

WASTE (WALES) MEASURE 2010

EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes relate to the Waste (Wales) Measure 2010 as passed by the National Assembly for Wales on 2 November 2010 and approved by Her Majesty in Council on 15 December 2010.
2. The Welsh Assembly Government's Department for Environment, Sustainability and Housing has prepared them in order to assist the reader of the proposed Measure. They do not form part of the draft Measure and have not been endorsed by the National Assembly for Wales.
3. The Explanatory Notes should be read in conjunction with the proposed Measure. They are not, and are not meant to be, a comprehensive description of the Measure. So where a section or part of a section is self-explanatory, no further explanation or comment is provided.
4. The Measure makes provision about—
 - the destination of proceeds from charges for single use carrier bags;
 - targets to be met by local authorities in relation to waste;
 - prohibiting or otherwise regulating the deposit of waste in a landfill;
 - site waste management plans for works involving construction or demolition.
5. The National Assembly's competence to legislate on these topics is found in Matters 6.1, 6.3 and 6.4 contained in Field 6 of Part 1 of Schedule 5 to the [Government of Wales Act 2006 \(c. 32\)](#). These Matters were added to Schedule 5 by the National Assembly for Wales (Legislative Competence) (Environment) Order 2010 and enable the National Assembly to make provision relating to—
 - preventing, reducing, collecting, managing, treating or disposing of waste,
 - protecting or improving the environment in relation to pollution¹, and
 - protecting or improving the environment in relation to nuisances²,
6. The National Assembly's legislative competence under matters 6.1, 6.3 and 6.4 is subject to a number of exceptions, none of which excludes the provision made in this Measure from the legislative competence of the Assembly.

¹ The term "pollution" is the subject of an interpretation provision in Field 6 of Part 1 of Schedule 5 to the Government of Wales Act 2006.

² The term "nuisance" is the subject of an interpretation provision in Field 6 of Part 1 of Schedule 5 to the Government of Wales Act 2006.

COMMENTARY ON SECTIONS

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

7. This section amends Schedule 6 to the [Climate Change Act 2008 \(c. 27\)](#) (“the 2008 Act”). That Schedule empowers the Welsh Ministers to make provision by regulations about charging by sellers of goods for the supply of single use carrier bags. The Welsh Ministers intend that, subject to the approval of the National Assembly, regulations requiring sellers to charge will come into force in 2011.
8. The 2008 Act did not empower the Welsh Ministers to impose duties on sellers of goods, or anyone else, in respect of the destination of proceeds from charges imposed under regulations. Section 1 of this Measure empowers the Welsh Ministers to do so by inserting new paragraphs 4A and 4B into Schedule 6 to the 2008 Act.
9. The purpose and effect of the new paragraph 4A is to allow the Welsh Ministers to make provision by regulations for the application of the net proceeds of the charge to purposes, which must relate to certain environmental matters, specified in regulations. This is principally given effect by sub-paragraph (2) of paragraph 4A which provides that such provision can be made by regulations under Schedule 6.
10. The “net proceeds of the charge” has the same meaning for this purpose as it has for all other purposes under Schedule 6 and so is defined by reference to the definition of that term already contained in paragraph 7(4) of Schedule 6³. When making regulations about applying the net proceeds of the charge the regulations will therefore be focussed on the amounts which represent the balance between the total amount received by sellers by way of the statutory charge for single use carrier bags, less any amounts specified in regulations (for example, the Draft Regulations currently before the National Assembly for Wales specify VAT and reasonable costs).
11. The purpose of sub-paragraph (1) is to make clear on the face of Schedule 6 of the 2008 Act (which extends to England and Wales and Northern Ireland) that the powers conferred by paragraph 4A apply only to regulations made by the Welsh Ministers in relation to Wales.
12. Sub-paragraph (2) widens the scope of the Welsh Ministers’ regulation-making powers under Schedule 6 to the 2008 Act so that regulations can also contain provision for the application of the net proceeds of the charge to specified purposes.
13. Sub-paragraph (3) sets out a non-exhaustive list of the provision that may be made under the power contained in sub-paragraph (2). Regulations could require sellers to apply the net proceeds of the charge to purposes specified in the regulations (sub-paragraph (3) (a)). They could also provide for any such duty to be discharged by sellers’ net proceeds being accepted by third parties. Those third parties would be specified in the regulations and could be persons or categories of persons (sub-paragraph (3)(b)). The regulations could deal with the arrangements for passing net proceeds to any third persons (sub-paragraph (3)(c)) and could require the third parties specified in the regulations to apply the proceeds to one or more specified purposes (sub-paragraph (3)(d)).
14. Sub-paragraph (3)(e) allows regulations to deal with the recovery of sums where the net proceeds have not been accepted or used as they should have been. It permits the Welsh Ministers to make provision about recovering sums from sellers and any persons who accept the proceeds from sellers. Sub-paragraph (3)(f) allows regulations to deal with applying any recovered sums to specified purposes. It makes clear on the face of the legislation that regulations which do make provision for applying recovered sums to specified purposes can also make provision so that those sums do not go into the Welsh Consolidated Fund. The regulations could also require the Welsh Ministers to give guidance about compliance with the regulations (sub- paragraph 3(g)).

