

**National Assembly for Wales**  
Legislation Committee No. 4

Proposed Waste (Wales) Measure

Stage 1 Committee Report  
June 2010



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## **Legislation Committee No.4**

Legislation Committee No.4 was established by the National Assembly for Wales to consider and report on legislation introduced into the Assembly, particularly by the Welsh Government. The Committee is also able to consider and report on non-government legislation, as appropriate.

### **Powers**

The Committee was established on 4 February 2009 as one of the Assembly's legislation committees. Its powers are set out in the National Assembly for Wales' Standing Orders, particularly Standing Orders 10, 22 and 23. These are available at [www.assemblywales.org](http://www.assemblywales.org)

### **Committee membership**

<i>Committee Member</i>	<i>Party</i>	<i>Constituency or Region</i>
Jenny Randerson (Chair)	Welsh Liberal Democrats	Cardiff Central
Christine Chapman	Labour	Cynon Valley
Brian Gibbons	Labour	Aberavon
Bethan Jenkins	Plaid Cymru	South Wales West
Jonathan Morgan	Welsh Conservative Party	Cardiff North
Kirsty Williams	Welsh Liberal Democrats	Brecon and Radnorshire

## List of relevant reports published by Legislation Committees

<i>Report title</i>	<i>Date of publication</i>
<a href="#"><u>Proposed Environmental Protection and Waste Management LCO Committee Report on the National Assembly for Wales (Legislative Competence) (No.2) Order 2007</u></a>	November 2007
<a href="#"><u>Legislation Committee No.4 - Proposed National Assembly for Wales (Legislative Competence) (Environment) Order 2009 – Committee Report</u></a>	June 2009

All previous committee reports can be found at <http://www.assemblywales.org/bus-home/bus-committees/bus-committees-perm-leg.htm>



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## **Summary of conclusions and recommendations**

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Our conclusions and recommendations are listed below, in the order that they appear in this report. Please refer to the relevant pages of the report to see the supporting evidence:

### ***General principles of the proposed Measure***

We note the evidence from consultees that much of the policy detail of the proposed Measure, as well as key operational detail, is to be set out in future regulations made under a combination of the proposed Measure and the Climate Change Act 2008. (Paragraph 70)

We believe the lack of developed policy proposals has resulted in the government not being able to provide detailed cost estimates for all policy areas of the proposed Measure. In particular, we believe the Regulatory Impact Assessment (RIA) may well underestimate the costs of monitoring the schemes relating to single use carrier bags and site waste management plans. We draw the Minister's attention to the criticisms made by consultees of the financial information provided in the RIA. (Paragraph 72)

Further to this, we note the RIA contains information relating to the costs of only part of the Minister's wider policy on single use carrier bags. Whilst we accept this is due to the fact that the majority of the policy in this area will be implemented in regulations made under the Climate Change Act 2008, we believe the Minister should consider providing cost estimates for the overall policy in relation to single use carrier bags. (Paragraph 73)

Based on the evidence we received, we are content to recommend that the Assembly agree the general principles of the proposed Measure, in so far as it provides a framework within which the Welsh Assembly Government will implement its strategy on waste. (Paragraph 75)

However, we are concerned that the Minister has introduced a proposed Measure for which so much policy detail has yet to be formulated. (Paragraph 76)

Whilst we note the Minister's evidence that much of this policy will be determined in forthcoming consultation with stakeholders, we consider it would have been more appropriate for this work to have

been undertaken in advance of the introduction of the proposed Measure, in order that a more complete legislative proposal could have been scrutinised. (Paragraph 77)

### ***Sections 1-2: Single use carrier bags***

#### *Development and scope of the voluntary agreement*

We note and are content with the Minister's reasons for developing a voluntary agreement with retailers prior to implementing the provisions of the proposed Measure in order to introduce a mandatory scheme. (Paragraph 108)

We recommend the Minister encourage all retailers to participate in the voluntary agreement for the distribution of net proceeds from a charge on single use carrier bags. (Paragraph 112)

#### *Openness and transparency of the voluntary agreement*

We note the general consensus amongst consultees that there was an expectation that retailers would operate in an open and transparent manner, not least because of their corporate responsibility policies and the threat of the implementation of a mandatory scheme should the voluntary scheme prove unsuccessful. (Paragraph 124)

#### *Monitoring of the voluntary agreement and mandatory scheme*

We recommend the Minister clarify her intentions in relation to the monitoring and auditing of the voluntary agreement and mandatory scheme. We believe this would be beneficial for all concerned with the relevant provisions of the Climate Change Act 2008 and this proposed Measure. (Paragraph 144)

In relation to costs, we note that the Minister has estimated the cost of monitoring the relevant provisions of the Climate Change Act 2008 as being no more than £10,000. We have doubts about the accuracy of this estimate and recommend the Minister gives further consideration to this matter. (Paragraph 145)

#### *Timing of the review of the voluntary agreement*

We recommend the Minister clarify her intentions in relation to the timing of a review of the voluntary agreement. We believe this would

be beneficial for all concerned with the relevant provisions of this proposed Measure. (Paragraph 154)

*Measuring the success of the voluntary agreement*

We believe it would be beneficial if the Minister clarified her intentions in relation to measuring the success of the voluntary agreement, and we recommend the Minister does this at the earliest opportunity. We believe a key criterion in measuring this success should be a significant reduction in the number of single use carrier bags in use in Wales. (Paragraph 174)

*Scope of a mandatory scheme*

In relation to the scope of the mandatory scheme for directing the net proceeds from a charge on single use carrier bags, we note the evidence from consultees that any retailers that had cooperated with the voluntary agreement should be able to continue to do so in the event of the introduction of a mandatory scheme. (Paragraph 185)

We support this view and believe such an arrangement will act as an incentive for greater numbers of retailers to cooperate with the voluntary agreement. We welcome the confirmation from the Minister that the proposed Measure allows for such an arrangement. (Paragraph 186)

However, we note such an arrangement may involve a further level of administration in determining those retailers that may be exempt from the mandatory scheme, and this may have cost implications for the Welsh Assembly Government and retailers. We recommend the Minister gives consideration to this matter at the appropriate time. (Paragraph 187)

*Destination of the net proceeds under a mandatory scheme*

We see considerable benefits in allowing the net proceeds from a charge on single use carrier bags to be drawn into a central fund, managed by a voluntary sector body such as the Charity Bank in Wales or Wales Sustainability Reinvestment Trust, from which grants or loans to environmental projects in Wales could be made. We welcome the confirmation from the Minister that the proposed Measure allows for such an arrangement and we recommend the Minister considers the use of such an established body in the management and distribution

of the net proceeds from a charge on single use carrier bags.  
(Paragraph 219)

### ***Section 3-8: Waste targets***

#### *The impact of statutory recycling targets on waste prevention and minimisation*

In view of the strength of evidence in relation to the importance of waste minimisation, we recommend the Minister considers setting separate targets for waste minimisation, in order to balance any distorting effect of the statutory recycling targets on the waste hierarchy. (Paragraph 255)

#### *Application and extent of waste targets*

We are aware that many local authorities currently work collaboratively in the delivery of services and pool their resources in order to achieve this. We note that this trend is in line with Welsh Assembly Government policy, and is likely to increase in the future. (Paragraph 279)

We see great strengths in extending this arrangement to allow two or more local authorities to work collaboratively in meeting the new statutory waste targets by pooling their individual targets, and we recommend the Minister amends the proposed Measure to enable this. (Paragraph 280)

In relation to the application of statutory waste targets, we note the evidence calling for these targets to apply to the private sector, but recognise that extending the application of the targets in this way could be outside the scope of the proposed Measure. However, in light of the evidence we have received on this point, we recommend the Minister gives consideration to the principle of setting waste targets for the private sector in the future. (Paragraph 281)

#### *Monitoring and auditing compliance with targets*

We find it significant that a statutory agency, such as the Environment Agency Wales, has expressed these concerns and we draw this evidence, and the evidence from Cylch, to the attention of the Minister. We recommend the Minister takes full account of this in implementing the relevant provisions of the proposed Measure. (Paragraph 297)

Similarly, we draw the Minister's attention to the evidence relating to local authorities being made responsible for non-compliance with waste targets when they have acted in good faith, and we recommend the Minister takes full account of this. (Paragraph 298)

#### *The appropriateness of financial penalties*

We are reassured by the Minister's statement that the use of financial penalties in cases of non-compliance will be a matter of last resort. (Paragraph 311)

We are, therefore, content that the proposed Measure makes provision for the imposition of financial penalties on local authorities in the event of non-compliance with statutory waste targets. (Paragraph 312)

#### **Sections 9-11: Landfill**

##### *Achieving the Welsh government's policy aims*

Whilst we agree in principle with the provisions for landfill restrictions, we have found it difficult to form an absolute view on this matter due to the fact that the majority of the policy detail will be contained in future regulations. (Paragraph 336)

We are, therefore, unable to fully support the Minister's views that landfill bans will be the main driving force for encouraging more sustainable waste management practices in Wales. (Paragraph 337)

##### *Cross border issues and perverse outcomes*

In light of the evidence we have received, we urge the Minister to be mindful of the potential for perverse outcomes as a result of the future implementation of landfill bans and we recommend the Minister put in place any arrangements necessary to prevent these perverse outcomes from occurring. (Paragraph 346)

We recommend that, when implementing the relevant provisions of the proposed Measure, the Minister consider the consequences for those local authorities that have long term waste disposal contracts in place. We further recommend that consideration be given to making transitional arrangements in order to accommodate any local authority which is legally bound to a fixed term contract with a waste disposal company outside Wales. (Paragraph 347)

### *Capacity of the waste management infrastructure*

We welcome the Minister's statement that the forthcoming sector plans will identify and deal with any gaps in the infrastructure arrangements in Wales, and we recommend the Minister takes a strategic overview to ensure capacity is in place in Wales before any landfill bans are introduced. (Paragraph 371)

We consider there is the potential for local authorities to be penalised twice under the provisions of the proposed Measure - firstly for failure to meet the statutory waste targets, and secondly for non-compliance with landfill bans. This is in addition to the landfill tax already in place covering municipal waste. We draw this to the Minister's attention, and we recommend the Minister takes account of this in implementing the relevant provisions of the proposed Measure. (Paragraph 372)

### *Monitoring and enforcement of landfill bans, and the introduction of civil sanctions*

We agree with the Minister, in principle, that civil sanctions are an appropriate and proportionate alternative to criminal proceedings. (Paragraph 392)

However, we note the evidence from the Environment Agency Wales regarding the timing of the introduction of civil sanctions for landfill bans, and agree that the timing of such sanctions in Wales should be commensurate with the introduction of civil sanctions under new legislation for permit breaches in England and Wales. We therefore recommend that the Minister consider commencing the enforcement of all civil sanctions across the waste disposal permitting regime at the same time. (Paragraph 393)

Furthermore, we believe that clarity is needed as to who will be responsible for monitoring compliance with landfill bans and enforcing any civil sanctions in the event of non-compliance. We therefore recommend the Minister amend the proposed Measure to make this explicit. (Paragraph 394)

### *Consultation*

We note there is a level of expectation amongst witnesses that they will be consulted on draft regulations. We welcome the Minister's assurance that the Welsh Assembly Government always consults on

draft regulations, and we trust this practice will continue for draft regulations made under this proposed Measure. (Paragraph 404)

### ***Sections 12-14: Site Waste Management Plans***

#### *Delivery of the Welsh government's policy intentions*

We question whether it is necessary for the Minister to bring forward regulations in relation to site waste management plans within the timeframe she has outlined, particularly in advance of the commencement of powers for Welsh Ministers under the Building Regulations in December 2011. We believe it would simplify the requirements on business and make for clearer, more coherent regulations if the implementation of regulations for site waste management plans was to coincide with the commencement of powers under Building Regulations. (Paragraph 438)

Whilst we believe it may not be practical or proportionate to include all building operations in the site waste management plan approach, we think the evidence we have received from the construction and demolition industry on this point merits further exploration. We recommend the Minister explores the points raised in this evidence fully at the appropriate time. (Paragraph 440)

#### *Capacity of the construction and demolition sector*

We recommend the Minister looks at a range of options for meeting the policy objectives in relation to site waste management plans, including linking the requirement to produce such plans to the relevant part of the planning process in order to reduce any unnecessary bureaucracy. This would provide for local authority involvement. (Paragraph 452)

We consider that training and support will need to be provided to the construction and demolition sector in order for them to meet the requirements of the proposed Measure in relation to site waste management plans, and we recommend the Minister gives consideration to making adequate provision for this at the appropriate time. (Paragraph 453)

### *Monitoring and enforcement arrangements*

We agree with the Environment Agency Wales that the enforcement of a site waste management plan scheme in Wales should be undertaken by local authorities, because of their day to day involvement with the construction and demolition sector. (Paragraph 468)

### *The introduction of a fees and charging scheme, and penalties*

We agree with those consultees who advocated the need for a fees and charging scheme in order to fund the effective monitoring and enforcement of the site waste management plan scheme. (Paragraph 481)

We recommend the Minister considers setting the levels of such fees so that the penalty for non-compliance is notably greater than the cost of complying with the site waste management plan regulations. (Paragraph 482)

In the interests of transparency and in order to assist those who will be subject to, and those who will enforce the regulations that may be made under sections 12 and 13, we consider there should be no ambiguity surrounding the level of penalty that may be imposed. We therefore recommend the Minister takes the necessary actions to clarify this point. (Paragraph 484)



# 1. Introduction

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## *Background*

1. On 22 February 2010, the Minister for Environment, Sustainability and Housing, Jane Davidson AM, introduced the proposed Waste (Wales) Measure ('the proposed Measure') and Explanatory Memorandum, and made an oral statement the following day.
2. The proposed Measure was referred to Legislation Committee No.4 ('the Committee') by the Business Committee on 9 February 2010 to "consider and report on the general principles of the proposed Measure"<sup>1</sup> no later than 25 June 2010.<sup>2</sup>

## *Scope of the Committee's Scrutiny*

3. At our first meeting on 25 February 2010, we agreed the scope of our scrutiny, as set out below:

To consider:

- i) the need for a proposed Measure to deliver the stated objectives of:
  - making provision to reduce the amount of waste and litter in Wales;
  - contributing to the development of more effective waste management arrangements in Wales;
- ii) whether the proposed Measure achieves its stated objectives;
- iii) the key provisions set out in the proposed Measure and whether they are appropriate to deliver its objectives;
- iv) potential barriers to the implementation of the key provisions and whether the proposed Measure takes account of them;
- v) the views of stakeholders who will have to work with the new arrangements.

## *The Committee's approach to evidence gathering*

4. We consulted widely, issuing an open call for written evidence through the Welsh media and the Assembly's website.

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<sup>1</sup> In accordance with Standing Order 23.23

<sup>2</sup> Reporting deadline set by the Business Committee

5. We invited key organisations with a subject area interest to submit written evidence to inform our work. A list of those who submitted written evidence is available at the end of this report.
6. We also took oral evidence from a number of witnesses; further details are attached at the end of this report.
7. We had to conduct our scrutiny in a relatively short time and are grateful to all those who provided evidence. Their contribution to our consideration of the proposed Measure has been invaluable.
8. The evidence we received inevitably reflected the wide range of interests of the respective organisations involved in the areas of retail, environmental protection, landfill, waste disposal, construction and demolition. In reporting on the proposed Measure, we have taken account of the views of each of the groups involved in these areas and have sought to reflect the key issues raised in their evidence in relation to the proposed Measure, adopting a consensual approach.
9. The Constitutional Affairs Committee and the Finance Committee have also reported on the proposed Measure. Their reports are available separately, on the Assembly's website.<sup>3</sup>
10. The following report details the conclusions we have reached based on the evidence received during the course of our work.

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<sup>3</sup> [Link to Finance Committee 'Reports' internet page](#); [Report of the Constitutional Affairs Committee](#), June 2010

## 2. Policy background

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### *Legislative Competence*

11. The principal powers enabling the National Assembly to make a Measure in relation to the reduction of waste and litter in Wales and the development of more effective waste management arrangements are contained in Matters 6.1, 6.3, and 6.4 of Schedule 5 to the Government of Wales Act 2006.

12. The proposed Measure is divided into four distinct policy areas:

- sections 1-2: Single use carrier bags;
- sections 3-8: Waste targets;
- sections 9-11: Landfill;
- sections 12-14: Site waste management plans.

13. Further detail on each of these areas is set out below.

### *Policy objectives of the proposed Measure*

14. The Explanatory Memorandum sets out the policy objectives of the proposed Measure:

“The proposed Waste (Wales) Measure 2010 makes provision to reduce the amount of waste and litter in Wales and contributes to the development of more effective waste management arrangements in Wales.”<sup>4</sup>

15. It goes on:

“The Assembly Government’s new Waste Strategy *Towards Zero Waste*<sup>5</sup> (...) sets out the general policy context for the various provisions in the proposed Waste (Wales) Measure 2010. The long term aim of the Strategy is that Wales becomes a zero waste country by 2050. (...) The provisions in this proposed Measure will put in place policy interventions which will help Wales to develop a more sustainable approach to waste management (...).”<sup>6</sup>

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<sup>4</sup> Explanatory Memorandum, para 1.1

<sup>5</sup> *Towards Zero Waste – A Consultation on a New Waste Strategy for Wales*, Welsh Assembly Government, 2009

<sup>6</sup> EM, para 3.1, 3.3

16. With regard to single use carrier bags (sections 1-2), the Explanatory Memorandum states:

“The proposed Waste (Wales) Measure 2010 amends Schedule 6 to the Climate Change Act 2008 to provide Welsh Ministers with a power to require retailers to pass on the net proceeds of a charge on single use carrier bags to specified purposes or specified persons, who would need to apply the net proceeds of the charge to specified purposes.”<sup>7</sup>

17. It goes on:

“Evidence suggests that applying the net receipts from a charge on single use carrier bags to worthwhile projects could help to ensure public buy-in and support [for] the implementation of the charge.”<sup>8</sup>

18. It further states that these provisions are “part of a wider Welsh Assembly Government policy to address waste and litter issues associated with single use carrier bags.”<sup>9</sup>

19. It should be noted that, whilst the proposed Measure provides for Welsh Ministers to be able to direct the net proceeds of a charge on single use carrier bags, it does not provide for the imposition of the charge itself. Powers for Welsh Ministers to impose a charge on the sale of single use carrier bags are contained in the Climate Change Act 2008.

20. In relation to waste targets (sections 3-8), the Explanatory Memorandum states:

“The proposed Waste (Wales) Measure 2010 establishes statutory targets for the percentage of a local authority’s municipal waste to be recycled, prepared for re-use and composted [with the aim of ensuring that Wales becomes a high recycling society (70% recycling across all sectors) by 2025<sup>10</sup>]. The proposed Measure will also provide Welsh Ministers with the power to establish other waste targets to be met by local authorities and to establish financial penalties

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<sup>7</sup> EM, para 3.4

<sup>8</sup> EM, para 3.10

<sup>9</sup> EM, para 3.5

<sup>10</sup> EM, para 3.17

which could be imposed on local authorities in the event that they fail to meet targets set under the proposed Measure.”<sup>11</sup>

21. It goes on:

“The purpose of placing these targets on a statutory footing is to give a clear signal of the importance of local authorities increasing the rate of recycling, preparing for re-use and composting of municipal waste. The establishment of statutory targets will also provide certainty to local authorities about the longer-term nature of the targets and enable them to plan ahead and take appropriate measures, including infrastructure investment, to ensure compliance.”<sup>12</sup>

22. With regard to landfill (sections 9-11), the Explanatory Memorandum states:

“The proposed Waste (Wales) Measure 2010 will provide the Welsh Ministers with a power to ban or restrict the deposit of specified kinds of waste in a landfill in Wales.”<sup>13</sup>

23. It further states:

“The purpose of the landfill provisions of the proposed Measure is to address the various environmental issues resulting from the landfilling of waste by giving the Welsh Ministers the power to ban or restrict the deposit of specified kinds of waste from landfill in Wales. Ensuring that particular kinds of waste are recycled or reused, or, in the case of residual waste, used for high efficiency energy generation, will deliver a number of environmental benefits and ensure that more preferable options under the waste hierarchy are used to manage our waste.”<sup>14</sup>

24. In relation to site waste management plans (sections 12-14), the Explanatory Memorandum states:

“The proposed Waste (Wales) Measure 2010 provides the Welsh Ministers with the power to make regulations about fees and charging schemes in relation to Site Waste Management Plans (SWMPs) which will be introduced for the construction and

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<sup>11</sup> EM, para 3.14

<sup>12</sup> EM, para 3.21

<sup>13</sup> EM, para 3.30

<sup>14</sup> EM, para 3.36

demolition (C&D) sector in Wales (section 12(2)(e)). This provision also restates the existing powers of the Welsh Ministers under section 54 of the Clean Neighbourhoods and Environment Act 2005 (CNEA) to make regulations requiring SWMPs.”<sup>15</sup>

25. The Explanatory Memorandum further states that the purpose of these site waste management plans is to:

“(…) help companies in the C&D sector to think and plan to prevent, minimise and recycle the waste being produced and divert waste away from landfill.”<sup>16</sup>

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<sup>15</sup> EM, para 3.42

<sup>16</sup> EM, para 3.43

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

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#### *General principles of the proposed Measure*

##### *Evidence from consultees*

26. The majority of evidence we received in relation to the general principles of the proposed Measure was positive, with most consultees, including Keep Wales Tidy, Cylch, RSPB Cymru, the Chartered Institute of Environmental Health Wales, New Earth Solutions, the Royal College of Nursing and the Wales Council for Voluntary Action (WCVA), welcoming the proposed Measure as a means of reducing the amount of waste and litter in Wales, and contributing to the development of more effective waste management arrangements in Wales, consistent with the waste hierarchy.

27. In expressing support for the proposed Measure, Keep Wales Tidy said:

“It is our opinion that the proposed charge would significantly reduce the amount of single use carrier bags in circulation, thereby reducing the amount being littered, which combined with the money raised via the charge has the potential to make genuine improvements within our communities, reduce the adverse affects on biodiversity and have positive impacts on the local and global environment.”<sup>17</sup>

28. The WCVA were similarly supportive of the proposed Measure, saying:

“WCVA agrees with the need for a Measure to deliver the stated objectives of making provision to reduce the amount of waste and litter in Wales and contribute to the development of environmentally beneficial projects.”<sup>18</sup>

29. In their evidence, the Chartered Institute of Environmental Health Wales said they were of the view that the proposed Measure was generally “desirable” in order to reduce the amount of plastic bag litter in Wales and achieve the stated objective of Wales becoming a high recycling society by 2025. They went on:

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<sup>17</sup> Written evidence, WM17

<sup>18</sup> Written evidence, WM28

“(…) the CIEH is of the view that a targeted approach such as the one proposed will focus local authorities to ensure that recycling, reusing and composting levels are driven up consistently.”<sup>19</sup>

30. However, they stated they could only provide “qualified support for the proposal that Welsh Ministers should have the powers suggested to require the Construction and Demolition sector to prepare plans for the management and disposal of waste created by its activities as necessary to achieve the objectives of the developing a more effective Waste Management system for Wales.”<sup>20</sup>

31. There were two other consultees who qualified their support for the provisions of the proposed Measure, namely the Confederation of British Industry (CBI) and the Environment Agency Wales.

32. The CBI and Environment Agency Wales both noted in their evidence that much of the policy detail would be a matter for future regulations and that, as such, it was difficult to form a conclusive view on the proposed Measure, although neither had any in-principle objections to the proposed Measure. (This is discussed in further detail in paragraphs 43-56 below).

33. A small number of consultees, including Boots, the WLGA, the Federation of Master Builders (FMB) and the Mid Wales Waste Partnership, stated they were not supportive of the general principles of the proposed Measure.

