

**National Assembly for Wales**  
Legislation Committee No. 1

Proposed Shipment of Waste for Recovery  
(Community Involvement in Arrangements)  
(Wales) Measure

Stage 1 Committee Report  
November 2009



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## **ANNEXES**

### **Annex A: List of written evidence received**

The submissions themselves are not included in this report, but they are available on the National Assembly's website at:

[http://www.assemblywales.org/bus-home/bus-legislation/bus-leg-measures/bus-legislation-measures-proposed\\_recycling/lc1\\_swr\\_written\\_responses.htm](http://www.assemblywales.org/bus-home/bus-legislation/bus-leg-measures/bus-legislation-measures-proposed_recycling/lc1_swr_written_responses.htm)

### **Annex B: Schedule of oral evidence**

The Records of Proceedings are not included in this report, but they are available on the National Assembly's website at:

[http://www.assemblywales.org/bus-home/bus-legislation/bus-leg-measures/bus-legislation-measures-proposed\\_recycling.htm](http://www.assemblywales.org/bus-home/bus-legislation/bus-leg-measures/bus-legislation-measures-proposed_recycling.htm)

**Annex C:** Letter from Jane Davidson AM, Minister for Environment, Sustainability and Housing to Rosemary Butler AM, Legislation Committee No 1 Chair, dated 28 October 2009

**Annex D:** Letter from Janet Ryder AM, Chair of the Subordinate Legislation Committee to Nerys Evans AM, Member in charge of the proposed Measure, dated 23 September 2009

## **Legislation Committee No. 1**

### **Proposed Shipment of Waste for Recovery (Community Involvement in Arrangements) (Wales) Measure**

#### **Committee Membership**

Rosemary Butler (Chair)	Labour
Mohammad Asghar	Plaid Cymru
Eleanor Burnham	Welsh Liberal Democrats
Ann Jones	Labour
Huw Lewis	Labour
Nick Ramsay	Welsh Conservative Party

## **Summary of conclusions and recommendations**

We acknowledge the evidence received in relation to the lack of transparency in current arrangements in relation to the way that local authorities deal with recyclate, in particular that which is exported for recovery. We therefore accept that improvements can and should be made in this regard. In view of this, **we fully support the aim of the proposed Measure.** However, we do not believe that the proposed Measure is necessary to achieve its stated aim, which we suggest could be met without recourse to legislation. Furthermore, we question whether the proposed Measure is the most appropriate or effective way of engaging local communities in the wider recycling agenda. Finally, we are concerned that the proposed Measure would place an additional and unnecessary burden on local authorities and does not represent an efficient or effective use of resource. For these reasons, **we are unable to support the general principles of the proposed Measure.** However, Mohammed Ashgar AM has made clear that he supports both the aim and the general principles of the proposed Measure.

**We recommend that the Assembly does not support the general principles of the proposed Measure.**



## 1. Introduction

1. In February 2008, Nerys Evans AM was successful in a ballot held by the National Assembly for Wales ('the Assembly') for the right to seek leave to introduce a Member proposed Measure, in accordance with Standing Order 23.99<sup>1</sup>. In May 2008, the Assembly agreed that Nerys Evans AM's proposed Measure in relation to recycling could be introduced for consideration<sup>2</sup>.

2. On 5 November 2008, Nerys Evans AM laid before the Assembly the proposed Shipment of Waste for Recovery (Community Involvement in Arrangements) (Wales) Measure<sup>3</sup> ('the proposed Measure') and accompanying Explanatory Memorandum<sup>4</sup>.

3. At its meeting on 2 December 2008, the Business Committee agreed to refer the proposed Measure to Legislation Committee No.1 ('the Committee') for consideration of the general principles (Stage 1), in accordance with Standing Order 23.21<sup>5</sup>. It subsequently agreed that the Committee must report on the proposed Measure no later than 30 November 2009.

### *(a) Terms of scrutiny*

4. At our meeting on 29 April 2009, we agreed the following framework within which to work in scrutinising the proposed Measure:

To consider -

- (i) the need for an Assembly Measure in relation to community involvement in local authorities' arrangements for dealing with recycle;
- (ii) the key provisions set out in the proposed Measure and whether they are appropriate to deliver its objectives;
- (iii) the practical and financial implications of implementing the provisions of the proposed Measure; and
- (iv) whether the proposed Measure will achieve its overall purpose and aim.

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<sup>1</sup> RoP, 20 February 2008.

<sup>2</sup> ROP, 7 May 2008.

<sup>3</sup> [Proposed Shipment of waste for Recovery \(Community Involvement in Arrangements\) \(Wales\) Measure.](#)

<sup>4</sup> Proposed Shipment of Waste for Recovery (community Involvement in Arrangements) (Wales) Measure, [Explanatory Memorandum.](#)

<sup>5</sup> National Assembly for Wales, Business Committee, BC(3)32-08, Committee Minutes, 2 December 2008.

***(b) Committee's approach***

5. We issued a general 'call for evidence' and invited key stakeholders primarily from within the fields of local government and waste management to submit written evidence to inform our work. A list of consultation responses is attached at **Annex 1**.

6. We also took oral evidence from a number of witnesses, a list of which is attached at **Annex 2**.

7. The following report and recommendations represent the conclusions we have reached on the evidence received during the course of our work. We would like to thank all those who contributed to the report.

## 2. Background

8. The principal power enabling the Assembly to make the proposed Measure is contained in Matter 12.5 of Schedule 5 to the Government of Wales Act 2006<sup>6</sup>

### *Matter 12.5*

*Provision for and in connection with—*

*(a) the making of arrangements by relevant Welsh authorities to secure improvement in the way in which their functions are exercised,*

*(b) the making of arrangements by relevant Welsh authorities for the involvement in the exercise of their functions of people who are likely to be affected by, or interested in, the exercise of the functions, and*

*(c) the assessment and inspection of the performance of relevant Welsh authorities in exercising their functions.*

9. The Explanatory Memorandum accompanying the proposed Measure states:

“The purpose of the proposed Measure is to engender greater transparency and openness in the way that Welsh local authorities deal with recyclate. In particular, it would require local authorities to make publicly available information about the proportion of recyclate collected from households that is processed outside the European Community and European Free Trade Area (EFTA).”<sup>7</sup>

10. It goes on:

“...it is intended that, as a result of this information, residents will encourage local authorities to use recycling facilities that are closer to the source of recyclate than those that are further away. It is also expected that the publication of information will

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<sup>6</sup> *The Government of Wales Act 2006*, c.32.

<sup>7</sup> Proposed Shipment of Waste for Recovery (Community Involvement in Arrangements) (Wales) Measure, Explanatory Memorandum, MPM-07-EM-S1, paragraph 3.1.

lead to increased interest, and therefore participation, in recycling.”<sup>8</sup>

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<sup>8</sup> Proposed Shipment of Waste for Recovery (Community Involvement in Arrangements) (Wales) Measure, Explanatory Memorandum, MPM-07-EM-S1, paragraph 3.3.

### **3. General principles of the proposed Measure and the need for legislation**

11. We would like to make clear that the role of the Committee was not to assess the merits or otherwise of the export of waste for recovery. In scrutinising the general principles, we sought to identify whether there was a definite and identifiable need for the proposed Measure. We also considered the practical implications of the proposed Measure and whether the legislation in its entirety would be workable and achieve its aim. Finally, and in view of the evidence received, we briefly considered the financial implications of the proposed Measure.

12. In forming a view on the general principles of the proposed Measure, we took account of a number of key issues, which are outlined in detail below.

#### ***(a) Is the way in which local authorities deal with recycle sufficiently open and transparent?***

13. A number of those giving evidence agreed that an improvement in transparency in the way that local authorities deal with its recycle was required. In particular, Cylch – Wales Community Recycling Network (Cylch) believed that current arrangements made by local authorities lack transparency.<sup>9</sup>

14. In evidence to the Committee, the Minister for Environment, Sustainability and Housing (“the Minister”) made clear that existing arrangements in the way that local authorities deal with recycle were ‘not sufficiently transparent’ and agreed that improvements were needed.<sup>10</sup>

15. In commenting on the transparency of existing arrangements, the Welsh Local Government Association (WLGA) stated:

“At the moment, local authorities comply with the requirements that exist in legislation, so they are doing what is required.”<sup>11</sup>

16. It also asserted that recent guidance issued by the Environment Agency Wales<sup>12</sup> to support the monitoring of the Landfill Allowance Scheme<sup>13</sup> ‘ensures that local authorities are already providing as much

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<sup>9</sup> Written evidence, SWR13.

<sup>10</sup> RoP, paragraph 9, 8 October 2009, Legislation Committee No.1.

<sup>11</sup> RoP, paragraph 9, 24 September 2009, Legislation Committee No.1.

<sup>12</sup> Environment Agency Wales, *Reporting final destination of municipal waste*. The aim of the guidance is to provide clarity to local authorities on what information is required in order to robustly demonstrate that biodegradable municipal waste (BMW) has been diverted from landfill.

<sup>13</sup> *The Landfill Allowances Scheme (Wales) Regulations 2004* place a duty on local authorities to submit a report to the Environment Agency detailing the weight of municipal waste sent to waste facilities under their direction and the final facility destination for materials handled in the UK.

information as possible on the end destination of the recyclate collected'.<sup>14</sup>

17. The WLGA explained that it had no objection to local authorities making available more information on what happens to their waste where it is obtainable. Nevertheless, it went on to question the additional benefit that this would provide.

18. Evidence from local authorities suggested that current arrangements in relation to the way in which they dealt with recyclate provided sufficient openness and transparency.<sup>15</sup> Like the WLGA, local authorities argued they were already providing information on the final destination of waste via WasteDataFlow.<sup>16</sup> Powys County Council stated:

“There are already systems in place (WasteDataFlow) that allows openness and transparency of local authorities’ activities.”<sup>17</sup>

19. Likewise, the Vale of Glamorgan Council stated:

“There is also little need to make a legislative Measure on local authorities as the information is already available on the Assembly’s Wastedataflow database.”<sup>18</sup>

20. Linked to the above, the Vale of Glamorgan Council questioned why improvements in openness and transparency were considered necessary, particularly in view of local authorities’ wider reporting procedures, for example National and Local Performance Indicators and Improvement Plans.<sup>19</sup>

21. In evidence, the Environment Agency Wales suggested that, while existing arrangements went some way in providing transparency in the way that local authorities deal with recyclate, improvements could be made.<sup>20</sup> It explained that currently most local authorities supplied information on the final destination of recyclate via WasteDataFlow in support of the Landfill Allowance Scheme. This provided ‘some information about waste exported for reprocessing’.<sup>21</sup>

22. The Environment Agency Wales went on to report that its recent guidance to local authorities on reporting the final destination of

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<sup>14</sup> Written evidence, SWR11.

<sup>15</sup> Written evidence, SWR1, SWR4, SWR8, SWR9, and SWR10.

<sup>16</sup> WasteDataFlow is the web based system for municipal waste data reporting by UK local authorities to Government. It requires weight based data to be entered quarterly on recycling, re-use, composting and disposal activities.

<sup>17</sup> Written evidence, SWR8.

<sup>18</sup> Written evidence, SWR1.

<sup>19</sup> Ibid.

<sup>20</sup> Written evidence, SWR5.

