Wales more closely. We expect to consult on the thresholds as part of the SWMP consultation later this year. Current options include value of projects, size of projects (i.e. number of dwellings), local authority planning and building notices thresholds.

comply with the requirements of the Duty of Care scheme to prevent the onset of illegal activities such as fly-tipping.

Option 3 - Through the proposed Waste Measure, provide the Welsh Ministers with a power to establish a fees and charging scheme for a comprehensive SWMP regime

- 8.4.11 A more comprehensive detailed SWMP regime which applies to a wider range of C&D projects would require greater cost recovery.
- 8.4.12 The scheme proposed in this option might include waste prevention and minimisation principles (“design waste out”) throughout all stages of C&D projects. As well as developers of projects, designers may be expected to be involved in the preparation, revision and implementation of a SWMP.
- 8.4.13 Under a comprehensive charging scheme, we have modelled two options: a scheme regulated by local authorities, and secondly, a scheme regulated by the Environment Agency. As per the simple charging option, we have not modelled the option of having two regulators to regulate the scheme as is currently the case in SWMP Regulations in England.
- 8.4.14 The threshold for C&D projects that enter such a scheme is likely to be lower than that of the simple charging scheme (£300K) with a greater number of projects requiring submission of a SWMP to the regulator. This ensures that a higher percentage of persons working within the construction and sector are familiar with the SWMP system.

Costs

- 8.4.15 Examining previous work on SWMPs elsewhere, a CBA was conducted in 2007 and 2008 for the SWMP regulations in England. However, the use of this study would be undesirable as the options proposed in Wales do not directly correlate with those used in the English assessment
- 8.4.16 Therefore, whilst there is some information on the costs of implementing different systems for collecting and allocating the money raised through the charge, none are directly related to the options being considered here. As such, a bespoke, high level modelling exercise has been undertaken which explores the estimated costs to the Assembly Government and the regulator in implementing the options. These provide the best estimates of the administrative, compliance and other costs to which the provisions of the proposed Measure (Options 2 and 3) would give rise. If the Assembly Government was to establish a fees and charges scheme, the costs, either full or partial, would fall to the C&D sector, specifically those companies required to prepare and submit SWMPs. Summaries of the first year and steady-state costs are set out in Tables 8 and 9.

- 8.4.17 The administrative (set up) costs in the first year for Option 2 range from £648,792 to £652,681 whilst the costs for Option 3 range from £4,220,305 to £4,238,336. The steady-state (administrative and compliance) costs for Option 2 range from £109,857 to £116,695 whilst the costs for Option 3 range from £3,205,226 to £3,508,201. Option 2 assumes 2,200 SWMPs to be completed annually whilst Option 3 assumes 19,800 SWMPs per annum.
- 8.4.18 If a decision was made to seek full cost recovery from the C&D sector to cover both the first year administrative set up costs and the steady-state administrative and compliance costs, those costs would be reflected in the fee for submitting a SWMP. Assuming the first year administrative costs would be recovered over a period of five years, the costs per SWMP would be approximately £111 for Option 2 and £213 for Option 3. After the period of five years the costs per SWMP would be reduced to approximately £52 for Option 2 and £170 for Option 3. These estimates of costs reflect a full cost recovery approach and the cost to be business could be lower if a partial cost recovery approach was adopted. The outstanding costs would then need to be met by the Assembly Government.

Option 1 - Do Nothing

- 8.4.19 This is the baseline option in which no charging scheme would be introduced. Funding would need to be identified from an alternative source or the regulatory regime introduced would either have no specific regulatory requirement or companies in the C&D sector requested to complete SWMPs on a voluntary basis.

Option 2 - Through the proposed Waste Measure, provide the Welsh Ministers with a power to establish a fees and charging scheme for a simple SWMP regime

- 8.4.20 The cost of this scheme is uncertain due to the difficulty in predicting how many projects would be required to complete a SWMP. To date, a comprehensive assessment on the number of construction projects completed in Wales has yet to be undertaken. UK National Statistics data indicate that there are around 11,000 businesses registered in Wales from the construction and demolition sector in 2008.
- 8.4.21 Under this option it is estimated that a total of 2,200 SWMPs would be completed annually. This figure, however, is based upon the estimated number of building control notices submitted per annum in Wales valued over a certain threshold, i.e. £300,000. It is likely, however, that the number of SWMPs required to be completed for this option will be refined in the full IA.
- 8.4.22 An estimate of the cost for this scheme is presented below and also displayed in Tables 8 and 9 at the end of this section. The costs are calculated by utilising (in most instances) the standard cost model.

For modelling purposes it has been assumed that the most likely regulator will be the local authorities in Wales. However, it is acknowledged that the Environment Agency may also be used as a regulator, and as such, a sensitivity of the costs of using the EA as the regulator is presented in the tables at the end of this section.

8.4.23 The costs for a simple charging scheme can be broken down into two distinct areas; those associated with the preparation of the scheme and those associated with the ongoing operation of the scheme.

8.4.24 Considering the costs associated with the preparation of the scheme, it is expected that the total preparation costs will be around £650,000. These costs, shown in Tables 8 and 9, are associated with the following areas:

- the development of guidance and publicity;
- the development of an IT system;
- training;
- the development of systems (e.g. application forms); and
- Equipment.

8.4.25 The development of guidance and publicity is initially expected to cost around £120,000. This cost is primarily accounted for by the cost of promoting the SWMP scheme throughout Wales. It is expected that under this option, the guidance associated with the SWMP scheme will be very similar to the non-statutory guidance available in England, and therefore is not expected to incur a large cost.