34. In their evidence, the WLGA said their “general position is that we question the need for the proposed Measure, given the range of works that are currently in hand that are working towards the same ends.”<sup>21</sup>

35. They expressed concern that the proposed Measure “appears to view local government as simply a service delivery agent, unable to lead and shape services to meet the individual circumstances of their communities”. They suggested that “a mixture of voluntary efforts and existing requirements and plans will go a long way towards achieving the stated objectives of the proposed Measure.”<sup>22</sup>

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<sup>19</sup> Written evidence, WM5

<sup>20</sup> *Ibid.*

<sup>21</sup> Record of Proceedings (RoP), para 121, 21 April 2010, Legislation Committee No. 4

<sup>22</sup> Written evidence, WM14



36. In their evidence, Boots argued that “the main effect of the proposal [in relation to single use carrier bags] will be to create an additional administrative burden on retailers”. They went on to say:

“The requirement in the proposed Measure for the compulsory direction of proceeds adds to the mood of punishment that this policy is in danger of creating, rather than creating a mood of encouragement.”<sup>23</sup>

37. The Local Authority Recycling Advisory Committee (LARAC) also questioned the provisions of the proposed Measure relating to single use carrier bags, arguing that the “resources required for enforcement and administration of the scheme could be disproportionate to the actual impact of reducing carrier bag use, which is a very minor portion of the waste stream. (...) Although visible to the public, plastic bags could be considered a ‘red herring’ in terms of prioritising resources in relation to wastes management.”<sup>24</sup>

38. In their evidence, the FMB stated that the provisions for site waste management plans in the proposed Measure were overly burdensome:

“It is fair to say that the FMB thinks that this may be a little bit of a sledgehammer to crack a nut and that such a heavily legislated approach might not be necessary.”<sup>25</sup>

39. They expressed concern that the small and medium enterprise construction sector has “experienced declining workloads for over two years (...) and is likely to remain without significant growth until 2012”. They argued that the provisions of the proposed Measure would not address problems such as fly-tipping, and could lead to compliant builders becoming less competitive. On this basis, they suggested the Minister should delay implementation of the relevant provisions of the proposed Measure “until the sector has returned to significant growth”.<sup>26</sup>

40. The Mid Wales Waste Partnership, Denbighshire County Council and Ceredigion County Council all argued that the statutory targets and penalties provided for by the proposed Measure were “excessive”<sup>27</sup> and

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<sup>23</sup> RoP, para 3, 25 March 2010, Legislation Committee No.4

<sup>24</sup> Written evidence, WM26

<sup>25</sup> RoP, para 70, 21 April 2010, Legislation Committee No.4

<sup>26</sup> *Ibid.* See also, written evidence, WM12

<sup>27</sup> Written evidence, WM29, 30 and 31

that “the reduction in waste is not guaranteed as the Measure does not target the issues which create waste.”<sup>28</sup>

### *Evidence from the Minister*

41. In her evidence on the general principles of the proposed Measure, the Minister said:

“Waste accounts for around 15 per cent of our ecological footprint, so, from a sustainability perspective, we need to take action to bring that down. The other major external imperative [for the proposed Measure] is the waste management hierarchy under the waste framework directive. It starts with reducing waste, then reusing, then recycling, then energy recovery, and then, last and very much least, disposal. So, the waste framework directive hierarchy looks at all the actions that can be taken to move away from disposal as the means of dealing with waste.”<sup>29</sup>

42. She went on:

“Our proposed Measure on waste brings forward a range of initiatives that contribute to the development of sustainable and effective waste management arrangements in Wales. (...) In addition, managing our scarce resources better will help to improve local environmental quality.”<sup>30</sup>

### ***Regulation and Order making powers in the proposed Measure***

#### *Evidence from consultees*

43. We received evidence from a number of consultees, including the CBI, Environment Agency Wales, ConstructionSkills Wales and the Law Society, saying they had found it difficult to comment on the general principles and content of the proposed Measure due to the fact that much of the policy detail would be implemented through regulations brought forward at a future date.

44. In their evidence on this point, the Law Society stated:

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<sup>28</sup> Written evidence, WM30 and 31

<sup>29</sup> RoP, para 4, 11 March 2010, Legislation Committee No.4

<sup>30</sup> RoP, para 5, 11 March 2010, Legislation Committee No.4

“It is difficult to judge the efficacy of the Measure when so much of the detail will be in Regulations to be made subsequently by Welsh Ministers.”<sup>31</sup>

45. The CBI made a similar point in their evidence:

“It is difficult to say with any clarity and certainty what our position is on the various provisions captured in this proposed Measure. We have no particular in principle objections to any of them. Most of it relates to how they will end up being implemented in practice. It is difficult for organisations to comment, and I imagine that it must be difficult for the committee to scrutinise when regulations are published at a much later stage after the proposed Measure has been debated. We would find it more helpful if we had earlier sight of the proposed regulations (...) so that we could give more informed comments to scrutiny committees such as this.”<sup>32</sup>

46. The Environment Agency Wales told us they were unable to comment on a number of matters relating to the proposed Measure, including how the funds raised from a charge on single use carrier bags should be distributed; the suitability of the WasteData Flow to monitor statutory recycling targets and landfill bans and; the resource implications for monitoring and enforcing any future landfill bans, without having sight of the regulations that would be brought forward under the proposed Measure:

“(...) much of the detail on how the measures will work in reality will come in subsequent regulations, through consultation.”<sup>33</sup>

47. Further to this, they expressed concern that the “introduction of supporting legislation appears to be piecemeal”:

“(...) from our point of view, it is the timing of when the subsequent regulations come into place, and how these marry up with the other interventions that need to be in place. (...) Once that fuller picture is available, it will be easier to see how the legislation fits in with the other components.”<sup>34</sup>

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<sup>31</sup> Written evidence, WM22

<sup>32</sup> RoP, para 161, 25 March 2010, Legislation Committee No.4

<sup>33</sup> RoP, para 111, 28 April 2010, Legislation Committee No.4

<sup>34</sup> Written evidence, WM16 and RoP, para 113, 28 April 2010, Legislation Committee No.4

48. The Environment Agency Wales suggested the Minister publish a “clear delivery plan (which includes a regulatory framework) for achieving the “Towards Zero Waste” outcomes.” They argued “this would provide the certainty that waste operators, regulators and waste producers need.”<sup>35</sup>

49. Similarly, ConstructionSkills Wales stated that, in order to provide a view on whether the proposed Measure was appropriate in terms of achieving its stated objectives, they would need to see the detail of the regulations on landfill bans and site waste management plans (SWMPs).<sup>36</sup> They agreed with the Environment Agency Wales that early sight of any future regulations and the plans for implementation of that legislation would be “beneficial” to the built environment sector in Wales.”<sup>37</sup>

50. On a related point, we received evidence from Boots, Tesco and the Co-operative saying they had found it difficult to scrutinise the Minister’s policy in relation to single use carrier bags without having first had sight of the regulations establishing a charge on single use carrier bags to be introduced under the Climate Change Act 2008. In their evidence, Boots said:

“This is sort of the cart coming before the horse with regard to this proposed Measure, in that we do not know what the regulations will say and we certainly do not know what the trigger will be for this proposed Measure, that may well be in the regulations that are planned to be introduced later this year.”<sup>38</sup>

51. Boots suggested the Minister “consider holding the proposed Measure back until the regulations from the Climate Change Act on single-use carrier bags are introduced so that we can fully understand what this proposed Measure would mean.”<sup>39</sup>

#### *Evidence from the Minister*

52. We drew the Minister’s attention to the evidence from consultees about the lack of policy detail provided by the proposed Measure, and

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<sup>35</sup> Written evidence, WM16

<sup>36</sup> Written evidence, WM 18

<sup>37</sup> *Ibid.*

<sup>38</sup> RoP, para 14, 25 March 2010, Legislation Committee No.4. See also written evidence, WM7 and WM15

<sup>39</sup> RoP, para 14, 25 March 2010, Legislation Committee No.4

asked her whether it would be more appropriate for greater detail to be provided on the face of the proposed Measure. Responding to this, the Minister stated:

“There is always an issue around the appropriate balance to be struck between the powers on the face of a Measure and what is left to regulation. The explanatory memorandum sets out why this proposed Measure contains enabling powers for Welsh Ministers to make subordinate legislation, which is likely to be subject to periodic review or amendment. That is the case in relation to the provision on some of the waste targets. It would be cumbersome, and it would take up an enormous amount of time for the National Assembly for Wales, if these amendments had to be done by Measure.”<sup>40</sup>

53. The Minister’s official argued:

“(…) in relation to some of the other subordinate legislation powers under the proposed Measure, specifically the landfill ones, we are talking about a policy area that is emerging and developing (...). This is an important legislative opportunity for us to ensure that we have the powers once we have reached a policy view on any proposed landfill bans, to be able to move quickly on those areas.”<sup>41</sup>

54. The Minister told us that that where the policy detail had been left to regulations, the proposed Measure made provision for “the most suitable subordinate legislative procedure”.<sup>42</sup>

55. Responding to the evidence from Boots that they had not had sight of the regulations to be made under the Climate Change Act relating to the introduction of a charge on single use carrier bags, the Minister said she would be publishing draft regulations and a Regulatory Impact Assessment for the charge on single use carrier bags on 4 June 2010.<sup>43</sup>

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<sup>40</sup> RoP, para 6, 5 May 2010, Legislation Committee No.4

<sup>41</sup> RoP, para 43, 11 March 2010, Legislation Committee No.4. See also RoP, para 6, 5 May 2010, Legislation Committee No.4

<sup>42</sup> RoP, para 6, 5 May 2010, Legislation Committee No.4

<sup>43</sup> Consultation launched by the Minister on 4 June 2010. Details available on the Welsh Assembly Government website, at:<http://new.wales.gov.uk/consultations/environmentandcountryside/carrierbagsre gs/?lang=en>

56. Responding to the suggestion by the Environment Agency Wales that the Minister bring forward a delivery plan for all legislation relating to waste, the Minister said:

“The waste agenda is being taken forward in ‘*Towards Zero Waste*’, which is our overarching waste strategy document for Wales. (...) a delivery plan will be prepared for each of the economic sectors, and will be fully consulted upon. The first four sector plans are the municipal sector plan; the construction and demolition sector plan; a collection, infrastructure and markets sector plan; and a retail sector plan.”<sup>44</sup>

### ***Regulatory Impact Assessment***

#### *Evidence from consultees*

57. Some consultees expressed concern about the accuracy of and level of detail provided in the Regulatory Impact Assessment as part of the Explanatory Memorandum.

58. In particular, the CBI said that, in their view, the robustness of the Regulatory Impact Assessment (RIA) was affected by the fact that much of the detailed regulation would be introduced at a later stage:

“We have some concerns over the robustness of the RIAs in this Measure. In particular we see the partial calculation of RIAs for the precise consequences of this Measure, with reference to other RIAs in preparation for other parts of what will ultimately be one piece of legislation. For example, the RIA on SWMPs in this Measure only attempts to calculate the costs to the regulatory authorities, with the inference that this will be passed on to construction companies. It makes no attempt to calculate the cost to companies of the preparation of SWMPs, which seems to be promised later.”<sup>45</sup>

59. They went on:

“It is extremely difficult for all concerned (those preparing the legislation, those scrutinising it, those giving evidence, and those who will ultimately be subject to it) to properly assess the

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<sup>44</sup> RoP, para 4, 5 May 2010, Legislation Committee No.4

<sup>45</sup> Written evidence, WM9

consequences when RIAs are prepared in this piecemeal manner.”<sup>46</sup>

60. In relation to single use carrier bags, they expressed concern that they had “yet to see an RIA for the overall policy proposal of mandating [a] charge for single use carrier bags, and are disappointed that this policy has proceeded so far without this calculation being made.”<sup>47</sup>

61. The CBI were critical that “no attempt has been made to calculate and allocate the costs resulting from [the landfill provisions] of this Measure”<sup>48</sup>, and questioned, in particular, the validity of the parts of the RIA relating to sections 12-14 of the proposed Measure on site waste management plans:

“If you calculate the cost to enforcement authorities, divide it by the number of plans, apparently two and a bit people across the whole of Wales will receive, appraise and monitor 2,200 site waste management plans across Wales. I am not quite sure what appraisal and monitoring will get done. It may be accurate, but it raises concerns; I do not know, I cannot tell from the RIA what will be done from that.”<sup>49</sup>

62. They also criticised these parts of the RIA for not calculating the cost of the provisions for construction companies.<sup>50</sup>

63. The WLGA were similarly critical of certain aspects of the RIA, suggesting the estimate that monitoring the mandatory scheme for the distribution of the net proceeds of a charge on single use carrier bags would require 5 per cent of a full time equivalent per local authority was unrealistic:

“That (5 per cent of a full-time equivalent) would equate to fewer than two hours for a person per week. That would not even scratch the surface. If you think of some larger authority areas, for example you will appreciate that they could lose that time just from travelling. If you want to do a serious piece of work on this and you really wanted to go to town on it, you

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<sup>46</sup> Written evidence, WM9

<sup>47</sup> *Ibid.*

<sup>48</sup> *Ibid.*

<sup>49</sup> RoP, para 231, 25 March 2010, Legislation Committee No.4

<sup>50</sup> Written evidence, WM9. See also RoP, para 231, 25 March 2010, Legislation Committee No.4

could have a full-time person in every authority working on it. More realistically perhaps, it could be someone working for half a week.”<sup>51</sup>

64. RSPB Cymru and Keep Wales Tidy both expressed concern with the cost estimates provided in the RIA for monitoring and evaluating the effectiveness of the schemes for distributing the charge on single use carrier bags.<sup>52</sup>

*Evidence from the Minister*

65. Responding to the criticisms of consultees that there were no cost estimates for the delivery of the policy as a whole, the Minister stated:

“We obviously look at the issue cumulatively in policy terms, but we are doing exactly the same as what is done with legislation made in other places in that the specific issues around the costs and benefits of the regulations are tested through regulatory impact assessments. We continue to have a very close dialogue with those people who are involved in the context of each of the economic sectors, which is why the sector plans will also be critical.”<sup>53</sup>

66. More specifically, and in relation to the policy for single use carrier bags, the Minister’s official told us:

“This proposed Measure is about how the net proceeds [from the sale of carrier bags] could be applied, but there is no policy intention, certainly for the time being, to use the powers in it. The total end-to-end cost for business will therefore be reflected in the forthcoming regulatory impact assessment, which will accompany the consultation on the charge.”<sup>54</sup>

67. Responding to concerns about the drafting of the Explanatory Memorandum and the complexity of some of the information provided within it, particularly relating to waste targets, the Minister gave a commitment to revise the wording of the Explanatory Memorandum

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<sup>51</sup> RoP, para 146, 21 April 2010, Legislation Committee No.4

<sup>52</sup> Written evidence, WM 27 and WM17

<sup>53</sup> RoP, para 15, 5 May 2010, Legislation Committee No.4

<sup>54</sup> RoP, para 18, 5 May 2010, Legislation Committee No.4



following completion of Stage 2 proceedings on the proposed Measure.<sup>55</sup>

### *Our view*

#### *Need for legislation*

68. We note the evidence from the Minister that the purpose of the proposed Measure is to give effect to Welsh Assembly Government commitments in relation to developing a more sustainable approach to waste management in Wales, as set out in government's waste strategy, 'Towards Zero Waste'.

69. The evidence we received from consultees illustrated a general consensus in favour of the need for legislation to make provision for the reduction of waste and litter in Wales and to contribute to the development of more effective waste management arrangements in Wales.

#### *Lack of policy detail and cost estimates*

**70. We note the evidence from consultees that much of the policy detail of the proposed Measure, as well as key operational detail, is to be set out in future regulations made under a combination of the proposed Measure and the Climate Change Act 2008. Some consultees said that, as a result, it had been difficult to comment in any depth on the provisions of the proposed Measure.**

71. In relation to the lack of detail contained in the proposed Measure, we note that a policy view on certain matters, namely single use carrier bags and landfill, has yet to be formulated. The Minister told us that policy in these areas would be developed following consultation with stakeholders.

**72. We believe the lack of developed policy proposals has resulted in the government not being able to provide detailed cost estimates for all policy areas of the proposed Measure. In particular, we believe the Regulatory Impact Assessment (RIA) may well underestimate the costs of monitoring the schemes relating to single use carrier bags and site waste management plans. We**

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<sup>55</sup> Letter from the Minister for Environment, Sustainability and Housing, [27 March 2010](#), [27 April 2010](#); and [letter from the Minister for Environment, Sustainability and Housing to the Finance Committee](#), 9 June 2010

**draw the Minister's attention to the criticisms made by consultees of the financial information provided in the RIA.**

**73. Further to this, we note the RIA contains information relating to the costs of only part of the Minister's wider policy on single use carrier bags. Whilst we accept this is due to the fact that the majority of the policy in this area will be implemented in regulations made under the Climate Change Act 2008, we believe the Minister should consider providing cost estimates for the overall policy in relation to single use carrier bags.**

### *Conclusion*

74. We note that the majority of consultees expressed support for the general principles of the proposed Measure as a vehicle for delivery of the government's commitments in this policy area, although some were concerned by the lack of policy detail.

**75. Based on the evidence we received, we are content to recommend that the Assembly agree the general principles of the proposed Measure, in so far as it provides a framework within which the Welsh Assembly Government will implement its strategy on waste.**

76. However, we are concerned that the Minister has introduced a proposed Measure for which so much policy detail has yet to be formulated.

77. Whilst we note the Minister's evidence that much of this policy will be determined in forthcoming consultation with stakeholders, we consider it would have been more appropriate for this work to have been undertaken in advance of the introduction of the proposed Measure, in order that a more complete legislative proposal could have been scrutinised.

## 4. Sections 1-2: Single use carrier bags

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### *Background*

78. Sections 1-2 of the proposed Measure seek to amend the Climate Change Act 2008 to provide Welsh Ministers with powers to require retailers to pass the net proceeds from the sale of single use carrier bags to specified purposes or persons.

79. The proposed Measure does not provide for the introduction of a charge on single use carrier bags – this is already provided for under the Climate Change Act 2008. The powers in the 2008 Act also enable Welsh Ministers to require retailers to keep records setting out, amongst other things, the uses to which the net proceeds from the charge have been put.<sup>56</sup>

80. The Explanatory Memorandum notes that a number of retailers currently charge for carrier bags on a voluntary basis and pass the net revenue from such charges to good causes. It states that the Minister's intention is to develop a voluntary agreement with the large retailers regarding the use to which the net receipts from a charge will be put. Under a voluntary agreement, retailers would manage the collection and distribution of the charge, having accounted for their administrative costs and the costs of the single use carrier bags. Net receipts would then be passed from retailers directly to environmental or other projects.<sup>57</sup>

81. The Explanatory Memorandum sets out that, in the event that the voluntary agreement “does not deliver satisfactory outcomes”, the Minister would be able to propose regulations, using the powers in the proposed Measure, to establish a mandatory scheme, under which retailers would be required to pass net proceeds from the sale of carrier bags to ‘specified purposes or persons’. These would be limited to purposes that related to specific Matters set out in Field 6 (environment) of Schedule 5 to the Government of Wales Act 2006.<sup>58</sup>

82. We received evidence from some consultees commenting on the principle of introducing a charge for single use carrier bags. As the powers to introduce a charge on single use carrier bags are provided

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<sup>56</sup> EM, para 3.13

<sup>57</sup> EM, para 3.8

<sup>58</sup> EM, para 3.13

for in a separate enactment, this matter falls outside the scope of the proposed Measure and, as such, will not be addressed in this report.

83. Although the voluntary agreement with large retailers regarding the destination of net proceeds from a charge on carrier bags does not require the legislative backing of the proposed Measure, it is central to the Minister's stated policy objective of reducing the environmental impacts of single use carrier bags. Furthermore, its failure to deliver satisfactory outcomes would provide the trigger for the use, by the Minister, of the relevant provisions in the proposed Measure. On this basis, the following chapter of this report will address both the voluntary agreement and any mandatory scheme that may follow.

## **Distribution of net proceeds from a charge on single use carrier bags – the voluntary agreement**

### *Background*

84. We received a considerable amount of evidence about the Minister's proposal to develop a voluntary agreement with large retailers for the distribution of net proceeds of single use carrier bag charges. The evidence we received fell into five distinct categories:

- development and scope of the voluntary agreement;
- openness and transparency of the voluntary agreement;
- monitoring of the voluntary agreement and mandatory scheme;
- timing of the review of the voluntary agreement;
- measuring the success of the voluntary agreement (the 'trigger' mechanism).

85. Further detail on each of these is provided in the following paragraphs.

### ***Development and scope of the voluntary agreement***

#### *Background*

86. The Explanatory Memorandum states that, in relation to the distribution of net proceeds from a charge on single use carrier bags,

the Minister intends to develop a voluntary agreement with the large retailers in Wales in the first instance.<sup>59</sup>

87. Should the voluntary agreement prove unsatisfactory, the Minister would be able to use the powers in the proposed Measure to establish a mandatory scheme which could apply to all retailers.

*Evidence from consultees*

88. In the evidence we received, there was support from, amongst others, the retail sector for the development of a voluntary scheme in the first instance. Both Cylch and the Local Authority Recycling Advisory Committee (LARAC), however, argued against the development of a voluntary agreement, with Cylch calling for the introduction of a mandatory scheme straight away.

89. We also received evidence questioning why the scope of the voluntary agreement was restricted to large retailers only, with some consultees suggesting that it should be developed in conjunction with all retailers in order to avoid confusion for consumers.