<sup>21</sup> Ibid.

waste had led to some improvements in information provided.<sup>22</sup> However, it stated:

“[This] information is in the WasteDataFlow system which [...] is technically available to the public but not readily accessed by the public. It is quite a complicated system, so it does not provide the transparency that the proposed Measure seems to ask for.”<sup>23</sup>

23. In addition, the Environment Agency Wales pointed out that the requirements under the proposed Measure in relation to the provision of information go further than those within existing legislation. It stated:

“...the information required by the proposed Measure on final destination and recovery and disposal rates is not provided through the current legislation regimes of duty of care for movements within the United Kingdom or within the Transfrontier Shipment Regulations for export. Although the, Landfill Allowance Scheme partially provides that information, it is only insofar as it relates to diversion of biodegradable waste from landfill.”<sup>24</sup>

#### *Evidence from the Member in charge*

24. In evidence, Nerys Evans AM explained that, in response to a request under the *Freedom of Information Act 2000*, some local authorities could not provide information on where their recycling took place; some local authorities could partially provide information; and others reported that some of its recycling was taking place beyond the European Community (EC) and European Free Trade Area (EFTA) in countries such as China, Brazil and India.<sup>25</sup>

25. She argued strongly that the lack of information that currently exists provided adequate justification for the proposed Measure and felt the public was entitled to know what was happening to its recycle.

26. Nerys Evans AM explained that information about where municipal waste is sent within the confines of the UK is currently available through WasteDataFlow.<sup>26</sup> She went on to explain, there is no statutory duty on local authorities to provide information on waste exported outside the UK, including that which is shipped for recovery beyond the EC and EFTA.<sup>27</sup>

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<sup>22</sup> RoP, paragraph 36, 1 October 2009, Legislation Committee No.1.

<sup>23</sup> RoP, paragraph 38, 1 October 2009, Legislation Committee No.1.

<sup>24</sup> RoP, paragraph 7, 1 October 2009, Legislation Committee No.1.

<sup>25</sup> RoP, paragraph 5, 1 July 2009, Legislation Committee No.1.

<sup>26</sup> RoP, paragraph 74, 1 July 2009, Legislation Committee No.1.

<sup>27</sup> RoP, paragraphs 8 and 74, 1 July 2009, Legislation Committee No.1.

27. In responding to the suggestion that the proposed Measure was unnecessary in view of existing controls on the transfer and export of waste, such as the *Transfrontier Shipment of Waste Regulations 2007* and the Duty of Care, Nerys Evans AM argued that compliance with existing regulation and policy is separate to the proposed Measure. She stated:

“...the [*Transfrontier Shipment of Waste Regulations 2007*] deal with the processing and handling of waste and aim to ensure that it is handled in an environmentally sound manner. Those duties fall to the Environment Agency. The duty of care set out in section 34 of the Environment Protection Act 1990 does not include any provisions to make information generally available to the public. Rather, it is concerned with the process by which waste is disposed of.”<sup>28</sup>

***(b) Could the aim of the proposed Measure be met by alternative means?***

28. A number of those giving evidence who were sympathetic towards the underlying aim of the proposed Measure believed it could be met by alternative means and without recourse to new legislation.

29. In evidence to the Committee, Veolia Environmental Services (UK) Plc (Veolia) suggested that improved transparency could be achieved by providing annual figures ‘showing the destination country and facility type, for all waste flows into and out of Wales’. It went on to assert that this information should be available from the Environment Agency Wales via WasteDataFlow.<sup>29</sup> This view was shared by the Environmental Services Association.<sup>30</sup>

30. Some of those giving evidence suggested the aim of the proposed Measure could be met if improvements were made to the way in which information provided via WasteDataFlow was published and that this could be done directly by the Welsh Government.<sup>31</sup> In evidence, the Vale of Glamorgan Council stated:

“...it would be simpler for the Assembly to use [information available in WasteDataFlow] and publicise it directly as it does with local authority recycling/composting and land-fill allowance performance.”<sup>32</sup>

31. The Environment Agency Wales felt that aims similar to those of the proposed Measure could be met ‘by adapting some of the current

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<sup>28</sup> RoP, paragraph 22, 1 July 2009, Legislation Committee No.1.

<sup>29</sup> Written evidence, SWR6.

<sup>30</sup> RoP, paragraph 85, 8 October 2009, Legislation Committee No.1.

<sup>31</sup> Written evidence SWR1, SWR8 and SWR12.

<sup>32</sup> Written evidence, SWR1.



systems and arrangements'.<sup>33</sup> However, in supplementary evidence it made clear that it supported both the aim and the principles of the proposed Measure.<sup>34</sup>

32. Although the Minister fully supported the aim of the proposed Measure she asserted that it could be met without the need for new legislation. She stated:

“...we can use existing mechanisms and, if necessary, existing powers through legislation to achieve these policy aims. Where it is practicable for local authorities to collect information from their contractors on waste is shipped, this can be recorded on the WasteDataFlow system.”<sup>35</sup>

33. And

“I have always been of the view that there are plenty of areas on which this Assembly might like to legislate and that we should not legislate on those areas that can be dealt with by other means.”<sup>36</sup>

34. The Minister made clear that before considering a legislative approach, work should be undertaken to encourage local authorities to voluntarily provide and subsequently publish information on what happens to its waste.<sup>37</sup> She went on to explain that, if a voluntary approach was not successful, she would consider using the Welsh Government's existing powers under section 30 of the *Waste and Emissions Trading Act 2003* ('the 2003 Act') to meet the aim of the proposed Measure. The Minister explained that, under the 2003 Act, Welsh Ministers could make regulations which would require local authorities to provide relevant information on waste.<sup>38</sup> This information could subsequently be made available to the public either by local authorities, or ultimately by the Welsh Government.<sup>39</sup>

35. Notwithstanding the above, the Minister recognised that practical difficulties faced by local authorities in providing information under the proposed Measure would apply equally in relation to any regulatory requirements brought about under section 30.<sup>40</sup> This issue is explored later in the report.

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<sup>33</sup> RoP, paragraph 7, 1 October 2009, Legislation Committee No.1.

<sup>34</sup> Written evidence, SWR5b.

<sup>35</sup> RoP, paragraph 4, 15 October 2009, Legislation Committee No.1.

<sup>36</sup> RoP, paragraph 16, 15 October 2009, Legislation Committee No.1.

<sup>37</sup> RoP, paragraphs 4 - 14, 8 October 2009, Legislation Committee No.1; and written evidence SWR14.

<sup>38</sup> RoP, paragraph 11 - 14, 8 October 2009, Legislation Committee No.1.

<sup>39</sup> RoP, paragraph 14, 8 October 2009, Legislation Committee No.1; and Letter from the Minister for Environment, Sustainability and Housing to Chair of Legislation Committee No.1, dated 28 October 2009.

<sup>40</sup> Letter from the Minister for Environment, Sustainability and Housing to Chair of Legislation Committee No.1, dated 28 October 2009.

### *Evidence from the Member in charge*

36. Nerys Evans AM argued strongly that the only way to achieve greater transparency in the way that local authorities deal with recyclate was through the proposed Measure.<sup>41</sup> She refuted the suggestion that the aim of the proposed Measure could be met by encouraging local authorities to provide and subsequently publish information on waste exported for recovery and stated:

“...realistically, that is not going to happen. That is why I think a statutory requirement through the proposed Measure is needed.”<sup>42</sup>

37. In response to the Minister’s suggestion that the Welsh Government’s existing powers under section 30 of the 2003 Act could be used to require local authorities to provide information on waste exported for recovery outside the EC and EFTA, Nerys Evans AM’s Legal Adviser asserted:

“The 2003 Act is intended to give effect to what we would refer to as the Landfill Directive [...] the aim of that directive is to reduce the amount of biodegradable waste going to landfill. There are powers to make regulations contained in that Act, as referred to, in section 30. However, any regulations would have to be set in the context of that Act and I am not convinced that the power for collecting this information would be entirely within the vires of the Act.”<sup>43</sup>

38. And

“...powers to make regulations are discretionary powers that can be exercised by the Minister or not. They are not requirements, as could be contained in a Measure.”<sup>44</sup>

39. Finally, the Legal Adviser pointed out:

“If regulations were made, they would require local authorities to provide information to Ministers, but they would not require its publication.”<sup>45</sup>

40. In responding to a letter from the Chair seeking clarification on the above, the Minister confirmed that the powers available to Welsh Ministers under section 30:

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<sup>41</sup> RoP, paragraph 14, 1 July 2009, Legislation Committee No.1.

<sup>42</sup> RoP, paragraph 23, 15 October 2009, Legislation Committee No.1.

<sup>43</sup> RoP, paragraph 23, 15 October 2009, Legislation Committee No.1.

<sup>44</sup> Ibid.

<sup>45</sup> RoP, paragraph 28, 15 October 2009, Legislation Committee No.1.

“...are not confined to biodegradable waste, but available in respect of anything which is waste for the purposes of the Waste Framework Directive, whether or not the thing in question is to be subject to a recovery process.”<sup>46</sup>

41. In addition, the Minister reiterated there were a number of ways in which information provided by local authorities to the Welsh Government under section 30 could be made available to the public. Indeed, she asserted that ‘ultimately, the Assembly Government could itself publish the information in question’.<sup>47</sup>

***(c) Is there an appetite among communities to become involved in the shipment of waste for recovery?***

42. Some of those giving evidence questioned whether there was an appetite among communities to become involved in the shipment of waste for recovery. The WLGA stated:

“On the Waste Awareness Wales site, there is information on all the different collection facilities that exist and where you can take your goods. That is the information that the general public wants, in the main. The public wants to know how to deal with waste, where various goods can be taken to be recycled and where the local facilities are. In terms of public demand, that is the sort of information that it wants and that is what is on the website. We do not get many requests to local authorities asking where the waste is going.”<sup>48</sup>

43. Linked to the above, the Environment Agency Wales asserted that generally the public wants reassurance that its waste is being recycled and not sent to landfill.<sup>49</sup> A similar view was shared by the Waste Resource Action Group (WRAP).<sup>50</sup>

*Evidence from the Member in charge*

44. In evidence, Nerys Evans AM asserted:

“The public’s interest in knowing what happens to recycling is evident, if only from media stories. The media would not cover stories about where recycling is dealt with if it did not think that there was a public appetite to find out about it.”<sup>51</sup>

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<sup>46</sup> Letter from the Minister for Environment, Sustainability and Housing to Chair of Legislation Committee No.1, dated 28 October 2009.

<sup>47</sup> Ibid.

<sup>48</sup> RoP, paragraph 85, 24 September 2009, Legislation Committee No.1.

<sup>49</sup> RoP, paragraph 113, 1 October 2009, Legislation Committee No.1.

<sup>50</sup> RoP, paragraph 148, 8 October 2009, Legislation Committee No.1.

<sup>51</sup> RoP, paragraph 36, 15 October 2009, Legislation Committee No.1.

45. And

“The Enviro report for the Welsh Assembly Government shows that a few local authorities across the UK are already publishing this information, so it is clear that those authorities see the benefit of doing that, and they see an appetite among the public, their constituents, to have that information. The Somerset Waste Partnership...is a good example of that approach, in that the local authority sees the need to pass this information on, the public has an appetite to see what is happening to its waste, and the authority is going about it voluntarily.”<sup>52</sup>

46. In its report to the Welsh Government, Enviro Company Limited states:

“A review of all local authority websites in the UK found that very few authorities are reporting publicly on the destinations of their recycle.”<sup>53</sup>

47. And

“Some of the information relates to the end product that recycle is converted into, others actually name their UK based processors and reprocessors; none were found to name overseas processors. A small number of local authorities report that some of their wastes (typically plastics) are being exported overseas to places like China, but they do not provide any further information than this.”<sup>54</sup>

48. As illustrated above, those local authorities across the UK that currently provide information on exports do not provide the same level of detail that local authorities in Wales must seek to provide under the section 55A(5) requirements.