8.4.26 The development of an IT system for the simple charging scheme is estimated to cost £0.5m. This system is expected to be used by the regulator to record basic details of the SWMPs.

8.4.27 It is expected that the regulator would need to be trained on the SWMP process. The training and recruitment costs associated with introducing this scheme are therefore anticipated to total £26,000.

8.4.28 In the simple charging scheme, the development of application forms for SWMPs is anticipated to cost around £3,000. The forms are expected to be very similar to those already in circulation in England and therefore will have minimum development costs.

8.4.29 Due to the significant uncertainty in the number of SWMPs expected to be completed each year, the ongoing costs are particularly sensitive to change. As such, the steady state costs can be considered to be a high level estimate at this stage.

8.4.30 The steady state costs are expected to be £110,000 for the simple charging scheme. Costs can be broken down in to the following areas:

- applications;
- minor variations such as change of name, or type of project;
- inspections and monitoring;

- enforcement and criminal sanctions;
- appeals;
- compliance; and
- exemptions.

8.4.31 The scheme may impose on the regulator a duty to register/keep a register of SWMPs on deposit of applications. This will form part of the registration fee. The money from the charge could be used as part of the regulator's duty to provide guidance to industry on how to apply for and comply with the SWMP application. It is expected that the steady state costs of applications will be £50,000, contributing to nearly half of all steady state costs for this scheme.

8.4.32 Minor variations are expected to arise where the original content of the SWMP differs from the actual C&D operation at the site. As such, the administration of these changes is expected to cost £2,000 per annum.

8.4.33 Regulators are expected to conduct inspection and monitoring of the scheme. To recover the costs of inspections, the regulator may apply a one-off inspection charge. The determination of the fee is dependent on numerous criteria, such as the estimated cost of work, the type of work and the number of dwellings. It is anticipated that the steady state costs of introducing an inspection and monitoring scheme will be around £16,000.

8.4.34 As part of the enforcement of the regulations, it is expected that a criminal sanctions scheme will be used. Use of fixed penalty notices and summary convictions for fines not exceeding £50,000 is expected to cost £3,000 per annum. In addition to this, an appeal system would also need to be administered. It is anticipated that the steady state costs for the appeals system will be £1,000. Furthermore, it is also expected that a compliance scheme would be introduced, whereby offenders are monitored. The scheme is expected to cost £300 per annum.

8.4.35 Finally, in order to ensure that persons registering themselves as exempt sites are in fact exempt, an exemption inspection scheme is expected to be introduced. This is anticipated to cost £2,500 per annum.

Option 3 - Through the proposed Waste Measure, provide the Welsh Ministers with a power to establish a fees and charging scheme for a comprehensive SWMP regime

8.4.36 As with the simple charging scheme option, the costs of this scheme are uncertain until the specific regulatory requirements have been developed and consulted on, thus enabling the Assembly Government to predict more accurately how many projects would be required to complete a SWMP. For the purposes of this RIA, we have assumed that 19,800 SWMPs would be completed annually. This figure is based

upon the estimated number of building control notices submitted per annum in Wales.

8.4.37 An overall estimate of the costs for this scheme are presented below and also displayed in Tables 8 and 9 at the end of this section along with those of the simple charging scheme. Like the simple charging scheme, the costs are calculated by utilising (in most instances) the standard cost model.

8.4.38 For modelling purposes the Environment Agency has been assumed to be the regulator. However, it is acknowledged that local authorities may also be used as a regulator. Consequently, a sensitivity of the costs of using local authorities as the regulator is presented in the tables at the end of this section.

8.4.39 Considering the one-off transitional costs associated with this scheme, it is expected that the total preparation costs will be around £4.2m. These costs are associated with the following areas:

- the development of guidance and publicity;
- the development of an IT system;
- training;
- the development of systems (e.g. application forms); and
- Equipment.

8.4.40 In all of the areas listed above, it is expected that the costs would be greater than those expected for the simple scheme. This can be attributed to the development of a more complex scheme, which is tailored not only to those partaking in construction projects, but those who design the projects (e.g. architects), and those who manage the waste resulting from the projects (carriers and reprocessors).

8.4.41 The development of guidance and publicity of the scheme is anticipated to cost £1.1m. These costs are attributed to the development of bespoke guidance for project designers, project administrators and persons dealing with the waste. It is also expected that there would be a comprehensive publicity campaign highlighting the SWMP system.

8.4.42 The IT system used for this scheme is estimated to cost £3.0m. This figure, however, is derived from an estimate and will be investigated further in the CBA and IA.

8.4.43 It is expected that the system could be used by the Assembly Government, local authorities and Environment Agency staff and as such, is expected to be six times more expensive than the system proposed for the simple charging scheme.

8.4.44 It is expected that the regulator's enforcement staff would require extensive training on all aspects of the SWMP system. This is anticipated to cost £136,000. As the application forms and other

relevant material would be bespoke to Wales, it is expected that the costs of developing these forms will be £11,000.

8.4.45 The ongoing costs, again like the simple charging scheme, are highly sensitive to the number of SWMPs expected to be completed each year. Consequently the figures calculated for the steady state costs can only be considered to being a high level estimate at this stage.

8.4.46 The total steady state costs are anticipated to be £3.5m. These costs are generated from the following areas:

- pre application discussions;
- applications;
- minor variations;
- inspections and monitoring;
- enforcement and criminal sanctions;
- appeals;
- compliance;
- exemptions; and
- verification of SWMPs.