90. In their evidence, Keep Wales Tidy told us they were “happy to start off with the voluntary scheme, but (...) want the legislation to be in place in case the voluntary scheme fails.”<sup>60</sup>

91. Tesco, the British Retail Consortium (BRC) and the CBI all expressed their support for the introduction of a voluntary agreement in the first instance, with the BRC saying:

“We favour the voluntary approach, and the evidence that we have is that a voluntary agreement between the major grocery retailers and each of the national UK Governments has effectively halved the number of carrier bags issued between May 2006 and May 2009. That has been achieved on a voluntary basis. That is the best way to take customers with us, by rewarding positive behaviour rather than taking a more punitive approach.”<sup>61</sup>

92. In their evidence, the CBI said:

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<sup>59</sup> EM, para 3.8 and 8.1.33

<sup>60</sup> RoP, para 14, 28 April 2010, Legislation Committee No.4

<sup>61</sup> RoP, para 5, 25 March 2010, Legislation Committee No.4

“We are pleased to note from the Explanatory Memorandum that it is the Assembly Government’s intention to allow a voluntary approach to the distribution of the proceeds of the carrier bag charge, and to hold in abeyance the power sought in the Measure to mandate the recipients.”<sup>62</sup>

93. Similarly, the Environment Agency Wales were content for the voluntary agreement to be pursued in the first instance:

“It is only if good evidence is brought forward that a voluntary scheme is not working that there should be the backstop of regulation. The regulation itself would place an extra burden on the retailers and would also undoubtedly place an extra burden on the local authorities. That is why we think that it is important to see whether the voluntary scheme works before bringing forward regulations.”<sup>63</sup>

94. Cylch, however, argued for a mandatory scheme to be introduced from the outset. In their written evidence, they said:

“Cylch believes that the net proceeds of revenues raised from the sale of single use carrier bags should reflect a downward trend in the use of these bags. Cylch is of the strong opinion that a voluntary code with only large retailers (20-50 retailers) is not enough to achieve this trend. It is imperative that legislative options are used to ensure all retailers (large and small) introduce a charge for single use carrier bags.”<sup>64</sup>

95. They reiterated this point in oral evidence, arguing that the reason they would prefer the introduction of a mandatory scheme from the outset is that:

“(…) voluntary measures, where commercial interests are concerned, are very rarely followed; even if they are followed, they are followed cynically to the letter. (...) If we are saying that we expect all retailers to get on board with this proposed Measure, we are being very optimistic. It will be left to the large retailers to get PR out of the fact that they are complying with the scheme, but that will only touch the surface- and, frankly, it would be unfair to all the others as well. If we are to make this effective, it needs to be implemented as a mandatory piece of

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<sup>62</sup> Written evidence, WM9

<sup>63</sup> RoP, para 126, 28 April 2010, Legislation Committee No.4

<sup>64</sup> Written evidence, WM20

legislation from the outset, so that everyone is on a level playing field from the beginning.”<sup>65</sup>

96. LARAC were similarly unsupportive of the proposals for a voluntary agreement, arguing:

“We don’t believe that a voluntary agreement will work, as we believe retailers will want to use their own revenue streams as they see fit. They are likely to fund programmes leading to waste avoidance and reduced emissions in their own ways, consistently with their Corporate Social Responsibility (CSR) policies.”<sup>66</sup>

97. Despite being content with the implementation of a voluntary agreement in the first instance, Keep Wales Tidy suggested that some confusion could be caused as a result of a voluntary agreement applying to large retailers only:

“Keep Wales Tidy would want to make sure that the charge and distribution of the funds raised is introduced in a way that makes it easy for retailers to implement, and that it can be fully understood by consumers. For example, some smaller retailers would appear to be excluded from the proposed voluntary scheme, which from paragraphs 3.8 and 8.1.33 of the Explanatory Memorandum would seem only to apply to the largest 20-50 retailers in Wales. Currently, it is the smaller retailers who are less likely to charge for bags or have any systems in place to distribute funds raised, so one impact of the introduction of the Measure could be to ensure these smaller retailers are included.”<sup>67</sup>

98. They went on:

“The non-adoption/ participation in a voluntary scheme by some retailers could lead to confusion amongst consumers and not result in the desired change in behaviour and the reduction in bags used. It is also important to have a level playing field amongst all retailers to avoid unfair competition.”<sup>68</sup>

99. On this point, they offered to work with smaller retailers such as local shopkeepers, to put simple systems in place for the collection of

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<sup>65</sup> RoP, para 13, 28 April 2010, Legislation Committee No.4

<sup>66</sup> Written evidence, WM26

<sup>67</sup> Written evidence, WM17

<sup>68</sup> *Ibid.*

charges for single use carrier bags. They suggested they could then act as an administrative body, ensuring that funds raised from the sale of single use carrier bags were used to support projects in the local area.<sup>69</sup>

100. The Welsh Council for Voluntary Action (WCVA) and RSPB Cymru were stronger in their evidence on the scope of the voluntary agreement, with the WCVA saying:

“The net proceeds of revenues raised from the sale of single use carrier bags should reflect a real decrease in their use. We doubt that a voluntary code with only large retailers is enough to achieve this. As indicated in the Explanatory Memorandum, of the 8,500 retailers in Wales only approximately 250 are classified as large businesses. We feel that this segmentation of large and small retailers and the lack of a government mandate on the collection and dispersal of the charge indicates a lack of commitment to the principles associated with a ‘one planet Wales’.”<sup>70</sup>

101. RSPB Cymru noted in their evidence:

“(..) if none but 20-50 of the largest retailers opt to pay the revenue to projects, presumably the risk that “*there might be a desire on the part of retailers to promote the use of single use carrier bags and increase their profits*” (EM para 8.1.43) would still apply for those not participating in the voluntary scheme.”<sup>71</sup>

#### *Evidence from the Minister*

102. In relation to the introduction of a voluntary agreement in the first instance, the Minister told us:

“The sector has told us that it is keen to support the voluntary agreement rather than have mandatory requirements. Therefore, working with them as effectively as possible to deliver that is in all of our interests.”<sup>72</sup>

103. She said:

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<sup>69</sup> RoP, para 17-18, 28 April 2010, Legislation Committee No.4

<sup>70</sup> Written evidence, WM28

<sup>71</sup> Written evidence, WM27

<sup>72</sup> RoP, para 50, 11 March 2010, Legislation Committee No.4



“(…) we are extremely keen to work with a range of organisations. A communication plan is being developed as we speak. We are also engaging with the representative bodies of relevant organisations so that the voluntary agreement is in place by the time the charge [for single use carrier bags] is introduced in 2011, and to ensure that we have full stakeholder involvement.”<sup>73</sup>

104. She reiterated this point in later evidence, stating:

“If I were the Minister at a future point, I would make the mandatory scheme cover all retailers. However, the decision of who is covered by a mandatory scheme will be taken post the election in May 2011, because this Government has made it clear that we are not introducing a mandatory scheme when we introduce the collection arrangements. I would continue to argue that the best way of delivering the scheme is to have voluntary participation, and I would be looking to work with retailers in Wales to secure their voluntary participation in the mandatory charge.”<sup>74</sup>

105. On the question of the scope of the voluntary agreement, we asked the Minister why she intended to pursue a voluntary agreement with large retailers only. Responding to this question, she stated:

“Around 90 per cent of single-use carrier bags in Wales come from the large retailers with more than 50 employees. We wanted to ensure that the large retailers passed on the proceeds to good causes. (...) the delivery and operation of that voluntary scheme will primarily be in the context of the large retailers, because they are the largest users of the bags affected by the new charge.”<sup>75</sup>

106. We asked why, if the voluntary agreement would cover “around 90 per cent” of single-use carrier bags in Wales, she intended the mandatory scheme to apply to all retailers. On this point, she argued:

“The mandatory scheme could apply to some or all retailers in Wales. That would be for a future Government to decide, if a decision were made to implement the mandatory provisions. One concern that was also expressed in this committee is that

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<sup>73</sup> RoP, para 50, 11 March 2010, Legislation Committee No.4

<sup>74</sup> RoP, para 35, 5 May 2010, Legislation Committee No.4

<sup>75</sup> RoP, para 31, 5 May 2010, Legislation Committee No.4

delivering a mandatory scheme as regards where the proceeds are directed could be difficult for very small retailers. We wanted to make sure that we lifted any barriers, particularly to small retailers.”<sup>76</sup>

### *Our view*

107. In relation to the Minister’s proposal to develop a voluntary agreement with retailers for the distribution of net proceeds from a charge on single use carrier bags, we note the general support expressed by the retail sector for this proposal.

**108. We also note and are content with the Minister’s reasons for developing a voluntary agreement with retailers prior to implementing the provisions of the proposed Measure in order to introduce a mandatory scheme.**

109. In relation to the scope of the voluntary agreement, we note the Minister’s evidence that, under the provisions of the Climate Change Act 2008, as of 2011, all retailers will be required to charge their customers for single use carrier bags, and to keep records detailing, amongst other things, the uses to which the net proceeds have been put.

110. On this basis, we consider the main burden of the legislation in this policy area would be imposed by the 2008 Act, rather than the proposed Measure and that, furthermore, the burden under that Act would be as significant for small and medium sized retailers as it would be for large retailers.

111. We are also mindful of a possible perverse incentive of the voluntary agreement as currently proposed, in that small and medium sized retailers, who would be required to charge for single use carrier bags under the provisions of the Climate Change Act 2008, would be able to retain all proceeds from such a charge, as long as they did not participate in the voluntary agreement.

112. For the reasons outlined above, **we recommend the Minister encourage all retailers to participate in the voluntary agreement for the distribution of net proceeds from a charge on single use carrier bags.**

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<sup>76</sup> RoP, para 33, 5 May 2010, Legislation Committee No.4

## ***Openness and transparency of the voluntary agreement***

### *Background*

113. The Explanatory Memorandum states that “under (...) a voluntary agreement, retailers will manage the collection of the charge and its distribution (...)”.<sup>77</sup>

114. We asked consultees whether they considered that such arrangements would ensure the openness and transparency of the voluntary agreement.

### *Evidence from consultees*

115. In their evidence, Boots, Tesco, the BRC, the Confederation of British Industry (CBI) and the WLGA all stated that it should be easy for retailers to ensure the voluntary scheme was open and transparent.

116. Both Tesco and Boots stated that they already publish details of any money they raise for charities as part of their corporate social responsibility reports. In their evidence, Boots stated:

“Boots specifically has a bag, which we call a ‘gorgeous bag’, for which we have entered a charity partnership with Breast Cancer Care and the Eve Appeal, which receive all the profits made from selling that. Consumers like it and respond to our efforts in this area, and they purchase it for that reason. We publish the amount of money that we raise through that as part of our corporate social responsibility report. It is also monitored by the charity and internally so that we can give it to those charities.”<sup>78</sup>

117. Tesco told us:

“We raise large sums for charity (...). So, we would see any money raised through us by a levy being published as part of our corporate responsibility plan.”<sup>79</sup>

118. The BRC stated that the threat of a mandatory scheme being introduced in the event that the voluntary scheme fails to work would provide sufficient incentive for retailers to be open and transparent:

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<sup>77</sup> EM, para 3.8

<sup>78</sup> RoP, para 25-27, 25 March 2010, Legislation Committee No.4

<sup>79</sup> RoP, para 28, 25 March 2010, Legislation Committee No.4

“(...) the regulations, as proposed [under the Climate Change Act 2008], intend to require retailers to report what they have done with the net proceeds of any money that they have raised. That would be effective, certainly in the presence of the eventual Measure, so that if retailers did not report or act in the spirit of the agreement, something more difficult or burdensome would be coming down the line. It is my personal belief that the majority of retailers will give the money raised to intended causes, because they will have to report back.”<sup>80</sup>

119. In their evidence, the CBI said that achieving openness and transparency in the voluntary agreement should be “quite simple.” They argued:

“(...) most of the big retailers already have well-established corporate social responsibility policies and have already donated large sums of money to causes that the retailers and their customers support. In my experience, many small retailers also contribute to local causes. I would expect reputation to be the biggest protector of the Assembly Government’s aspirations (...).”<sup>81</sup>

120. The WLGAs were of a similar opinion:

“Under a voluntary agreement, you would imagine, hopefully, that the retailers would be only too keen to publicise and to promote where their funds were going. It is in their interests to make it clear that they are using their funds in a socially useful way.”<sup>82</sup>

### *Evidence from the Minister*

121. We asked the Minister how she would ensure openness and transparency of the voluntary agreement in terms of the collection of charges and the distribution of funds raised from single use carrier bags. She said:

“There are two things to say on that. The first is that the requirement to publish information will apply to retailers that, in a given year, give out a certain number of bags and whose

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<sup>80</sup> RoP, para 33, 25 March 2010, Legislation Committee No.4

<sup>81</sup> RoP, para 186, 25 March 2010, Legislation Committee No.4

<sup>82</sup> RoP, para 132, 21 April 2010, Legislation Committee No.4

turnover is more than a certain amount. So, the larger retailers will be required to publish the information.”<sup>83</sup>

122. She went on:

“The retailers themselves will be responsible for distributing the net proceeds from the charge, and they will be required to keep records on the use of those net proceeds. The climate change legislation that introduces the power to charge also means that retailers will be responsible.”<sup>84</sup>

### *Our view*

123. In relation to whether the arrangements for a voluntary agreement provide for openness and transparency, we note that, under the provisions of the Climate Change Act 2008, retailers would be responsible for the collection and distribution of the net proceeds from a charge on single use carrier bags. We also note that, under the same legislation, they would be required to keep records on the use of those net proceeds.

**124. We note the general consensus amongst consultees who provided evidence on this point that there was an expectation that retailers would operate in an open and transparent manner, not least because of their corporate responsibility policies and the threat of the implementation of a mandatory scheme should the voluntary scheme prove unsuccessful.**

### ***Monitoring of the voluntary agreement and mandatory scheme***

#### *Background*

125. The Explanatory Memorandum states that, under the voluntary agreement, individual retailers would be responsible for administering the proceeds from the sale of single use carrier bags.

126. Although there was disagreement amongst consultees as to how the voluntary agreement, and any future mandatory scheme, should be monitored in practice, there was support in favour of the principle of monitoring arrangements being put in place.

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<sup>83</sup> RoP, para 65, 11 March 2010, Legislation Committee No.4

<sup>84</sup> RoP, para 66, 11 March 2010, Legislation Committee No.4

*Evidence from consultees*

127. Some consultees felt that the distribution of funds under both the voluntary agreement and mandatory scheme should be independently monitored.

128. In its written evidence, the Chartered Institute of Environmental Health stated:

“It does (...) seem to be the case that for the system to operate there will have to be an overseeing mechanism. (...) The scheme proposed relies on the premises complying and voluntarily paying to the arms length third party such monies as are generated under the scheme. Although there are powers given to Welsh Ministers to recover such monies if they are not accepted or applied in accordance with the scheme there is no indication as to how this will be detected or enforced.”<sup>85</sup>

129. They went on:

“CIEH has no wish to see a burdensome regime established to ensure compliance with the Measure but we are unconvinced that the system will work without some form of proper enforcement mechanism. We suspect that such a system will be vulnerable to mismanagement and to fraud which may lead to the whole measure falling into disrepute. We take the view that a proper and robust enforcement framework is required and that there is a need for a proper enforcement scheme.”<sup>86</sup>

130. In its evidence the Waste Resources Action Programme (WRAP) suggested that some monitoring of the administration of the voluntary agreement would be advisable:

“We certainly feel that a voluntary scheme needs independent monitoring. That is what WRAP currently does for the voluntary scheme to reduce the number of carrier bags. For any mandatory scheme, it may be worth looking at the costs of each option or approach before reaching a decision.”<sup>87</sup>

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<sup>85</sup> Written evidence, WM5

<sup>86</sup> *Ibid.*

<sup>87</sup> RoP, para 21, 21 April 2010, Legislation Committee No.4

131. Similarly, RSPB Cymru felt strongly that arrangements for monitoring the effectiveness of the voluntary agreement should be put in place:

“(…) it is a matter of great concern that, under assessment of the costs of the voluntary approach, no cost is allocated for monitoring. If the uptake and effectiveness of the scheme is not assessed, how will the Assembly Government be able to fully assess whether the policy objective of reducing the impact of single use carrier bags on the environment is being achieved?”<sup>88</sup>

132. In its written evidence, Keep Wales Tidy argued that if the distribution of the charge were to be a matter for retailers, funds could be directed to projects that would not support the environment:

“Although Keep Wales Tidy accepts that retailers can make a good case for being allowed to distribute funds to projects of their choosing in line with their corporate responsibility agenda, we are concerned that this may mean that some of the revenue from charging may go to fund projects that will not benefit the environment in Wales or promote positive environmental behaviour.”<sup>89</sup>

133. They went on to say that that administrative costs to retailers of distributing the funds raised from a charge could be reduced by funds being distributed via a central organisation, such as Keep Wales Tidy.

134. However, Boots and the Co-operative both argued against the need for an independent body to monitor the administration, by retailers, of the net proceeds. In oral evidence, the Co-operative stated:

“We are encouraged that the proposed Measure does not provide for the establishment of a third party, as was originally proposed. In our opinion, that would have been an unnecessarily bureaucratic move, interfering with the relationship between the communities where funds are raised and spent.”<sup>90</sup>

135. Although Tesco agreed with Boots and the Co-operative that the day-to-day administering of the net proceeds should be a matter for

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<sup>88</sup> Written evidence, WM27

<sup>89</sup> Written evidence, WM17

<sup>90</sup> RoP, para 234, 28 April 2010, Legislation Committee No.4

retailers, they stated they would be happy for an independent body to review the overall effectiveness of the scheme:

“If it is looking at whether all retailers are co-operating with a voluntary scheme, I see no problem with that being reviewed by independent external people. (...) someone has to look at all retailers to see whether the scheme is working (...). An independent group of experts who do not have an interest in receiving the moneys would be the best group of people to look at it.”<sup>91</sup>

136. The Environment Agency Wales was also of the opinion that the administering of both the voluntary and mandatory schemes should be a matter for retailers, and that it should be for the Welsh Assembly Government and retailers to decide if the scheme was effective:

“We support the retailers being given an opportunity to administer the scheme themselves. That is in line with the approach that we take with people whom we regulate, so we are moving towards a system in which operators are encouraged to self-monitor the discharge of emissions. (...) We feel that retailers are best placed to understand how to engage their customers on the distribution of funds.”<sup>92</sup>

137. The WLGA agreed that, generally, retailers should be responsible for administering the net proceeds, but that smaller retailers may need some assistance. They did, however, suggest that “some sort of independent overview of the system” was desirable.<sup>93</sup>

138. Further to this, both the WLGA and the CBI questioned the estimate of costs provided in the Explanatory Memorandum for monitoring the mandatory agreement. The WLGA argued that the 5 per cent of a full time equivalent per local authority “would not even scratch the surface”.<sup>94</sup>

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<sup>91</sup> RoP, para 86, 25 March 2010, Legislation Committee No.4

<sup>92</sup> Written evidence, WM16

<sup>93</sup> RoP, para 134, 21 April 2010, Legislation Committee No.4

<sup>94</sup> RoP, para 146, 21 April 2010, Legislation Committee No.4. See para 61-63 of this report for further information on this point.



### *Evidence from the Minister*

139. We asked the Minister what monitoring arrangements would be put in place as part of the voluntary agreement. In answer to this, she argued:

“Under the Climate Change Act 2008, retailers will be required to keep accurate records of what they have done with the net proceeds [from the charge on single use carrier bags]. So, there will be clear monitoring, and retailers will be able to use an element of the funds with regard to the administration. We will also monitor this carefully. We estimate that the monitoring costs will be no more than £10,000, but we would be happy to revise the regulatory impact assessment to reflect that, if that was felt to be necessary. However, the primary monitoring mechanism will be the monitoring done by those who are delivering the scheme.”<sup>95</sup>

140. In view of the strength of evidence from some consultees regarding the need for some measure of independence in monitoring the voluntary agreement, we asked the Minister whether the arrangements she had outlined would be sufficient. On this point, she argued:

“You must remember that major sanctions would be taken against [retailers] if they were not recording accurately the number of bags sold and the receipt of the charges, because that is a critical part of the legislation [the Climate Change Act 2008]. They will also be monitored by local authorities with regard to enforcement issues, but the monitoring of the voluntary scheme will be undertaken in partnership between the Assembly Government department and the retailers in the same way as the voluntary agreement was developed.”<sup>96</sup>

141. She confirmed that details of the monitoring arrangements would form part of the forthcoming consultation with retailers on the development of a voluntary agreement, but that she envisaged a complaints-led process in relation to the enforcement of any duties imposed by the proposed Measure in relation to single use carrier

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<sup>95</sup> RoP, para 91, 5 May 2010, Legislation Committee No.4

<sup>96</sup> RoP, para 95, 5 May 2010, Legislation Committee No.4

bags.<sup>97</sup> She also said that she expected guidance on the voluntary agreement to be provided as part of that agreement.<sup>98</sup>

### *Our view*

142. In relation to the monitoring of both the voluntary agreement and a mandatory scheme, we note that most consultees who commented on this point expressed support for the principle of independent monitoring in order to ensure the continued effectiveness of the agreement or scheme. There was, however, disagreement as to how such independent monitoring would be carried out in practice, particularly without it being overly costly or burdensome.

143. Whilst we acknowledge the evidence from the Minister that details of the monitoring arrangements would form part of her forthcoming consultation with retailers on the development of the voluntary agreement, we are nonetheless concerned that so little policy detail in relation to these arrangements has been provided by the Minister in the context of the proposed Measure. We are similarly concerned that so much of the policy detail in relation to the monitoring and auditing arrangements for a mandatory scheme under the proposed Measure is to be a matter for future regulations. This makes it difficult to judge the appropriateness and effectiveness of such arrangements.

**144. We recommend the Minister clarify her intentions in relation to the monitoring and auditing of the voluntary agreement and mandatory scheme. We believe this would be beneficial for all concerned with the relevant provisions of the Climate Change Act 2008 and this proposed Measure.**

**145. In relation to costs, we note that the Minister has estimated the cost of monitoring the relevant provisions of the Climate Change Act 2008 as being no more than £10,000. We have doubts about the accuracy of this estimate and recommend the Minister gives further consideration to this matter.**

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<sup>97</sup> [Letter from the Minister for Environment, Sustainability and Housing to the Finance Committee](#), 9 June 2010

<sup>98</sup> RoP, para 60, 5 May 2010, Legislation Committee No.4

## ***Timing of the review of the voluntary agreement***

### *Background*

146. A number of consultees raised the question of timing of the review of the voluntary agreement, although there was no clear consensus as to how frequently the effectiveness of the voluntary scheme should be reviewed.

### *Evidence from consultees*

147. In their evidence, the WLGA suggested that such a review could take place as part of the annual report process:

“If there is a voluntary scheme in place, you would want some sort of reporting on that system - possibly an annual reporting arrangement. At annual report time, I would have thought that a review should be undertaken of how the system is working.”<sup>99</sup>

148. Keep Wales Tidy suggested that “a minimum of a year” should be allowed before reviewing the agreement, “with perhaps informal quarterly updates to the Assembly.” They said provision for this should be included in the proposed Measure.<sup>100</sup>

149. In its evidence, the Environment Agency Wales suggested that a five-year period of review, such as that undertaken under the Landfill Allowances Scheme, might be the most appropriate:

“We believe that a reasonable timescale would be one in which there is sufficient time for retailers to put the voluntary scheme in place, to get it up and running, and to collect some sort of data, so that you could see trends in the success of the scheme, should any unintended consequences and any wilful non-compliance arise. The time that that takes is a matter of judgement. However, I can tell you about our experiences of validating data for the landfill allowances scheme. The scheme was introduced in 2004, and the first review of the allowance was made in 2009. So that gives some indication.”<sup>101</sup>

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<sup>99</sup> RoP, para 138, 21 April 2010, Legislation Committee No.4

<sup>100</sup> RoP, para 23, 28 April 2010, Legislation Committee No.4

<sup>101</sup> RoP, para 119, 28 April 2010, Legislation Committee No.4

150. The CBI suggested that any review of the effectiveness of the voluntary scheme should be part of a wider review of the success of the charge on single use carrier bags:

“There probably ought to be a review period for the whole proposal to levy charges for single-use carrier bags in Wales. I guess that you would need to allow sufficient time for it to be implemented in order for consumers to take on board the changing circumstances and react to them, and maybe allow time for any tapering off in the initial enthusiasm as was seen in Ireland. Therefore, I would have thought that you would need a period of about three years to review the whole policy and whether it has been a success or not, and I would not want to have differing review periods for different bits of the legislation - I would rather do it all in one go.”<sup>102</sup>

#### *Evidence from the Minister*

151. We questioned the Minister on the evidence we received relating to the timeframe for a review of the voluntary agreement. On this point, she said:

“I thought that it would be sensible to review it probably halfway through the next Assembly. I thought that it might make sense to review it two years into the scheme, because that Assembly could then decide whether to make any different legislative arrangements.”<sup>103</sup>

152. She went on:

“If the scheme is working broadly well, you may well want to look at a longer timetable for the review, but it will probably need a review in the next Assembly, and that will be a matter for the Members of that Assembly.”<sup>104</sup>

#### *Our view*

153. Whilst we consider it would be inappropriate for the proposed Measure to make provision for the timing of a review of the success of the voluntary agreement, we are concerned that so little detail in

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<sup>102</sup> RoP, para 193, 25 March 2010, Legislation Committee No.4

<sup>103</sup> RoP, para 40, 5 May 2010, Legislation Committee No.4

<sup>104</sup> *Ibid.*

relation to the timing of such a review has been provided by the Minister.

**154. We recommend the Minister clarify her intentions in relation to the timing of a review of the voluntary agreement. We believe this would be beneficial for all concerned with the relevant provisions of this proposed Measure.**

***Measuring the success of the voluntary agreement (the ‘trigger’ mechanism)***

*Background*

155. We received evidence from a number of consultees calling for greater clarity as to the criteria to be used in judging the success of the voluntary scheme, who should be involved in assessing this, and the ‘trigger mechanism’ for the introduction of a mandatory scheme.

*Evidence from consultees*

156. Boots, Tesco, the BRC and the WLGA all stated that greater clarity was needed as to the criteria that would be used to measure the success or failure of the voluntary agreement.