#### ***(d) Scope of the proposed Measure***

49. The proposed Measure derives legislative competence from Matter 12.5 of Schedule 5 to the *Government of Wales Act 2006*<sup>55</sup> and, therefore is limited in scope to local authorities. As such, the key provisions of the proposed Measure apply to ‘waste collection authorities in Wales or to waste disposal authorities in Wales’, i.e. municipal waste.

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<sup>52</sup> RoP, paragraph 37, 15 October 2009, Legislation Committee No.1.

<sup>53</sup> Written evidence, SWR14a.

<sup>54</sup> Ibid.

<sup>55</sup> *The Government of Wales Act 2006*, c.32.

50. The Welsh Government's Proposed Environmental Protection and Waste Management Legislative Competence Order ('the proposed Order') is currently in progress. If made, the proposed Order will provide the Assembly with the power to legislate in relation to the prevention, reduction, collection, management, treatment or disposal of waste.

51. It was implicit in some evidence that the scope of the proposed Measure was too narrow since it applied only to waste dealt with by local authorities. Furthermore, the proposed Measure was limited to the small percentage exported beyond EC and EFTA boundaries.

52. A number of those giving evidence expressed disappointment that the proposed Measure applied only to municipal waste, which accounts for only 10 per cent of total waste arising in Wales.<sup>56</sup> The WLGA argued:

“...there should be equity across all waste streams and...it is just as important to know what happens to recyclate collected from industrial, commercial and other activities in Wales as that collected by councils.”<sup>57</sup>

53. The WLGA asserted that, if passed, the proposed Order would provide the Assembly with an opportunity to bring forward a Measure that applied to all waste sectors to address this issue more holistically.<sup>58</sup>

54. Similarly, the Environment Agency Wales advocated extending the scope of the proposed Measure to cover all waste sectors. It stated:

“If the [proposed] LCO does come into force we do agree there is an opportunity to look at this area more holistically to encompass an approach that could consider a broader scope of waste streams beyond the municipal stream, which could be better than the narrow scope within the proposed Measure.”<sup>59</sup>

55. The Environment Agency Wales also pointed out that the proposed Measure relates only to shipments of waste for recovery outside the EC and EFTA, which constituted a small percentage of total waste that is recovered. It raised concern that, taken out of context, information published as a result of the proposed Measure could attract negative media coverage and subsequently damage public confidence in recycling. To this end, the Environment Agency Wales suggested that, consideration should be given to extending the scope of the proposed

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<sup>56</sup> Written evidence, SWR1, SWR8 and SWR11.

<sup>57</sup> Written evidence, SWR11.

<sup>58</sup> RoP, paragraphs 12, and 26 – 29, 24 September 2009, Legislation Committee No.1; and written evidence SWR11.

<sup>59</sup> RoP, paragraph 22, 1 October 2009, Legislation Committee No.1.

Measure to require local authorities to publish more comprehensive information about where all its recycle was sent.<sup>60</sup> It stated:

“...focusing just on the small amount of waste that is exported actually might have a negative impact because it suggests that all the material that is collected is exported when actually only a very small proportion of [the material that is collected for recycling] ends up in facilities abroad.”<sup>61</sup>

56. And

“...if the Measure proceeds as a requirement for municipal waste only, then we would prefer that it applies to all municipal wastes recycled to enable the public to see where all the materials that they put out for recycling are reprocessed. This would provide a proper context in relation to shipments to non EC and EFTA countries.”<sup>62</sup>

*Evidence from the Member in charge*

57. In evidence, Nerys Evans AM confirmed that the scope of the proposed Measure was limited to municipal waste because it derives legislative competence from Matter 12.5 of Schedule 5 to the *Government of Wales Act 2006*,<sup>63</sup> which relates to ‘the making of arrangements by relevant Welsh authorities to secure improvements in the way in which their functions are exercised’.<sup>64</sup>

58. In responding to the suggestion that the proposed Measure should extend to the provision of information on all municipal waste that is recycled, Nerys Evans AM explained:

“The information about where our waste is sent within the confines of the United Kingdom is currently available through the WasteDataFlow system. Therefore, technically, the information is available, but in reality it is very difficult to interpret and analyse the WasteDataFlow system as it currently stands. Currently, there is no statutory duty on local authorities to provide information on waste that is shipped outside the United Kingdom’s borders, and that is where my proposed Measure comes in. So, that is why we have chosen the boundaries of the European Community and the European Free Trade Area.”<sup>65</sup>

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<sup>60</sup> RoP, paragraph 12, 1 October 2009, Legislation Committee No.1; and written evidence SWR5b.

<sup>61</sup> RoP, paragraph 29, 1 October 2009, Legislation Committee No.1.

<sup>62</sup> Written evidence, SWR5b.

<sup>63</sup> *The Government of Wales Act 2006*, c.32.

<sup>64</sup> RoP, paragraphs 57 – 61, 1 July 2009, Legislation Committee No.1.

<sup>65</sup> RoP, paragraph 51, 15 October 2009, Legislation Committee No.1.

59. And

“We have chosen European boundaries because we presume that the facilities within European boundaries are of the same standard as any facilities in Wales or the United Kingdom. We could have set the UK as a boundary, but looking at the recycling standards within the boundaries of Europe, we see that it would be better to set Europe as a boundary and to require local authorities to provide information about everything that is exported beyond that boundary.”<sup>66</sup>

60. Notwithstanding the above, Nerys Evans AM stated she would consider extending the requirement subject to any recommendations made by the Committee.<sup>67</sup>

***(e) Timing of the proposed Measure***

61. The WLGA argued strongly that the proposed Measure was ‘premature’ in view of opportunities that would come about as a result of the proposed Environmental Protection and Waste Management Legislative Competence Order.<sup>68</sup>

62. In commenting on the time it could take for local authorities to re-negotiate waste contracts to ensure they could meet the requirements of the proposed Measure, the Environment Agency Wales implied that it may be more sensible to wait until the proposed Order was made before tackling this issue.<sup>69</sup>

63. In contrast, Cylch argued that, in view of the lack of progress made in taking forward the proposed Order, it was important to continue to pursue the proposed Measure. It suggested that further legislation could be introduced if necessary once the proposed Order was made.<sup>70</sup>

64. In responding to the above points, the Minister explained that progress had been made in relation to the proposed Order. She explained that the draft Environmental Protection and Waste Management Legislative Competence Order would be brought forward in the autumn and that, subject to approval by the Assembly and both Houses of Parliament, it was likely to receive Royal Approval early in 2010.<sup>71</sup>

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<sup>66</sup> RoP, paragraph 56, 15 October 2009, Legislation Committee No.1.

<sup>67</sup> RoP, paragraph 67, 1 July 2009, Legislation Committee No.1.

<sup>68</sup> RoP, paragraphs 26 and 27, 24 September 2009, Legislation Committee No.1; and written evidence SWR11.

<sup>69</sup> RoP, paragraph 73, 1 October 2009, Legislation Committee No.1.

<sup>70</sup> RoP, paragraph 181, 1 October 2009, Legislation Committee No.1.

<sup>71</sup> RoP, paragraph 31, 8 October 2009, Legislation Committee No.1.

65. When questioned about the timeliness of the proposed Measure in anticipation of the proposed Order, the Minister asserted she did not consider the proposed Measure premature as it had raised important issues which were relevant to the wider waste debate. Notwithstanding this, she reiterated that the proposed Measure itself was not necessary to achieve its required aim.<sup>72</sup>

*Evidence from the Member in charge*

66. Nerys Evans AM felt strongly that the proposed Measure was timely.<sup>73</sup> She acknowledged the Minister's evidence in relation to the progress of the proposed Order, but pointed out that the Order had yet to be made. In addition, Nerys Evans AM argued that, given the Minister favoured a voluntary approach it was unlikely she would consider introducing a broader Measure following conferral of power on the Assembly by the proposed Order.<sup>74</sup>

67. Nerys Evans also explained that, once passed, the Measure could be amended to broaden its scope once the proposed Order had been made, if necessary.<sup>75</sup>

***(f) Practical implications of the proposed Measure***

*(i) Requirement to provide information in relation to waste exported for recovery beyond the EC and EFTA*

68. Some of those giving evidence pointed out that local authorities did not have the power to compel private waste companies to provide information on the final destination of waste and, as such would experience difficulty in providing the information required under section 55A(5).<sup>76</sup> Indeed, it was argued that, rather than involving local authorities, as proposed in the Measure, requirements should be placed on private waste companies to provide the necessary waste data.<sup>77</sup> The WLGA accepted this would not be possible within the Assembly's current legislative competence. However, it explained that, once made, the proposed Environmental Protection and Waste Management Legislative Competence Order would provide an opportunity for the Assembly to introduce a Measure across all waste sectors, which could include a requirement on private waste companies to provide local authorities with relevant information.<sup>78</sup>

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<sup>72</sup> RoP, paragraph 29, 8 October 2009, Legislation Committee No.1.

<sup>73</sup> RoP, paragraphs 50 – 53, 1 July 2009, Legislation Committee No.1

<sup>74</sup> RoP, paragraph 66, 15 October 2009, Legislation Committee No.1.

<sup>75</sup> RoP, paragraph 53, 1 July 2009, Legislation Committee No.1; and RoP, paragraph 66, 15 October 2009, Legislation Committee No.1.

<sup>76</sup> Written evidence, SWR4, SWR8, SWR11 and SWR12.

<sup>77</sup> Written evidence, SWR8; and RoP, paragraph 12, 24 September 2009, Legislation Committee No.1.

<sup>78</sup> RoP, paragraphs 12, 22, 27, and 49 – 53, 24 September 2009, Legislation Committee No.1.



69. In evidence to the Committee, the Environment Agency Wales asserted that, in order to ensure the required information was made available, local authorities would need ‘to review their contracts with waste management companies’.<sup>79</sup> However, it went on to explain that local authorities may experience difficulties in incorporating the necessary requirements into existing contracts.<sup>80</sup>

70. Similarly, the Minister suggested:

“Local authorities can build in contract requirements to help them monitor the movement of the recyclate that they produce...”<sup>81</sup>

71. Notwithstanding this, she went on to explain that this would take time to introduce ‘not least because it cannot be inserted into existing contract requirements without significant cost for local authorities’.<sup>82</sup>

72. The WLGA acknowledged that including the provision of information as a condition of contract was feasible and could be done as contracts were re-negotiated.<sup>83</sup> Nevertheless, it raised concern that private waste companies may be reluctant to enter into such contracts and that, with restrictions on local authorities’ ability to negotiate they could receive a lower price for their recyclate as companies attempt to offset the cost of providing the required information.<sup>84</sup> Ultimately, the WLGA argued that ‘Wales could become less competitive because of the regulatory and reporting regime this measure imposes’.<sup>85</sup>

73. In commenting on the above, the Environmental Services Association asserted that including the provision of the necessary information as a condition of contract would not necessarily deter private waste companies from operating in Wales. However, it went on to suggest that it could ‘force local authorities...to choose between genuine public services and providing this extremely bureaucratic information’.<sup>86</sup>

74. The Committee received strong evidence to suggest that it would be extremely difficult, perhaps impossible, for local authorities to provide the level of detail required under section 55A(5).

75. As previously stated, the Environment Agency Wales reported that, at present, some information on the final destination of recyclate was provided by local authorities via WasteDataFlow. However, it made clear that, while local authorities could reasonably be expected to

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<sup>79</sup> Written evidence, SWR5.

<sup>80</sup> RoP, paragraph 68, 1 October 2009, Legislation Committee No.1.; and written evidence, SWR5B.

<sup>81</sup> Written evidence, SWR14.

<sup>82</sup> Ibid.

<sup>83</sup> RoP, paragraph 16, 24 September 2009, Legislation Committee No.1.

<sup>84</sup> RoP, paragraphs 16 – 18, 24 September 2009, Legislation Committee No.1.