8.4.47 In order to design waste out at the earliest stage of development, it is expected that in this scheme, designers of projects would be required to undertake pre-application discussions with the regulator so as to ensure waste minimisation principles are integrated in to the project at its inception. The costs associated with this approach are anticipated to be £639,000 per annum.

8.4.48 Considering the application, inspection and enforcement stage, it is expected that the requirements on the regulator would not differ from those outlined in the simple charging scheme. The costs, however, are expected to be higher than those anticipated for the simple charging scheme as a more rigorous approach is expected to be utilised under this option. The steady state costs are shown in the summary cost table below.

8.4.49 The final stage of the process for a comprehensive regime could be the verification of the SWMPs. In this scheme it would be expected that SWMPs are checked to ensure that the submissions made to the regulator comply with the requirements of the regulations and associated with additional records, such as compliance with the Duty of Care scheme. The steady state costs for administering this process are therefore expected to be £414,000.

Table 8 Summary Cost Table – 1st Year Costs

	Option 1: Do Nothing	Option 2: Simple SWMP regime – Local Authority Regulated	Option2: Simple SWMP regime – EA Regulated	Option 3: Comprehensive SWMP Regime - Local Authority Regulated	Option 3: Comprehensive SWMP regime – EA Regulated
Administrative Costs					
Guidance and Publicity	-	£120,303	£121,895	£1,108,834	£1,109,198
IT Systems	-	£500,000	£500,000	£3,000,000	£3,000,000
Training	-	£25,898	£28,196	£124,371	£136,037
Systems	-	£2,590	£2,590	£11,100	£11,100
Total	-	£648,792	£652,681	£4,220,305	£4,238,336

Table 9 Summary Cost Table – Steady State Costs

	Option 1: Do Nothing	Option 2: Simple SWMP regime – Local Authority Regulated	Option 2: Simple SWMP regime – EA Regulated	Option 3: Comprehensive SWMP Regime – Local Authority Regulated	Option 3: Comprehensive SWMP regime – EA Regulated
Administrative Costs					
Guidance and Publicity	-	£10,000	£10,000	£100,000	£100,000
IT Systems	-	£25,000	£25,000	£150,000	£150,000
Training	-	-	-	-	-
Systems	-	-	-	-	-
Compliance Costs					
Pre-Application Activities	-	-	-	£575,340	£638,985
Applications	-	£49,520	£53,630	£445,678	£482,672
Variations	-	£2,122	£2,298	£19,100	£20,686
Inspections and Monitoring	-	£15,982	£17,750	£1,150,680	£1,277,970
Enforcement and Criminal Sanctions - Monetary Penalties	-	£3,376	£3,740	£267,089	£296,409
Appeals and Cost Recovery	-	£981	£1,082	£54,918	£60,668
Compliance	-	£320	£355	£57,534	£63,898
Exemptions	-	£2,557	£2,840	£2,877	£3,195
Verification of	-	-	-	£382,010	£413,719

SWMPs					
Total Steady State Costs	-	£109,857	£116,695	£3,205,226	£3,508,201

Benefits

8.4.50 As the formal CBA and IA have yet to be concluded, no direct benefits to the Assembly Government have been modelled.

8.4.51 It is expected that the full benefits of implementing a charging scheme will be explored once the IA has been concluded. The main benefits are anticipated to be as follows:-

- a) Helps the regulator to monitor, inspect and enforce the regulations by recruitment of resources and provision of training;
- b) Ensures that clients and contractors take ownership on waste management functions, build contacts and facilitate effective communication with the regulator;
- c) Builds stronger relationships with companies who learn, through help and support, how to implement sustainable waste management practices on-site which will encourage better use of resources, minimise the waste being produced and promote planning for waste minimisation & management;
- d) Ensures knowledge that the regulations will be enforced effectively, will reduce illegal waste activities and ensure that care is taken on-site to manage waste properly in accordance to waste management legislation.

Conclusion

8.4.52 Due to the uncertainty in the number of SWMPs which would be required to be completed, it is difficult to draw any firm conclusions on the modelling described above, especially in relation to the steady state costs.

8.4.53 It is apparent, however, that the costs for the implementation of a SWMP regime can vary considerably dependant on the extent and scale of regulatory duties. Drawing on the experience of implementation of SWMPs in England, the costs in the simple scheme are shown to be very small. If, however, a more bespoke scheme for Wales is introduced, it is clear that the start up and on going costs could be significantly larger.

8.4.54 The benefits associated with the introduction of a charging scheme have not yet been calculated. However, post implementation research on the English SWMP system has shown that early implementation of SWMPs in the design stage of projects can lead to significant cost savings for clients and contractors during the course of the construction project activity.

8.4.55 Table 10 summarises the high level estimated costs and demonstrates the wide variation in the estimated figures. This work, which began in

December 2009, is expected to be completed in April 2010. It is not therefore possible to provide any definitive assessment of the costs and benefits of the options listed above at this stage.