3 “The seller’s gross proceeds of the charge reduced by such amounts as may be specified”: paragraph 7(4) of Schedule 6.

15. Sub-paragraphs (4) and (5) are about the purposes that can be specified in regulations as being purposes to which the net proceeds of the charge must be applied. These are connected to the National Assembly's competence to legislate in this area.
16. The regulations can, in certain circumstances, apply to persons other than sellers if the Welsh Ministers consider that to do so would be appropriate to achieve either of both of two objectives. The first objective concerns the enforcement of any provision about application of the net proceeds of the charge. The second objective relates to making any provision about the application of the net proceeds effective (sub-paragraph (6)).
17. Sub-paragraphs (7) and (8) add flexibility to how regulations under Schedule 6 to the 2008 Act can be applied.
18. **Schedule 6** already allows regulations to be applied to all sellers, to named sellers or to sellers identified by reference to factors which are set out in Schedule 6 (or to a combination of both name and factors). Sub-paragraph (7) now allows regulations to be applied by reference to a seller's arrangements for applying the net proceeds of the charge and by reference to any other factor which the Welsh Ministers consider appropriate. Examples of results which could be achieved under this additional flexibility are the application of regulations to sellers identified by reference to the number or type of single use carrier bags they supply.
19. Sub-paragraph (8) permits regulations to make exceptions and exemptions. This puts beyond doubt for example, that sellers identified by name could be exempted from regulations.
20. Paragraph 4B defines a number of terms used in paragraph 4A.
21. Further amendments to Schedule 6 to the Climate Change Act 2008 are made by section 1(3) and 1(4) of the Measure.
22. **Section 1(3)** inserts a new paragraph 7(3A) into Schedule 6. Paragraph 7 of Schedule 6 is about record keeping and the publication of records. The effect of paragraph 7(3A) is that regulations made by the Welsh Ministers under that Schedule may also require the publication or supply of records or information relating to the amount received by a person from a seller as net proceeds of the charge. This would, for example, allow the regulations to require persons who accept the net proceeds from a seller to publish and supply records.
23. **Section 1(4)** inserts a new paragraph 8(2A) into Schedule 6. Paragraph 8 is about enforcement. The effect of paragraph 8(2A) is to enable the Welsh Ministers to confer powers on an administrator to question those who the administrator reasonably believes has received any net proceeds of the charge. Administrators are appointed under the regulations to administer and enforce the provision they make.

Section 2 – Regulations: procedure

24. This section amends section 77 of the Climate Change Act 2008. Section 77 introduces Schedule 6 and contains provision about the procedure to be applied when regulations are made under the Schedule. Section 2 inserts a new subsection 4(aa) into section 77 with the effect that the first set of regulations to be made by the Welsh Ministers under paragraph 4A of Schedule 6 are subject to the affirmative resolution procedure. This means that the regulations cannot come into force unless a draft of them is laid before, and approved by a resolution of, the National Assembly.