<sup>85</sup> Written evidence, SWR11.

<sup>86</sup> RoP, paragraphs 116 and 117, 8 October 2009, Legislation Committee No.1.

provide information on where recyclate goes they would not necessarily be able to provide the level of detail required by section 55A(5).<sup>87</sup> The Environment Agency Wales suggested that the ease with which local authorities could obtain the information required under section 55A(5) ‘depends on who [local authorities] use for their recycling services and how complex [their] arrangements are’.<sup>88</sup> This view was shared by the Minister who stated:

“...there are times when the information is perfectly easy to collect...where these things become more complex and mixed, it does become harder.”<sup>89</sup>

76. In expanding on the above, the Minister explained that, where local authorities deal with intermediaries (i.e. processors and brokers) that directly export materials it should be possible for local authorities to obtain information regarding the final destination but not necessarily the level of detail required under section 55A(5). She reported that in instances where there were several intermediate stages in the transfer of materials from a local authority to a final processor difficulties would arise in the provision of accurate information.<sup>90</sup> She stated:

“There are some practical difficulties in monitoring the transport of recyclate. Waste collected for recycling is often managed by material brokers to whom it is supplied by local authorities. This waste may be aggregated with waste from other sources before being sent abroad. Whilst it might be possible for the first destination of that aggregated waste to be identified, it would be extremely difficult to secure accurate data to meet all the requirements of the Measure.”<sup>91</sup>

77. Many of those giving evidence raised concerns that arrangements for dealing with recyclate were such that tracing waste from individual local authorities can be difficult.<sup>92</sup> Particular problems would arise when materials were co-mingled and passed to a Materials Recovery Facility (MRF) for sorting with those from other sources. On this point, the Environmental Services Association stated:

“Recyclables are increasingly frequently collected at the kerbside commingled, and then sent to a MRF to be sorted into material streams before despatch to reprocessors. It is normal practice for MRFs to handle material from a number of local authorities, and

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<sup>87</sup> RoP, paragraphs 40 – 42, 1 October 2009, Legislation Committee No.1; and written evidence SWR5 and SWR5b.

<sup>88</sup> RoP, paragraph 40, 1 October 2009, Legislation Committee No.1.

<sup>89</sup> RoP, paragraph 36, 8 October 2009, Legislation Committee No.1.

<sup>90</sup> RoP, paragraph 34, 8 October 2009, Legislation Committee No.1; and written evidence SWR14.

<sup>91</sup> Written evidence, SWR14.

<sup>92</sup> Written evidence, SWR4, SWR5, SWR5B, SWR6, SWR7, SWR9, and SWR10.

to send the processed material to a range of end markets, both UK-based and overseas.”<sup>93</sup>

78. Following on from this, several of those giving evidence explained that recyclate is often bulked before being exported, which also makes it difficult to trace back to its original source.<sup>94</sup>

79. In evidence, the Environment Agency Wales asserted that local authorities would find it difficult to meet the requirements in section 55A(5)(b), (d) and (e) because there is currently no legislative provision which enables them to obtain this type of information.<sup>95</sup> It stated:

“It is assumed that under compliance with the Transfrontier Shipment of Waste Regulations, Green List recyclate is of a good enough quality to be fully recovered, so the proportion of materials from reprocessing facilities that are disposed of is quite low and derived from many sources of waste input to the facility. This would be a considerable burden on the receiving plant to supply, with only contractual requirements to underpin the provision and there is little prospect of any verification of information provided.”<sup>96</sup>

80. Referring specifically to the section 55A(5)(d) requirement, the Environmental Services Association stated:

“[it] would be an onerous requirement, as once ownership of the material has passed to the reprocessor (e.g. the paper mill) it is under no obligation to provide information on how the material is used in its facility.”<sup>97</sup>

81. Finally, the Environment Agency Wales suggested that information to meet the section 55A(5)(f) requirement could be difficult for local authorities to provide if material goes through brokers in the destination country, where it could be mixed with materials from other sources and sent to various final destinations.<sup>98</sup>

82. In commenting on the ability of local authorities to capture information required under section 55A(5), , Enviro Consulting Limited<sup>99</sup> stated:

“Given that there is an existing regulatory framework that already captures information on waste exported outside of the UK, including outside the EU and EFTA, there is an opportunity

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<sup>93</sup> Written evidence, SWR7.

<sup>94</sup> Written evidence, SWR4, SWR5, SWR5B, SWR6, SWR7, SWR9, and SWR10.

<sup>95</sup> Written evidence, SWR5b.

<sup>96</sup> Ibid.

<sup>97</sup> Written evidence, SWR7.

<sup>98</sup> Written evidence, SWR5B.

<sup>99</sup> Written evidence, SWR14a.

for the local authorities to use this system, through access to completed Annex VII Forms, to source details as required in the proposed Measure.”<sup>100</sup>

83. It outlined two options that could be used to capture information on Annex VII Forms. Firstly, Enviros Company Limited suggested an obligation be placed on local authorities to collect Annex VII Forms from Materials Recovery Facilities, processors and brokers for all shipments of waste. It envisaged that this would be done by including the return of Annex VII Forms to local authorities as a condition of contract. However, Enviros Company Limited went on to explain there are a number of ‘practical impediments to the implementation of this option’. These have been outlined in paragraphs 69 to 81.

84. The second option put forward by Enviros Company Limited, which was advocated by the Environment Agency Wales, was for the Welsh Government to seek an amendment to the *Transfrontier Shipment of Waste Regulations 2007* to require private waste companies to send Annex VII Forms to the Environment Agency Wales for all shipments of Green List waste from waste arising in Wales. It went on to explain that this information could subsequently be passed to local authorities for use and publication.

85. Similar arrangements to those outlined directly above are in operation in both Scotland and Northern Ireland and that evidence received by Enviros Company Limited when carrying out its research suggested that in Scotland, ‘the Annex VII reporting system appears to work well’. Notwithstanding this, Enviros Company Limited highlighted a number of limitations to the information captured under the Scottish regime, which would apply equally to Wales in the event that a similar regime was introduced. It explained:

“...waste leaving Wales to be processed in England prior to export would not be captured if the requirement to submit Annex VII Forms was extended to Wales [only]. This omission could significantly affect the ability of local authorities to offer full transparency on waste destinations.”<sup>101</sup>

86. This view was also expressed by the Environment Agency Wales.<sup>102</sup>

87. Similarly, the Minister explained that, in a recent exchange with the Department for Environment, Food and Rural Affairs, it had suggested that, it may be ‘feasible’ for the Welsh Government to operate the same arrangements as Scotland and Northern Ireland. However, in response to this, the Minister asserted:

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<sup>100</sup> Ibid.

<sup>101</sup> Written evidence, SWR1 4a.

<sup>102</sup> RoP, paragraphs 50 – 51, 1 October 2009, Legislation Committee No.1.

“...since Welsh recyclate may be exported from English ports, the value of a Welsh-only regime may be questioned.”<sup>103</sup>

88. While it was not clear from the Minister’s evidence, the Committee’s Legal Adviser has confirmed that Welsh Ministers do not have the power to amend the *Transfrontier Shipment of Waste Regulations 2007*.

89. In addition to the practical difficulties outlined in relation to the use of Annex VII Forms, it is important to note that these Forms do not provide the exact level of detail required under section 55A(5). As such, they would only go part way in assisting local authorities in meeting the specific requirements of the proposed Measure in relation to the provision of information. Both the Environment Agency Wales and Enviros Company Limited acknowledged this was the case.<sup>104</sup>

90. In evidence, both the Minister and the Environment Agency Wales suggested that local authorities could reasonably be expected to provide the level of detail made available by the Somerset Waste Partnership, which publishes details of the amount of waste exported in tonnes and general information on where it is shipped.<sup>105</sup> Notwithstanding this, the Minister reaffirmed that this could be achieved via a voluntary approach without the need for the proposed Measure.

91. Similarly, as previously mentioned, the Environmental Services Association and Veolia agreed it was ‘reasonable and practicable’ for local authorities to obtain aggregated data, on an annual basis, showing material recycled in Wales, the UK, Europe and beyond the EC and EFTA.<sup>106</sup> Indeed, the Environmental Services Association asserted:

“That is feasible and it is interesting information at local authority and public level.”<sup>107</sup>

#### *Evidence from the Member in charge*

92. In evidence, Nerys Evans AM argued that the information needed to enable local authorities to meet the section 55A(5) requirements was already available.<sup>108</sup> She asserted that this information was held by those involved in recycling arrangements and it was therefore ‘just a matter of getting it to filter down’ and explained:

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<sup>103</sup> RoP, paragraph 39, 8 October 2009, Legislation Committee No.1.

<sup>104</sup> RoP, paragraph 50, 1 October 2009, Legislation Committee No.1; and written evidence, SWR14a.

<sup>105</sup> RoP, paragraph 14, 8 October 2009, Legislation Committee No.1; and RoP, paragraph 55, 1 October 2009, Legislation Committee No.1.

<sup>106</sup> Written evidence, SWR6; and RoP, paragraph 85, 8 October 2009, Legislation Committee No.1.

<sup>107</sup> RoP, paragraph 106, 8 October 2009, Legislation Committee No.1.

<sup>108</sup> RoP, paragraphs 17 and 81, 1 July 2009, Legislation Committee No.1.

“...the intention is to make it a condition of contract that whoever deals with the waste provides the information to the local authorities.”<sup>109</sup>

93. Nerys Evans AM acknowledged that this would be done as contracts were re-negotiated, which would take time.<sup>110</sup>

94. In commenting on concerns raised about the ability of local authorities to provide the information necessary to meet the section 55A(5), Nerys Evans AM explained that the draft proposed Measure was revised, in light of consultation responses, to include section 55A(8) and (9). She pointed out that these provisions cover instances where information required under section 55A(5) is not held by, or available to the local authority. In such instances, the local authority must take ‘reasonable steps’ to obtain the information and include details of this in its statement.<sup>111</sup>

95. Nerys Evans AM also argued that some local authorities across the UK were already publishing information on waste exported for recovery, which suggested there was nothing to prevent local authorities in Wales from obtaining the information required under section 55A(5).<sup>112</sup>

96. In responding to concerns raised that it would be difficult for local authorities to provide the level of detail required under section 55A(5), Nerys Evans AM explained the specific requirements set out in section 55A(5) (a) to (f) were chosen because ‘the proposed Measure needs to be meaningful’.<sup>113</sup>

97. She went on to set out that Enviro Company Limited had reported that most of the information required under section 55A(5) was available in Annex VII Forms.<sup>114</sup>

98. Nerys Evans AM agreed to consider amending the section 55A(5) requirements to reflect more accurately information in Annex VII Forms, subject to the Committee’s recommendations.<sup>115</sup>

*(ii) Potential impact of the proposed Measure on recycling rates*

99. All of those giving evidence commented on the potential consequences of the proposed Measure. While some suggested the proposed Measure could have a positive impact, the majority raised

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<sup>109</sup> RoP, paragraph 72, 1 July 2009, Legislation Committee No.1.

<sup>110</sup> RoP, paragraph 72, 1 July 2009, Legislation Committee No.1.

<sup>111</sup> RoP, paragraph 81, 1 July 2009, Legislation Committee No.1.

<sup>112</sup> RoP, paragraph 92, 15 October 2009, Legislation Committee No.1.

<sup>113</sup> RoP, paragraph 84, 15 October 2009, Legislation Committee No.1.

<sup>114</sup> Ibid.

<sup>115</sup> Ibid.

serious concern that it could have a negative effect on public participation in recycling.