Table 10 Summary Cost/Benefit Table

	Option 1: Do Nothing	Option 2: Simple SWMP regime – Local Authority Regulated	Option 2: Simple SWMP regime – EA Regulated	Option 3: Comprehensive SWMP regime - Local Authority Regulated	Option 3: Comprehensive SWMP Regime – EA Regulated
Total 1st Year Costs		-£648,792	-£652,681	-£4,220,305	-£4,238,336
Total Steady State Costs	-	-£109,857	-£116,695	-£3,205,226	-£3,508,201
Total 1st Year Benefits	-	-	-	-	-
Total Steady State Benefits	-	-	-	-	-
10 Year NPV	-	-£1,484,551	-£1,540,462	-£28,604,656	-£30,927,625

8.4.56 The final line of the table shows the Net Present Value of the options discounted over a 10 year period. The HM Treasury central discount rate of 3.5% has been used in the calculations.

Specific Impact Tests

Competition Assessment

We do not expect there to be any significant impacts on competition from this provision.

Small Firms Impact Test

UK National Statistics data indicate that there are around 11,000 businesses registered in Wales from the construction and demolition sector. A large proportion of these are expected to be small firms. The impact on individual small firms is expected to be conducted in the full impact assessment.

Legal Aid

We do not consider that this provision will have any impact on the workload of the courts or on legal aid.

Sustainable Development

This provision may contribute to the principles of sustainable development by encouraging greater resource efficiency.

Carbon Assessment

At this stage it is not possible to estimate the potential scale of these impacts.

Other Environment

At this stage it is not possible to estimate the potential scale of these impacts.

Health Impact Assessment

We do not consider that this provision will give rise to a significant demand on health and social care services.

Race Equality

We do not consider that this provision is relevant to the Government's responsibilities under the race equality duty.

Disability Equality

We do not consider that this provision will have any disability equality impacts.

Gender Equality

We do not consider that this provision will have any gender equality impacts.

Human Rights

Insofar as we are aware, the proposed provision is unlikely to have any human rights implications.

Rural Proofing

We do not consider that this provision will have a significantly different impact in rural areas.

9. Competition Assessment

- 9.1 The specific impact tests in relation to competition assessment and small firms impact test have been considered for the single use carrier bags, waste targets and SWMP aspects of the proposed Measure, the results of which are set out under Section 8 of this Memorandum. The impact of the proposed Measure will not have a detrimental effect on competition for business, charities, local government or the voluntary sector. These tests will be completed for any regulations to introduce a landfill ban or restriction using the provisions contained in the proposed Measure.

10. Post implementation review

Single Use Carrier Bags

- 10.1 The regulations that will introduce a minimum charge for single use carrier bags under the Climate Change Act 2008 will enable local authorities, who will be responsible for enforcing the requirements in relation to the charge, to impose civil sanctions for breaches of the regulations. The Climate Change Act 2008 will require the Welsh Ministers to review the operation of those provisions. This review must take place as soon as practicable after 3 years from when the provisions came into force. This would be an appropriate juncture to review the policy on charging for single use carrier bags as a whole. The review would include the voluntary agreement, or the Measure provision, in the event that regulations have been made under it.

Waste targets

- 10.2 Progress against the Measure will be monitored via the reporting regime based on the WasteDataFlow system, which is the national waste database for municipal waste data reporting by UK local authorities to government. Local authority performance will also be monitored by the reporting of Performance Indicators via the Local Government Data Unit, which are signed off by the Auditor General for Wales. Where any local authority fails to achieve a target, it will be a matter for the Welsh Ministers to determine whether the penalty should be applied.

Landfill

- 10.3 The provisions relating to a ban or restriction of the deposit of specified kinds of waste in landfill sites in Wales are enabling powers for the Welsh Ministers to make regulations in relation for such a ban or restriction. The arrangements for monitoring and review will be fully considered at the point that any such ban or restriction will be implemented by the regulations.

Site Waste Management Plans

- 10.4 The arrangements for monitoring and review will be considered in more detail as part of the cost-benefit analysis/ RIA and consultation on the SWMP Regulations. It is likely that a mechanism will be developed to review the implementation of the regulations at specified intervals to monitor their effectiveness. This will include monitoring of the fees and charging scheme, if implemented, and amended as necessary to ensure that any fees and charges are set in line with inflation.

Annex 1

Explanatory Notes

1. These Explanatory Notes relate to the proposed Waste (Wales) Measure 2010 as introduced into the National Assembly for Wales on 23 February 2010.
2. The Welsh Assembly Government's Department for Environment, Sustainability and Housing has prepared them in order to assist the reader of the proposed Measure and to help inform debate on it. They do not form part of the draft Measure and have not been endorsed by the National Assembly for Wales.
3. The Explanatory Notes should be read in conjunction with the proposed Measure. They are not, and are not meant to be, a comprehensive description of the Measure. So where a section or part of a section is self-explanatory, no further explanation or comment is provided.
4. The Measure makes provision about—
 - the destination of proceeds from charges for single use carrier bags;
 - targets to be met by local authorities in relation to waste;
 - prohibiting or otherwise regulating the deposit of waste in a landfill;
 - site waste management plans for works involving construction or demolition.
5. The National Assembly's competence to legislate on this topic is found in Matters 6.1, 6.3 and 6.4 contained in Field 6 of Schedule 5 to the Government of Wales Act 2006. These Matters were added to Schedule 5 by virtue of the National Assembly for Wales (Legislative Competence) (Environment) Order 2010 and enable the National Assembly to make provision relating to—
 - preventing, reducing, collecting, managing, treating or disposing of waste, and
 - protecting the environment in relation to pollution and nuisances, subject to a number of exceptions, none of which excludes provision made in this Measure from the legislative competence of the Assembly.