157. In their evidence, Boots said:

“The point of success would be to have secured a reduction in the use of carrier bags, so that is what needs to be measured. As a retailer, corporately, it would be good to have a handle on how that is measured, rather than individual stores measuring it. So, that adds complexity. A far better way of approaching it would be for us to provide the Assembly Government with information on how many carrier bags we have used, how much we have generated, and what we have used before. The measure of success should not happen at a store level, which would add complexity, and would also be complex for smaller businesses.”<sup>105</sup>

158. They went on:

“We would want to see different measures of success, rather than specifically a reduction in the number of carrier bags and paper bags. There should be a proposal about what we would

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<sup>105</sup> RoP, para 82, 25 March 2010, Legislation Committee No.4

measure as a package to ensure that the intentions of the regulations and the proposed Measure are being achieved.”<sup>106</sup>

159. The BRC told us that “the criteria for success should (...) be defined upfront, so that retailers know what is expected of them.”<sup>107</sup>

160. They went on:

“I think that we need a clear definition upfront of what success is and then we need an independent review to determine whether it has failed or worked. That idea of only imposing those requirements on retailers who have not come forward with a voluntary agreement seems sensible.”<sup>108</sup>

161. Keep Wales Tidy also called for the criteria for success of the voluntary scheme to be defined:

“There needs to be clarity regarding whether the voluntary scheme is succeeding or failing - there should be some sort of indicators. I suppose that the indicators would be used to assess the success of the scheme, which would then trigger that move [from the voluntary agreement to a mandatory approach]. We are not experts on developing indicators, but we have tried to think of what might be used. For example, are retailers participating? How many retailers have reached agreement with voluntary organisations and charities to distribute funds raised by the charge? Those should be relatively easy to calculate. If those organisations are not receiving any funds, that may be the indicator that the scheme is failing, Furthermore, if the environmental benefits have not been achieved, the scheme could be said to be failing.”<sup>109</sup>

162. The Environment Agency Wales, however, argued that the criteria for success were a matter for subsequent regulations, not the proposed Measure:

“We do not envisage that the criteria would need to be put in the proposed Measure, rather, it would form a part of the subsequent consultation on detailed regulations. We think that the criteria would be a matter for discussion between retailers

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<sup>106</sup> RoP, para 83, 25 March 2010, Legislation Committee No.4

<sup>107</sup> RoP, para 89, 25 March 2010, Legislation Committee No.4

<sup>108</sup> RoP, para 157, 25 March 2010, Legislation Committee No.4

<sup>109</sup> RoP, para 21, 28 April 2010, Legislation Committee No.4

and Government, because after all, retailers know that sector best.”<sup>110</sup>

163. They went on:

“However, for example, we envisage that they could cover such things as the level of co-operation among retailers, namely how many are complying voluntarily, as well as a possible target for the reduction in the number of single-use carrier bags used.”<sup>111</sup>

164. On the question of who should be involved in judging the success of the voluntary scheme, Tesco argued that it would be helpful to have “clarity and certainty” on this point. The BRC shared that view.<sup>112</sup>

165. The WLGA suggested that an inter-agency body should be established to gauge the overall success of the scheme:

“It would be useful to have some sort of public, private or voluntary interagency group look at how the system is operating and produce a report. However, I have no problem with that report going to the Minister to take a view on whether satisfactory progress is being made.”<sup>113</sup>

166. Keep Wales Tidy suggested that “retailers, voluntary sector organisations, charities, the Welsh Assembly Government, and local authorities should all be involved”.<sup>114</sup>

167. In their evidence, Boots told us they were unclear as to what would trigger a move from the voluntary agreement to a mandatory scheme:

“We do not have much clarity about what the trigger would be—the proposed Measure contains no explanation of what would trigger the use of the regulatory powers in Sections 1 and 2 of the proposed Measure. Until we have the regulations and an understanding of those, we would need to consider that carefully. We would rather stay with the voluntary approach (...). However, if the approach breaks down, the way that it is

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<sup>110</sup> RoP, para 124, 28 April 2010, Legislation Committee No.4

<sup>111</sup> *Ibid.*

<sup>112</sup> RoP, para 86-89, 25 March 2010, Legislation Committee No.4

<sup>113</sup> RoP, para 140, 21 April 2010, Legislation Committee No.4

<sup>114</sup> RoP, para 21, 28 April 2010, Legislation Committee No.4

judged to have broken down is all very unclear. We have not discussed what we would do if that happened.”<sup>115</sup>

### *Evidence from the Minister*

168. We questioned the Minister on the evidence we received relating to the need for clearly defined criteria for measuring the success of the voluntary agreement, and a trigger mechanism for the introduction of a mandatory scheme under the proposed Measure. In her response to this, she stated:

“That will form a part of the engagement that we will have with the voluntary sector over what a successful voluntary agreement looks like. Any future Government will need to determine whether retailers have participated appropriately to determine whether it wishes to introduce the direction under this proposed Measure. The power would be there in legislation for a future Government to use, or not to use.”<sup>116</sup>

169. She expanded on this point in later evidence. Emphasising that the measures relating to charging for single use carrier bags were not intended to be revenue generating<sup>117</sup>, she said:

“One of the things that we will want to look at is what would constitute a failure of the voluntary agreement. A number of factors would need to be taken into account, such as a failure to pass on net receipts from a charge, a failure to pass on net receipts to appropriate purposes in line with any agreement, or a failure to ensure that a certain percentage of the net receipts was passed on specifically to purposes or projects in Wales. We would expect those to be set out in the agreement, that is, the agreement that we will be working up with the retailers during this year (...).”<sup>118</sup>

170. On the question as to who would be involved in judging the success of the voluntary agreement, and assessing whether it was appropriate to introduce a mandatory scheme, the Minister said:

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<sup>115</sup> RoP, para 40, 25 March 2010, Legislation Committee No.4

<sup>116</sup> RoP, para 78, 11 March 2010, Legislation Committee No.4

<sup>117</sup> RoP, para 28, 5 May 2010, Legislation Committee No.4

<sup>118</sup> RoP, para 52 and 54, 5 May 2010, Legislation Committee No.4



“That is something that we will work up with the retailers (...). That will be part of the development of the voluntary agreement (...).”<sup>119</sup>

171. She went on to say:

“There would always be a transitional period [between a voluntary and mandatory scheme], because there would need to be a proper consultation on any regulations that introduced a mandatory scheme.”<sup>120</sup>

### *Our view*

172. In relation to measuring the success of the voluntary agreement and the trigger mechanism for the introduction of a mandatory scheme, we note the evidence from consultees calling for greater clarity from the Minister on these points.

173. We reiterate the concerns we expressed in our conclusions on monitoring the operation of the voluntary and mandatory schemes, and the timing of a review of the voluntary agreement, that very little detail has been provided by the Minister in relation to how the success of the voluntary agreement would be measured, the criteria to be used in measuring this, and what would trigger the introduction of a mandatory scheme.

174. We acknowledge the Minister’s evidence that these are matters that will be addressed as part of her forthcoming consultation with retailers. Nevertheless, **we believe it would be beneficial if the Minister clarified her intentions in relation to measuring the success of the voluntary agreement, and we recommend the Minister does this at the earliest opportunity. We believe a key criterion in measuring this success should be a significant reduction in the number of single use carrier bags in use in Wales.**

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<sup>119</sup> RoP, para 58, 5 May 2010, Legislation Committee No.4

<sup>120</sup> RoP, para 50, 5 May 2010, Legislation Committee No.4

## **Distribution of net proceeds from a charge on single use carrier bags – the mandatory scheme**

### *Background*

175. Although a number of the points made by consultees about the voluntary agreement, such as how it should be monitored and enforced, apply equally to the mandatory scheme, some specific issues were raised by consultees about the provisions for a mandatory scheme provided for under the proposed Measure, including:

- scope of a mandatory scheme;
- destination of the net proceeds under a mandatory scheme.

176. These issues are discussed in more detail in the following paragraphs.

### *Scope of a mandatory scheme*

#### *Background*

177. While a number of consultees assumed that a mandatory scheme introduced under the proposed Measure would cover all retailers, some felt that those retailers that had cooperated with the voluntary agreement should be exempted from any future mandatory scheme.

#### *Evidence from consultees*

178. This point was made by the BRC in their evidence:

“I would like to see something that says, if retailers do cooperate on a voluntary basis, they should be allowed to continue to co-operate on that basis. If retailers do not, the Measure could kick in then.”

179. They went on:

“If you have 90 per cent of retailers co-operating, do you then penalise all retailers, even those that have been responsible and done exactly as you have asked under a voluntary

agreement? There has to be a way of keeping this light touch for retailers.”<sup>121</sup>

180. Both Tesco and Boots agreed with this point, suggesting there could be an “earned autonomy from a mandatory approach” for retailers who were cooperating with the voluntary agreement.<sup>122</sup>

181. We also received evidence questioning whether traders at public events would be covered by the provisions of the proposed Measure. In their evidence, Keep Wales Tidy said they “support[ed] the inclusion of organisations who hand out single use carrier bags at events, such as the Royal Welsh Show, in the arrangements for the charge.”<sup>123</sup>

#### *Evidence from the Minister*

182. We questioned the Minister as to whether the proposed Measure provided for some retailers to be excluded from the scope of the mandatory scheme. On this point, the Minister stated:

“I was pleased to find that the retailers that have complied with the voluntary scheme could continue under that arrangement. We could have a situation, regarding the legislation, where retailers that are not complying could become part of a mandatory scheme, and retailers that were complying could continue under the voluntary arrangement.”<sup>124</sup>

183. We asked the Minister whether such an arrangement, where some retailers were operating under a voluntary agreement and others under a mandatory scheme, could lead to confusion. In answer to this, she said:

“It would (...) give a clear message (...) that if people comply with the voluntary agreement, there would be no change to their circumstances. (...) Our initial view was that we wanted a totally mandatory scheme, but (...) I have never wanted to penalise early adopters in anything, and if it turns out that those big retailers fully participate in delivery at a voluntary level, we would not want to penalise them in any way.”<sup>125</sup>

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<sup>121</sup> RoP, para 37, 25 March 2010, Legislation Committee No.4

<sup>122</sup> RoP, para 154-155, 25 March 2010, Legislation Committee No.4

<sup>123</sup> Written evidence, WM17

<sup>124</sup> RoP, para 62, 5 May 2010, Legislation Committee No.4

<sup>125</sup> RoP, para 64, 5 May 2010, Legislation Committee No.4

184. We also asked the Minister to clarify whether a mandatory scheme imposed by the proposed Measure would extend to traders at public events. She confirmed this was the case, arguing:

“If further regulations are made in the future under the Measure, I would not think it unreasonable for such market traders to be required to pass on any net proceeds to projects in Wales. They could, for example, pass on funds to a national organisation, and may choose to do so voluntarily when the charging regulations come into force next year.”<sup>126</sup>

#### *Our view*

**185. In relation to the scope of the mandatory scheme for directing the net proceeds from a charge on single use carrier bags, we note the evidence from consultees that any retailers that had cooperated with the voluntary agreement should be able to continue to do so in the event of the introduction of a mandatory scheme.**

**186. We support this view and believe such an arrangement will act as an incentive for greater numbers of retailers to cooperate with the voluntary agreement. We welcome the confirmation from the Minister that the proposed Measure allows for such an arrangement.**

**187. However, we note such an arrangement may involve a further level of administration in determining those retailers that may be exempt from the mandatory scheme, and this may have cost implications for the Welsh Assembly Government and retailers. We recommend the Minister gives consideration to this matter at the appropriate time.**

#### ***Destination of the net proceeds under a mandatory scheme***

##### *Background*

188. Under a mandatory scheme, retailers would be directed to pass net proceeds from the sale of carrier bags to ‘specified purposes or persons’. These would be limited to purposes that related to specific Matters set out in Field 6 (environment) of Schedule 5 to the Government of Wales Act 2006.

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<sup>126</sup> [Letter from the Minister for Environment, Sustainability and Housing](#), 12 May 2010

### *Evidence from consultees*

189. There were mixed views from consultees as to whether it was appropriate for a mandatory scheme to specify the purposes to which any net proceeds from a charge on single use carrier bags should be directed.

190. In their evidence, Boots stated that the net proceeds from a charge on single use carrier bags should not be directed towards only the specific purposes or persons provided for in the proposed Measure, i.e. environmental purposes. They argued they should be able to pass the net proceeds they raised to any charitable purpose, in line with their corporate responsibility agenda:

“Boots specifically has a bag (...) for which we have entered into a charity partnership with Breast Cancer Care and the Eve Appeal, which receive all of the profits made from selling that. Consumers like it and respond to our efforts in this area.”<sup>127</sup>

191. They went on:

“We want to give the money raised through this levy to our charity partnerships rather than direct it to an environmental cause or elsewhere. We feel that it is important that we continue those partnerships and build on them so that consumers and visitors to our stores understand where we are coming from with the partnerships that we have with these charities.”<sup>128</sup>

192. Both the BRC and CBI argued that the proposed Measure should not specify the purposes to which the net proceeds should be applied. In their evidence, the BRC said:

“Retailers should be allowed to distribute funds to environmental projects of their choosing, in line with their wider Corporate Responsibility agenda, and reporting publicly to their customers. Retailers already make significant donations to charitable causes. A number of retailers that already charge for bags donate the money raised to support charitable causes, publicly reporting those donations. Guidance encouraging responsible distribution of funds is a more appropriate and

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<sup>127</sup> RoP, para 25, 25 March 2010, Legislation Committee No.4

<sup>128</sup> RoP, para 27, 25 March 2010, Legislation Committee No.4

proportionate solution and would enable retailers, large and small, to continue existing relations with local and national charities.”<sup>129</sup>

193. They went on:

“We believe that any funds will be diverted for the purposes outlined in the Measure under a voluntary approach. There is therefore no need for the Measure to specify the purposes to which the funds should be applied.”<sup>130</sup>

194. Both the CBI and WLGA expressed similar views, with the CBI stating:

“Most large retailers already have organisations they support through their CSR [corporate social responsibility] policies and we envisage that the carrier bag charges will be applied in furtherance of these existing policies. We believe it is disproportionate and inappropriate for the Assembly Government to dictate which organisations are allowed to benefit from receipt of these funds.”<sup>131</sup>

195. In their evidence, the WLGA argued:

“(…) the real purpose behind the proposed Measure seems to be to have the ability to direct where the funds go and what the funds are used for. (…) if the funds were being put towards a socially useful outcome, be that a health purpose or whatever, I would have thought that that would be acceptable to most people. So, I suppose that we would question why it [the proposed Measure] needs to prescribe that the proceeds must be applied to an environmental cause.”<sup>132</sup>

196. In contrast, Keep Wales Tidy, Cylch, the WCVA, Tesco, RSPB Cymru, Cerith Rhys Jones<sup>133</sup>, Stephen Millson<sup>134</sup> and Richard Lewis<sup>135</sup> all said in their evidence that they believed it was appropriate for the net proceeds from a charge on single use carrier bags to be directed to environmental purposes.

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<sup>129</sup> Written evidence, WM6

<sup>130</sup> *Ibid.*

<sup>131</sup> Written evidence, WM9

<sup>132</sup> RoP, para 132, 21 April 2010, Legislation Committee No.4

<sup>133</sup> Written evidence, WM1

<sup>134</sup> Written evidence, WM3

<sup>135</sup> Written evidence, WM11

197. Keep Wales Tidy and Cylch stated that, as the aim of the charge was to reduce the use of single use carrier bags by consumers, any funds raised should be distributed to projects which would help support this change in behaviour. In their oral evidence, Keep Wales Tidy said:

“It is important that funding deals with the problems created by single use carrier bags, which is the reason why the funding is being collected. It is to deal with those problems and to change behaviour.”<sup>136</sup>

198. They went on:

“There are many ways that (...) organisations are working with the environmental sector. (...) we work with community groups, as does Environment Wales. The work that we do also has health benefits. It is not just about looking at the environment as a single issue because the environment has an impact on people’s health, such as their mental health.”<sup>137</sup>

199. Cylch agreed with this point, stating:

“As far as the plastic bag tax revenues are concerned, (...) it is important, because it is a behavioural change that we are after, to link the revenue that you gain from selling all these bags to the results of that revenue. It has to be fairly clear to people that they are paying for a plastic bag in order to reduce the number of plastic bags in the environment in the first place. The better that is targeted and communicated (...) the more effective it will be in changing habits.”<sup>138</sup>

200. Further to this, both Keep Wales Tidy and Cylch suggested that the net proceeds raised from the sale of single use carrier bags could be drawn into a central fund to provide grants and loans for environmental projects. In their evidence, Cylch said:

“It should also be noted, that monies generated through the proposed levy have the potential to go much further if invested appropriately from the outset. For example, if monies were drawn into a central fund invested in the Charity Bank in Wales or via the Wales Sustainability Reinvestment Trust, they could

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<sup>136</sup> RoP, para 44, 28 April 2010, Legislation Committee No.4

<sup>137</sup> *Ibid.*

<sup>138</sup> RoP, para 47, 28 April 2010, Legislation Committee No.4

be used to provide grants and loan finance to environmental projects in Wales. The interest generated on the central fund and returns on investments would provide a revolving fund with the ability to maximise the financial (and environmental) benefit the levy could bring.”<sup>139</sup>

201. Keep Wales Tidy made a similar point in their evidence, suggesting that the revenue raised from the sale of single use carrier bags could be “channell[ed] (...) through a small number of organisations in the voluntary sector such as Keep Wales Tidy, Environment Wales or the Wales Sustainability Reinvestment Trust who could provide the administration and monitoring functions and already have systems in place to provide grants and loan finance to environmental projects in Wales.”<sup>140</sup>

202. While the Co-operative supported the principle of the net proceeds being distributed to environmental projects, they felt that the definition of environmental projects provided for by the proposed Measure<sup>141</sup> was too narrow. By way of example, they said they would like to be able to direct funds to projects that reduced greenhouse gas emissions or environmental projects based outside Wales. In their oral evidence, the Co-operative stated:

“The proposed Measure restricts the destination of proceeds to initiatives based wholly in Wales, and we think that there are many trans-boundary campaigns that can have an effect on the environment of Wales without money having been wholly spent within the principality. An example would be our current work on tar sands in Canada; it relates to greenhouse gas emissions, so would have an effect on Wales.”<sup>142</sup>

203. They went on:

“We think that the specified purposes are too specific, because they focus on waste reduction and pollution. We would prefer a more expansive set of specified purposes covering environmental projects, but we are not clear what projects might be within the scope at the moment. We have a number of valuable environmental projects that are currently supported by

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<sup>139</sup> Written evidence, WM20

<sup>140</sup> Written evidence, WM17

<sup>141</sup> Specified purposes set out in para 4A(4) of Schedule 6 to the Climate Change Act 2008, as inserted by section 1 of the proposed Measure

<sup>142</sup> RoP, para 218, 28 April 2010, Legislation Committee No.4



the Co-operative in Wales that would be worthy recipients of any proceeds raised. These include a green energy projects for schools, which provides schools with renewable energy equipment such as wind turbines and solar panels.”<sup>143</sup>

204. In their evidence, RSPB Cymru stated that they would like clarification as to whether the specified purposes provided for by the proposed Measure<sup>144</sup> cover biodiversity and conservation:

“We would welcome a clear statement from the Assembly Government that this purpose is indeed intended to include conservation and enhancement of biodiversity, and for this to be reflected in any guidance accompanying regulations made under the Measure.”<sup>145</sup>

205. The Environment Agency Wales was of the opinion that, whilst it supported the distribution of funds to environmental projects, the public should be involved in deciding which projects receive funding:

“We said in our written evidence that our preference would be for the funds to go to environmental causes because of carrier bags’ cost to the environment - the resources taken to make them and also the litter they cause. It is important that the public have a say in where the funds go, because that is more likely to lead to buy-in for the scheme and the distribution of funds.”<sup>146</sup>

### *Evidence from the Minister*

206. We questioned the Minister on the evidence we received arguing against the proposed Measure specifying the purposes for which proceeds from the sale of single use carrier bags could be passed.

207. Firstly, and in relation to the operation of the voluntary agreement, the Minister said:

“We, as a Government, have made clear that our intention is to work through the voluntary agreement to identify environmental projects—the more local, the better—for delivery. However, we have also said that where retailers

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<sup>143</sup> RoP, para 225, 25 March 2010, Legislation Committee No.4

<sup>144</sup> Specified purposes set out in para 4A(4) of Schedule 6 to the Climate Change Act 2008, as inserted by section 1 of the proposed Measure

<sup>145</sup> Written evidence, WM27

<sup>146</sup> RoP, para 128, 28 April 2010, Legislation Committee No.4

already have charitable arrangements that benefit good causes, we would not want to cut across those. We would not want to demand—in fact, we could not demand, under a voluntary scheme—that those charitable causes were changed. What we will be encouraging all retailers to do is to put the investment from the charge, when it comes in next year, into environmental projects.”<sup>147</sup>

208. Secondly, on the question of the direction of proceeds under a mandatory scheme, the Minister told us that the provisions of the proposed Measure were limited by the extent of the Assembly’s legislative competence in this area:

“(…) we would have to ensure that any provision for a statutory scheme came within the competence of the National Assembly in matters 6.1, 6.3, 6.4, 5.18 and 16.2 of Schedule 5 to the Government of Wales Act 2006.”<sup>148</sup>

209. She argued that the specified purposes in the proposed Measure were worded in order to achieve this.<sup>149</sup>

210. We asked the Minister for her comments on evidence from the Cooperative suggesting that net proceeds from the sale of carrier bags could be spent on environmental projects outside Wales. She said that a “primary consideration” for the Welsh Assembly Government was for the money to be spent in Wales and that, where retailers were not already operating under a voluntary agreement, “we will strongly encourage them to introduce schemes that have an environmental benefit in Wales.”<sup>150</sup>

211. She went on:

“(…) we would want the benefit to be as local as possible to the place where people are shopping, because people need to see a link between paying this charge and the outcome. (...) we want to ensure that any revenue raised, wherever possible, benefits the locality, although that locality may be deemed to be fairly

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<sup>147</sup> RoP, para 81, 5 May 2010, Legislation Committee No.4

<sup>148</sup> RoP, para 85, 11 March 2010, Legislation Committee No.4

<sup>149</sup> RoP, para 66, 5 May 2010, Legislation Committee No.4

<sup>150</sup> RoP, para 76, 5 May 2010, Legislation Committee No.4

wide, or local charities that have a wider reach into the developing world, if that is appropriate in that area.”<sup>151</sup>

212. We also asked the Minister whether the proposed Measure would enable the net receipts from a charge on single use carrier bags to be channelled through a single body, such as the Charity Bank, who would manage those funds, as suggested by Cylch and Keep Wales Tidy in their evidence. The Minister confirmed this would be possible:

“The proposed (...) Measure could ensure that the net receipts are channelled through a single body, which would manage the net receipts through a central investment fund. However, the Measure does not give the power to establish a new body for those purposes.”<sup>152</sup>

213. In relation to the evidence from the Co-operative as to whether the specified purposes provided for in the proposed Measure extended to projects relating to the reduction of greenhouse gas emissions, the Minister confirmed that this was covered by the proposed Measure:

“In terms of the reduction of greenhouse gas emissions, my understanding is that it is a clear benefit in the context of the specified purpose of protecting or improving the environment in relation to pollution or nuisances, so it would be covered.”<sup>153</sup>

214. Finally, we questioned the Minister on the evidence from RSPB Cymru calling for clarification as to whether the specified purposes would include conservation and enhancement of biodiversity. Again, the Minister confirmed these would be caught by the proposed Measure:

“Conservation enhancement is something that we do on a daily basis in the context of the way in which we allocate funds inside the Assembly Government for local environmental quality, for example. The crucial issue is purely that the specified purposes need to relate to responsibilities that we have in Wales, but there is a wide interpretation of the ways in which those responsibilities can be delivered.”<sup>154</sup>

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<sup>151</sup> RoP, para 85, 5 May 2010, Legislation Committee No.4

<sup>152</sup> [Letter from the Minister for Environment, Sustainability and Housing](#), 12 May 2010

<sup>153</sup> RoP, para 66, 5 May 2010, Legislation Committee No.4

<sup>154</sup> RoP, para 68, 5 May 2010, Legislation Committee No.4

### *Our view*

215. In relation to the direction of net proceeds under a mandatory scheme introduced by the proposed Measure, we note the conflicting evidence from consultees as to whether it was appropriate for the proposed Measure to specify the purposes to which any net proceeds could be directed.