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

25. **Section 3** sets targets for local authorities in respect of the recycling, preparation for re-use and composting of municipal waste and makes authorities that do not meet the targets liable to a financial penalty. The local authorities referred to in this section

are county councils and county borough councils in Wales (see the definitions in section 17).

26. Subsection (2) requires local authorities to secure the recovery (by recycling, preparation for re-use or composting operations), of at least the target amount of its municipal waste in each target financial year. It also requires local authorities to meet the target amount in all subsequent financial years until the next target financial year is reached, at which point a new target amount will apply. The table in subsection (3) specifies the targets years and the target amounts for each of them. Subsection (4) enables the Welsh Ministers to amend this table by order. Any such order is subject to an affirmative resolution procedure in the National Assembly for Wales (section 20(2) and (3)).
27. For the purposes of the target, “composting” includes any other form of transformation by biological processes (subsection (5)). The Welsh Ministers may also make further provision by order, setting out how to establish whether waste is recycled, prepared for re-use or composted for the purposes of the targets. Such orders are subject to a negative resolution procedure in the National Assembly for Wales (see section 20(1)).
28. If a local authority does not meet a recycling, preparation for re-use or composting target, liability to a penalty arises under subsection (7). Penalties are to be paid to the Welsh Ministers. Further provision is made about penalties in section 6 (see the relevant explanatory notes below).
29. Subsection (8) explains what is meant by a local authority’s municipal waste from a target financial year. It is the total amount by weight of the following—
 - all the waste the authority collects in that year in its capacity as a waste collection authority under section 45 of the [Environmental Protection Act 1990 \(c. 43\)](#) (“the 1990 Act”) (this includes virtually all household waste; commercial waste from premises where the occupier of those premises has requested collection; and industrial waste from premises where the occupier of the premises has made a request for collection by the authority and the authority is content to collect it);
 - all the waste deposited with the authority at the places it provides for that purpose in its capacity as a waste disposal authority under subsections (1)(b) and (3) of section 51 - e.g. places badged as “civic amenity sites” or “recycling centres”(these places must be provided for persons resident in its area to deposit their household waste and the authority may make them available for the deposit of household, commercial or industrial waste by other persons); and
 - such other waste as may be specified by the Welsh Ministers by order (these orders are subject to a negative resolution procedure (see section 20(1))).

Section 4 – Regulations to set waste targets

30. This section enables the Welsh Ministers to make regulations to specify other waste targets, in addition to those set under section 3, relating to the prevention, reduction, collection, management, treatment or disposal of waste by local authorities. This section also enables the Welsh Ministers to make regulations to specify indicators to measure a local authority’s performance in relation to these targets and to impose a financial penalty on local authorities if these waste targets are not met.
31. Regulations under this section are subject to an affirmative resolution procedure in the National Assembly for Wales (see section 20(3)).

Section 5 – Monitoring and auditing compliance with targets

32. This section enables the Welsh Ministers to make regulations about assessing, monitoring and auditing compliance in relation to targets for recycling, preparation

for re-use and composting under section 3 or other waste targets under section 4. Regulations may make provision—

- for the method of assessing compliance with targets;
 - about arrangements for monitoring and auditing compliance;
 - conferring powers of entry and inspection for those persons monitoring and auditing compliance;
 - requiring local authorities to keep records and provide information;
 - about the publication of information in relation to targets; and
 - imposing liability on a local authority to pay a penalty if it fails to comply with any requirement of regulations made under this section.
33. Regulations under this section which impose liability to pay a penalty are subject to an affirmative resolution procedure in the National Assembly for Wales (see section 20(3)). All other regulations under this section are subject to a negative procedure (see section 20(1), (2) and (3)).

Section 6 – Regulations about penalties

34. This section enables the Welsh Ministers to make regulations about penalties to which local authorities may be liable—
- for failure to meet the targets for recycling, preparation for re-use and composting set under section 3
 - failure to meet waste targets under section 4, or
 - for breaches of regulations under section 5 relating to monitoring and auditing compliance.
35. Regulations under section 6 may set the amount of a penalty, or lay down rules for calculating it. They can also specify when payments are to be paid, and make provision about interest on unpaid penalties; about recovering, setting off or securing unpaid amounts in respect of penalties and interest; and about waiver of penalties.
36. Regulations under this section are subject to an affirmative resolution procedure in the National Assembly for Wales (see section 20(3)).