SINGLE USE CARRIER BAGS

Section 1 – Charges for single use carrier bags: destination of proceeds

6. This section amends Schedule 6 to the Climate Change Act 2008 (“the 2008 Act”). This Schedule empowers the Welsh Ministers to make provision by regulations about charging by sellers of goods for the

supply of single use carrier bags. The Welsh Ministers intend that regulations requiring sellers to charge will come into force in 2011.

7. The Schedule did not include specific provision, on enactment, authorising the Welsh Ministers to impose duties on sellers of goods, or anyone else, in respect of the destination of proceeds from charges imposed under regulations. The amendment to Schedule 6 by section 1(2) of this Measure achieves that by inserting a new paragraph 4A and paragraph 4B after paragraph 4 of Schedule 6 to the 2008 Act.
8. The purpose and effect of the new paragraph 4A is to allow the Welsh Ministers to make provision by regulations for the application of the net proceeds of the charge to purposes specified in the regulations. This is principally given effect by sub-paragraph (2) of paragraph 4A which provides that such provision can be made by regulations under the Schedule. The “net proceeds of the charge” are to be established by reference to definitions in paragraph 7(4) of Schedule 6 and regulations made by the Welsh Ministers under powers in that paragraph.
9. The purpose of sub-paragraph (1) is to make clear on the face of the 2008 Act (which extends to England and Wales and Northern Ireland) that the paragraph applies only to regulations made by the Welsh Ministers in relation to Wales.
10. Sub-paragraph (3) sets out a non-exhaustive list of the provision that may be made under sub-paragraph (2). Regulations could require sellers to apply the net proceeds of the charge to purposes specified in the regulations (sub-paragraph (3)(a)). They could also provide for any such duty to be discharged where the seller’s net proceeds from the charge are accepted by persons specified in regulations (sub-paragraph (3)(b)). The regulations could require those persons to apply the proceeds to one or more specified purposes (sub-paragraph (3)(d)). Sub-paragraph (3)(c) provides that the regulations could make provision about the arrangements under which the net proceeds of the charge are to be given by sellers to those specified persons. Those provisions could also include a seller’s arrangements for applying the charge (sub-paragraph (3)(7)).
11. The regulations may include provisions about the recovery of the net proceeds in certain circumstances, including the application of recovered sums (sub-paragraphs (3)(e) and (f)). The regulations could also require the Welsh Minister to give guidance about compliance with the regulations (sub-paragraph 3(g)).
12. Sub-paragraphs (4) and (5) are about the purposes to which the net proceeds of the charge should be applied. These are connected to the National Assembly’s competence to legislate in this area. They are: (a) the prevention or reduction of waste; (b) the collection, management, treatment or disposal of waste; (c) the protection or improvement of the

environment in relation to pollution or nuisances; and (d) educational or recreational activities for children or young people which relate to (a) to (c). The purposes cannot concern the production of renewable energy for consumption in transport or the use of energy in transport.

13. The regulations can, in certain circumstances, apply to persons other than sellers (sub-paragraph (3)(6)).
14. Paragraph 4B defines a number of terms used in paragraph 4A.
15. Further amendments to Schedule 6 to the Climate Change Act 2008 are made by section 1(3) and 1(4) of the Measure. Section 1(3) inserts a new paragraph 7(3A) into the Schedule. Paragraph 7 is about record keeping and the publication of records. The effect of paragraph 7(3A) is that regulations made by the Welsh Ministers under the Schedule may also require the publication or supply of records or information relating to the amount received by a specified person from a seller (see paragraph 10, above).
16. Section 1(4) inserts a new paragraph 8(2A) into the Schedule. Paragraph 8 is about enforcement. The effect of paragraph 8(2A) is to enable the Welsh Ministers to, in regulations, confer powers on an administrator (i.e. the person who will administer and enforce the regulations made under the Schedule) to question those who the administrator reasonably believes has received any net proceeds of the charge.

Section 2 – Regulations: procedure

17. This section amends section 77 of the Climate Change Act 2008. Section 77 introduces Schedule 6 and contains provision about the procedure to be applied when regulations are made under the Schedule. Section 2 inserts a new subsection 4(aa) into section 77 with the effect that the that the first set of regulations to be made by the Welsh Ministers under paragraph 4A of Schedule 6 must be subject to the affirmative resolution procedure.

WASTE TARGETS

Section 3 – Recycling, preparation for re-use and composting targets

18. Section 3 sets targets for local authorities in respect of the recycling, preparation for re-use and composting of municipal waste and imposes liability to a financial penalty on authorities that do not meet the targets. The local authorities referred to in this section are county councils and county borough councils in Wales (see the definitions in section 15).
19. Subsection (2) requires local authorities to secure the recovery (by recycling, preparation for re-use or composting operations), of at least

the target amount of its municipal waste in each target financial year. It also requires local authorities to meet the target amount in all subsequent financial years until the establishment of a new target amount for a target financial year. The target amounts in respect of each target year are set out in a table in subsection (3). Subsection (4) enables the Welsh Ministers to amend this table by order. Any such order is subject to an affirmative resolution procedure in the National Assembly for Wales (section 18(3)).