216. We note the Minister's evidence that, in making provision for a mandatory scheme under the proposed Measure, such provision would be limited by the extent of the Assembly's legislative competence in this area, namely Field 6 of Schedule 5 to the Government of Wales Act 2006 - the environment. However, we note that the destination of net proceeds under a voluntary agreement, in which all retailers could participate, would not be restricted in this way.

217. On this point, we are grateful for the Minister's clarification that, under the voluntary agreement, where retailers already have charitable arrangements that benefit good causes in place as part of their corporate responsibility agenda, those agreements could continue. We are content with this.

218. We note the evidence from the Minister that, under the voluntary scheme, she intended to encourage retailers to invest the net proceeds from the charge on single use carrier bags in projects that were of benefit to the environment, particularly where retailers did not already have other charitable arrangements in place. We are content with this, particularly as it would help to make clear to the public the link between the revenue gained from a charge on single use carrier bags and the results of that revenue.

219. In relation to the evidence from Cylch and Keep Wales Tidy, **we see considerable benefits in allowing the net proceeds from a charge on single use carrier bags to be drawn into a central fund, managed by a voluntary sector body such as the Charity Bank in Wales or Wales Sustainability Reinvestment Trust, from which grants or loans to environmental projects in Wales could be made. We welcome the confirmation from the Minister that the proposed Measure allows for such an arrangement and we recommend the Minister considers the use of such an established body in the management and distribution of the net proceeds from a charge on single use carrier bags.**

## 5. Sections 3-8: Waste targets

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### *Background*

220. Section 3 of the proposed Measure specifies targets for recycling, preparation for re-use and composting to be achieved by local authorities in Wales by 2025 and imposes liability to a financial penalty on local authorities that do not meet these targets. It also provides for Welsh Ministers to make regulations to vary these waste targets by order.

221. Section 4 enables Welsh Ministers to make regulations to specify other waste targets, in addition to those specified in section 3, relating to the prevention, reduction, collection management treatment or disposal of waste.

222. Section 5 enables Welsh Ministers to make regulations about monitoring and auditing compliance with the waste targets specified in section 3 or other targets provided for under section 4.

223. Section 6 provides for Welsh Ministers to make regulations about penalties for non-compliance.

224. Sections 7 and 8 make provision about consultation and guidance respectively.

225. There was no clear agreement amongst consultees as to whether the statutory recycling targets for local authorities provided for in the proposed Measure should be introduced. Some consultees expressed support for the general principle of statutory recycling targets, whilst others questioned their necessity.

226. Four main themes emerged from the evidence in relation to the setting of statutory waste targets in the proposed Measure:

- the impact of statutory recycling targets on waste prevention and minimisation;
- application and extent of waste targets;
- monitoring and auditing compliance with targets;
- the appropriateness of financial penalties.

227. Each of the themes is discussed in greater detail in the following paragraphs.

### ***The impact of statutory recycling targets on waste prevention and minimisation***

#### *Background*

228. A number of consultees, including the WLGA, the Environment Agency Wales, Friends of the Earth Cymru and the some local authorities, questioned the focus of the proposed Measure, with some arguing that the statutory recycling targets provided for in the proposed Measure could draw attention away from waste prevention and minimisation.

#### *Evidence from consultees*

229. In its written evidence, the WLGA expressed doubt as to the efficacy of statutory waste targets, particularly as a means of contributing to waste minimisation:

“(...) it is questionable whether statutory recycling targets will achieve the desired results - or whether they may introduce some perverse incentives. For example, the waste hierarchy would suggest that greatest effort and resource should be applied to waste prevention and minimisation. However, if penalties apply to recycling (but not to waste minimisation) there is a risk of scarce resources being targeted at a less effective part of the hierarchy.”<sup>155</sup>

230. They emphasised this point in oral evidence, stating:

“We do not think that statutory targets are necessary. We already have a set of statutory waste targets in relation to the landfill allowance scheme, and the discussion is on recycling targets as a performance indicator. We feel that that would be more than adequate.”<sup>156</sup>

231. LARAC were similarly unconvinced about the introduction of statutory waste targets under the proposed Measure, saying:

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<sup>155</sup> Written evidence, WM14

<sup>156</sup> RoP, para 153, 21 April 2010, Legislation Committee No.4

“With existing waste targets already in place and Local Authorities working towards high recycling rates and landfill diversion, there is a feeling that the provisions being made are already adequate without additional targets for local authorities.”<sup>157</sup>

232. In their written evidence, Denbighshire County Council, Ceredigion County Council, Carmarthenshire County Council and the Mid Wales Waste Partnership all questioned whether the imposition of statutory waste targets would contribute to effective waste management in Wales.

233. In written evidence, Denbighshire County Council stated:

“Denbighshire believes that the proposed statutory recycling targets (...) may not deliver the Sustainable Development outcome that the Assembly [Government] so clearly desires. The Council has no objection to the targets in principle (...) but Denbighshire does not believe the theory behind the targets is robust enough to make them statutory. (...) Denbighshire believes the waste prevention approach must take priority for any Government with an interest in delivering Sustainable Development.”<sup>158</sup>

234. They went on:

“Because of this, Denbighshire (...) believes that the principle of statutory recycling targets is flawed. The inconsistency of approach between private and public sectors creates great uncertainty over the feasibility of meeting the targets and Denbighshire considers it unreasonable to make them statutory.”<sup>159</sup>

235. Ceredigion County Council and the Mid Wales Waste Partnership made similar points, both arguing that the proposed Measure would not guarantee a reduction in the amount of waste produced as it “does not target the issues which create waste.”

236. In their evidence, Ceredigion County Council stated:

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<sup>157</sup> Written evidence, WM26

<sup>158</sup> Written evidence, WM29

<sup>159</sup> *Ibid.*

“While you state that the Waste Measure would contribute to the development of a more effective management of waste, I believe that this has already been achieved on a voluntary basis without the threat of statutory targets and penalties, and hence that they are unnecessary for achieving the goal of a more sustainable Wales.”<sup>160</sup>

237. Both suggested that greater emphasis should be placed on product design, packaging and “ensuring that all items are as recyclable as possible.”<sup>161</sup>

238. Carmarthenshire County Council expressed a similar view, stating:

“The measure should perhaps be more aimed at fundamental targets of reducing the amount of waste in the waste stream by targeting producers and reducing the waste authorities have to deal with.”<sup>162</sup>

239. The Environment Agency Wales, whilst supporting the principle of waste targets and their use as part of a suite of interventions to increase recycling, were similarly concerned that the introduction of statutory recycling efforts could draw attention away from waste minimisation:

“It is fair to say that we are concerned that statutory recycling targets may mean that local authorities choose to focus on recycling at the expense of delivering, say the non-statutory waste minimisation targets that are set out in the Assembly Government’s draft Wales waste strategy. (...) Waste prevention and minimisation is at the top of the waste hierarchy. That is the ultimate aim of much of the European and domestic waste legislation. So, while we support statutory recycling targets as a way of moving waste away from the bottom of the hierarchy—so, disposal, or even recovery from waste—we are concerned that an unintended consequence could be that we miss the aim of moving towards the top of the hierarchy, namely prevention and minimisation.”<sup>163</sup>

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<sup>160</sup> Written evidence, WM30

<sup>161</sup> Written evidence, WM30 and WM31

<sup>162</sup> Written evidence, WM32

<sup>163</sup> RoP, para 136-137, 28 April 2010, Legislation Committee No.4. See also written evidence, WM16



240. The Wales Audit Office expressed a similar view, stating:

“The measure can help move waste up the waste hierarchy away from disposal and towards waste reduction and reuse, although the focus is on recycling which is only mid-way up the hierarchy. The Welsh Government should consider doing more to promote waste reduction rather than just segregation and recycling.”<sup>164</sup>

241. In contrast, both Cylch and the Chartered Institute of Environmental Health expressed support for the introduction of statutory waste targets as a means of achieving the government’s objectives in this policy area.

242. In oral evidence, Cylch stated:

“We are very keen on statutory targets. (...) They provide clarity and (...) the role of Government is to give clarity to everyone else. One reason why we have taken so long to get where we are is because that clarity has been lacking for the most part. (...) the stronger the target, the clearer you are about it and the more effective that is made, the better it will be.”<sup>165</sup>

243. They went on:

“(...) the implication with statutory targets is that anyone who takes material from the material waste stream is entitled to have some payment from the local authorities for doing that work for them. That means that the marketplace will open up to others, such as the private sector and the community sector, if they have the ingenuity and knowledge to go and get those materials and sell them in the marketplace. That will have a material effect. So, to get ahead of that, the stronger the proposed Measure and the more emphatically it is enforced, the quicker we will arrive at that situation and the quicker we will reduce waste.”<sup>166</sup>

244. In its written evidence, the Chartered Institute of Environmental Health stated:

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<sup>164</sup> Written evidence, WM23

<sup>165</sup> RoP, para 65-66, 28 April 2010, Legislation Committee No.4

<sup>166</sup> RoP, para 68, 28 April 2010, Legislation Committee No.4

“We agree that the proposed Measure regarding Waste Targets is necessary if the stated ambition of Wales becoming a higher recycling society by 2025 is to be achieved. Whilst much is currently being done by local authorities and others to increase recycling it is clear that we need a step targeted approach to ensure that Wales manages its waste effectively. (...) the CIEH is of the view that a targeted approach such as the one proposed will focus local authorities to ensure that recycling, reusing and composting levels are driven up consistently.”<sup>167</sup>

245. However, the Chartered Institute of Environmental Health also argued it was important that targets were able to be amended if they became unrealistic or too easily achievable:

“Setting waste targets is an appropriate way of achieving the stated target [of] moving towards increasing recycling. The CIEH considers that it is important however to ensure that as specified in ss3(4) that the target amounts should be capable of amendment. It is important that targets are not fixed at levels that are unachievable. If it is clear that the targets are being achieved with relative ease it is appropriate to amend them upwards, if however it becomes clear that local authorities cannot achieve the targets for whatever reason it is appropriate that they should be reduced.”<sup>168</sup>

246. On a related point, the WLGA also expressed concern in their evidence about the possibility for other waste targets to be introduced under section 4 of the proposed Measure:

“They [local authorities] are aware that we need to change the way in which we run the waste service, and there is a lot of goodwill to that. (...) The concern that we hear from local authorities is that the provision in the proposed Measure to allow a whole series of other potential statutory targets to come about starts to make it look more like micromanagement, and that local government is there as a service delivery agent to be told what to do, as opposed to a partner working together with the Assembly Government on the waste agenda.”<sup>169</sup>

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<sup>167</sup> Written evidence, WM5

<sup>168</sup> *Ibid.*

<sup>169</sup> RoP, para 157, 21 April 2010, Legislation Committee No.4

### *Evidence from the Minister*

247. On the introduction of statutory waste targets by the proposed Measure, the Explanatory Memorandum states:

“The purpose of placing these targets on a statutory footing is to give a clear signal of the importance of local authorities increasing the rate of recycling, preparing for re-use and composting of municipal waste. The establishment of statutory targets will also provide certainty to local authorities about the longer-term nature of the targets and enable them to plan ahead and take appropriate measures (...) to ensure compliance.”<sup>170</sup>

248. Responding to criticisms that the provisions of the proposed Measure could distract attention from waste minimisation, the Minister argued:

“Waste minimisation is the primary element driving our agenda. (...) Recycling more will make a significant contribution to reducing our ecological footprint, especially against the background of reducing waste arisings. So, we do not see any contradiction between waste minimisation and high recycling.”<sup>171</sup>

249. We pressed the Minister on whether her policy of focusing on recycling waste by introducing statutory waste targets risked missing the bigger picture of preventing waste. She did not agree with this suggestion, stating:

“We are not just looking at one target. If we were, I would have more sympathy with that view. We already have twin levers—first, in the context of the landfill tax, and secondly, the statutory targets in the municipal sector—but we also have a lever in the context of landfill bans. Those will all promote the diversion of waste from landfill, which is the primary objective, and they will increase recycling for those waste streams. So, it is not just about one target, but about using all the mechanisms to drive down the amount of waste that already goes into the system, as well as make sure that any waste that goes into the system is appropriately used. With non-statutory

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<sup>170</sup> Explanatory Memorandum, para 3.21

<sup>171</sup> RoP, para 117, 5 May 2010, Legislation Committee No.4

targets, we know that there is still far too much waste going to landfill, even for those authorities that are doing fairly well on the current aspirational targets.”<sup>172</sup>

250. Responding to the concerns expressed by the WLGA about the powers for Welsh Ministers to set other waste targets under section 4, the Minister stated:

“We are not looking to introduce any new targets under section 4, but (...) we are in a very fast-moving field in the context of European obligations, for example. It may well be that future Governments, in terms of delivering on European waste hierarchy obligations, landfill obligations and waste framework directive obligations, might want to, for example, look at source-separated food or maximum levels of energy from waste—those are two areas that you could see might crop up. However, this Government is not looking at framing that at this point. Clearly, the proposed Measure will enable a future Government to look at what is most appropriate in terms of achieving the outcomes, which must be about far greater recycling in the context of the waste agenda.”<sup>173</sup>

### *Our view*

251. We note the conflicting evidence from consultees as to whether the focus of the proposed Measure, in setting targets for recycling, has the potential to draw attention away from waste prevention and waste minimisation, which are both higher on the waste hierarchy.

252. We also note the views of some consultees that enough is already being done by local authorities and others, on a non-statutory basis, to develop more effective management of waste in Wales and that, as such, the use of statutory targets is unnecessary.

253. We are reassured by the Minister’s statement that waste minimisation remains a priority for the Welsh government, and we share her view that there need not be any contradiction between waste minimisation and high recycling.

254. We recognise that much work has already been undertaken by local authorities and others in Wales to increase levels of recycling, but

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<sup>172</sup> RoP, para 119, 5 May 2010, Legislation Committee No.4

<sup>173</sup> RoP, para 112, 11 March 2010, Legislation Committee No.4

we agree with the Minister that placing waste targets on a statutory footing gives a clear signal as to the importance of driving up recycling, preparing for re-use and composting levels in Wales.

255. However, **in view of the strength of evidence in relation to the importance of waste minimisation, we recommend the Minister considers setting separate targets for waste minimisation, in order to balance any distorting effect of the statutory recycling targets on the waste hierarchy.**

256. We are satisfied that the proposed Measure makes provision for the waste targets to be amended by order. We believe this provides the Minister with the necessary flexibility to respond to any unforeseen circumstances in the future, as appropriate.

257. We are similarly satisfied that the proposed Measure enables the Minister to specify other waste targets. Again, we consider this flexibility to be important as a means of responding to any future waste hierarchy obligations, particularly those emanating from Europe.

258. On this basis, we are content that the waste targets provided for in the proposed Measure will make a significant contribution towards ensuring that Wales becomes a high recycling society by 2025.

### ***Application and extent of waste targets***

#### ***Background***

259. Section 3 of the proposed Measure specifies statutory targets for the percentage of a local authority's municipal waste to be recycled, prepared for re-use and composted.

260. In relation to the application of the statutory waste targets, we received evidence questioning whether these targets should apply to each individual local authority or whether two or more local authorities should be able to pool their targets.

261. We also received evidence from some consultees arguing that the waste targets imposed by the proposed Measure should extend beyond the public sector to encompass the private sector.

### *Evidence from consultees*

262. In both their written and oral evidence, WRAP suggested that the introduction of universal recycling targets across all local authorities may be challenging.

“The proposal [to set the same percentage targets for all local authorities] is understandable given the ambitious targets in the new draft waste strategy. However, some authorities will face more challenging circumstances and may need greater effort or require more support to help them achieve those targets. Additional support and guidance needs to be offered to help local authorities to keep pace with those targets, to reach 70 per cent by 2025.”<sup>174</sup>

263. In its written evidence, the Wales Audit Office suggested that local authorities should be able to pool landfill allowances and recycling targets in order to aid delivery of the policy objectives:

“The Welsh Government should consider using the measure to allow local authorities collaborating within regional procurement hubs to pool Landfill Allowance Scheme (LAS) and recycling targets. We suggest this as a temporary provision until regional waste treatment facilities are operational. (...) This provision recognises the different circumstances currently applicable to each local authority and their varying need to progress collaboration quickly. It would ease current progress and have no impact on the long-term strategic aim for each local authority to take their share of responsibility for delivering national waste strategy.”<sup>175</sup>

264. In their evidence, the Environment Agency Wales suggested that transitional arrangements could be put in place for those local authorities who would find the targets more challenging:

“We think that it will be much more difficult for some local authorities to achieve the percentage targets for recycling, particularly in the short term as they are all starting from different baselines. There are already non-statutory targets for recycling, and the top performing local authority, Torfaen, has achieved a recycling rate of 49 per cent, whereas the authority

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<sup>174</sup> RoP, para 26, 21 April 2010, Legislation Committee No.4

<sup>175</sup> Written evidence, WM23

at the bottom of the league, Blaenau Gwent, has achieved 25 per cent, so you can see some difference there. There was a similar situation when the landfill allowance scheme was introduced in 2004, and there were some transition years before all local authorities were asked to achieve the same diversion targets in terms of a flat percentage of the waste that they collected that should be diverted from landfill.”<sup>176</sup>

265. They went on:

“So, we would suggest that consideration should be given to a similar transition for the recycling targets, and that local authorities in the first instance should be supported to meet their targets to ensure compliance, and that financial penalties should only be used for any wilful or persistent non-compliance. (...) it is about supporting them to get there and trying to get up to that level playing field.”<sup>177</sup>

266. In relation to the extent of the statutory waste targets, in both its written and oral evidence, the WLGA stated that, if statutory targets for recycling were to be adopted, they should be applied to all sectors. In their oral evidence, the WLGA argued:

“It is a question of the logic of the argument: if a statutory target is applied to all local authorities, why not to other sectors? It is a consistency issue. We do not believe that there is a need for a statutory target, but if the argument is that you must have a target to make it work, why is it applied only to the local authority sector?”<sup>178</sup>

267. In its written evidence, Denbighshire County Council called for consistency between the private and public sectors, arguing:

“The inconsistency of approach between private and public sectors creates uncertainty over the feasibility of meeting the targets (...)”.<sup>179</sup>

268. Cylch agreed that statutory waste targets should apply to all sectors and to all types of waste, particularly Waste Electronic and Electrical Equipment (WEEE). In oral evidence, Cylch stated:

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<sup>176</sup> RoP, para 142-143, April 28 2010, Legislation Committee No.4

<sup>177</sup> *Ibid.*

<sup>178</sup> RoP, para 155, April 21 2010, Legislation Committee No.4

<sup>179</sup> Written evidence, WM29

“In terms of waste targets for preparation for reuse, Cylch would like to see specific targets for the reuse of WEEE. The WEEE Directive has been ineffective in encouraging reuse of WEEE and something needs to be done on a Wales level to ensure that valuable resources within WEEE remain in Wales. (...) A specific preparation for reuse target for WEEE will help the WEEE Directive get back on track with Welsh Assembly policy such as Towards Zero Waste, the Social Enterprise Action Plan for Wales and the Sustainable Development Scheme.”<sup>180</sup>

269. The Environment Agency Wales was also supportive of recycling targets for all sectors, but on a non-statutory basis:

“We support the use of recycling targets for all sectors. Some of the commercial waste that will be collected by local authorities will be included within the statutory targets. However, there are non-statutory targets in the draft Wales waste strategy for the industrial and commercial sector and the construction and demolition sector. We support those. (...) On whether those targets should be statutory, we would be mindful of the fact that we would create a new regulatory burden on those particular sectors, and also a new regulatory burden in terms of monitoring and enforcing any statutory regime.”<sup>181</sup>

#### *Evidence from the Minister*

270. We questioned the Minister as to whether, based on the evidence we received, there was a case for varying the waste targets of individual different local authorities. Responding to this, she said:

“We made some assessment of rural, urban and Valleys authorities to see whether there were such significant differences that we would need differential targets. However, it was not the case. Those authorities in each category that had seized this agenda were delivering similarly well, so we thought it important to have clear national targets.”<sup>182</sup>

271. We also put to her the evidence we received in support of local authorities being able to pool their waste targets. On this point, the Minister argued:

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<sup>180</sup> Written evidence, WM20. See also RoP, para 72, 28 April 2010, Legislation Committee No.4

<sup>181</sup> RoP, para 139, 28 April 2010, Legislation Committee No.4

<sup>182</sup> RoP, para 125, 5 May 2010, Legislation Committee No.4



“We had long discussions with local authorities about pooled targets, but the issue that remained unresolved was that if authority X did not perform in relation to its contribution towards a pooled target, the other authorities would have to over-perform to make up for the laggard’s performance. No proposal was ever made to us about other authorities having to up their game to meet the gap, as it were, left by the poorly performing authority.”<sup>183</sup>

272. She went on:

“So, the danger of the pooling approach is that you end up with either Wales or a group of local authorities being penalised in infraction proceedings because the landfill allowance scheme is infractable, whereas if they have their own individual targets, they all have the authority for the delivery in their own areas. Although we are providing the mechanisms for the facilities on a collaborative basis, we think that it is best for the delivery of the obligation to sit with the individual local authority.”<sup>184</sup>

273. We asked the Minister whether there was anything in the proposed Measure to prevent voluntary collaboration by local authorities. She replied:

“They will be given their own recycling or landfill allowance scheme targets. If they want to choose a collaborative method for delivery, that is a matter for them. It may well be, in the context of the facilities that are provided, that that might make sense to them. They would still have to own their targets, however, because they would be statutory targets.”<sup>185</sup>

274. We asked the Minister for her views on the Environment Agency Wales’ evidence suggestion that a transitional period could be put in place for those local authorities who might find meeting the waste targets challenging. She argued that such arrangements were already in place:

“The targets have been set as a number of increases over time, from 2012-13 to 2019-20, so they are already transitional. (...) So, the period from now until 2013 is the key period for local authorities to gear up to achieve the next recycling rate. It is 40

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<sup>183</sup> RoP, para 129, 5 May 2010, Legislation Committee No.4

<sup>184</sup> *Ibid.*

<sup>185</sup> RoP, para 131, 5 May 2010, Legislation Committee No.4

per cent in 2010, and 52 per cent for 2012-13, which requires an increase of four percentage points per year. That is consistent with the trajectory that local authorities had to meet the 2003-04, 2006-07 and 2009-10 targets. So, in a sense, we have already been in a long period of transition and will carry on with a similar period of transition to get us to the 2025 target of 70 per cent.”<sup>186</sup>

275. We questioned the Minister on the evidence we received from Cylch, suggesting the proposed Measure should include specific targets for the reuse of WEEE. Responding to this, the Minister stated:

“On the waste electrical and electronic equipment directive, all such equipment collected from households by local authorities, collected from businesses or left at local authority bring sites will be included in the targets set under the proposed Measure, because it will count as municipal waste. However, the proposed Measure allows us to set targets for the future, and it may well be that a future Government will want to look at specifying targets for waste streams such as WEEE in the future. The proposed Measure allows a future Government to take appropriate action on waste targets. At the moment, we are focusing on the most immediate necessary waste targets.”<sup>187</sup>

### *Our view*

276. In relation to the setting of national waste targets applicable to all local authorities in Wales equally, we are content with the Minister’s evidence that her assessment of rural, urban and Valleys authorities had shown no significant differences in service delivery across these authorities and that, as such, there was no need to set different targets for different local authorities.

277. On the question of collaborative working by local authorities in meeting statutory waste targets, we recognise that the waste targets set out in the proposed Measure are ambitious, and we understand the need for this in the context of making Wales a high recycling society by 2025. However, we note the evidence from consultees that some local authorities would find it challenging to meet such ambitious targets, particularly in the short term.

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<sup>186</sup> RoP, para 123, 5 May 2010, Legislation Committee No.4

<sup>187</sup> RoP para 113, 5 May 2010, Legislation Committee No.4

278. We acknowledge the evidence from the Minister in relation to the disadvantages of allowing two or more local authorities to pool their individual waste targets, particularly that under such arrangements, a group of local authorities working collaboratively could be penalised for the failure of any one authority within that group, and we note that her preferred approach (and that provided for by the proposed Measure) is for the delivery of the obligation to lie with the individual local authority. We do not agree with the Minister on this point.