100. It was generally felt that negative media stories about local authorities that export waste for recycling could be a disincentive for the public to recycle. This could result in an increase in landfill and would make it difficult for local authorities to meet recycling targets.

101. In evidence the WLGA argued that the proposed Measure could ‘jeopardise public confidence in recycling’ It stated:

“There is some really good work going on across Wales at the moment to encourage the uptake of recycling...and we are seeing participation rates increase and recycling on an upward trend. That is all good news and very positive. Our concern about the proposed Measure is that it seems to be predicated on the basis that if stuff is not being dealt with locally, it is being exported and that it is therefore a waste of people’s time bothering to recycle...”<sup>116</sup>

102. Similar views were shared by others representing local government and by Veolia and the Environmental Services Association.<sup>117</sup>

103. In addition and as previously mentioned, the Environment Agency Wales pointed out that the proposed Measure focuses only on the small percentage of waste that is sent to countries beyond the EC and EFTA. As such, it raised concern that, taken out of context, it may lead to negative media coverage, which could have an adverse effect on recycling rates.<sup>118</sup>

104. In evidence, WRAP reported that negative media stories about the export of waste overseas caused a drop in the number of ‘committed recyclers’.<sup>119</sup>

#### *Evidence from the Member in charge*

105. In the Explanatory Memorandum, Nerys Evans AM suggests that, as a result of the publication of information required under the proposed Measure:

“...residents will encourage local authorities to use recycling facilities that are closer to the source of the recyclate, than those that are further away. It is also expected that the publication of

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<sup>116</sup> RoP, paragraph 31, 24 September 2009, Legislation Committee No.1.

<sup>117</sup> Written evidence, SWR2, SWR3, SWR4, SWR5, SWR6, SWR7, SWR8, SWR11 and SWR12.

<sup>118</sup> RoP, paragraph 12, 1 October 2009, Legislation Committee No.1; and written evidence SWR5b.

<sup>119</sup> RoP, paragraph 150, 8 October 2009, Legislation Committee No.1.

information will lead to increased interest, and therefore participation, in recycling.”<sup>120</sup>

106. In evidence, Nerys Evans AM asserted that when the public has more information about recycling, participation rates rise. She explained that information on recycling that was given to residents of a social housing complex in the London Borough of Barnet led to an increase in participation rates from 65 per cent to 90 per cent.<sup>121</sup> In addition, she explained that participation rates had not fallen in Somerset, which currently publishes information on waste that is exported.<sup>122</sup>

107. Nerys Evans AM refuted the suggestion that the proposed Measure could lead to a fall in recycling rates and asserted that it was based on the assumption that ‘the public will not understand the information presented to it’. She went on to explain that this should not be an issue if, when published, the information required under the proposed Measure is properly explained by local authorities and stated:

“...it is up to local authorities to explain why they are recycling in a certain way or in certain countries.”<sup>123</sup>

108. Nerys Evans AM argued strongly that local authorities should not be afraid of sharing information on what happens to its recycle with the public. Indeed, she suggested it was important to ‘trust the public to cope with this information and to deal with it responsibly’.<sup>124</sup>

### ***Our view***

109. We would like to make clear that, in forming a view on the proposed Measure we made a definite distinction between support for the underlying aim of the proposed Measure and support for the general principles. In order to support the general principles we would need to be satisfied that:

- we support the aim of the proposed Measure;
- we are convinced that a legislative approach in the form of the proposed Measure (or one that is broadly similar) is necessary; and,
- the proposed Measure is workable and that it is capable of achieving its aim.

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<sup>120</sup> Proposed Shipment of Waste for Recovery (Community Involvement in Arrangements) (Wales) Measure, Explanatory Memorandum, MPM-07-EM-S1, paragraph 3.3.

<sup>121</sup> RoP, paragraphs 28 – 29, and 113, 1 July 2009, Legislation Committee No.1; and RoP, paragraph 151 – 152, 15 October 2009, Legislation Committee No.1.

<sup>122</sup> RoP, paragraph 151 – 152, 15 October 2009, Legislation Committee No.1.

<sup>123</sup> RoP, paragraph 137, 1 July 2009, Legislation Committee No.1.

<sup>124</sup> RoP, paragraph 39, 1 July 2009, Legislation Committee No.1.



110. It was apparent from the evidence we received that there were varying levels of support for the proposed Measure. We note that a minority of those giving evidence fully supported the aim and the general principles of the proposed Measure. That support was provided partly on the basis that current arrangements lack transparency, or that improvements to those arrangements could be made. In addition, it was suggested that the proposed Measure could assist in the development of local recycling infrastructure and help prevent waste being illegally disposed of in other countries.

111. We note that the majority of those giving evidence did not support the general principles of the proposed Measure, with some strongly opposing a legislative approach. In opposing the legislation, some of the reasons provided included the suggestion that the proposed Measure was based on the assumption that exporting waste for recovery was of no benefit; that it could damage public confidence in recycling; and that it failed to take account of the complexities of the market for recyclate. In addition, those representing local government argued they were already providing as much information as possible on the final destination of waste and that the proposed Measure would be an unnecessary administrative burden.

112. We note the Minister's view that the aim of the proposed Measure could be met by encouraging local authorities to publish information on waste exported for recovery. If this was not successful, she suggested that the existing powers of Welsh Ministers could be used to require local authorities to provide such information.

113. Irrespective of their overall stance on the proposed Measure, we note that most of those giving evidence raised concerns about the practical and financial implications for local authorities and others of meeting the requirements of the legislation.

114. We acknowledge the evidence received in relation to the lack of transparency in current arrangements in relation to the way that local authorities deal with recyclate, in particular that which is exported for recovery. We therefore accept that improvements can and should be made in this regard. In view of this, **we fully support the aim of the proposed Measure.** However, we do not believe that the proposed Measure is necessary to achieve its stated aim, which we suggest could be met without recourse to legislation. Furthermore, we question whether the proposed Measure is the most appropriate or effective way of engaging local communities in the wider recycling agenda. Finally, we are concerned that the proposed Measure would place an additional and unnecessary burden on local authorities and does not represent an efficient or effective use of resource. For these reasons, **we are unable to support the general principles of the proposed Measure.** However, Mohammed Ashgar AM has made clear that he

supports both the aim and the general principles of the proposed Measure.

115. Further detail about how we came to our decision on the general principles of the proposed Measure is set out below.

116. We note that the main justification put forward by the Member in charge for the proposed Measure is that existing arrangements in relation to the way that local authorities deal with recyclate, in particular the shipment of waste for recovery outside the EC and EFTA, are not sufficiently transparent and that it is only right and proper that the public is fully informed about what happens to its recyclate. We accept there is currently a lack of information available to the public about waste that is exported for recovery and, as such agree that improvements can and should be made in respect of this. However, we feel strongly that this can be achieved without the need for the proposed Measure. We are encouraged by the Minister's evidence and welcome the commitment she has given to exploring further a voluntary approach to the reporting of information about exports of waste by local authorities. We believe this represents a proportionate response and is a sensible way forward. To this end, we urge the Minister to commence work with local authorities in respect of this issue as soon as practicable. Following on from this, we are content that the existing powers of Welsh Ministers under section 30 of the *Waste and Trading Emissions Act 2003* could be used to compel local authorities to provide information on waste exported for recovery. We accept these powers could be used if the voluntary approach outlined above does not prove successful.

117. We question whether there is an appetite amongst the public for the type of information that local authorities would be required to provide under the proposed Measure. The evidence we received suggests that, in simple terms the public wants an assurance that the waste it separates for recycling is being recycled and not sent to landfill. As well as questioning the level of public demand for information on waste that is exported for recovery beyond the EC and EFTA, we question whether it is reasonable to expect local authorities to provide the level of detail needed to meet the section 55A(5) requirements. We received strong evidence to suggest that local authorities would find it extremely difficult, if not impossible to meet these specific requirements. We acknowledge there is scope for local authorities to obtain some of the required information through contractual arrangements with private waste companies. However, we share the concern raised in evidence that this could have financial implications for local authorities and may make Wales less attractive to private waste companies.

118. While we recognise that the proposed Measure provides for circumstances where local authorities do not hold or cannot obtain

this information, we are not convinced that the section 55A(5) requirements are reasonable or indeed that they will help in delivering the aim of openness and transparency. Indeed, we believe that any information made available to the public in relation to waste that is exported for recovery should be meaningful, presented in a manner that is easily accessible, and set in the wider context of waste that is recycled to avoid misinterpretation.

119. Following on from this, according to the Member in charge, it is expected that the proposed Measure will lead to increased interest, and therefore participation, in recycling. While we accept that increasing public awareness about what and how to recycle is likely to have a positive effect on recycling rates, it does not necessarily follow that specific information on waste that is shipped for recovery outside the EU and EFTA will have the same effect. Indeed, we received strong evidence to suggest there is a real danger that the publication of information required under the proposed Measure could compromise the progress that has been made in Wales to date in meeting recycling targets. To this end, we question whether the proposed Measure is an appropriate mechanism through which to engage local communities in recycling.

120. Finally, on a wider point, we note the timing of the proposed Environmental Protection and Waste Management Legislative Competence Order which, according to the Minister's evidence, is scheduled to be made early in 2010. We acknowledge that, once made, the proposed Order would provide the Assembly with the power to introduce a broader Measure, which would deal not only with municipal waste, but would extend to commercial and industrial waste. In addition, we acknowledge that the proposed Order would provide the Assembly with the power to require private waste companies to provide local authorities with information on the final destination of waste.

121. While we note the assertion made by the Member in charge that once passed, the proposed Measure could be amended to broaden its scope, we are not convinced this is a suitable approach in view of the imminence of the conferral of power to the Assembly by the proposed Order. Notwithstanding this, we remain of the view that new legislation is not necessary in order to improve openness and transparency in the way that local authorities deal with recyclate.

122. For the reasons set out above, **we recommend that the Assembly does not support the general principles of the proposed Measure.**

#### 4. Financial implications

123. In considering the financial implications of the proposed Measure, we were conscious that the Finance Committee had chosen to consider the financial aspects of the proposed Measure, in accordance with Standing Order 14.2(i). In view of this, and in order to avoid duplication, we did not consider this issue in any great detail.

124. Serious concern was raised in evidence about the financial implications of the proposed Measure for those involved in its implementation, particularly local authorities.

125. Most of those giving evidence argued that significant resources would be needed to enable local authorities to meet the requirements of the proposed Measure, in particular those provided for in section 55A(5). This evidence came not only from local government, but from those representing the private waste sector who also suggested there would be cost implications for companies in providing information to local authorities.<sup>125</sup>

126. In commenting on this, Powys County Council stated:

“...there will be a much higher level of effort required to get the level of detail required from organisations that are likely to be unwilling, or unable, to provide the information.”<sup>126</sup>

127. Likewise, the County Surveyors’ Society (Wales) Waste Group stated:

“[there will be] a significant amount of time required to chase additional information on the final destinations...”<sup>127</sup>

128. Similarly, Veolia asserted:

“The data recording could be complex and expensive for all parties. We suspect that the final cost to local authority will be significantly higher as a result of these measures.”<sup>128</sup>

129. As previously mentioned, it was suggested that the renegotiation of contracts with private waste companies could have financial implications for local authorities.<sup>129</sup> As well as administrative costs, concern was raised in evidence that local authorities could receive a

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<sup>125</sup> RoP, paragraph 69, 8 October 2009, Legislation Committee No.1; and written evidence, SWR1, SWR4, SWR6, SWR7, SWR8, SWR9, SWR10, SWR11, and SWR12.

<sup>126</sup> Written evidence, SWR8.

<sup>127</sup> Written evidence, SWR12.

<sup>128</sup> Written evidence, SWR6.