20. For the purposes of the target, “composting” includes any other form of transformation by biological processes (subsection (5)). The Welsh Ministers may also make further provision by order for establishing whether waste is recycled, prepared for re-use or composted for the purposes of the waste recovery targets. Such orders are subject to a negative resolution procedure in the National Assembly for Wales (see section 18(3)).
21. If a local authority does not meet a recycling, preparation for re-use and composting target liability to a penalty arises under subsection (7). Penalties are to be paid to the Welsh Ministers. Further provision is made about penalties in section 6 (see the relevant explanatory notes below).
22. The meaning of a local authority’s municipal waste from a target financial year for the purposes of the targets is specified in subsection (8). It is the total amount by weight of the following—
 - all the waste the authority collects in that year in its capacity as a waste collection authority under section 45 of the Environmental Protection Act 1990 (“the 1990 Act”) (this includes household waste; commercial waste from premises where the occupier of those premises has requested collection; and industrial waste from premises where the occupier of the premises has made a request for collection by the authority and the authority is content to collect it);
 - all the waste deposited with the authority at the places it provides for that purpose in its capacity as a waste disposal authority under subsections (1)(b) and (3) of section 51 (these places must be provided for persons resident in its area to deposit their household waste and the authority may make them available for the deposit of household or other controlled waste by other persons); and
 - such other waste as may be specified by the Welsh Ministers by order (these orders are subject to a negative resolution procedure (see section 18(3))).

Section 4 – Regulations to set waste targets

23. This section enables the Welsh Ministers to make regulations to specify other waste targets, in addition to those set under section 3, relating to the prevention, reduction, collection, management, treatment or disposal of waste. This section also enables the Welsh Ministers to make regulations to specify indicators to measure a local authority's performance in relation to these targets and to impose a financial penalty on local authorities if these waste targets are not met.
24. Regulations under this section are subject to an affirmative resolution procedure in the National Assembly for Wales (see section 18(3)).

Section 5 - Monitoring and auditing compliance with targets

25. This section enables the Welsh Ministers to make regulations about monitoring and auditing compliance in relation to targets for recycling, preparation for re-use and composting under section 3 or other waste targets under section 4. Regulations may make provision—
- for the method of assessing compliance with targets;
 - about arrangements for monitoring and auditing;
 - conferring powers of entry and inspection for those auditing compliance;
 - requiring local authorities to maintain records and provide information;
 - about the publication of information in relation to targets; and
 - impose liability on a local authority to pay a penalty if it failed to comply with any requirement of the regulations
26. Regulations under this section which impose liability to pay a penalty are subject to an affirmative resolution procedure in the National Assembly for Wales. All other regulations under this section are subject to a negative procedure (unless they are contained in instrument containing regulations imposing liability to pay a penalty) (see section 18(3)).

Section 6 – Regulations about penalties

27. This section enables the Welsh Ministers to make regulations about penalties to which local authorities may be liable—
- for failure to meet the targets for recycling, preparation for re-use and composting set under section 3
 - failure to meet waste targets under section 4, or
 - for breaches of regulations under section 5 relating to monitoring and auditing compliance.
28. The regulations under section 6 may make provision for the amount of the penalty to be incurred or rules calculating their amounts; when payments are to be paid; any interest on unpaid penalties; recovering,

setting off or securing unpaid amounts in respect of penalties and interest; and about any waiver of penalties.

29. Regulations under this section are subject to an affirmative resolution procedure in the National Assembly for Wales.

Section 7 – Consultation

30. Subsection (1) requires the Welsh Ministers to consult the Environment Agency, local authorities, and such other persons as they consider appropriate before making orders or regulations under section 3 or regulations under sections 4, 5 or 6.

31. Subsection (2) provides that if the Welsh Ministers carry out any consultation for the purposes of subsection (1) prior to the Measure being passed, it has effect as if it were undertaken after the Measure was passed.

Section 8 - Guidance

32. This section requires local authorities to have regard to any guidance issued by the Welsh Ministers in exercising their functions under sections 3 to 6 of the Measure.

LANDFILL

Section 9 – Regulations prohibiting deposit of waste in a landfill

33. Subsection (1) provides the Welsh Ministers with a power by regulations to make provision for and in connection with prohibiting or otherwise regulating the deposit of specified kinds of waste in landfill sites in Wales. “Specified” means specified in regulations made by the Welsh Ministers (section 15).

34. The deposit of waste in a landfill is currently regulated (in part) by the Environmental Permitting (England and Wales) Regulations 2007 (SI 2007/3538). Those regulations are made under section 2 of the Pollution Prevention and Control Act 1999. The purpose of section 2 of the 1999 Act is (among other things) to regulate activities that are capable of causing any environmental pollution. Section 2 is exercisable by the Welsh Ministers in relation to Wales⁵². The purpose section 9 of this Measure is to give the Welsh Ministers the power to prohibit or otherwise regulate deposit of waste in a landfill whether or not the deposit of any particular type of waste in any particular circumstances is capable of causing environmental pollution.

⁵² Except in so far as the functions are exercisable by the Secretary of State in relation to a cross-border body but which, by their nature, are not functions which can be specifically exercised in relation to Wales – such functions are exercisable concurrently with the Secretary of State (National Assembly for Wales (Transfer of Functions) Order 2005 (SI 2005/1958), article 3).