**279. We are aware that many local authorities currently work collaboratively in the delivery of services and pool their resources in order to achieve this. We note that this trend is in line with Welsh Assembly Government policy, and is likely to increase in the future.**

**280. We see great strengths in extending this arrangement to allow two or more local authorities to work collaboratively in meeting the new statutory waste targets by pooling their individual targets, and we recommend the Minister amends the proposed Measure to enable this.** We believe this will aid delivery of the Minister's policy objectives in the short term, particularly for those local authorities who may need more advice and support than others, whilst still enabling long term strategic waste management aims to be met. We further believe that any disadvantages of such an arrangement would be offset by the sharing of any risks by the local authorities involved.

**281. In relation to the application of statutory waste targets, we note the evidence calling for these targets to apply to the private sector, but recognise that extending the application of the targets in this way could be outside the scope of the proposed Measure. However, in light of the evidence we have received on this point, we recommend the Minister gives consideration to the principle of setting waste targets for the private sector in the future.**

282. Finally, we welcome the clarification from the Minister that waste electrical and electronic equipment collected from households or businesses or left at local authority sites will be included in the waste targets provided for under the proposed Measure.

## ***Monitoring and auditing compliance with targets***

### *Background*

283. Section 5 of the proposed Measure enables Welsh Ministers to make provision, by regulation, for monitoring and auditing compliance of local authorities with statutory waste targets imposed by the proposed Measure.

### *Evidence from consultees*

284. In its written evidence, the Environment Agency Wales stated that it expected to be responsible for the monitoring of local authority compliance with the statutory targets.

285. The Environment Agency Wales said that while the current system used for monitoring municipal waste ('WasteData Flow') could be used to monitor local authorities' compliance with the statutory targets imposed by the proposed Measure, it would need some amending, which, they suggested, could be complicated:

"Environment Agency Wales already validates the data on Local Authority recycling rates in WasteDataFlow (WDF). The data is used by the Local Government Data Unit to monitor Local Authorities' performance on municipal waste recycling. However, we anticipate that governments may need to make changes to WDF. (...) There are considerable practical difficulties in tracking the waste collected from doorsteps by a Local Authority through to the final destination. This is because the collected waste is often mixed together with wastes from other Local Authorities and passes through a number of processors before reaching its endpoint."<sup>188</sup>

286. They reiterated this point in their oral evidence, drawing attention to the implications for resources:

"This financial year, we are working with the Assembly Government and Cardiff Council to undertake a study to try to track that recyclate, really to understand what the burden would be, and what solutions could be put in place to overcome some of those barriers and the costs involved. (...) More effort will undoubtedly be required to do this work. We

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<sup>188</sup> Written evidence, WM16

try to work in the most effective way possible, so we could double-up some of our existing site visits and look at recycle at the same time. So, we will try to do it as efficiently and effectively as possible. However, inevitably, if the burden is more than the resource that we have, we will have to reprioritise and ask ourselves whether it is the highest priority work.”<sup>189</sup>

287. In its written evidence, Cylch questioned the accuracy of the WasteData Flow system and its ability to monitor compliance:

“Cylch believes that data submitted to the WasteDataFlow is inaccurate. The way that some local authorities collect materials for recycling makes it impossible for accurate reporting of the diversion of biodegradable municipal wastes from landfill. In particular, poor quality grades of paper and card are traded between primary, secondary and tertiary Materials Recycling Facilities (MRFs). This trade is fuelled by expensive contracts, where local authorities pay successive sorting facilities large sums to sort material; some of which is of such poor quality it is subsequently landfilled. In some instances these tonnages are claimed as recycled. Even lorry loads that are delivered and accepted by UK reprocessors can contain quite a measurable percentage of “contrary” materials that are then landfilled. These materials may still be reported as having been recycled by the Local Authority of origin. How can WAG monitor recycling targets when such inaccuracies in reporting take place?”<sup>190</sup>

288. The WLGA, Wales Audit Office, Ceredigion County Council, Mid Wales Waste Partnership and the Chartered Institute of Environmental Health all stated in their evidence that, in monitoring compliance, the Welsh Assembly Government will need to take into account the extent to which local authorities are responsible for non-compliance with a statutory target if they have acted in good faith. In its written evidence, the Wales Audit Office stated:

“How will the Welsh Government demonstrate that it is the local authorities’ failings rather than the limitations of the methods they have imposed, or low voluntary participation, that is the

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<sup>189</sup> RoP, para 155 and 161, 28 April 2010, Legislation Committee No.4

<sup>190</sup> Written evidence, WM20

cause for poor performance? This is of importance for Wales Audit Office, as we undertake the annual performance assessment within the Local Government Measure.”<sup>191</sup>

289. Again, on this point, they argued:

“If fines are based on target breaches only, regardless of the attempts of the authorities to improve performance, then the Welsh Government is making it more difficult for performance to improve in the future by cutting off the resources that are required to improve.”<sup>192</sup>

290. The Chartered Institute of Environmental Health made a similar point, stating:

“(…) failure to meet the targets may result in the imposition of a financial penalty on the local authority which would have the effect of diverting monies from other local priorities. This may be appropriate where the local authority has failed to meet the targets through its own failure to address the issue but is counter intuitive where the failure arises when a local authority where it has tried to take steps to achieve compliance but has been prevented from doing so, e.g. by failure to secure planning permission etc.”<sup>193</sup>

291. Ceredigion County Council also drew attention to what they described as “the barrier of public participation in the new schemes to the levels required to achieve the targets.”

292. They went on:

“Consultations and public engagement activities may have little effect and as a result, an Authority could face penalties through no fault of its own.”<sup>194</sup>

### *Evidence from the Minister*

293. We asked the Minister how she intended compliance with the statutory waste targets specified in the proposed Measure to be monitored and audited. She said:

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<sup>191</sup> Written evidence, WM23

<sup>192</sup> *Ibid.*

<sup>193</sup> Written evidence, WM5

<sup>194</sup> Written evidence, WM30

“We already have a system of reporting under the WasteDataFlow system, which is the national waste database for municipal waste data. That is reported by UK local authorities to Government. Local authority performance would also be monitored by the reporting of the performance indicators by the local government data unit, which are signed off by the Auditor General for Wales. Monitoring of the recycling targets will include enhanced monitoring of the fate of materials from material recycling facilities, especially secondary sorting facilities, to ensure that only those materials that are actually recycled—as defined by the waste framework directive—are reported as being recycled. So, it is focused monitoring.”<sup>195</sup>

294. Responding to the criticisms regarding the WasteDataFlow system, the Minister said:

“(…) I am satisfied that it will adequately monitor the performance of local authorities against statutory recycling targets. We know that Cylch is particularly concerned that inaccuracies can occur due to the collection methods employed by certain local authorities and that due to the way the system works at the moment, the amount that is being recycled can be overestimated because local authorities are given the benefit of the doubt. We know that there are certain aspects of WasteDataFlow that will need to be reviewed continually to ensure more accurate reporting. We would also say, however, that we feel that those elements of misreporting will be very small. It is important that we have broad confidence in the mechanism and its use in other parts of the UK.”<sup>196</sup>

295. We questioned the Minister on the evidence we received suggesting it would be unreasonable to make local authorities responsible for non-compliance with waste targets when they have acted in good faith. On this point, the Minister argued:

“Local authorities need to introduce the right methods to increase recycling. That is within their powers. There is substantial external evidence about what the right methods are. They have been given substantial extra funding by the

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<sup>195</sup> RoP, para 139, 11 March 2010, Legislation Committee No.4

<sup>196</sup> RoP, para 141, 5 May 2010, Legislation Committee No.4

Assembly Government to introduce the necessary systems, such as food waste collection. They have various powers and mechanisms to ensure the participation of householders. They also have the power to undertake extensive awareness campaigns to promote the benefits of recycling among householders. They can also increase the range of recyclable materials collected. They can increase access to—and the provision of—recycling facilities, by creating more recycling centres and banks, for example, and thereby providing a greater degree of choice. The solutions are in their hands.”<sup>197</sup>

### *Our view*

296. In relation to monitoring and auditing local authorities’ compliance with statutory waste targets, we note the concerns of the Environment Agency Wales and Cylch regarding the shortcomings of the current system for monitoring compliance, WasteDataFlow.

**297. We find it significant that a statutory agency, such as the Environment Agency Wales, has expressed these concerns and we draw this evidence, and the evidence from Cylch, to the attention of the Minister. We recommend the Minister takes full account of this in implementing the relevant provisions of the proposed Measure.**

**298. Similarly, we draw the Minister’s attention to the evidence relating to local authorities being made responsible for non-compliance with waste targets when they have acted in good faith, and we recommend the Minister takes full account of this.**

### *The appropriateness of financial penalties*

#### *Background*

299. Section 6 of the proposed Measure enables Welsh Ministers to make regulations about penalties in relation to waste targets.

#### *Evidence from consultees*

300. Concern was expressed by some consultees about the implications of financial penalties being attached to the statutory waste targets imposed by the proposed Measure.

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<sup>197</sup> RoP, para 139, 5 May 2010, Legislation Committee No.4



301. In both written and oral evidence, the WLGA stated that it felt the threat of financial penalties was contrary to the spirit of co-operation that existed between the Welsh Assembly Government and local authorities on waste. The WLGA argued that the imposition of financial penalties could take resources away from other local authority services:

“I suppose that our starting position is that we do not want the penalties at all (...).Our concern is that we do not want to see scarce resources being tied up in paying penalties. It is a far better idea for the public money available to be used to deliver the service. (...) We have seen improvements in the recycling and composting levels of authorities across the board, and we would like to see our efforts continuing to be directed towards service provision, rather than having to make potential provision to pay penalties.”<sup>198</sup>

302. They went on:

“At the ministerial waste programme board, the Minister was very clear that penalties would be brought in as a last resort. I think that there was some reassurance from that, but things can change. Over time, administrations change, as can the personnel and the Minister. Having that provision in there would cause some concern, because although we have that reassurance currently, things can change over time.”<sup>199</sup>

303. The Mid Wales Waste Partnership was similarly unsupportive of the use of penalties for non-compliance with waste targets. In their evidence, they stated:

“The penalties proposed could make it even harder for authorities to deliver front line services. The use of double penalties in relation to waste may protect that service (or not) but could have a much greater or worse impact on other services such as education and social services.”<sup>200</sup>

304. The Wales Audit Office argued that it would be difficult for the Welsh Assembly Government to “justify additional penalties (...) to a

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<sup>198</sup> RoP, para 159, 21 April 2010, Legislation Committee No.4

<sup>199</sup> RoP, para 161, 21 April 2010, Legislation Committee No.4

<sup>200</sup> Written evidence, WM31

system that seems already to be working”, given that current performance on recycling targets was good.<sup>201</sup>

305. Cylch, however, stated that they agreed with the principle of financial penalties in cases of non-compliance.<sup>202</sup>

#### *Evidence from the Minister*

306. We asked the Minister why she considered it necessary to make provision in the proposed Measure for financial penalties to be applied to local authorities in the case of non-compliance with statutory waste targets. She stated:

“The penalties for non-compliance would always be an absolute last resort. We will look to parallel what is happening in the recycling agenda with the landfill allowance schemes; there will be no difference between the two. (...) Interestingly enough, no authority has failed to meet its landfill allowance scheme targets with the penalty system in place, but several authorities have failed and are failing to meet the non-statutory recycling targets. So, statutory targets with associated penalties reflect the priorities of the Assembly Government and the hierarchy of priorities in ‘Towards Zero Waste’.”<sup>203</sup>

307. She went on:

“It is also worth pointing out that we know that some local authority waste departments have been able to secure additional resources from their local authorities because of the penalties associated with the landfill allowance scheme. So, the proposed waste Measure will enable them to do the same in the context of recycling. Let us say, at the end of the day, if they secure the targets, they will get financial savings.”<sup>204</sup>

308. She confirmed that “the detail on the application of the penalties would be set out in regulations and would be subject to the affirmative procedure. So, the Assembly would have a further opportunity for detailed comment.”<sup>205</sup>

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<sup>201</sup> Written evidence, WM23

<sup>202</sup> RoP, para 98, 28 April 2010, Legislation Committee No.4

<sup>203</sup> RoP, para 136, 136, 5 May 2010, Legislation Committee No.4

<sup>204</sup> RoP, para 137, 5 May 2010, Legislation Committee No.4

<sup>205</sup> RoP, para 141, 11 March 2010, Legislation Committee No.4

*Our view*

309. In relation to financial penalties, we acknowledge the concerns raised by consultees that the proposed Measure provides for the imposition of financial penalties in the event of non-compliance by local authorities' with statutory waste targets.

310. However, we also note the Minister's evidence that statutory waste targets with associated penalties reflect the Welsh government's priorities in this policy area.

**311. We are reassured by the Minister's statement that the use of financial penalties in cases of non-compliance will be a matter of last resort.**

**312. We are, therefore, content that the proposed Measure makes provision for the imposition of financial penalties on local authorities in the event of non-compliance with statutory waste targets.**

## 6. Sections 9-11: Landfill

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### *Background*

313. Section 9 provides the Welsh Ministers with the power to ban or restrict the deposit of specified kinds of waste in a landfill in Wales.

314. Section 10 of the proposed Measure provides the Welsh Ministers with the power to impose civil sanctions alongside a ban and restriction on the deposit of specified kinds of waste in landfill in Wales.

315. The proposed Measure does not make provision for monitoring and enforcement, however we received evidence relating to how the landfill bans would be monitored and who would be responsible for enforcing the sanctions.

316. With regard to the provisions contained in sections 9 to 11 of the proposed Measure, we received evidence from a large number of consultees including the Local Authority Recycling Advisory Committee (LARAC)<sup>206</sup>, Ceredigion County Council<sup>207</sup>, the Mid Wales Waste Partnership<sup>208</sup>, and the Welsh Local Government Association (WLGA)<sup>209</sup>.

317. A large proportion of those consultees who offered an opinion on sections 9 to 11 of the proposed Measure were supportive of the legislative provisions; including Cylch<sup>210</sup>, NewEarth Solutions<sup>211</sup> and the Chartered Institute of Environmental Health (CIEH)<sup>212</sup>.

318. In the evidence we received from consultees, comments were directed to five main areas;

- the ability to achieve the Welsh government’s stated policy aims through these provisions;
- the possible cross border issues which could arise;
- the capacity of the waste management infrastructure in Wales;

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<sup>206</sup> Written evidence, WM26

<sup>207</sup> Written evidence, WM30

<sup>208</sup> Written evidence, WM31

<sup>209</sup> Written evidence, WM14

<sup>210</sup> Written evidence, WM20

<sup>211</sup> Written evidence, WM21

<sup>212</sup> Written evidence, WM5

- the monitoring and enforcement of landfill bans;
- the appropriateness of introducing a civil sanction scheme for failure to comply with landfill bans.

319. These five areas are explored in more detail below.

### ***Achieving the Welsh government's policy aims***

#### *Evidence from consultees*

320. In relation to the issue of whether or not the introduction of landfill bans would enable the Welsh Assembly Government to deliver on its stated aims, we received conflicting evidence.

321. Some of the evidence we received questioned the need for landfill bans, while other evidence suggested they would be a useful tool to bring the restrictions on commercial and industrial wastes in line with those placed on municipal waste.

322. A number of consultees suggested that, as an individual measure, prohibiting the deposit of certain wastes from landfill would not achieve the stated aims of reducing levels of waste sent to landfill in Wales.

323. The Environment Agency Wales said that, whilst they were supportive in principle, they did not believe the bans would achieve the stated aims on their own.<sup>213</sup>

324. They argued that the amount of waste that goes to landfill is influenced by a number of things including regulatory and strategic drivers.<sup>214</sup>

325. They went on to say:

“(...) landfill restrictions are an end-of pipe regulatory measure and we would like to see their introduction coupled with upstream interventions to ensure that we drive the behavioural changes needed among waste producers to minimise waste, and to ensure that the waste is managed higher up the waste hierarchy with lower environmental impacts.”<sup>215</sup>

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<sup>213</sup> RoP, para 164, 28 April 2010, Legislation Committee No.4

<sup>214</sup> *Ibid.*

<sup>215</sup> RoP, para 165, 28 April 2010, Legislation Committee No.4

326. In oral evidence, the British Retail Consortium (BRC) said that, while they understood the principle of landfill bans, they thought that the landfill tax had been sufficiently successful in reducing the amount of waste sent to landfill:

“The escalating cost of landfill tax has been effective in making it cost-effective to separate waste for those companies for which it was not previously cost-effective to do so. You gradually ramp it up and get it to be cost-effective to gather more and more of that waste. If you put a ban on landfill, you are coming at it from a slightly different angle and you will have to collect all those material and build from the bottom up how you are going to do that, regardless of cost. It is a question of what is the most effective lever.”<sup>216</sup>

327. In its written evidence, Denbighshire County Council argued that local authorities should be exempted from landfill bans:

“Overall, as the Assembly is already providing Councils with significant support to procure waste treatment capacity (alternatives to landfill) the Landfill Ban is in reality going to have a negligible impact on Councils anyway. Rather than introduce all the costs of monitoring the compliance of 22 Local Authorities with the ban, Denbighshire considers it better to exempt the new definition of “Local Authority Collected Municipal Waste” from the ban.”<sup>217</sup>

328. Both the Local Authority Recycling Advisory Committee (LARAC) and Denbighshire County Council suggested that, in order to achieve the best possible outcome in terms of reducing waste sent to landfill, the commercial and industrial sectors also needed to be included in these provisions, along with the municipal sector.<sup>218</sup>

329. ConstructionSkills Wales, in its written evidence, expressed concern about the broad powers that would be given to Welsh Ministers to ban certain substances from landfill:

“Although the built environment sector in Wales has made much progress in terms of taking forward the lower waste and low-carbon agendas, an outright ban of particular materials

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<sup>216</sup> RoP, para 106, 25 March 2010, Legislation Committee No.4

<sup>217</sup> Written evidence, WM29

<sup>218</sup> Written evidence, WM26 and WM29

could have a detrimental impact on the industry operating in Wales.”<sup>219</sup>

330. The CBI said they supported the specific provisions in the proposed Measure regarding prohibiting certain waste from landfill, however they suggested that the availability of a disposal and processing infrastructure in Wales was a problem and that ‘externalities’ such as the planning system also needed reforming if the targeted reduction in waste sent to landfill was to be achieved.<sup>220</sup>

331. In its written evidence, the CBI stated that the Welsh Assembly Government would need to address externalities such as the planning system in order to ensure that the appropriate infrastructure was developed:

“Waste disposal infrastructure has externalities which means it is not a perfect market and may not necessarily react to simple market signals. The most obvious of these is the planning system, which means that the development of new waste projects is a lengthy, costly and most importantly an uncertain process.”<sup>221</sup>

#### *Evidence from the Minister*

332. In her evidence, the Minister said that sections 9 to 11 of the proposed Measure would enable the Welsh Ministers to introduce bans or restrictions on specific kinds of waste going to landfill which would lead to the adoption of more sustainable waste management practices, in line with the waste hierarchy.<sup>222</sup>

333. The Minister stated she wanted to ensure that the proposed Measure gave the National Assembly an appropriate opportunity to have the power to move forward to introduce the proposed bans or restrictions once the appropriate consultation had been undertaken.<sup>223</sup>

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<sup>219</sup> Written evidence, WM18

<sup>220</sup> Written evidence, WM9

<sup>221</sup> *Ibid.*

<sup>222</sup> RoP, para 8, 11 March 2010, Legislation Committee No.4

<sup>223</sup> RoP, para 176, 11 March 2010, Legislation Committee No.4

334. The Minister also said that the forthcoming collection infrastructure and market sector plan would ensure that the landfill bans were part of a rounded package of policy measures.<sup>224</sup>

335. She explained that the Welsh Assembly Government had issued a joint consultation with the Department for Environment, Food and Rural Affairs (DEFRA) on the introduction of restrictions on the landfilling of certain wastes, which closes in June.<sup>225</sup> She went on:

“Any proposal to restrict or ban the deposit of specified types of waste in landfill in Wales brought forward under our proposed Measure will be informed by the outcomes of that consultation.”<sup>226</sup>

#### *Our view*

336. In relation to the Welsh government’s intention to prohibit the deposit of certain wastes from landfill sites in Wales, **whilst we agree in principle with the provisions for landfill restrictions, we have found it difficult to form an absolute view on this matter due to the fact that the majority of the policy detail will be contained in future regulations.**

337. **We are, therefore, unable to fully support the Minister’s views that landfill bans will be the main driving force for encouraging more sustainable waste management practices in Wales.**

#### *Cross border issues and perverse outcomes*

##### *Evidence from consultees*

338. The Chartered Institute of Environmental Health said that whilst it was appropriate to obtain legislative powers over landfill sites, banning certain wastes from landfill would not prevent “waste tourism” and may lead to perverse outcomes, such as an increase in fly tipping.<sup>227</sup> They said:

“The nature of the proposed Measure would be appropriate in terms of reducing the volume of the specified waste material

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<sup>224</sup> RoP, para 160, 5 May 2010, Legislation Committee No.4

<sup>225</sup> RoP, para 158, 5 May 2010, Legislation Committee No.4

<sup>226</sup> *Ibid.*

<sup>227</sup> Written evidence, WM5



being deposited to landfill in Wales. What it will not do however is prevent 'waste tourism' i.e. waste that is prohibited from being deposited to landfill in Wales being exported to England for disposal to landfill here. It is already the case that some Welsh local authorities and waste disposal companies take waste to landfill sites in England for disposal, and in environmental terms it is not desirable that an indirect effect of the proposed Measure should be to increase waste being 'exported'." <sup>228</sup>

339. The Environment Agency Wales also commented on the issue of perverse outcomes and suggested that the bans could lead to increased export of waste to landfill in England or even illegal stockpiling of waste. <sup>229</sup>

340. An additional issue of a cross-border nature that was raised by some consultees was that of long term contracts held between local authorities in Wales and waste disposal businesses in England.

341. In their oral evidence, the British Retail Consortium said that the impact on cross-border relationships between companies and local authorities would need to be considered, as often local authority contracts were set in place for a period of up to 25 years, and therefore a transition period would be needed in order to deal with issues of this nature. <sup>230</sup>

#### *Evidence from the Minister*

342. In relation to concerns raised regarding issues of a cross border nature, the Minister said that instances of fly-tipping were decreasing, despite the increased cost of land-filling waste due to the implementation of the landfill tax. <sup>231</sup>

343. She added that the work carried out by the Green Alliance for DEFRA on landfill bans implemented in other countries had shown that illegal disposal of banned waste was not cited as a significant resulting problem. <sup>232</sup>

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<sup>228</sup> Written evidence, WM5

<sup>229</sup> RoP, para 112, 28 April 2010, Legislation Committee No.4

<sup>230</sup> RoP, para 117, 25 March 2010, Legislation Committee No.4

<sup>231</sup> RoP, para 183, 5 May 2010, Legislation Committee No.4

<sup>232</sup> *Ibid.*

344. In response to the concerns raised by some consultees regarding those local authorities that have long term cross-border waste disposal contracts in place, the Minister said:

“We would not expect any local authority to enter into a contract with a landfill operator in England that would compromise its obligation to achieve targets set by the Government in Wales.”<sup>233</sup>

#### *Our view*

345. In relation to cross border issues, we note the evidence from some consultees regarding the practical implementation of any future landfill bans. We share the concerns of a number of consultees regarding the potential for perverse outcomes of any such bans, such as fly-tipping and illegal stockpiling of waste, and we believe the Minister could have provided more evidence on this point to allay these concerns.

