

Finance Committee
**Landfill Disposals Tax (Wales)
Bill: Committee Stage 1 Report**

March 2017



National Assembly for Wales
Finance Committee



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Finance Committee

Finance Committee

To carry out the functions of the responsible committee set out in Standing Order 19; the functions of the responsible committee set out in Standing Orders 18.10 and 18.11; and consider any other matter relating to the Welsh Consolidated Fund.

Current Committee membership:



Simon Thomas AM (Chair)
Plaid Cymru
Mid and West Wales



Mike Hedges AM
Welsh Labour
Swansea East



Steffan Lewis AM
Plaid Cymru
South Wales East



Eluned Morgan AM
Welsh Labour
Mid and West Wales



Nick Ramsay AM
Welsh Conservative
Monmouth



Mark Reckless AM
UKIP Wales
South Wales East



David Rees AM
Welsh Labour
Aberavon



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- reviewing the geographical coverage of the scheme to address potential difficulties finding local projects over time, or too much demand within the 5 mile radius;
- the need to ensure the eligibility of cross-border projects;
- an equitable split of funding allocated to the three themes of biodiversity, waste minimisation and other environmental enhancements;
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01. Introduction

1. On 28 November 2016, the Cabinet Secretary for Finance and Local Government (the Cabinet Secretary), Mark Drakeford AM, introduced the Landfill Disposals Tax (Wales) Bill¹ (the Bill) and accompanying Explanatory Memorandum (EM)². The Cabinet Secretary made a statement³ on the Bill in Plenary on 29 November 2016.

2. At its meeting on 15 November 2016, the National Assembly's Business Committee agreed to refer the Bill to the Finance Committee (the Committee) for consideration of its general principles (Stage 1), in accordance with Standing Order 26.9.⁴ The Business Committee agreed that the Committee should report to the National Assembly by 10 March 2017.⁵

Terms of Reference

3. The Committee agreed the following terms of reference for Stage 1 scrutiny of the Bill:

To consider –

- the general principles of the Bill and the need for legislation;
- any potential barriers to the implementation of these provisions and whether the Bill takes account of them;
- whether there are any unintended consequences arising from the Bill
- the financial implications of the Bill (as set out in Chapter 6 of the Explanatory Memorandum);
- the appropriateness of the powers in the Bill for Welsh Ministers to make subordinate legislation (as set out in Chapter 5 of the Explanatory Memorandum);
- whether the Welsh Government's principles for the development of devolved tax policy and legislation have been followed:
 - be fair to businesses and individuals who pay them;
 - be simple, with clear rules which seek to minimise compliance and administration costs;
 - support growth and jobs that in turn help tackle poverty; and
 - provide stability and certainty for taxpayers.
- the definition of a 'taxable disposal' and 'qualifying materials';
- the provisions on how the tax will be calculated including the taxable weight of material and the discount in respect of water content;

¹ [Landfill Disposals Tax \(Wales\) Bill](#)

² [Explanatory Memorandum](#)

³ [Statement by the Cabinet Secretary for Finance and Local Government, Landfill Disposals Tax \(Wales\) Bill, 29 November 2016](#)

⁴ [Standing Orders of the National Assembly for Wales, Standing Order 26.9](#)

⁵ [National Assembly for Wales, Business Committee, Report on the timetable for consideration of the Landfill Disposals Tax \(Wales\) Bill, November 2016](#)

- the implementation of tax rates and whether these retain the flexibility to deal with subsequent changes at a Wales and UK level;
- the proposed exemptions;
- the proposed reliefs;
- the inclusion of unauthorised disposals of waste at places other than authorised landfill sites;
- the inspection of premises for the purposes of ascertaining a person’s liability to Land Disposals Tax and the sharing of information between the Welsh Revenue Authority, Natural Resources Wales and local authorities;
- the duties on taxpayers to make payments and pay penalties and interest in certain circumstances;
- how companies, partnerships and unincorporated bodies are treated in terms of the provisions and responsibility for compliance; and
- the establishment of the Landfill Communities Scheme as a grant scheme rather than a tax credit and developing it outside of the Bill.