35. Subsection (2) specifies that the regulations may amend regulations made under section 2 of the Pollution Prevention and Control Act 1999 which relate to the operation of a landfill. This will allow provision under section 9 of the Measure to be incorporated into the existing environmental permitting regime. The subsection also provides that regulations may (among other things) provide for offences in relation to failure to comply with the regulations; provide for penalties in relation to such offences; and provide for enforcement authorities and the functions of such authorities.
36. The power of the Welsh Ministers to create criminal offences under this section is subject to the limits imposed by paragraph 2 of Part 2 of Schedule 5 to the Government of Wales Act 2006. They would not be able to use this power to create any criminal offence punishable—
- on summary conviction, with imprisonment the prescribed term or with a fine exceeding level 5 on the standard scale (currently £5000), or
 - on conviction on indictment, with a period of imprisonment exceeding two years.
37. The prescribed term is 51 weeks in the case of a summary offence and 12 months where the offence is triable either way. But before the coming into force of sections 154(1) and 281(5) of the Criminal Justice Act 2003 no term of imprisonment of more than six months is to be imposed on conviction of a summary offence created under the regulations or on summary conviction of an such an offence triable either way⁵³.
38. Regulations under this section are subject to an affirmative resolution procedure in the National Assembly for Wales.

Section 10 – Civil sanctions

39. This section specifies that the power to make regulations in section 9 includes power to provide for civil sanctions in respect of offences created under section 9.
40. The power allows the Welsh Ministers to make provision by regulations, in relation to an enforcement authority, that could be made by an order under Part 3 of the Regulatory Enforcement and Sanctions Act 2008 (“RESA”) if for the purposes of Part 3 of that Act, the enforcement authority were a regulator and the offence were a relevant offence in relation to that regulator.
41. The provision that could be made by order under part 3 of RESA includes—

⁵³ Paragraph 52, Schedule 11 Government of Wales Act 2006.

- provision to confer on a regulator the power by notice to impose a fixed monetary penalty on a person in relation to an offence (section 39 RESA);
 - provision to confer on a regulator the power by notice to impose one or more discretionary requirements (section 42 RESA) (a discretionary requirement means a requirement to pay a monetary penalty of an amount determined by the regulator; a requirement to take steps specified by the regulator to secure that the offence does not continue or recur; or a requirement to take steps specified by the regulator to secure that the position is restored to what it would have been if the offence had not been committed);
 - provision to confer on a regulator the power to issue a stop notice, which is a notice prohibiting a person from carrying on an activity until steps specified in the notice are taken (section 46 RESA);
 - provision to enable a regulator to accept an enforcement undertaking from a person in a case where the regulator has reasonable grounds to suspect that the person has committed a relevant offence (section 50 RESA) (enforcement undertakings are undertakings to take action specified in the undertaking, which, if carried out, have the effect of preventing that person from being convicted of an offence or having fixed monetary penalties or discretionary requirements imposed on them).
42. Sections 39(4) and 42(6) of RESA are disapplied in relation to the regulations made under section 9(1) of the Measure by subsection (3).
43. The effect of section 39(4) of RESA is to place a limit on the amount of a fixed monetary penalty that may be imposed. Where provision is made to confer power on a regulator to impose a fixed monetary penalty in relation to an offence triable summarily (whether or not also triable on indictment) and punishable on summary conviction by a fine (whether or not also punishable by imprisonment) the amount of the fixed monetary penalty may not exceed the maximum amount of that fine. Section 42(6) operates in the same way in respect of a monetary penalty imposed under a discretionary requirement (referred to in RESA as a “variable monetary penalty”).
44. Sections 39(4) and 42(6) are disapplied in the case of provision made under section 9(1) of the Measure by virtue of section 10.
45. Subsection (3)(b) also modifies subsection 49(1) of RESA. Section 49 makes provision requiring the enforcement of stop notices by the creation of criminal offences. The maximum fine on summary conviction specified in section 49 exceeds the amount that can be imposed in relation to an offence created by or under an Assembly Measure. The provisions of subsection (3)(b) make clear that

reference in section 49(1)(a) to “£20,000” is to be read as a reference to “level 5 on the standard scale”.

46. Subsection (4) applies section 63 to 69 of RESA to regulations made under section 9 of the Measure as they would apply to an order made under Part 3 of RESA.

47. Section 63 of RESA provides that where power is conferred on a regulator to impose a civil sanction in relation to an offence, the provision conferring the power must secure the following results—

- that the regulator publishes guidance about its use of the sanction;
- that guidance relating to fixed monetary penalties, discretionary requirements contains specified information, such as the circumstances in which penalties may or may not be imposed, the amount of the penalty, how liability may be discharged and rights to make representations and objections and rights of appeal;
- that the guidance is revised where appropriate;
- that the regulator consults such persons as the provisions specify before publishing any guidance;
- that the regulator has regard to the guidance in exercising functions.

48. Where power is conferred on a regulator to impose a civil sanction, the regulator must also—

- prepare and publish guidance about how the offence is enforced (section 64 RESA);
- publish reports about the cases in which the civil sanction has been imposed (section 65 RESA).

49. The Welsh Ministers may not make provision conferring power on a regulator to impose a civil sanction in relation to an offence unless the authority is satisfied that the regulator will act in accordance with the following principles (referred to in RESA as “the regulatory principles”) in exercising that power—

- that regulatory activities should be carried out in a way which is transparent, accountable, proportionate and consistent; and
- that regulatory activities should be targeted only at cases in which action is needed.

50. The Welsh Ministers must review the operation of provision to impose civil sanctions (section 67 RESA) and may suspend the power of a regulator to impose civil sanctions (section 68). Section 69 of RESA makes provision about the payment of receipts from civil sanctions into the Welsh Consolidated Fund where the regulator has functions only in relation to Wales, and into the UK Consolidated Fund where the regulator has functions in relation to Wales and another part of the UK.