<sup>129</sup> RoP, paragraphs 16 – 18, 24 September 2009, Legislation Committee No.1.

lower price for their recycle, which would have an impact on their budgets.<sup>130</sup>

130. A number of those giving evidence suggested there would be a cost to local authorities in collating, analysing and responding to representations made by the public under section 55B(3) and (5).<sup>131</sup> In evidence, the WLGAs argued that the cost of the proposed Measure was estimated at approximately £700,000. This would provide the equivalent of one full time member of staff per local authority. It stated:

“New staff would need to be recruited to deliver on this Measure and we would look to the Welsh Assembly Government to put additional fund into either the [local government revenue] settlement or Sustainable Waste Management Grant to cover the costs.”<sup>132</sup>

131. The need for the Welsh Government to meet the cost of the proposed Measure was also raised by others representing local government.<sup>133</sup>

132. In commenting on the financial implications of the proposed Measure, the Minister suggested they were ‘difficult to assess’ and that they ‘would vary between local authorities, depending on the complexity of their arrangements’. She went on to assert that the total cost estimate would be approximately £350,000 per annum.<sup>134</sup>

133. The Minister explained that the cost of the proposed Measure would need to be fully funded by the Welsh Government. She stated:

“There is currently no budget provision for this, so funds would need to be diverted from other initiatives, possibly displacing activities set out in the ‘Towards Zero Waste’ Strategy...”<sup>135</sup>

134. The Minister asserted that the cost of technical enhancements to WasteDataFlow to allow for the voluntary reporting of relevant information by local authorities would be in the region of £20,000, which the Welsh Government ‘could quite easily meet’.<sup>136</sup> Again, she argued that the aim of the proposed Measure could be met ‘by other means and at a low cost’.<sup>137</sup>

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<sup>130</sup> RoP, paragraph 16, 24 September 2009, Legislation Committee No.1; and written evidence, SWR19.

<sup>131</sup> Written evidence, SWR8 and SWR12.

<sup>132</sup> Written evidence, SWR11.

<sup>133</sup> Written evidence, SWR9 and SWR11.

<sup>134</sup> RoP, paragraph 69, 8 October 2009, Legislation Committee No.1.

<sup>135</sup> Written evidence, SWR14.

<sup>136</sup> RoP, paragraph 69, 8 October 2009, Legislation Committee No.1.

<sup>137</sup> RoP, paragraph 71, 8 October 2009, Legislation Committee No.1.

### *Evidence from the Member in charge*

135. In the Explanatory Memorandum, Nerys Evans AM states:

“The costs resulting from this proposed Measure will be incurred almost exclusively by local authorities in Wales.”<sup>138</sup>

136. She considered the estimate of £700,000 provided by the WLGA was ‘questionable’ and went on to explain:

“...it is not anticipated that one full-time member of staff per local authority would be required to carry out this work. In particular, because it is an annual reporting requirement, the workload is expected to be concentrated at one time of year, with monthly updates from processors.”<sup>139</sup>

137. In evidence, Nerys Evans AM continued to argue that the cost of the proposed Measure would be ‘negligible’ and that its implementation ‘can be easily incorporated’ into the existing workload of local authority staff.<sup>140</sup>

### ***Our view***

138. The evidence we received indicates there is concern about the financial implications for local authorities of meeting the requirements of the proposed Measure, in particular the requirement provided for in section 55A(5). We note that the estimated cost of implementing the proposed Measure varies from negligible cost to £700,000. On the basis of evidence received, we believe that the cost of the proposed Measure is likely to be higher than the original estimate provided by Nerys Evans AM. In view of our decision not to support the general principles of the proposed Measure, we do not think it is appropriate to make any recommendations in relation to its financial implications.

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<sup>138</sup> Proposed Shipment of Waste for Recovery (Community Involvement in Arrangements) (Wales) Measure, Explanatory Memorandum, MPM-07-EM-S1, paragraph 9.3.

<sup>139</sup> Proposed Shipment of Waste for Recovery (Community Involvement in Arrangements) (Wales) Measure, Explanatory Memorandum, MPM-07-EM-S1, paragraph 9.5.

<sup>140</sup> RoP, paragraphs 95 – 97, 1 July 2009, Legislation Committee No.1.

## 5. Other issues

139. Given that we do not support the general principles of the proposed Measure, we do not feel it is appropriate or indeed necessary to comment on other issues that were raised during the course of our work. Notwithstanding this, we acknowledge the evidence received in respect of these issues and, for the sake of completeness have included a précis of this evidence below.

140. In the event that the proposed Measure progresses beyond Stage 1, we urge the Member in charge to give due consideration to the evidence we received from stakeholders.

### ***(a) Requirement on local authorities to take ‘reasonable steps’ to obtain information required under section 55A(5)***

141. Section 55A(8) requires an authority, when preparing a statement to take ‘reasonable steps’ to obtain the information required under section 55A(5). Section 55A(9) provides that, in instances where an authority is unable to provide the required information, it must include in its statement the steps taken to obtain the information.

142. It was apparent in evidence that there was confusion about the meaning of ‘reasonable steps’ and about its practical application. A number of those giving evidence raised concerns that the term was open to interpretation and, as such, subject to legal challenge.

143. The WLGA questioned what steps a local authority would need to take to satisfy the requirement to take ‘reasonable steps’ to obtain the information required under section 55A(5). It stated:

“...what are ‘reasonable steps’? If an authority does not hold certain types of information, it can ask for and seek that information from contractors that it is dealing with. Is that a reasonable enough step? If it asks and does not get the information, has it done enough, or does it need to take that matter further? Should it take it up more formally with the company, perhaps take legal action or renegotiate the contracts? What would be reasonable?”<sup>141</sup>

144. In commenting on the extent to which the inclusion of section 55A(8) addressed its concern about the ability of local authorities to meet the section 55A(5) requirement, the WLGA stated:

“It depends very much on how far an authority is expected to go to get the information and the cost benefit.”<sup>142</sup>

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<sup>141</sup> RoP, paragraph 63, 24 September 2009, Legislation Committee No.1.

<sup>142</sup> Ibid.

145. The Environmental Services Association asserted that the inclusion of the term ‘reasonable steps’ was ‘a recipe for legal confusion’.<sup>143</sup>

146. Cylch believed that section 55A(8) was a ‘get out clause’, that its inclusion could undermine the effectiveness of the proposed Measure and, as such, should be deleted.<sup>144</sup>

147. In evidence, the Minister welcomed the inclusion of the section 55A(8) provision and stated:

“I was pleased to see that the proposed Measure was amended to ensure that local authorities take reasonable steps. However, it also exposes the difficulties, because the amendment that refers to reasonable steps is a pragmatic amendment.”<sup>145</sup>

148. Notwithstanding the above, the Minister’s legal adviser went on to explain the difficulties in determining what constituted ‘reasonable steps’. She stated:

“...it is difficult to say what might constitute reasonable steps. Clearly, some steps would have to be taken. I do not know whether it would be considered reasonable to amend contracts to require the other party to it to provide any information that it holds. There is a chance that that might be viewed as reasonable but, in the end, it all comes down to what a court would conclude was reasonable in the circumstances.

“There is then the question of whether it would be reasonable for a local authority to require some person with whom it contracts to contract with someone further down the chain to provide the information in turn, so that it could then be provided to the local authority, but I think that we are getting a bit further away from what may or may not be considered reasonable.”<sup>146</sup>

### *Evidence from the Member in charge*

149. In evidence, Nerys Evans AM’s Legal Adviser explained the proposed Measure ‘accepts that a local authority may not always have all the information needed’ and includes provision, to take account of this, namely section 55A(8) and (9).<sup>147</sup> She went on to state:

“There is nothing unusual about the term, ‘reasonable steps’; it is commonly used in primary and secondary legislation. There

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<sup>143</sup> RoP, paragraph 113, 8 October 2009, Legislation Committee No.1.

<sup>144</sup> RoP, paragraphs 208 – 211, 1 October 2009, Legislation Committee No.1.

<sup>145</sup> RoP, paragraph 43, 8 October 2009, Legislation Committee No.1.

<sup>146</sup> RoP, paragraphs 44 - 55, 8 October 2009, Legislation Committee No.1.

<sup>147</sup> RoP, paragraph 110, 15 October 2009, Legislation Committee No.1.



are at least seven examples in the Environmental Protection Act 1990...<sup>148</sup>

And

“If a local authority is unable to provide the information on a particular matter, the new proposed section 55A(9) requires the authority to explain the steps that it has taken. The public will then be able to judge whether those steps are reasonable. In the highly unlikely event that a local authority has failed to take reasonable steps to obtain the information, I agree that its failure would be open to challenge in the courts, but provided that a local authority had acted in good faith, in my opinion, it would be highly unlikely for it to be found not to have taken reasonable steps to obtain the information. That is consistent with the spirit of the proposed Measure, namely not to place overly onerous burdens on the local authorities, but to improve the transparency in their decision making.”<sup>149</sup>

***(b) Requirement on local authorities to publish the statement on its website***

150. The majority of those who commented on section 55B(1) questioned whether the publication of the statement on a local authority’s website was an effective way of involving the public in arrangements made by local authorities in the way that they deal with recycle. The WLGA stated:

“...only a limited number of people will find [the information] useful and will go to the website to seek it out; whether it would attract the attention of the majority of the public is a questionable point.”<sup>150</sup>

151. Although the Minister did not comment directly on the section 55B(1) requirement, she emphasised the importance of engaging the public in the wider waste debate, including the environmental benefits of recycling regardless of where it takes place.<sup>151</sup> On behalf of the Minister, the Head of Waste Strategy for the Welsh Government explained that priority was being given to assist local authorities in working more directly with communities to help them understand the benefits of recycling.<sup>152</sup> Linked to this, the WLGA asserted:

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<sup>148</sup> RoP, paragraph 110, 15 October 2009, Legislation Committee No.1.

<sup>149</sup> RoP, paragraph 111, 15 October 2009, Legislation Committee No.1.

<sup>150</sup> RoP, paragraph 69, 24 September 2009, Legislation Committee No.1.

<sup>151</sup> Letter from the Minister for Environment, Sustainability and Housing to Chair of Legislation Committee No.1, dated 28 October 2009.

<sup>152</sup> RoP, paragraph 52, 8 October 2009, Legislation Committee No.1.

“Activities such as pro-active consultation, engagement on service changes and new facilities and doorstepping to explain to people about why waste is important are far more direct routes of community involvement and will have more of an impact than a statement on a website.”<sup>153</sup>

152. Similarly, Caerphilly County Borough Council argued:

“We believe that community involvement in local authority recycling arrangements would be better achieved through pro-active communication campaigns at both a local and national level. The Authority supports the work being conducted by organisations such as Waste Awareness Wales and believes that more direct routes of community involvement will have a greater impact than a statement on a website.”<sup>154</sup>

153. A number of those representing local government argued that the preparation and subsequent publication of the statement was ‘needless duplication’ and that WasteDataFlow should be used to record and make public the required information.<sup>155</sup> It was also suggested that, if further work was required to publish the information it should be undertaken either by the Environment Agency Wales or by the Welsh Government. Similarly, the County Surveyors’ Society (Wales) Waste Group stated:

“The suggested publication of a statement on an authorities’ website is viewed as ineffective. WasteDataFlow is used by all authorities to track waste movements. It would be more effective that the information [required under the proposed Measure] is entered into WDF. The information could then be collated at a national level through the Environment Agency and a national report issued. This would ensure consistency of reporting and, if combined with other reports such as the Landfill Allowance Scheme Annual Report, provide additional background information on waste management.”<sup>156</sup>

154. The Environment Agency Wales explained that WasteDataFlow could be adapted and used by local authorities as a means of capturing the information required under the proposed Measure, although this would have financial implications.<sup>157</sup> Notwithstanding this, it reiterated WasteDataFlow could not be relied upon as a means of ensuring that this information was made available to the public.<sup>158</sup>

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<sup>153</sup> Written evidence, SWR11.