Section 7 – Guidance

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

Section 8 – Consultation

38. Subsection (1) requires the Welsh Ministers to consult the Environment Agency, local authorities, and such other persons as they consider appropriate before making orders or regulations under section 3 or regulations under sections 4, 5 or 6, or before providing any guidance under section 7.
39. Subsection (2) provides that if the Welsh Ministers have carried out any consultation for the purposes of subsection (1) prior to the Measure being passed, it has effect as if it were undertaken after the Measure was passed. In other words, it satisfies the requirement in subsection (1).

Section 9 – Regulations prohibiting deposit of waste in a landfill

40. Subsection (1) provides the Welsh Ministers with a power to make provision by regulations for and in connection with prohibiting or otherwise regulating the deposit of specified kinds of waste in landfill sites in Wales. “Specified” means specified in regulations made by the Welsh Ministers (section 17).
41. The deposit of waste in a landfill is currently regulated (in part) by the [Environmental Permitting \(England and Wales\) Regulations 2007 \(SI 2007/3538\)](#). Those regulations are made under section 2 of the [Pollution Prevention and Control Act 1999 \(c. 24\)](#). The purpose of section 2 of the 1999 Act is (among other things) to regulate activities that are capable of causing any environmental pollution. The regulation-making power under section 2 is exercisable by the Welsh Ministers in relation to Wales⁴. The purpose of section 9 of this Measure is to give the Welsh Ministers the power to prohibit or otherwise regulate deposit of waste in a landfill whether or not the deposit of that type of waste is capable of causing environmental pollution.
42. Subsection (2) specifies that the regulations may amend regulations made under section 2 of the Pollution Prevention and Control Act 1999 which relate to the operation of a landfill. This will allow provision under section 9 of the Measure to be incorporated into the existing environmental permitting regime. The subsection also provides that regulations may (among other things) make failure to comply with the regulations an offence; provide for penalties in relation to such offences; and set out who the enforcement authorities will be, and what their functions will be.
43. The power of the Welsh Ministers to create criminal offences under this section is subject to the limits imposed by paragraph 2 of Part 2 of Schedule 5 to the Government of Wales Act 2006. They would not be able to use this power to create any criminal offence punishable—
- on summary conviction, with imprisonment for more than the prescribed term or with a fine exceeding level 5 on the standard scale (currently £5000), or
 - on conviction on indictment, with a period of imprisonment exceeding two years.
- The prescribed term is currently six months in relation to a summary conviction, whether or not the offence was triable either way. But on the coming into force of sections 154(1) and 281(5) of the [Criminal Justice Act 2003 \(c. 44\)](#) it will be 51 weeks in the case of a summary offence and 12 months where the offence is triable either way⁵.
44. Regulations under this section are subject to an affirmative resolution procedure in the National Assembly for Wales (section 20(3)).

Section 10 – Civil sanctions in respect of the deposit of waste in a landfill

45. This section specifies that the power to make regulations in section 9 includes power to provide for civil sanctions in respect of offences created under section 9. Civil sanctions are an alternative to criminal penalties as a way of addressing breaches.
46. The power allows the Welsh Ministers to make equivalent provision, in relation to an enforcement authority, to that which could be made by an order under Part 3 of the [Regulatory Enforcement and Sanctions Act 2008 \(c. 13\)](#) (“RESA”) in relation to a regulator.
47. This means that the Welsh Ministers can make provision enabling an enforcement authority to—

4 Except in so far as the power is exercisable in relation to offshore oil and gas exploration and exploitation: the power rests with the Secretary of State in these circumstances. Where the power is exercisable in relation to a cross-border body but, by its nature, cannot be specifically exercised in relation to Wales, the power is exercisable by the Welsh ministers in relation to that body concurrently with the Secretary of State ([National Assembly for Wales \(Transfer of Functions\) Order 2005 \(SI 2005/1958\)](#), article 3).