The Committee’s approach

4. The Committee took oral evidence from a number of witnesses. The schedule of oral witnesses is attached at Annex A. The Committee also issued a public consultation which invited anyone interested in the Bill’s provisions to submit written evidence to inform the Committee’s work. A list of the 20 consultation responses is attached at Annex B.

5. In addition, the Committee visited the Lamby Way landfill site in Cardiff to inform its consideration of the Bill. The Committee extends its thanks to the staff of Cardiff Council for facilitating this visit.



Mike Hedges AM and Nick Ramsay AM at the landfill site.



Mark Reckless AM, David Rees AM and Simon Thomas AM discussing the weighbridge with Gareth Ffoulkes, Landfill Manager.

6. This report sets out the Committee’s conclusions and recommendations, based on the evidence received during the course of its inquiry.

7. The Committee would like to thank those who have contributed to its work. The Committee is also grateful for the assistance of legal expert Daniel Greenberg during the consideration of this complex subject area.

Other Committee's consideration of the Bill

8. The National Assembly's Constitutional and Legislative Affairs (CLA) Committee took evidence from the Cabinet Secretary on the appropriateness of the provisions in the Bill that grant powers to make secondary legislation on 9 January 2017. It reported on its conclusions in March 2017.

9. As this Bill contains a number of regulation making powers, the Committee has addressed this in chapter 4 of this report.

02. Background

10. The Wales Act 2014⁶ conferred on the National Assembly for Wales legislative competence over devolved areas of taxation and provided for UK Landfill Tax (LFT) to be dis-applied in Wales.

11. This Bill will introduce a Landfill Disposals Tax (LDT) to replace LFT in Wales from April 2018. It is the third piece of legislation related to the devolution of tax powers in the Wales Act 2014. The EM states:

“This legislation is linked to the Tax Collection and Management (Wales) Act 2016, which sets out the arrangements for the collection and management of devolved taxes including the establishment of the Welsh Revenue Authority. The Bill is also linked to the Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Bill introduced to the National Assembly for Wales on 12 September 2016, which intends to introduce a replacement for Stamp Duty Land Tax in Wales and measures to tackle devolved tax avoidance.”⁷

12. The Tax Collection and Management (Wales) Act 2016⁸ (TCMA) provided for the establishment of the Welsh Revenue Authority (WRA), which is to be the authority responsible for the collection and management of LDT, as specified in section 2(2) of the Bill.

Legislative competence

13. The EM states:

“Section 107 of the Government of Wales Act 2006 (“GoWA 2006”) provides legislative competence for the National Assembly for Wales (“the Assembly”) to make laws for Wales to be known as Acts of the National Assembly for Wales.

Section 108 of GoWA 2006 provides that a provision of an Act of the Assembly is within the Assembly’s legislative competence if it relates to one or more of the subjects listed under the headings in Part 1 of Schedule 7 of that Act and does not fall within any of the exceptions specified in that Part of the Schedule (whether or not under that heading or any of those headings), and it neither applies otherwise than in relation to Wales nor confers, imposes, modifies or removes (or gives power to confer, impose, modify or remove) functions exercisable otherwise than in relation to Wales.

Paragraph 16A of Schedule 7 sets out the following subject on which the Assembly may legislate:

Taxation 16A

Devolved taxes (as defined in section 116A(4)).

Section 116A(4) of GoWA 2006 provides that a tax specified in Part 4A of GoWA 2006 is defined as a devolved tax. Part 4A provides the Assembly with

⁶ [Wales Act 2014](#)

⁷ Explanatory Memorandum, paragraph 1.2

⁸ [Tax Collection and Management \(Wales\) Act 2016](#)

the legislative competence to make provision in relation to a tax on disposals to landfill (section 116N) and a tax on transactions involving an interest in land (section 116L).”⁹

14. The Llywydd issued a statement¹⁰ on 28 November 2016 that, in her opinion, the provisions of the Bill would be within the legislative competence of the National Assembly for Wales.