Section 11 – Consultation

51. Section 11(1) provides that before making any regulations under section 9, the Welsh Ministers must consult the Environment Agency; local authorities; representatives of those persons affected by the regulations; and other persons as considered appropriate.
52. Subsection (2) has the effect of allowing consultation undertaken before the passing of the Measure to count for the purposes of subsection (1).

SITE WASTE MANAGEMENT PLANS

53. Sections 12 to 14 of the Measure restate, with slight modifications, section 54 of the Clean Neighbourhoods and Environment Act 2005. The main modification is contained in section 12 to enable the Welsh Ministers to make regulations about fees and charges schemes

Section 12 – Site Waste Management Plans

54. The purpose and effect of section 12(1) is that it allows the Welsh Ministers to make provision, by regulations, to require specified persons to make plans setting out how they will manage and dispose of waste created in the course of specified works involving construction and demolition (subsection (1)(a)). The regulations may require those required to make plans to comply with them (subsection (1)(b)).
55. Subsection (2) sets out a non-exhaustive list of the provision that could be made by regulations under subsection (1).. These include the circumstances in which plans must be prepared (subsection (2)(a)); the contents of plans (subsection (2)(b); provisions about enforcement authorities and their functions (subsection (2)(c) and the keeping of plans and their production to enforcement authorities (subsection (2)(d)). The regulations may also require the Welsh Ministers, or an enforcement authority, to establish a fees and charging scheme to enable the recovery of reasonable costs incurred by an enforcement authority in performing the functions that will be conferred on it by the regulations (subsection(2)(e)).

56. The works which will be affected by the regulations may, by virtue of subsection (3), be described by reference to the cost or likely cost of such works.

57. Subsection (4) is a savings provision. It will ensure that, if the Welsh Ministers make regulations about site waste management plans under section 54 of the Clean Neighbourhoods and Environment Act 2005 before the Measure comes into force, those regulations have effect as if they were made under the provision in this Measure.

Section 13 – Offences and penalties

58. This section enables the Welsh Ministers to make regulations in relation to offences and penalties for breaches of the requirements established in regulations made under section 12. Because this provision re-enacts provision in section 54 of the Clean Neighbourhoods and Environment Act 2005, the limits imposed by the general restriction in paragraph 2 of Part 2 of Schedule 5 to the Government of Wales Act 2006 do not apply. Paragraph 9 of Part 3 of Schedule 5 provides that the general restrictions in Part 2 do not prevent a provision of an Assembly restating the law.

Section 14 – Guidance

59. This section requires an enforcement authority to have regard to any guidance issued by the Welsh Ministers in regard to site waste management plans.

GENERAL

Section 15 – Interpretation

60. This section provides definitions for the purpose of the Measure.

Section 16 – Minor and consequential amendments

61. This section introduces minor and consequential amendments which are set out in a Schedule to the Measure.

Section 17 - Orders and regulations

62. This section contains general provisions about regulations and orders made under the Measure.

63. Subsection (1) provides that where the Welsh Ministers are empowered by the Measure to make orders or regulations, these are to be made by statutory instrument. Subsection (2) provides that any power to make regulations or orders, given to the Welsh Ministers under this Measure, includes the power to make different provisions for different cases or classes of cases, different areas, different persons or

descriptions of person, and different purposes. It also enables orders or regulations to make different provisions to apply at different times and to make provisions generally or in relation to specific cases. Subsection (2) also enables the Welsh Ministers to make incidental, supplementary, consequential, transitory, transitional or saving provision as the Welsh Ministers think fit.

64. Under subsection (3), a provision that may be made by order under this Measure may be made by regulations. Under subsection (4), a provision that may be made by regulations under this Measure may be made by order. This enables different orders or regulations to be made by the same instrument.

Section 18 – Orders and regulations: procedures

65. Subsection (1) provides that any statutory instrument made under the Measure will be subject to the National Assembly's negative resolution procedure. This does not apply to orders commencing certain provisions of the Measure under section 19(1). These commencement orders are not subject to any Assembly procedure. Subsection (2) also provides that the negative procedure does not apply to the orders and regulations to which subsection (3) applies. These orders and regulations are subject to an affirmative resolution procedure.
66. Subsection (3) specifies the orders and regulations that need to be laid before, and be approved by a resolution of, the National Assembly (the affirmative procedure). This applies to orders made under section 3(4) – orders amending the table of recycling, preparation for re-use and composting targets set out in section 3(3). The affirmative procedure will also apply to regulations made under the following sections: section 4 (regulations to set waste targets); section 5 (1) (g) (regulations imposing liability on a local authority to pay a penalty if it fails to comply with regulations monitoring and auditing compliance with targets); section 6 (regulations about penalties); and section 9 (regulations prohibiting deposit of waste in a landfill).
67. Subsection (4) provides that where regulations make provision that may be made by order, any procedure that would apply to the order under this section applies to the regulations. Similarly, under subsection (5) where an order makes provision that may be made by regulations, any procedure that would apply to the regulations under this section applies to the order.

Section 19 – Commencement

68. Subsection (1) sets out that section 3 will be come into force by an order made by the Welsh Ministers.

69. Subsection (2) provides that the remaining provisions will come into force at the end of a period of two months beginning on the day on which this Measure is approved by Her Majesty in Council.

Section 20 – short title

70. This section provides the short title of the Measure.

Schedule

71. The Schedule makes consequential amendments to Section 54 of the Clean Neighbourhoods and Environment Act 2005 (c.16) and the Climate Change Act 2008.