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

- impose a fixed monetary penalty (section 39 RESA);
 - impose a variable monetary penalty, determined by the enforcement authority (section 42 RESA);
 - require specified steps to be taken so as to secure that the offence does not continue or recur (ibid);
 - require specified steps to be taken so as to secure that the position is restored to what it would have been if the offence had not been committed (ibid);
 - issue a stop notice, which is a notice prohibiting a person from carrying on an activity until steps specified in the notice are taken (section 46 RESA);
 - accept an enforcement undertaking from a person in a case where the authority has reasonable grounds to suspect that the person has committed a relevant offence (section 50 RESA) (an enforcement undertaking is an undertaking to take specified action; fulfilling the undertaking will have the effect of preventing the person from being convicted of an offence in respect of the act or omission to which the undertaking relates or having fixed monetary penalties or discretionary requirements imposed on them in relation to that act or omission).
48. Sections 39(4) and 42(6) of RESA are disapplied in relation to the regulations made under section 9(1) of the Measure by subsection (3). This is because both provisions of RESA impose limits on penalties, and the limits they impose are potentially higher, than the limits permissible in Measures by virtue of paragraph 2 of Part 2 of Schedule 5 to the Government of Wales Act 2006 (see paragraph 37 above).
49. Subsection (3)(b) also modifies subsection 49(1) of RESA, for the same reason. Section 49 of RESA makes provision requiring the enforcement of stop notices by the creation of criminal offences. The maximum fine on summary conviction specified in section 49 is more than the amount that can be imposed in relation to an offence created by or under an Assembly Measure (see above, paragraph 37). Subsection (3)(b) modifies subsection 49(1) of RESA so as to remove this discrepancy, by making clear that reference in section 49(1)(a) of RESA to “£20,000” is to be read as a reference to “level 5 on the standard scale” – the maximum fine allowed under paragraph 2 of Part 2 of Schedule 5 to the Government of Wales Act 2006.
50. Subsection (4) applies section 63 to 69 of RESA to regulations made under section 9 of the Measure as they would apply to an order made under Part 3 of RESA. Subsections (5) and (6) make related provision.
51. The combined effect of subsections (4) to (6) is set out in the following paragraphs.
52. Where the Welsh Ministers confer power on an enforcement authority to impose a civil sanction in relation to an offence, the Welsh Ministers must also ensure the following results (see section 63 of RESA)—
- that the authority publishes guidance about its use of the sanction;
 - that guidance contains specified information, depending on the type of sanction - such as the circumstances in which a monetary penalty or stop notice is likely to be imposed, the circumstances in which it cannot be imposed; the amount of any monetary penalty; how to discharge penalties and rights of appeal and similar;
 - that the guidance is revised where appropriate;
 - that the authority consults persons specified in the Welsh Ministers’ regulations before publishing any guidance;
 - that the authority has regard to the guidance in exercising functions.

53. Where power is conferred on an enforcement authority to impose a civil sanction in relation to an offence the authority must also—
- prepare and publish guidance about how the offence is to be enforced (see section 64 RESA);
 - publish reports about the cases in which the civil sanction has been imposed (see section 65 RESA).
54. The Welsh Ministers may not make provision enabling an enforcement authority to impose a civil sanction in relation to an offence unless the Welsh Ministers are satisfied that the authority will act in accordance with the following principles (referred to in RESA as “the regulatory principles”) in exercising that power—
- that regulatory activities should be carried out in a way which is transparent, accountable, proportionate and consistent; and
 - that regulatory activities should be targeted only at cases in which action is needed.
55. Where the Welsh Ministers have conferred a power to impose civil sanctions, they must review how that power is being operated (see section 67 of RESA) and may suspend the power of an enforcement authority to impose such sanctions (see section 68 of RESA).
56. Receipts from civil sanctions – e.g. from the payment of monetary penalties – must be paid into the Welsh Consolidated Fund where the enforcement authority has functions only in relation to Wales, and into the UK Consolidated Fund where the enforcement authority has functions in relation to Wales and another part of the UK (see section 69 of RESA).