**346. In light of the evidence we have received, we urge the Minister to be mindful of the potential for perverse outcomes as a result of the future implementation of landfill bans and we recommend the Minister put in place any arrangements necessary to prevent these perverse outcomes from occurring.**

**347. We recommend that, when implementing the relevant provisions of the proposed Measure, the Minister consider the consequences for those local authorities that have long term waste disposal contracts in place. We further recommend that consideration be given to making transitional arrangements in order to accommodate any local authority which is legally bound to a fixed term contract with a waste disposal company outside Wales.**

#### ***Capacity of the waste management infrastructure***

##### *Evidence from consultees*

348. In relation to the capacity of the waste management infrastructure in Wales, in the evidence we received there was a general consensus that, while there was capacity in some sectors, improvements to the waste management infrastructure in Wales would

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<sup>233</sup> RoP, para 185, 5 May 2010, Legislation Committee No.4

need to be made in order to respond to the increased levels of recyclate that may arise as a result of the landfill bans implemented under the proposed Measure.

349. In oral evidence, the Environment Agency Wales said that although there had been significant infrastructure improvements in recent years, particularly in relation to construction and demolition waste, there was still a need for additional recycling facilities, and alternative facilities for residual waste and waste diverted from landfill.<sup>234</sup>

350. The Environment Agency Wales went on to say:

“Businesses, particularly small and medium-sized enterprises, often cite the insufficient availability of recycling facilities as a reason for not recycling their waste. For example, many local authorities do not allow trade waste to be taken into civic amenity sites, which makes it difficult for small businesses to deal with recycling.”<sup>235</sup>

351. In their evidence, Clych stated that, while there was capacity in the sector to deal with most of the potential increased recyclate, an overall assessment of the capacity to deal with different sorts of waste had not taken place:

“The guys sitting around the table on the campaign for recycling are forever saying that they can cope with any kind of increase, but I do not know whether we have done a mass balance analysis of whether they can cope with all municipal waste.”<sup>236</sup>

352. Clych suggested that, while the sector may be able to manage paper and glass waste, they were not as confident with regard to other materials such as textiles.<sup>237</sup>

353. Both the CBI and the WLGA said they were uncertain that the level of infrastructure in Wales was sufficient to deal with the potential increase in the amount of recyclate that could arise as a result of future landfill bans.

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<sup>234</sup> RoP para 167, 28 April 2010, Legislation Committee No.4

<sup>235</sup> *Ibid.*

<sup>236</sup> RoP, para 92, 28 April 2010, Legislation Committee No.4

<sup>237</sup> *Ibid.*

354. The CBI stated that the necessary recycling infrastructure needed to be in place, but that whether current capacity was sufficient to cope “remains to be seen”.<sup>238</sup>

355. In their evidence, the WLGA said:

“There are a number of issues, one of which is having the facilities to deal with the materials that we are collecting. At the moment, the infrastructure is not there.”<sup>239</sup>

356. A particular issue of concern to some consultees was the infrastructure available in Wales to deal with construction and demolition waste.

357. In their evidence, the CBI said they had received representations from organisations in the construction industry who felt that the current infrastructure was not sufficient to cope with a complete landfill ban on certain products.<sup>240</sup>

358. In oral evidence, the Federation of Master Builders (FMB) stated:

“At the moment, we feel that there are not enough alternatives [to landfill], so a landfill ban would be a great constraint on the industry and make for extra costs and a great many problems (...) If there were a complete ban on landfill, there are very few options for builders and we should be looking at providing better recycling options for them.”<sup>241</sup>

359. Concern was also raised regarding the capacity of local authorities to deal with any future landfill bans. In its written evidence, Denbighshire County Council stated that the Welsh Assembly Government would need to consider the cumulative impact landfill bans may have on councils in Wales.<sup>242</sup>

360. In their evidence, the Wales Audit Office (WAO) argued that until there had been establishment of the necessary infrastructure required in Wales, the landfill bans should not be enforced.<sup>243</sup> They stated:

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<sup>238</sup> RoP, para 202, 25 March 2010, Legislation Committee No.4

<sup>239</sup> RoP, para 167, 21 April 2010, Legislation Committee No.4

<sup>240</sup> RoP, para 208, 25 March 2010, Legislation Committee No.4

<sup>241</sup> RoP, para 74, 21 April 2010, Legislation Committee No.4

<sup>242</sup> Written evidence, WM29

<sup>243</sup> Written evidence, WM23

“The Welsh Government should make a clear statement of policy intent for the necessary establishment of waste treatment infrastructure before landfill bans are enforced. This needs time to set up infrastructure and to improve awareness. If preparations are not in place before the measure is used for this purpose, fly tipping and environmental pollution could result.”

361. We also heard evidence regarding markets for recyclate and the influence these would have on any future landfill bans.

362. In their oral and written evidence, the WLGAs expressed concern that there were not sufficient markets for recyclate in Wales to be able to cope with the impact of landfill bans and statutory waste targets.<sup>244</sup> They said:

“(…) the other big issue is the market for the recyclate. Even if we develop the treatment facilities, and the materials go there and are recycled, we still need an outlet for this product if this approach is to work effectively.”<sup>245</sup>

363. In oral evidence, the Environment Agency Wales stated that there was not much data currently available about the market for recyclate in Wales but the important thing for the future was to ensure that the quality of recyclate being produced:

“(…) is of a sufficiently high quality to maximise the recovery capability, and in a sense it is that quality that drives the infrastructure and collection systems that need to be put in place to meet those sorts of market demands.”<sup>246</sup>

364. On this matter, Cylch believed that the market for recyclate had developed significantly over the last few years.<sup>247</sup>

365. Whilst offering their support for the overall aim of reducing waste in Wales, ConstructionSkills Wales stated in their written evidence:

“(…) whilst [we] recognise... that legislation in particular areas can provide short-term solutions to issues such as waste-management we would suggest that a more sustainable and

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<sup>244</sup> Written evidence, WM14

<sup>245</sup> RoP, para 167, 21 April 2010, Legislation Committee No.4

<sup>246</sup> RoP, para 151, 28 April 2010, Legislation Committee No.4

<sup>247</sup> RoP, para 105, 28 April 2010, Legislation Committee No.4

economically viable solution to the waste-management issue in Wales would be to make the reduction, recycling and reclamation of waste (of all types) easier for construction companies and organisations operating in the built environment sector.”<sup>248</sup>

*Evidence from the Minister*

366. With regard to the capacity of the relevant infrastructure arrangements in Wales, the Minister told us that she intended to consult on a number of plans during the next 12 months which would act as a stimulant and analysis of the infrastructure available in Wales.<sup>249</sup>

367. She advised that the consultation on the municipal sector plan would be launched in June 2010, with the consultation on the collection infrastructure plan and market sector plan following in December 2010.<sup>250</sup>

368. On this point, the Minister said:

“I am confident that the sector plans will deliver an increase in infrastructure, and we have growing evidence that there is spare capacity in recycling and reprocessing facilities in Wales that could accommodate much of the extra material that would be banned or restricted from landfill.”<sup>251</sup>

369. The Minister also advised there would be a lead-in time before any landfill bans were introduced in order to allow the infrastructure in Wales to develop sufficiently. She said this would be looked at in the context of the joint consultation with DEFRA on what would be banned.<sup>252</sup>

370. With regard to comments made by some consultees in relation to other factors that may affect the speed of waste infrastructure development in Wales, the Minister acknowledged these views and said that the Welsh Assembly Government would be reviewing ‘TAN 21’<sup>253</sup>

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<sup>248</sup> Written evidence, WM18

<sup>249</sup> RoP, para 162, 5 May 2010, Legislation Committee No.4

<sup>250</sup> *Ibid.*

<sup>251</sup> *Ibid.*

<sup>252</sup> RoP, para 168, 5 May 2010, Legislation Committee No.4

<sup>253</sup> Technical Advice Note (TAN) 21: Waste (2001)

<http://wales.gov.uk/topics/planning/policy/tans/tan21?lang=en>

as part of the waste collection infrastructure and management sector plan.<sup>254</sup>

### *Our view*

371. In relation to the capacity of the waste management infrastructure in Wales, we acknowledge the concerns of some consultees about a lack of such capacity. We are not convinced that the current infrastructure in Wales is sufficient to cope with the possible increase in recyclable materials as a result of the proposed Measure. However, **we welcome the Minister's statement that the forthcoming sector plans will identify and deal with any gaps in the infrastructure arrangements in Wales, and we recommend the Minister takes a strategic overview to ensure capacity is in place in Wales before any landfill bans are introduced.**

372. Finally, **we consider there is the potential for local authorities to be penalised twice under the provisions of the proposed Measure - firstly for failure to meet the statutory waste targets, and secondly for non-compliance with landfill bans. This is in addition to the landfill tax already in place covering municipal waste. We draw this to the Minister's attention, and we recommend the Minister takes account of this in implementing the relevant provisions of the proposed Measure.**

### ***Monitoring and enforcement of landfill bans, and the introduction of civil sanctions***

#### *Evidence from consultees*

373. We received conflicting views from consultees on the subject of whether civil sanction powers, which accompany the landfill ban provisions, were an appropriate way of enabling the Welsh Assembly Government to deliver on its stated aims.

374. Concerns were raised over who should be responsible for monitoring any bans and how any subsequent sanctions would be enforced.

375. Both the BRC and the WLGA queried how the landfill ban would be policed. In their evidence, the BRC said:

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<sup>254</sup> RoP, para 166, 5 May 2010, Legislation Committee No.4

“How do you set something up that has the teeth to prosecute? What do you do then? Do you start going through households’ bins? Do you start going through retailers’ bins? It all becomes burdensome, when we are trying to introduce the carrot and not the stick. We then come back to the principle of taking everyone with us so that they understand how to manage their waste and why they should manage their waste responsibly and effectively.”<sup>255</sup>

376. The WLGA told us that local authorities had some concerns about how landfill bans would be enforced:

“(…) concerns have been raised with me by a number of authorities over that issue and the way that it will work in practice, because if individuals put items into their residual waste bin that come under the ban, it is difficult for the local authority to deal with them once they have been delivered to a residual waste facility, unless the authority operates what are called ‘dirty MRFs’, where someone has to sort all the stuff to take out the banned material, which is a messy business.”<sup>256</sup>

377. The Environment Agency Wales, whilst stating that they expected to act as the regulatory body for monitoring landfill bans as they were currently the regulatory authority for the management of landfill sites, said they would not be able to comment on how they would enforce these bans until the detailed regulations were produced.<sup>257</sup>

378. They went on to say that consideration would need to be given to the timing of the introduction of any civil sanctions:

“We understand that new legislation may well come in to provide powers to impose civil sanctions for permit breaches in England and Wales from 2011, and we would suggest that, if WAG is looking to introduce civil sanctions relating to landfill bans, it should consider the timing of that relative to the general introduction of civil sanctions for permit breaches.”<sup>258</sup>

379. A number of witnesses questioned the rationale behind penalising local authorities for failure to comply with landfill bans,

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<sup>255</sup> RoP, para 137, 25 March 2010, Legislation Committee No.4

<sup>256</sup> RoP, para 188, 21 April 2010, Legislation Committee No.4

<sup>257</sup> RoP, para 177, 28 April 2010, Legislation Committee No.4

<sup>258</sup> RoP, para 182, 28 April 2010, Legislation Committee No.4



even though they may have provided the necessary services and information for residents within their authority.

380. Ceredigion County Council said:

“The penalties do not take into account that a local authority may have introduced a comprehensive service, communicated and engaged with householders, implemented all tools to help achieve performance (monitoring, enforcing etc) and still not met the target.”<sup>259</sup>

381. The Mid Wales Waste Partnership and WLGA expressed similar views to those of Ceredigion County Council.<sup>260</sup>

382. The WLGA said, while it would probably be appropriate to have civil sanctions in place in the event of non-compliance, they had some concerns regarding the level of those penalties and the thresholds that would trigger them.<sup>261</sup>

383. In answering questions regarding the potential barriers to implementing the provisions of the proposed Measure, the Law Society said that whilst including powers for Welsh Ministers to make regulations for monitoring compliance, the proposed Measure:

“(...) fails to provide (...) the means to ensure that public authorities have the resources to monitor non compliance and the illegal dumping that is likely to follow more strict control over disposal of waste.”<sup>262</sup>

384. Both the Chartered Institute of Environmental Health and the Environment Agency Wales said that, if civil sanctions were to be introduced as a means of dealing with non-compliance, training and resources would be needed to ensure consistency of approach and application between all the enforcement agencies.<sup>263</sup>

385. In their written evidence, the Chartered Institute of Environmental Health stated it:

“(...) support[ed] the introduction of civil sanctions as an alternative mechanism for dealing with offenders, but notes

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<sup>259</sup> Written evidence, WM3

<sup>260</sup> Written evidence, WM31 and WM 14

<sup>261</sup> RoP, para 176, 21 April 2010, Legislation Committee No.4

<sup>262</sup> Written evidence, WM22

<sup>263</sup> Written evidence, WM5 and WM16

that a degree of training to ensure understanding and consistency of approach and application between all of the enforcement agencies will be necessary, and that resources must be made available to ensure this takes place.”<sup>264</sup>

### *Evidence from the Minister*

386. In her evidence, the Minister said that despite the fact that the Environment Agency Wales had yet to gain any civil sanction powers for other parts of the environmental permitting regime, it was appropriate to seek the powers to introduce civil sanctions in relation to landfill bans.<sup>265</sup>

387. She argued that civil sanctions were a good alternative to criminal sanctions as they gave the enforcement authority the ability “to make a more proportionate and flexible response to regulatory non-compliance. Otherwise it will be between prosecuting, cautioning or taking no action”<sup>266</sup>

388. When asked who would be responsible for providing the monitoring and enforcement role in relation to landfill bans, the Minister stated that it would seem sensible if the responsibility lay with the Environment Agency in Wales, because they already had an important regulatory function in relation to landfill sites.<sup>267</sup>

389. The Minister went on to say:

“The main work in forming the proposal was the analysis conducted by WRAP and Eunomia, the independent consultancy, on landfill bans. The Environment Agency has been a participating member of that project’s steering group. It has been interviewed as part of the project on its monitoring and enforcement roles (...)”<sup>268</sup>

390. However, she said “the exact regulatory role will depend on the type of ban or restriction that is introduced.”<sup>269</sup>

391. In relation to the monitoring of an individual’s compliance with the landfill bans, the Minister said:

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<sup>264</sup> Written evidence, WM5

<sup>265</sup> RoP, para 196, 5 May 2010, Legislation Committee No.4

<sup>266</sup> *Ibid.*

<sup>267</sup> RoP, para 184, 11 March 2010, Legislation Committee No.4

<sup>268</sup> RoP, para 190, 5 May 2010, Legislation Committee No.4

<sup>269</sup> *Ibid.*

“(…) we do not consider that the power under section 9 of the proposed Measure could be used to create offences that can be imposed against individual householders who place banned substances in residual waste bags.”<sup>270</sup>

### *Our view*

392. In relation to the Minister’s intention to introduce civil sanctions as a means of addressing non-compliance with landfill bans, whilst we acknowledge the evidence from some consultees questioning the appropriateness of providing for civil sanctions in the proposed Measure, **we agree with the Minister, in principle, that civil sanctions are an appropriate and proportionate alternative to criminal proceedings.**

393. **However, we note the evidence from the Environment Agency Wales regarding the timing of the introduction of civil sanctions for landfill bans, and agree that the timing of such sanctions in Wales should be commensurate with the introduction of civil sanctions under new legislation for permit breaches in England and Wales. We therefore recommend that the Minister consider commencing the enforcement of all civil sanctions across the waste disposal permitting regime at the same time.**

394. **Furthermore, we believe that clarity is needed as to who will be responsible for monitoring compliance with landfill bans and enforcing any civil sanctions in the event of non-compliance. We therefore recommend the Minister amend the proposed Measure to make this explicit.**

### *Consultation*

#### *Background*

395. Section 11 of the proposed Measure requires Welsh Ministers to consult with certain bodies before making regulations in relation to waste targets. Section 7 of the proposed Measure makes similar provision in relation to landfill.

396. Section 7 of the proposed Measure requires Welsh Ministers to consult with the Environment Agency; local authorities, and ‘such

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<sup>270</sup> [Letter from the Minister for Environment, Sustainability and Housing - Additional Evidence](#), 12 May 2010

other persons as the Welsh Ministers consider appropriate'. In addition to these consultees, section 11 of the proposed Measure also requires Welsh Minister's to consult with 'such persons appearing to them to be representative of the interests of persons liable to be subject to duties under the regulations as they consider appropriate'.

#### *Evidence from consultees*

397. In their evidence, ConstructionSkills Wales said that, while they were pleased to note that consultation provisions regarding landfill bans were included in the proposed Measure, the proposed Measure should stipulate that consultation with industry experts and sector representatives, such as the Welsh Built Environment Forum, was required.<sup>271</sup>

398. In giving reasoning for this, they said:

"(...) whilst we recognise that the Welsh Ministers receive advice and consultation from a range of sources, there is no specific department or individual in the Welsh Assembly Government with a responsibility over the built environment."<sup>272</sup>

#### *Evidence from the Minister*

399. Responding to the concerns of ConstructionSkills Wales, the Minister said:

"We have established a Construction Unit within my Department to strengthen our relationship with this important sector. The focus of the unit will enable officials to have an ongoing dialogue with the sector and will allow them to more effectively consider the cumulative effect of different legislative and regulatory proposals on the construction sector."<sup>273</sup>

400. More generally, we asked the Minister why the provisions in sections 7 and 11 of the proposed Measure relating to consultation were different. The Minister's official said the "difference relates to the scope of the provision to which they relate."<sup>274</sup>

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<sup>271</sup> Written evidence, WM18

<sup>272</sup> *Ibid.*

<sup>273</sup> [Letter from the Minister for Environment, Sustainability and Housing, 12 May 2010](#)

<sup>274</sup> RoP, para 146, 5 May 2010, Legislation Committee No.4

401. He explained that the provisions in section 11 were broader than those contained in section 7 and, as such, contained additional obligations.<sup>275</sup> He went on:

“[The consultation provisions of section 11] reflects the wider application of the landfill provisions and would encompass representative bodies of different organisations affected by the provisions.”<sup>276</sup>

402. When asked for her views on consultation on draft regulations in general terms, the Minister said “There is always consultation.”<sup>277</sup>

#### *Our view*

403. In relation to the consultation provisions regarding landfill bans, we note the views of ConstructionSkills Wales. We are, however, satisfied with the Minister’s statement that the provisions of the proposed Measure allow for consultation with the representative bodies of different organisations affected by these provisions. On this basis, we are content with sections 7 and 11 as drafted.

**404. We note there is a level of expectation amongst witnesses that they will be consulted on draft regulations. We welcome the Minister’s assurance that the Welsh Assembly Government always consults on draft regulations, and we trust this practice will continue for draft regulations made under this proposed Measure.**

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<sup>275</sup> RoP, para 148, 5 May 2010, Legislation Committee No.4

<sup>276</sup> RoP, para 150, 5 May 2010, Legislation Committee No.4

<sup>277</sup> RoP, para 165, 11 March 2010, Legislation Committee No.4

## 7. Sections 12-14: Site waste management plans

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### *Background*

405. Sections 12 to 14 of the proposed Measure provide the Welsh Ministers with the powers to make regulations in relation to site waste management plans (SWMPs) for the construction and demolition (C&D) sector in Wales.

406. We received evidence from a number of organisations on these provisions, including ConstructionSkills Wales<sup>278</sup>, NewEarth Solutions<sup>279</sup>, the Federation of Master Builders (FMB)<sup>280</sup>, the Environment Agency Wales<sup>281</sup> and the Confederation of British Industry (CBI)<sup>282</sup>.

407. The majority of those consultees who offered an opinion on site waste managements plans were supportive of the legislative provisions contained in the proposed Measure, although the Federation of Master Builders did not support the principle of introducing site waste management plans under this proposed Measure.

408. The evidence we received from consultees focused on four main areas;

- the ability of site waste management plans to deliver the Welsh government’s policy intentions;
- the current capacity of the C&D sector in Wales and its associated ability to cope with the requirements of administering site waste management plans;
- how site waste management plans should be policed and enforced;
- the proposals for the introduction of a fees and charging scheme.

409. These four areas are explored in more detail below.

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<sup>278</sup> Written evidence, WM18

<sup>279</sup> Written evidence, WM21

<sup>280</sup> Written evidence, WM12

<sup>281</sup> Written evidence, WM16

<sup>282</sup> Written evidence, WM9

## ***Delivery of the Welsh government's policy intentions***

### *Evidence from consultees*

410. In relation to the issue of whether the introduction of site waste management plans, and the accompanying charging scheme, would enable the Welsh Assembly Government to deliver on its stated aims of delivering more sustainable waste management practices, some consultees suggested there would be different outcomes for smaller scale construction or demolition projects, compared to those projects which were larger in scale.

411. The Federation of Master Builders (FMB) said they did not support the provisions relating to site waste management plans contained in the proposed Measure, and suggested that they would not achieve the Welsh government's stated policy objectives.<sup>283</sup>

412. They said:

“There is a strong view amongst FMB members that SWMPs have not been the driving force to bring about improvements in waste management and have not delivered the business benefits that were promised prior to implementation. SWMPs are unlikely to tackle fly tipping as those that undertake this deplorable practice will ignore the obligation in the same way that they ignore existing waste regulation.”<sup>284</sup>

413. Further to this, in oral evidence, they told us that in England, where SWMPs have already been introduced, the FMBs members do not feel that SWMPs have delivered the business benefits promised:

“I think that builders were promised that the scheme would reduce costs with regard to moving waste off sites because there would be a more efficient system in place. I think that they were also promised that this would mean that they would be viewed by the public as sustainable builders, which would improve their employability for want of a better word. That has not happened.”<sup>285</sup>

414. On this basis they suggested there was no need for a legislative framework in this area and that they would prefer requirements in

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<sup>283</sup> Written evidence, WM12

<sup>284</sup> *Ibid.*

<sup>285</sup> RoP, para 83, 21 April 2010, Legislation Committee No.4

relation to site waste management to be introduced through building regulations.<sup>286</sup>

415. They said:

“We would like to see a system where these regulations are made part of building regulations, which will hopefully be devolved completely in November 2011.”<sup>287</sup>

416. They also suggested that a more effective and less costly way of achieving the Welsh government’s policy aims in this area would be to improve the standards within the construction sector by introducing a ‘competent person’s scheme’ which could be linked with building regulations.<sup>288</sup>

417. They went on to say a ‘competent person’s scheme’:

“(…) will be less costly, more effective and get straight to the point of the matter. The control on it then will be that if you do not comply with any of the regulations, including this one, then you lose your competent person licence in effect, and that stops you from operating.”<sup>289</sup>

418. In contrast, both WRAP and the Environment Agency Wales stated they thought the introduction of site waste management plans in England had been successful.