<sup>154</sup> Written evidence, SWR4.

<sup>155</sup> Written evidence, SWR1, SWR4, SWR8, SWR11, and SWR12.

<sup>156</sup> Written evidence, SWR12.

<sup>157</sup> RoP, paragraph 14 – 15, and 18, 1 October 2009, Legislation Committee No.1.

<sup>158</sup> RoP, paragraph 15, 1 October 2009, Legislation Committee No.1.

155. Similarly, the Minister explained that the report by Enviro Consulting Limited<sup>159</sup> had found that WasteDataFlow could be adapted to facilitate the reporting on final destination of recyclate that is shipped outside the EC and EFTA at a cost of approximately £20,000.<sup>160</sup> However, she acknowledged:

“...most members of the public will be completely unaware of the information reported through WasteDataFlow, unless it is extracted and presented in an accessible format.”<sup>161</sup>

156. The Environment Agency Wales felt that consideration should be given to using other mechanisms to make information required under the proposed Measure available to the public, in particular local media and local authority newsletters.<sup>162</sup> It also suggested that the Welsh Government’s Annual Municipal Waste Statement could be used ‘as a means of sharing this information on an all Wales basis’.<sup>163</sup>

#### *Evidence from the Member in charge*

157. In evidence, Nerys Evans AM explained that the decision to limit the publication of the statement on local authorities’ websites was based on the need to minimise costs and emphasised the need to ensure the proposed Measure was not overly burdensome on local authorities.<sup>164</sup>

158. She went on to suggest that, once information was made available by local authorities it was probable that ‘groups and organisations who will take an interest in this area’ would seek ways to ensure that it was available to the public more widely in the course of their work.<sup>165</sup>

159. Notwithstanding the above, Nerys Evans AM suggested that as ‘a minimum’, local authorities should satisfy the requirement to publish the statement on their websites. She went on to state that she would consider extending the requirement to include other mechanisms in light of the Committee’s recommendations.

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<sup>159</sup>Enviros - which she had commissioned to explore the potential use of WasteDataFlow to help meet the aim of the proposed Measure

<sup>160</sup> RoP, paragraph 69, 8 October 2009, Legislation Committee No.1.

<sup>161</sup> RoP, paragraph 9, 8 October 2009, Legislation Committee No.1.

<sup>162</sup> Written evidence, SWR5.

<sup>163</sup> RoP, paragraph 85, 1 October, Legislation Committee No.1.

<sup>164</sup> RoP, paragraph 103, 1 July 2009, Legislation Committee No.1; and RoP, paragraphs 121 - 123, 15 October 2009, Legislation Committee No.1.

<sup>165</sup> RoP, paragraph 123, 15 October 2009, Legislation Committee No.1.

***(c) Provision in relation to the invitation to the public to make representations ‘having regard to the proximity principle’***

160. In evidence to the Committee, the WLGA raised concern about the use of ‘the proximity principle’ as a basis on which to determine the appropriateness of local authorities’ arrangements for dealing with recyclate. It stated:

“...it does not necessarily follow that dealing with waste locally is best economically, socially and environmentally. There is the proximity principle and certainly, for a lot of residual waste, you want to get rid of it as close to home as possible. When you talk about the recyclate markets, however, they are more international, and you have to negotiate with the contractors where you will get a deal...

“If you want the most environmentally advantageous solution, you will want to ensure that where you take the recyclate and the contractor that you deal with will, as far as possible, be closed-loop recycling, rather than materials going off and being used for a form of recycling that is perhaps not in the best environmental interests.”<sup>166</sup>

161. Linked to the above, the Environment Agency Wales stated:

“In general the proximity principle is a guiding principle. It should not be applied rigidly or hard and fast. It really does need to be looked at, to work out the most appropriate environmental option for each individual material and circumstance.”<sup>167</sup>

162. There was confusion in evidence about the definition of ‘the proximity principle’ provided in section 55B(4) of the proposed Measure.

163. In evidence, WRAP stated that reference to ‘the proximity principle’ should be deleted. It asserted that, ‘the proximity principle’, as defined in European legislation does not apply to shipments of waste for recovery and, as such is not applicable to the proposed Measure, which applied specifically to shipments of waste for recovery.<sup>168</sup>

164. On a related point, the Environmental Services Association raised concern that the definition of the ‘proximity principle’ created ‘undesirable ambiguity between domestic and EU legal text’.<sup>169</sup> In addition, it asserted:

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<sup>166</sup> RoP, paragraph 93, 24 September 2009, Legislation Committee No.1.

<sup>167</sup> RoP, paragraph 93, 1 October 2009, Legislation Committee No.1.

<sup>168</sup> Written evidence, SWR2 and SWR2a.

<sup>169</sup> Written evidence, SWR7.

“If this law comes into effect before the new waste framework directive in December 2010, then it must rely on the definitions in the current waste framework directive. In that current directive the legal concept of proximity relates only to disposal, while this proposed Welsh law relates to one aspect of recovery, namely recycling.”<sup>170</sup>

165. We asked the Minister for her views on whether, in order for the public to make meaningful representations under section 55B(3), it would need to have a clear understanding of waste management generally, and knowledge of the location of recycling installations specifically. In commenting on this, the Minister stated:

“It is reasonable to expect the public and the business community to make representations on the proximity principle if it is explained appropriately.”<sup>171</sup>

*Evidence from the Member in charge*

166. In evidence, Nerys Evans AM defended the inclusion of reference to the ‘proximity principle’ as a basis on which the public should make representations on arrangements made by local authorities in relation to their recyclate. She stated:

“...emphasis on the proximity principle in the proposed Measure is in line with the Assembly Government’s policies to do with waste and all of the EU directives and regulations relating to waste. It is not unusual; it is a key element of recycling policy that we try to deal with the recyclate as close as possible to where it was generated.”<sup>172</sup>

167. In addition, Nerys Evans AM acknowledged that the ‘proximity principle’ was not the sole consideration for local authorities when making arrangements for dealing with its recyclate.<sup>173</sup> She went on to suggest that, although the ‘proximity principle’ was specifically provided for in section 55B(3), this ‘does not preclude the public from making representations on any other issue’.<sup>174</sup>

168. In responding to concerns regarding the definition of the ‘proximity principle’ provided for in the proposed Measure, Nerys Evans AM’s Legal Adviser explained:

“When the proposed Measure was originally drafted, the most relevant European directive which is referred to in the proposed

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<sup>170</sup> RoP, paragraph 128, 8 October 2009, Legislation Committee No.1.

<sup>171</sup> RoP, paragraph 55, 8 October 2009, Legislation Committee No.1.

<sup>172</sup> RoP, paragraph 132, 15 October 2009, Legislation Committee No.1.

<sup>173</sup> RoP, paragraph 136, 15 October 2009, Legislation Committee No.1.

<sup>174</sup> Ibid.

Measure, was the Waste Framework Directive. Subsequently, a new directive has been published, a revised Waste Framework Directive, which is required to be transposed into domestic law by December 2010. The revised directive deals more precisely with the definitions of ‘recovery’ and ‘disposal’ of waste.”<sup>175</sup>

169. She went on to explain that, if the proposed Measure progressed to Stage 2, the definition of ‘proximity principle’ could be amended to take account of the revised Waste Framework Directive.<sup>176</sup>

170. Nerys Evans AM argued that ‘the public understands the practical meaning of the [proximity] principle’ and that a broader knowledge of waste management issues and specific knowledge of local facilities ‘would not be a prerequisite for making a representation’. She also suggested it was unlikely that local authorities would publish the required information without providing the necessary context within which to explain its decision to export.<sup>177</sup>

***(d) Requirement on local authorities to ‘have regard’ to representations made by the public under section 55B(3)***

171. There were mixed views from those who comment directly on the requirement for local authorities to ‘have regard’ to representations made by the public about arrangements made in relation to the shipment of waste for recovery beyond the EC and EFTA.

172. In evidence, the Environment Agency Wales suggested that local authorities should have regard to representations ‘as part of a broader strategic level of waste planning’.<sup>178</sup>

173. The WLGA emphasised that local authorities, as democratically elected bodies should be responsible for making decisions ‘at the local level’. It went on to suggest that problems may arise if suggestions from the public about future arrangements were contrary to the Welsh Government’s Waste strategy. Furthermore, the WLGA raised concerns that representations from the public could be based on inaccurate information, given the difficulties faced by local authorities in providing the detailed information required under the proposed Measure.<sup>179</sup> Finally, it pointed out that local authorities have:

“...a limited role to play in securing markets for recyclate – they do not always deal with the end processor so representations may have very little impact.”<sup>180</sup>

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<sup>175</sup> RoP, paragraph 126, 15 October 2009, Legislation Committee No.1.

<sup>176</sup> RoP, paragraphs 126 - 130, 15 October 2009, Legislation Committee No.1.

<sup>177</sup> RoP, paragraphs 142 - 144, 15 October 2009, Legislation Committee No.1.

<sup>178</sup> RoP, paragraphs 94 - 95, 1 October 2009, Legislation Committee No.1.

<sup>179</sup> RoP, paragraphs 74 - 75, 24 September 2009, Legislation Committee No.1.

<sup>180</sup> Written evidence, SWR11.

174. This issue was also raised in evidence from Caerphilly County Borough Council.<sup>181</sup>

175. In commenting on section 55B(3), Powys County Council stated:

“Powys supports the involvement of residents in waste management activities. However, the authority feel that inviting and having regard to representations to the destination of wastes as outlined has the potential to do more damage than good regarding local authority recycling activities. As proposed in the Measure the engagement would be unstructured and is likely to give rise to adverse publicity. It will also raise expectations that the local authority can act on representations when the reality is such that local markets for recyclate is immature and needs substantial investment for local authorities to have real choice in where they send their materials.”<sup>182</sup>

*Evidence from the Member in charge*

176. In evidence, Nerys Evans AM explained:

“...because of the complexities involved [in making decisions about where waste is sent for recycling], it is reasonable to expect local authorities to have regard to those representations, but the proposed Measure leaves it to local authorities to decide how to define that. They are not bound by it, but they have to take it into account.”<sup>183</sup>

177. She went on to reiterate that, ultimately how it responded to representations made by the public under section 55B(3) was a matter for the local authority.<sup>184</sup>

***(e) Monitoring and regulation***

178. In evidence to the Committee, the Environment Agency Wales pointed out that the proposed Measure contained no monitoring or regulatory provisions.<sup>185</sup> It implied that this could undermine the effectiveness of the proposed Measure and stated:

“[The proposed Measure] makes it unclear as to whether there are any teeth behind it, because, if local authorities do not comply, who is going to do anything about it?”

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<sup>181</sup> Written evidence, SWR4.

<sup>182</sup> Written evidence, SWR8.

<sup>183</sup> RoP, paragraph 121, 1 July 2009, Legislation Committee No.1.

<sup>184</sup> RoP, paragraph 122 - 123, 1 July 2009, Legislation Committee No.1.

<sup>185</sup> RoP, paragraph 20, 1 October 2009, Legislation Committee No.1.