Section 11 - Consultation

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

Section 12 - Site waste management plans

59. Sections 12 to 16 of the Measure restate, with modifications, section 54 of the [Clean Neighbourhoods and Environment Act 2005 \(c. 16\)](#). The modifications concern the administration and enforcement of the regime: section 12 enables the Welsh Ministers to make regulations about fees and charges schemes, section 14 enables civil sanctions to be applied to offences and section 16 provides for consultation.
60. The purpose and effect of section 12(1) are to allow the Welsh Ministers to make provision, by regulations, to require specified persons to make plans setting out how they will manage and dispose of waste created in the course of specified works involving construction and demolition (subsection (1)(a)). The regulations may require those required to make plans to comply with them (subsection (1)(b)).
61. Subsection (2) sets out a non-exhaustive list of the provisions that could be made by regulations under subsection (1). These include the circumstances in which plans must be prepared (subsection (2)(a)); the contents of plans (subsection (2)(b)); provisions about enforcement authorities and their functions (subsection (2)(c) and the keeping of plans and their production to enforcement authorities (subsection (2)(d)). The regulations may also require the Welsh Ministers, or an enforcement authority, to establish a fees and charging scheme to enable the recovery of reasonable costs incurred by an enforcement authority in performing the functions that will be conferred on it by the regulations (subsection(2)(e)).

62. The works which will be affected by the regulations may, by virtue of subsection (3), be described by reference to the cost or likely cost of such works, or by reference to other criteria.
63. Subsection (4) is a savings provision. It will ensure that, if the Welsh Ministers make regulations about site waste management plans under section 54 of the Clean Neighbourhoods and Environment Act 2005 before the Measure comes into force, those regulations have effect as if they were made under the provision in this Measure.

Section 13 – Offences and penalties

64. This section enables the Welsh Ministers to make regulations in relation to offences and penalties for breaches of the requirements established in regulations made under section 12. It also sets out, or clarifies, the limits on the criminal sanctions that can be imposed for such offences.
65. As set out above, section 12 largely re-enacts provision in section 54 of the Clean Neighbourhoods and Environment Act 2005. For that reason, the limits on the criminal sanctions that can be imposed in Measures do not apply to offences created under it. (These limits are set out in paragraph 2 of Part 2 of Schedule 5 to the Government of Wales Act 2006; and the fact that they do not apply in cases where a Measure is restating the law is contained in paragraph 9 of Part 3 of Schedule 5).
66. Instead, section 13 (2) and (3) set out the limits that apply to sanctions for offences created under section 12. Section 13(2) deals with offences for breaches of restated provisions, i.e. breaches of requirements established under section 12(2)(a) to (d). It imposes restrictions prohibiting the creation of offences which are punishable by imprisonment, or by a fine exceeding £50,000 on summary conviction.
67. However, the provision made by section 12(2)(e) is not a restatement of the existing law but an addition to it. This means that the limits on criminal sanctions set out in paragraph 2 of Part 2 to Schedule 5 of the Government of Wales Act 2006 do apply in this case. Nevertheless, the Welsh Assembly Government thought it desirable to make the limit on sanctions clear on the face of the Measure, and section 13(3) therefore provides that offences made under this provision must not be punishable on summary conviction by a fine exceeding level 5 on the standard scale.

Section 14 – Civil sanctions in respect of site waste management plans

68. This section allows the Welsh Ministers to enable enforcement authorities to impose civil sanctions in relation to offences committed under site waste management plan regulations, as an alternative to prosecution of those offences in the criminal courts. The approach follows that taken at section 10 in relation to landfill offences. In particular, the proposed Measure modifies section 49(1) of Regulatory Enforcement and Sanctions Act 2008 to enable the civil sanctions regime in relation to Site Waste Management Plans to comply with the Government of Wales Act 2006 limit on maximum penalties. However, that limit does not apply to site waste management plans offences in the same way that it applies to landfill offences, and therefore section s39(4) and 42(6) of the 2008 Act are not disapplied.

Section 15 - Guidance

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

Section 16 - Consultation

70. **Section 16(1)** provides that before making any regulations under section 12, the Welsh Ministers must consult the Environment Agency; local authorities; appropriate

representatives of persons affected by the regulations; and other persons that the Welsh Ministers consider appropriate.

