

WASTE (WALES) MEASURE 2010

EXPLANATORY NOTES

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 6¹. 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-

¹ “The seller’s gross proceeds of the charge reduced by such amounts as may be specified”: paragraph 7(4) of Schedule 6.

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)).
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.