“It does not stipulate the monitoring authority or powers for Assembly officials, so it is a bit unclear.”<sup>186</sup>

179. Linked to this, the Environment Agency Wales explained that, as the regulatory authority for waste management operations, it is responsible for the verification of information provided by local authorities via WasteDataFlow. It raised concerns that the proposed Measure does not provide for the verification of information that local authorities are required to publish under section 55A(5).<sup>187</sup>

*Evidence from the Member in charge*

180. In evidence, Nerys Evans AM explained that including a monitoring provision in the proposed Measure would be outside of the Assembly’s current legislative competence. She reiterated that the proposed Measure derived competence from Matter 12.5, which deals with how local government undertake its work and improves on it.<sup>188</sup>

***(f) Other potential consequences of the proposed Measure***

181. A number of those giving evidence raised concern that the proposed Measure would result in increased pressure on local authorities, to stop exporting waste outside the EC and EFTA, either because of negative media coverage, or because of difficulties in meeting the requirements of the proposed Measure in relation to the provision of information.<sup>189</sup> Indeed, the Environment Agency Wales suggested that, if the proposed Measure is passed, steps should be taken ‘to ensure that local authorities do not stop sending material overseas as a result of difficulties in obtaining the data required as this is against the core principles of the waste strategy’.<sup>190</sup>

182. In addition, it was suggested that ‘political’ pressure would be brought to bear on local authorities to stop exports of waste.

183. Furthermore, both the Environmental Service Association and Voelia asserted that the proposed Measure would result in local authorities being ‘pressurised’ into using domestic facilities that may be ‘more expensive and less sustainable’.

184. A number of those giving evidence questioned whether there was sufficient demand for recyclate in domestic markets to meet any increase brought about as a result of the proposed Measure. The Environment Agency Wales stated:

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<sup>186</sup> RoP, paragraph 20, 1 October 2009, Legislation Committee No.1.

<sup>187</sup> RoP, paragraphs 16 – 17, 1 October 2009, Legislation Committee No.1.

<sup>188</sup> RoP, paragraphs 67 – 68, 15 October 2009, Legislation Committee No.1.

<sup>189</sup> Written evidence, SWR5, SWR6, SWR7

<sup>190</sup> Written evidence, SWR5.



“...it may not be possible to generate the necessary local markets for recyclates in order to keep apace with demand for local reprocessing of our wastes, especially since demand for secondary material would be largely overseas.”<sup>191</sup>

185. Similarly, Veolia explained:

“The UK has little manufacturing business, and we would have difficulty finding uses for all the paper and plastic, even if recycling facilities were to be built.”<sup>192</sup>

186. Veolia also suggested the proposed Measure could lead to ‘an increased use of raw materials in countries such as China and India’.<sup>193</sup>

187. There was some evidence to suggest that the proposed Measure could have a positive impact. This came mainly from the Environment Agency Wales. In evidence, it stated:

“...the general public are often reluctant to accept a waste reprocessing facility in their locality, due to preconceptions about the potential nuisance and/or impact on human health. Providing the means for more information to be collected and shared with the general public may encourage the population to accept recycling facilities within their neighbourhoods which would be a positive outcome in terms of the development of UK recycling infrastructure.”<sup>194</sup>

188. The Environment Agency Wales also asserted:

“The Measure will result in local authorities having a greater understanding of what is happening to their waste which will help prevent waste being illegally disposed in other countries – an area where the Environment Agency has limited control.”<sup>195</sup>

189. The Minister accepted the above assertion, however went on to argue that ‘the measures that we could take as a Government in terms of regulations would also do that’.<sup>196</sup>

#### *Evidence from the Member in charge*

190. In evidence Nerys Evans AM acknowledged that ‘there is no capacity in Wales to deal with and recycle all our waste’, however she went on to emphasise:

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<sup>191</sup> Ibid.

<sup>192</sup> Written evidence, SWR6.

<sup>193</sup> Ibid.

<sup>194</sup> Written evidence, SWR5.

<sup>195</sup> Ibid.

<sup>196</sup> RoP, paragraph 63, 8 October 2009, Legislation Committee No.1.

“[I am] not trying to force all local authorities to recycle within their boundaries; this is just to ensure that people know where our waste is recycled.”<sup>197</sup>

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<sup>197</sup> RoP, paragraph 137, 1 July 2009, Legislation Committee No.1.

## **6. Other Assembly Committee reports**

### ***(i) Finance Committee report***

191. The Finance Committee considered the proposed Measure on 24 September and 8 October 2009 and subsequently laid its report on 13 November 2009.

#### ***Our view***

192. We note the Finance Committee's report.

### ***(ii) Subordinate Legislation Committee***

193. The Subordinate Legislation Committee considered the proposed Measure on 23 September 2009. The Committee noted that changes to section 55C(2) are an administrative matter and that the power would be more appropriately exercised under the negative procedure.

#### ***Our view***

194. We note the Subordinate Legislation Committee's report.

## Legislation Committee No 1

### Proposed Shipment of Waste for Recovery (Community Involvement in Arrangements) (Wales) Measure

#### List of written evidence received

Responses	Organisation
SWR1	Vale of Glamorgan Council
SWR2	Waste and Resources Action Programme (WRAP)
SWR2A	Waste and Resources Action Programme (WRAP) - Supplementary Evidence
SWR3	Novelis Recycling
SWR4	Caerphilly County Borough Council
SWR5	Environment Agency Wales
SWR5A	Environment Agency Wales - Supplementary Evidence
SWR5B	Environment Agency Wales - Additional Supplementary Evidence
SWR6	Veolia Environmental Services (UK) Plc
SWR7	Welsh Environmental Services Association
SWR8	Powys County Council
SWR9	Gwynedd County Council
SWR10	Pembrokeshire County Borough Council
SWR11	Welsh Local Government Association (WLGA)
SWR12	CSS (County Surveyors' Society) (Wales) Waste Group
SWR13	Cylch-Wales Community Recycling Network
SWR14	Jane Davidson AM, Minister for Environment, Sustainability and Housing

Responses to the consultation can be found at:

[http://www.assemblywales.org/bus-home/bus-legislation/bus-leg-measures/bus-legislation-measures-proposed\\_recycling/lc1\\_swr\\_written\\_responses.htm](http://www.assemblywales.org/bus-home/bus-legislation/bus-leg-measures/bus-legislation-measures-proposed_recycling/lc1_swr_written_responses.htm)

## Legislation Committee No 1

### Proposed Shipment of Waste for Recovery (Community Involvement in Arrangements) (Wales) Measure

#### Schedule of oral evidence

Date	Witnesses
1 July 2009	Member in charge of the proposed Measure - Nerys Evans AM
24 September 2009	Welsh Local Government Association
1 October 2009	Environment Agency Wales  Cylch
8 October 2009	Jane Davidson AM, Minister for Environment, Sustainability and Housing  Environmental Services Association (ESA)  Waste and Resources Action Programme (WRAP)
15 October 2009	Member in charge of the proposed Measure - Nerys Evans AM

Transcripts of oral evidence can be found at:

[http://www.assemblywales.org/bus-home/bus-legislation/bus-leg-measures/bus-legislation-measures-proposed\\_recycling.htm](http://www.assemblywales.org/bus-home/bus-legislation/bus-leg-measures/bus-legislation-measures-proposed_recycling.htm)

**Jane Davidson AC/AM**

**Y Gweinidog dros yr Amgylchedd, Cynaliadwyedd a Thai  
Minister for Environment, Sustainability and Housing**



Llywodraeth Cynulliad Cymru  
Welsh Assembly Government

Ein cyf/Our ref LF/JD0096/09

Rosemary Butler AM  
Chair  
Legislation Commitment No.1  
National Assembly for Wales  
Cardiff Bay  
Cardiff  
CF99 1NA

28th October 2009

*Dear Rosemary,*

**Proposed Shipment of Waste for Recovery (Community Involvement in Arrangements) (Wales) Measure**

Thank you for your letters of 12<sup>th</sup> and 15<sup>th</sup> of October regarding the above Measure, both of which are considered in this response.

In your letter of 12<sup>th</sup> October you identify that section 30 of the Waste and Emissions Trading Act 2003 could not be used to require local authorities to publish information provided by them in accordance with regulations made under that section, and enquire about the types of arrangements which could be put in place to ensure that such information is made available to the public.

If the question is concerned with whether there is a mechanism available to guarantee that such information is made available to the public, then the answer is yes: ultimately, the Assembly Government could itself publish the information in question.

With respect to other arrangements which could be put in place to make such information available to the public, as I mentioned in my evidence to the Committee, there are many ways in which communities can be engaged in the work of their local authorities and I am particularly interested in the approach adopted by Somerset Waste Partnership. It may be that the voluntary adoption of a similar approach by local authorities in Wales could be a more effective, or perhaps complementary, mechanism to engage the interest of local communities in the wider debate about the positive environmental impact of recycling, whether within Wales or beyond, and I would be interested to investigate the feasibility of this approach also.

In your letter of 15 October you seek clarification on my position with respect to the principle of the Measure, as opposed to its aims, and invite a response to the doubt raised by Nerys Evans about the scope of the power to require information under section 30.

Bae Caerdydd • Cardiff Bay  
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With respect to the first point, my statement in Plenary expressing support for the principle of the proposed Measure was not intended to depart in any way from the view I expressed in evidence to the Committee. I fully support the underlying principles, or aims, of the Measure namely, engendering greater transparency about what happens to recyclate and promoting the engagement of local communities in the work of their local authorities and in the wider waste debate. I remain of the view that those principles can be achieved by the use of existing legislation and that consequently a Measure is not necessary to achieve the desired results in this case.

On the question of the scope of section 30, the powers available to the Welsh Ministers under that section are not confined to biodegradable waste, but are available in respect of anything which is waste for the purposes of the Waste Framework Directive, whether or not the thing in question is to be subject to a recovery process. The definition of "waste" for the purposes of Part 1 of the Act can be found in section 37.

Whatever legislative vehicle were to be used to require local authorities to provide information in relation to waste, the practical difficulties in obtaining information of the nature proposed by the Measure would remain. Evidence suggests that the complexity of waste management operations are such that it is not within the gift of local authorities to compel or to reasonably negotiate the provision of information on the ultimate fate of their individual portions of recyclate overseas. For this reason alone, careful consideration would need to be given to the scope of any proposed duty so as to avoid the imposition of obligations which would require local authorities to expend resources in pursuit of a result which is ultimately beyond their powers to deliver.

Yours

A handwritten signature in black ink, appearing to be 'J. Davidson', written in a cursive style.

**Jane Davidson AM**

Y Gweinidog dros yr Amgylchedd, Cynaliadwyedd a Thai  
Minister for Environment, Sustainability and Housing

**Subordinate Legislation  
Committee  
Y Pwyllgor Is-ddeddfwriaeth**



Cynulliad National  
Cenedlaethol Assembly for  
Cymru Wales  
Bae Caerdydd / Cardiff Bay  
Caerdydd / Cardiff  
CF99 1NA

Nerys Evans  
Assembly Member  
The National Assembly for Wales  
Cardiff Bay  
Cardiff  
CF99 1NA

23 September 2009

Dear Nerys

**Proposed Shipment of Waste for Recovery (Community Involvement in Arrangements) (Wales) Measure**

At the Committee meeting held on 23 September 2009, in accordance with its remit under SO 15.6 (ii), the Subordinate Legislation Committee considered the appropriateness of the provisions in the Proposed Shipment of Waste for Recovery (Community Involvement In Arrangements) (Wales) Measure that grant powers to make subordinate legislation to the Welsh Ministers.

In scrutinising the proposed measure the Committee looked at the legal advisors report (attached for information). The Committee was advised that changes to section 55C(2) are an administrative matter and this power would be more appropriately exercise under the negative procedure.

I am copying this letter to the Chair of Legislation Committee No 1, to inform them of the view of the Subordinate Legislation Committee.

Yours sincerely,

**Janet Ryder AM**  
Chair  
Subordinate Legislation Committee

cc. Rosemary Butler, Chair, Legislation Committee No 1