71. Subsection (2) has the effect of allowing consultation undertaken before the passing of the Measure to count for the purposes of subsection (1).

Section 17 - Interpretation

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

Section 18 – Minor and consequential amendments

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

Section 19 – Orders and regulations

74. This section contains general provisions about regulations and orders made under the Measure.
75. Subsection (1) provides that where the Welsh Ministers are empowered by the Measure to make orders or regulations, these are to be made by statutory instrument. Subsection (2) provides that any power to make regulations or orders, given to the Welsh Ministers under this Measure, includes the power to make different provisions for different cases or classes of cases, different areas, different persons or descriptions of person, and different purposes. It also enables orders or regulations to make different provisions apply at different times and to make provisions that apply generally or in relation to specific cases. Subsection (2) also enables the Welsh Ministers to make incidental, supplementary, consequential, transitory, transitional or saving provision, as the Welsh Ministers think fit.
76. Under subsection (3), a provision that may be made by order under this Measure may be made by regulations. Under subsection (4), a provision that may be made by regulations under this Measure may be made by order. This enables various provisions under the Measure to be combined in a single statutory instrument, rather than two separate ones.

Section 20 - Orders and regulations: procedures

77. Subsection (1) provides the default position that any statutory instrument made under the Measure will be subject to the National Assembly's negative resolution procedure. There are two exceptions to this, set out in subsection (2). The first is orders under section 21(1) of the Measure, commencing section 3 of the Measure. These commencement orders are not subject to any Assembly procedure. Subsection (2) also provides that the negative procedure does not apply to the orders and regulations listed in subsection (3). These orders and regulations are subject to an affirmative resolution procedure.
78. Subsection (3) specifies the orders and regulations that need to be laid before, and be approved by a resolution of, the National Assembly (i.e. the orders and regulations that are subject to the affirmative procedure). These are –
- orders made under section 3(4) – orders amending the table of recycling, preparation for re-use and composting targets set out in section 3(3);
 - regulations made under section 4 (regulations to set waste targets);
 - regulations made under section 5 (1) (g) (regulations imposing liability on a local authority to pay a penalty if it fails to comply with regulations relating to monitoring and auditing compliance with targets);

- regulations made under section 6 (regulations about penalties for breach of targets under sections 3 or 4 or for breach of monitoring and auditing requirements under section 5);
 - regulations made under section 9 (regulations prohibiting deposit of waste in a landfill); and regulations made under section 14 (regulations making provision for civil sanctions in respect of site waste management plans).
79. Subsection (4) provides that where regulations make provision that may be made by order, the procedure that would apply to the order under this section applies to the regulations. Similarly, under subsection (5), where an order makes provision that may be made by regulations, the procedure that would apply to the regulations under this section applies to the order. This ensures that, where provisions made under different sections of the Measure are made in a single statutory instrument, the Assembly procedure applicable to that instrument is clear.

Section 21 – Commencement

80. Subsection (1) sets out that section 3 will be brought into force by an order made by the Welsh Ministers.
81. Subsection (2) provides that the remaining provisions of the Measure will come into force automatically, at the end of a period of two months beginning on the day on which the Measure is approved by Her Majesty in Council.

Section 22 – Short title

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

Schedule

83. The Schedule makes consequential amendments to Section 54 of the [Clean Neighbourhoods and Environment Act 2005 \(c.16\)](#) and the [Climate Change Act 2008 \(c.27\)](#).

RECORD OF PROCEEDINGS IN NATIONAL ASSEMBLY FOR WALES

The following table sets out the dates for each stage of the Measure's passage through the National Assembly for Wales. The Record of Proceedings and further information on the passage of this Measure can be found on the National Assembly for Wales' website at: <http://www.assemblywales.org/bus-home/bus-legislation/bus-leg-measures/business-legislation-measures-waste.htm>

<i>Stage</i>	<i>Date</i>
Introduced	22 February 2010
Stage 1 - Debate	6 July 2010
Stage 2 Scrutiny Committee – consideration of amendments	30 September 2010
Stage 3 Plenary - consideration of amendments	2 November 2010
Stage 4 Approved by the Assembly	2 November 2010
Royal Approval in Privy Council	15 December 2010