419. In oral evidence, WRAP stated:

“[We]... commissioned a site waste management plan impact survey in 2009... Projects where there was client involvement in the site waste management plan also tended to generate greater savings, with around 65 per cent of respondents reporting that implementing a site waste management plan improved resource efficiency for all projects. Over half of the respondents reported that they had experienced reduced costs as a result of implementing a site waste management plan. Overall, 76 per cent of respondents stated that the benefits of

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<sup>286</sup> RoP, para 71, 21 April 2010, Legislation Committee No.4

<sup>287</sup> *Ibid.*

<sup>288</sup> *Ibid.*

<sup>289</sup> *Ibid.*



implementing a site waste management plan outweighed the costs.”<sup>290</sup>

420. In their evidence, the Environment Agency Wales stated:

“Interestingly, a survey was done by NetRegs (...) which showed that 56 per cent of those surveyed, who were mainly principal contractors and therefore not necessarily SMEs, had a positive view of using site waste management plans. Twenty per cent of those who responded said that it saved them money, and 13 per cent of them said that it improved their environmental credentials and that that had helped them to gain business. Although these are quite small percentages, they are significant given that these are relatively new regulations and it requires a lead-in time for benefits to materialise from the introduction of any new regulations.”<sup>291</sup>

421. The Environment Agency Wales acknowledged this particular consultation had received some negative feedback which suggested that the implementation of the plans was time-consuming and expensive, but went on to say that:

“It is partly this kind of feedback that has led to the possibility of there being different regulations in Wales, to enable them to be more effective in improving and delivering those environmental benefits.”<sup>292</sup>

422. In their written evidence, the Chartered Institute of Environmental Health suggested that, as planning authorities currently attached planning conditions to large projects which required the reuse of all the products of demolition within the site, the construction and demolition sector already achieved high levels of waste management.<sup>293</sup>

423. The Environment Agency Wales expressed similar views and said that a number of larger companies in Wales had already adopted a ‘SWMP approach’ for construction projects as a method of achieving best practice.<sup>294</sup>

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<sup>290</sup> RoP, para 59, 21 April 2010, Legislation Committee No.4

<sup>291</sup> RoP, para 187, 28 April 2010, Legislation Committee No.4

<sup>292</sup> *Ibid.*

<sup>293</sup> Written evidence, WM5

<sup>294</sup> RoP, para 184, 28 April 2010, Legislation Committee No.4

424. The Chartered Institute of Environmental Health suggested that, as larger projects would not be affected significantly by these new statutory provisions, the proposed Measure:

“(…) should target those sites where waste arisings are currently an issue, rather than those, such as large C&D projects, where waste arisings are not an issue. Specifically, the Measure should address smaller scale construction projects, such as domestic dwellings conversion and adaptations which give rise to relatively small amounts of waste but which are often the source of fly tipped materials.”<sup>295</sup>

425. A number of consultees also suggested that any site waste management plan scheme should take account of the differing nature of construction projects, i.e. new build or renovation. The CBI said:

“One can plan new builds to minimise waste, for example by using virgin materials that might be easier to recycle. It is different for refurbishments, as contaminated waste may need to be cleaned from the site, and that is much harder to deal with.”<sup>296</sup>

426. The Federation of Master Builders and ConstructionSkills Wales both stated that the C&D sector had been adversely affected by the recent economic conditions and that it would not be appropriate to introduce additional regulatory burden on the industry in the current economic climate.<sup>297</sup>

427. The Federation of Master Builders said that delayed implementation of these provisions until the C&D sector had suitably recovered would be welcomed.<sup>298</sup>

428. The CBI also suggested that the Welsh Assembly Government should be mindful of the cumulative impact on the construction industry of the introduction of a number of different regulations, including regulations on site waste management plans.<sup>299</sup>

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<sup>295</sup> Written evidence, WM5

<sup>296</sup> RoP, para 218, 25 March 2010, Legislation Committee No.4

<sup>297</sup> Written evidence, WM12 and WM18

<sup>298</sup> RoP, para 114, 21 April 2010, Legislation Committee No.4

<sup>299</sup> RoP, para 227, 25 March 2010, Legislation Committee No.4

### *Evidence from the Minister*

429. In introducing the provisions of the proposed Measure which relate to site waste management plans (SWMPs), the Minister said:

“(…) the development of site waste management plans, including the power to establish a fee and charges regime to fund the monitoring and enforcement of such plans, will lead to more sustainable waste management practices specifically in the construction and demolition sector.”<sup>300</sup>

430. The Minister stated that site waste management plans were one of a number of approaches designed to improve resource efficiency for the C&D sector in Wales. She said that, if used properly, the SWMPs would help businesses identify costs which could “help make a business more competitive by achieving cost savings such as reduced disposal or landfill tax costs.”<sup>301</sup>

431. The Minister informed us there would be a threshold for triggering the requirement to produce a site waste management plan. On this point, the Explanatory Memorandum states:

“Modelling on a threshold similar to the English SWMP Regulations (£300,000) companies involved in the Construction and Development (C&D) sector would be expected to prepare, update and implement a SWMP where they are involved in a construction or Demolition project with a value of more than £300K. Any C&D project on one site above that value must, before work begins, prepare a SWMP and submit it to the regulator.”<sup>302</sup>

432. The Minister said there would be consultation on the threshold value.<sup>303</sup>

433. When asked why the proposed Measure was the appropriate vehicle for the introduction of site waste management plans, as opposed to introducing a similar scheme as part of building regulations, the Minister argued that waste management in the C&D sector needed to be tackled now and, as such, the Welsh Ministers

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<sup>300</sup> RoP, para 9, 11 March 2010, Legislation Committee No.4

<sup>301</sup> [Letter from the Minister for Environment, Sustainability and Housing - Additional Evidence](#), 12 May 2010

<sup>302</sup> EM, para 8.4.9

<sup>303</sup> *Ibid.*

should not wait for powers over building regulation to be commenced (in December 2011) before addressing the issue.<sup>304</sup>

434. She went on to say:

“Using the Building Regulations system to make provision for site waste type activities would (...) be on a longer-time frame than is currently envisaged for this work. We need to make regulations requiring the making of Site Waste Management Plans now. This is because the plans are likely to help companies to benefit from improved waste management arrangements, which could potentially lead to costs savings.”<sup>305</sup>

435. With regard to the suggestion that the introduction of the site waste management plan regime should be delayed until the C&D sector had sufficiently recovered from the current economic difficulties, the Minister said:

“(...) we do not want to delay the implementation of site waste management plans as we want companies in the construction and demolition sector to use this important tool in order to start to enjoy the benefits (...) namely more effective waste management arrangements, which can lead to costs savings for companies.”<sup>306</sup>

#### *Our view*

436. In relation to the Minister’s intention to make regulations for site waste management plans for the construction and demolition sector in Wales, we note that some consultees have questioned the need for this part of the proposed Measure, saying they would prefer provision for site waste management to be made via building regulations.

437. We agree with the Minister that, in principle, the management of waste from construction and demolition sites should lead to more sustainable waste management practices.

438. However, **we question whether it is necessary for the Minister to bring forward regulations in relation to site waste**

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<sup>304</sup> [Letter from the Minister for Environment, Sustainability and Housing - Additional Evidence](#), 12 May 2010

<sup>305</sup> *Ibid.*

<sup>306</sup> *Ibid.*

**management plans within the timeframe she has outlined, particularly in advance of the commencement of powers for Welsh Ministers under the Building Regulations in December 2011. We believe it would simplify the requirements on business and make for clearer, more coherent regulations if the implementation of regulations for site waste management plans was to coincide with the commencement of powers under Building Regulations.**

439. We note the Minister's evidence in relation to a threshold value for building projects for which a site waste management plan must be produced. Although we acknowledge the Minister's intention to consult on this threshold value, the suggested threshold of £300, 000 is unlikely to capture smaller building operations.

**440. Whilst we believe it may not be practical or proportionate to include all building operations in the site waste management plan approach, we think the evidence we have received from the construction and demolition industry on this point merits further exploration. We recommend the Minister explores the points raised in this evidence fully at the appropriate time.**

### ***Capacity of the construction and demolition sector***

#### *Evidence from consultees*

441. A number of consultees argued that small and medium enterprises (SMEs) do not currently have the capacity to formulate and action the site waste management plan system, and may need support in order to meet the statutory requirements.

442. The Federation of Master Builders suggested that the challenges for smaller scale construction or demolition projects would be greater than those experienced by large-scale projects.<sup>307</sup>

443. The CBI said there were:

“(...) far greater capacity and expertise issues here for small and medium-sized construction companies than for larger construction companies, which, by and large, are already doing this.”<sup>308</sup>

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<sup>307</sup> Written evidence, WM9 and WM12

<sup>308</sup> RoP, para 224, 25 March 2010, Legislation Committee No.4

444. In their evidence, both the Federation of Master Builders and ConstructionSkills Wales stated that, if site waste management plans were to be introduced, some training for the sector would be required.<sup>309</sup>

445. In its written evidence, ConstructionSkills Wales stated:

“[We]... would recommend that waste-management courses/ training and information is made available through the Flexible Support 4 Business programme.”<sup>310</sup>

#### *Evidence from the Minister*

446. In relation to the concerns raised by consultees that site waste management plans could prove disproportionately burdensome for SMEs, the Minister said she would encourage small firms to respond to the forthcoming consultation on the sector plans and outline their concerns.<sup>311</sup>

447. The Minister also advised us that a cost benefit analysis and impact assessment is currently evaluating the options which would take forward the SWMP scheme in Wales. She said this would determine the extent of the business’ roles and responsibilities.<sup>312</sup>

448. The Minister went on to say that a “Small Firms Test” had been carried out as part of that cost benefit analysis, through which she aimed to gauge the impact of the regulations on site waste management plans on smaller firms.<sup>313</sup>

449. In discussing the ongoing cost benefit analysis and impact assessment, the Minister said:

“(...) it is anticipated there will be a degree of administrative burden in order to meet the legislative requirements of compliance.”<sup>314</sup>

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<sup>309</sup> Written evidence, WM12 and WM18

<sup>310</sup> Written evidence, WM18

<sup>311</sup> [Letter from the Minister for Environment, Sustainability and Housing - Additional Evidence](#), 12 May 2010

<sup>312</sup> *Ibid.*

<sup>313</sup> *Ibid.*

<sup>314</sup> [Letter from the Minister for Environment, Sustainability and Housing - Additional Evidence](#), 12 May 2010

450. In response to the evidence received regarding the capacity of the current C&D infrastructure in Wales, the Minister argued that those affected by the site waste management plan regulations would have adequate time to prepare for compliance with the regulations.<sup>315</sup>

#### *Our view*

451. In relation to the capacity of the construction and demolition sector to manage the site waste management plan regime, we share the concerns of those consultees who suggested that small and medium size enterprises (SMEs) may be disproportionately affected by the introduction of requirements to produce site waste management plans.

452. On this basis, **we recommend the Minister looks at a range of options for meeting the policy objectives in relation to site waste management plans, including linking the requirement to produce such plans to the relevant part of the planning process in order to reduce any unnecessary bureaucracy. This would provide for local authority involvement.**

453. Finally, **we consider that training and support will need to be provided to the construction and demolition sector in order for them to meet the requirements of the proposed Measure in relation to site waste management plans, and we recommend the Minister gives consideration to making adequate provision for this at the appropriate time.**

#### ***Monitoring and enforcement arrangements***

##### *Evidence from consultees*

454. In relation to the monitoring of site waste management plans, a number of consultees commented on the need for enforcement of the plans in order to guard against non-compliance.

455. In their evidence, the WLGA stated they would like further clarity on how site waste management plans would be monitored and enforced:

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<sup>315</sup> [Letter from the Minister for Environment, Sustainability and Housing - Additional Evidence](#), 12 May 2010

“In terms of the enforcement of those plans (...) we would want some clarity over who is responsible. Local authorities have some involvement through the building control function, but that is not for all sites (...). Also, local authorities do not have a waste regulatory role in any other sense, whereas the Environment Agency does (...).”<sup>316</sup>

456. The WLGA went on to suggest that, through informal discussions with the Environment Agency Wales, they had concluded that joint responsibility undertaken by the Environment Agency and local authorities in England had caused significant confusion.<sup>317</sup> They said “there is a bit of a muddle over who does what.”<sup>318</sup>

457. In their evidence, the Federation of Master Builders, ConstructionSkills Wales and the Environment Agency Wales suggested that local authorities would be best placed to monitor and enforce the scheme. The Federation of Master Builders said:

“(...) [monitoring and enforcement of the scheme) should definitely [involve] building control inspectors, because they have the experience and they understand the regulations. The proposals from Eunomia, which is doing a scan on this, suggest a number of options. Most of them use building control, and it is to be hoped that it would be part of the building regulation scheme.”<sup>319</sup>

458. In its written evidence, ConstructionSkills Wales stated that it would be concerned by any suggestion that the Environment Agency would be the monitoring body in Wales:

“(...) the Environment Agency would not be best placed to scrutinise construction projects and their waste management plans. Although according to the Environment Agency Wales website, the Agency does have a remit “overseeing the management of waste”, this does not include any specific remit over the built environment sector.”<sup>320</sup>

459. In their oral evidence, the Environment Agency Wales stated:

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<sup>316</sup> RoP, para 179, 21 April 2010, Legislation Committee No.4

<sup>317</sup> *Ibid.*

<sup>318</sup> *Ibid.*

<sup>319</sup> RoP, para 85, April 21 2010, Legislation Committee No.4

<sup>320</sup> Written evidence, WM18



“We have recommended the local authority as the body to do this as opposed to what happens in England, where they have gone for the two-authority approach of the agency and the local authority. Given that that seems to have caused confusion, we think that the local authorities are best placed to take on this role given that they currently have the most direct involvement with the construction sector as part of their planning duties and through the regulation of the enforcement of building regulations.”<sup>321</sup>

460. The Environment Agency Wales justified the recommendation by stating that local authorities were already in regular contact with clients, principal contractors and sub-contractors at the various stages of design and project delivery, which put them in the ideal position to take on this new role.<sup>322</sup>

461. In its written evidence, the Chartered Institute of Environmental Health warned that whoever was responsible for monitoring compliance may face difficulties when monitoring SWMPs on smaller sites; they said:

“We do (...) perceive problems in smaller scale development where not all of the waste generated, or none of the waste generated can be reused on site. Whilst plans can be made to manage the waste in actual fact all these will be will be details of how the waste will be disposed of, rather than used (...) the Site Waste Management Plan will have to include an element of estimation to take account of the unknown factors. In such cases it will be hard to determine whether compliance with the plan has been achieved.”<sup>323</sup>

#### *Evidence from the Minister*

462. We asked the Minister for her views on the suggestion that if an effective system were to be introduced, robust monitoring and significant penalties would be needed to ensure that site waste management plans were properly enforced. The Minister responded by saying that decisions regarding the nature of the site waste

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<sup>321</sup> RoP, para 197, April 28 2010, Legislation Committee No.4

<sup>322</sup> *Ibid.*

<sup>323</sup> Written evidence, WM5

management plan regulations and the associated fees and charging scheme have yet to be made.<sup>324</sup>

463. In relation to the question of who would be the appropriate monitoring authority in Wales, the Minister confirmed that:

“No decision has been taken about who the regulator would be, although two possible options would be local authorities or the Environment Agency.”<sup>325</sup>

464. The Minister did, however, suggest that, as the Environment Agency had considerable experience in the area of waste regulation, it would be appropriate for them to be considered as a possible regulator in Wales.<sup>326</sup>

465. We asked the Minister about the evidence we had received suggesting the policing of site waste management plans in England by both the Environment Agency and local authorities had led to confusion and had undermined the effectiveness of the SWMP scheme. Responding to this, the Minister suggested that the difficulties encountered in England were in part due to the lack of an effective monitoring and enforcement regime.<sup>327</sup>

466. She went on to say:

“The establishment of such a fees and charging regime [in Wales] should help to address the problems encountered in England by ensuring that monitoring and enforcement functions are appropriately funded.”<sup>328</sup>

### *Our view*

467. In relation to the introduction of a fees and charging scheme for site waste management plans, we note the evidence from consultees that joint responsibility of the Environment Agency and local authorities for enforcing the site waste management plan scheme in England had led to confusion of roles and had undermined the success of the scheme.

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<sup>324</sup> [Letter from the Minister for Environment, Sustainability and Housing - Additional Evidence](#), 12 May 2010

<sup>325</sup> RoP, para 204, 11 March 2010, Legislation Committee No.4

<sup>326</sup> [Letter from the Minister for Environment, Sustainability and Housing - Additional Evidence](#), 12 May 2010

<sup>327</sup> *Ibid.*

<sup>328</sup> *Ibid.*

**468. We agree with the Environment Agency Wales that the enforcement of a site waste management plan scheme in Wales should be undertaken by local authorities, because of their day to day involvement with the construction and demolition sector.**

***The introduction of a fees and charging scheme, and penalties***

*Background*

469. Sections 12 and 13 of the proposed Measure provide for Welsh Ministers to make regulations in respect of a fees and charging scheme, and to create offences and impose penalties for non-compliance with site waste management plan regulations.

470. Sections 12 and 13 restate existing provisions contained in section 54 of the Clean Neighbourhoods and Environment Act 2005.<sup>329</sup>

*Evidence from consultees*

471. With regard to the provisions of the proposed Measure which provide for a fees and charging scheme for offences in relation to site waste management plans, a number of conflicting views were offered by consultees.

472. In their evidence, both the Welsh Local Government Association and the Environment Agency Wales said they believed a fees and charging scheme would be necessary to ensure effective administration and monitoring of the scheme.

473. The WLGA stated:

“If you are to have a mandatory scheme, then someone has to administer it, and its administration costs have to be covered from somewhere. So, in the same way as you pay your planning and building regulations fees, it would mean a fee for the administration of the site waste management plan, because if you make it mandatory and someone has to enforce it, you will need some income to cover the cost of that.”<sup>330</sup>

474. The Environment Agency Wales said:

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<sup>329</sup> EM, para 3.53

<sup>330</sup> RoP, para 186, 21 April 2010, Legislation Committee No.4

“The fees and charges scheme will ensure that a funding stream is in place to help the regulator, whoever that will be, to monitor, inspect and enforce site waste management plans and to check that the requirements of the regulations are being met.”<sup>331</sup>

475. In their written evidence, New Earth Solutions offered caution that the fees and charges “be proportionately applied and appropriately resourced by the relevant authorities.”<sup>332</sup>

476. The Federation of Master Builders said that the level of fees should be set as such so they heavily penalise non-compliant people. They suggested that those who are compliant would welcome extensive fees for non-compliance, as it had the potential to reduce the rogue element within the C&D sector.<sup>333</sup>

477. In contrast, ConstructionSkills Wales expressed concerns with the proposed penalty scheme and suggested that it would be inappropriate for the built environment sector to be subject to regulatory costs and penalties decided by the Welsh Assembly Government without consultation with the built environment sector or sector representatives.<sup>334</sup> They said:

“The imposition of fees and charges is of significant concern to ConstructionSkills Wales as the built environment sector in Wales is effectively still in recovery. If the Welsh Assembly Government were to involve an outside agency with no specific knowledge or expertise in the built environment sector in Wales, our organisation would again be concerned that another level of organisation bureaucracy could add cost and time to projects being carried out.”<sup>335</sup>

#### *Evidence from the Minister*

478. In relation to the introduction of a fees and charging scheme, the Explanatory Memorandum states the initial cost of establishing the site waste management scheme would be covered by the imposition of

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<sup>331</sup> RoP, para 199, 28 April 2010, Legislation Committee No.4

<sup>332</sup> Written evidence, WM21

<sup>333</sup> RoP, para 112, 21 April 2010, Legislation Committee No.4

<sup>334</sup> Written evidence, WM18

<sup>335</sup> *Ibid.*

fees and charges; it anticipates that such charges would decrease over time.<sup>336</sup>

479. In her evidence, the Minister stated the detail of the charging scheme would be a matter for future regulations and that “no final decisions have been made about the nature of Site Waste Management Plan regulations, on which we aim to consult on later in 2010, or any associated fees and charging scheme.”<sup>337</sup>

480. In correspondence<sup>338</sup>, we requested the Minister provide clarification relating to the level of penalty that could be imposed under the regulations, and whether this ability was fettered by the relevant provisions of the Government of Wales Act 2006.<sup>339</sup> Responding to this point, the Minister stated that, as the provisions restated the existing law, the general restrictions in the 2006 Act would not apply.<sup>340</sup>

#### *Our view*

481. In relation to the setting of fees for non-compliance with site waste management plans, **we agree with those consultees who advocated the need for a fees and charging scheme in order to fund the effective monitoring and enforcement of the site waste management plan scheme.**

482. **We recommend the Minister considers setting the levels of such fees so that the penalty for non-compliance is notably greater than the cost of complying with the site waste management plan regulations.**

483. In relation to the level of penalty that could be imposed under the regulations, we note that sections 12 and 13 of the proposed Measure amount in essence to a restatement of the law as found in the Clean Neighbourhoods and Environment Act 2005 and that this Act confers on the Welsh Ministers a power to make regulations relating to site waste management plans. We further note this power is unfettered in relation to penalties that may be imposed for breach of these

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<sup>336</sup> EM, para 8.4.18

<sup>337</sup> [Letter from the Minister for Environment, Sustainability and Housing - Additional Evidence](#), 12 May 2010

<sup>338</sup> [Letter to the Minister for Environment, Sustainability and Housing](#), 21 May 2010

<sup>339</sup> Government of Wales Act 2006, paragraph 2, Part 2, Schedule 5

<sup>340</sup> [Letter from the Minister for Environment, Sustainability and Housing](#), 28 May 2010

regulations. We were advised by the Minister<sup>341</sup> that, in the case of an unmodified restatement of existing law, the general restriction relating to the imposition of penalties contained in the Government of Wales Act 2006<sup>342</sup> would not apply.

**484. In the interests of transparency and in order to assist those who will be subject to, and those who will enforce the regulations that may be made under sections 12 and 13, we consider there should be no ambiguity surrounding the level of penalty that may be imposed. We therefore recommend the Minister takes the necessary actions to clarify this point.**

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<sup>341</sup> [Letter from the Minister for Environment, Sustainability and Housing](#), 28 May 2010

<sup>342</sup> Government of Wales Act 2006, paragraph 2, Part 2, Schedule 5

## Witnesses

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The following witnesses provided oral evidence to the Committee on the dates noted below. Transcripts of all oral evidence sessions can be viewed in full at <http://www.assemblywales.org/bus-home/bus-legislation/bus-leg-measures/business-legislation-measures-waste.htm>

### *11 March 10*

Jane Davidson AM	Minister for Environment, Sustainability and Housing, Welsh Assembly Government
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### *25 March 10*

Marc Donovan	Boots
Simon Morys	Tesco
Bob Gordon	British Retail Consortium
David Rosser	CBI Wales

### *21 April 10*

Richard Jenkins	Federation of Master Builders
Beth Winkley	WRAP
Tim Peppin	Welsh Local Government Association

### *28 April 10*

Jeanie Gray	Keep Wales Tidy
Mal Williams	Cylch
Joanne Sherwood	Environment Agency Wales
Nadia De Longhi	Environment Agency Wales
Iain Ferguson	The Co-operative

### *5 May 10*

Jane Davidson AM	Minister for Environment, Sustainability and Housing, Welsh Assembly Government
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## List of written evidence

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The following people and organisations provided written evidence to the Committee. All written evidence can be viewed in full at

<http://www.assemblywales.org/bus-home/bus-legislation/bus-leg-measures/business-legislation-measures-waste.htm>

<i>Organisation</i>	<i>Reference</i>
Cerith Rhys Jones, former Climate Change Champion Wales	WM 1
Benita Afan Rees	WM 2
Stephen Millson	WM 3
Jean Anderson	WM 4
Chartered Institute of Environmental Health Wales	WM 5
British Retail Consortium	WM 6
Tesco	WM 7
Boots	WM 8
CBI Wales	WM 9
Jan Tucker	WM 10
Richard Lewis	WM 11
FMB Cymru	WM 12
Waste & Resources Action Programme (WRAP)	WM 13
Welsh Local Government Association	WM 14
The Co-operative	WM 15
The Environment Agency Wales	WM 16
Keep Wales Tidy	WM 17
ConstructionSkills Wales	WM 18



Waste Awareness Wales	WM 19
Cylch	WM 20
New Earth Solutions	WM 21
Planning and Environmental Law Committee, Law Society	WM 22
Wales Audit Office	WM 23
Friends of the Earth Cymru	WM 24
Royal College of Nursing	WM 25
LARAC - Local Authority Recycling Advisory Committee	WM 26
RSPB Cymru	WM 27
WCVA	WM 28
Denbighshire County Council	WM 29
Ceredigion County Council	WM 30
Mid Wales Waste Partnership	WM 31
Carmarthenshire County Council	WM 32
Margaret Jones, Executive Member Environment, Cardiff Council	WM 33

**Written evidence received from the Member in Charge,  
Jane Davidson AM, the Minister for Environment,  
Sustainability and Housing.**

[Letter from the Minister for Environment, Sustainability and Housing - Additional Evidence](#), 27 March 2010

[Letter from the Minister for Environment Sustainability and Housing - Additional Evidence, Annex A, Annex B](#), 27 April 2010

[Letter from the Minister for Environment, Sustainability and Housing - Additional Evidence](#), 12 May 2010

[Letter from the Minister for Environment, Sustainability and Housing](#), 28 May 2010