Pre-legislative consultation

15. The Welsh Government published its consultation “Developing a Landfill Disposals Tax” in spring 2015, which covered:

- tax rates and taxable disposals;
- proposals for improving tax compliance and enforcement;
- options to simplify and modernise tax administration;
- whether and how a proportion of Landfill Disposals Tax receipts could be used to enhance community wellbeing.¹¹

16. The EM states:

“In developing LDT for Wales, the Welsh Government has applied its principles for the development of devolved tax policy and legislation to:

- be fair to businesses and individuals who pay them;
 - be simple, with clear rules which seek to minimise compliance and administration costs;
 - support growth and jobs that in turn help tackle poverty; and
 - provide stability and certainty for taxpayers.”¹²
-

Fiscal Framework for Wales

17. LDT is one of a range of taxes intended to be devolved to Wales, including Land Transaction Tax. These tax streams would provide the Welsh Government with a direct source of funding, independent of funding via the Welsh block grant. As a consequence, an adjustment to the block grant will be made through the Comparable model outlined in the fiscal framework agreed¹³ between the UK and Welsh governments in December 2016. During his oral statement on the fiscal framework, the Cabinet Secretary stated:

“As the Wales Bill has progressed through the UK Parliament, the First Minister has been clear that it would be a significant barrier to the Welsh Government’s support for the Wales Bill if we were not able to reach an agreement with the UK Government on a fair, long-term funding arrangement for Wales. I believe that the fiscal framework agreed with the Chief Secretary to

⁹ Explanatory Memorandum, paragraphs 2.1-2.4

¹⁰ [Presiding Officer’s statement, 28 November 2016](#)

¹¹ [Welsh Government, Developing a Landfill Disposals Tax, February 2015](#)

¹² Explanatory Memorandum, paragraph 3.20

¹³ [Fiscal Framework, December 2016](#)

the Treasury addresses that concern. It provides a step forward in the way Wales is funded, taking account of the new tax powers that will be devolved in 2018, and paves the way for the devolution of Welsh rates of income tax in 2019.”¹⁴

18. The Comparable model will apply a comparability factor for landfill tax to determine deductions from 2018-19. While the latest available figures will be used to determine this comparability factor at the time of devolution, based on 2015-16 HMRC statistics, the comparability factor for landfill tax would be 87%. Landfill tax revenues are expected to fall over time. The Office of Budget Responsibility’s (OBR) forecasts for Welsh landfill tax, published with the Autumn Statement 2016, estimate that revenues would fall from £35 million in 2016-17 to £23 million by 2021-22.

¹⁴ Cabinet Secretary for Finance and Local Government – Oral Statement: The Fiscal Framework, 17 January 2017

03. General Principles

19. The Bill establishes the legal, administrative and operational framework to replace LfT in Wales. LfT is currently a UK tax on the disposal of material as waste by way of landfill at landfill sites. LfT was introduced in 1996 as a key environmental behaviour change driver in encouraging the diversion of waste from landfill, greater recycling, reuse and recovery of waste. Since its introduction, the tax has contributed to a significant reduction in the proportion of waste sent to landfill, and an increase in recycling. In Wales the total tonnage of waste landfilled fell by 52% between 2001 and 2013.¹⁵

Purpose of the Bill

20. The Cabinet Secretary explained that the Bill was needed because:

“If we didn’t have a Bill, in April 2018 the revenue that comes at present to Wales wouldn’t come in the future. So, that’s the first purpose: namely to ensure the revenue. The second purpose, of course, is to underline or bolster our objectives in the environmental sphere.”¹⁶

21. In terms of the potential impact on revenue, the EM¹⁷ sets out details of the OBR forecast for Wales’s annual revenue for tax on disposals to landfill until 2021-22:

	£ million						
	2015-16	2016-17	2017-18	2018-19	2019-20	2020-21	2021-22
Welsh forecast	34	35	30	27	25	24	23

(Table: Welsh landfill tax forecast)¹⁸

22. Acknowledging that the amount of tax collected is declining as it achieves its aim of reducing the amount of waste sent to landfill, the Cabinet Secretary said:

“We want to ensure the revenue, of course, because it’s important for public services in Wales, but the purpose is not to raise revenue; the purpose is to do things differently in the landfill sphere.”¹⁹

Consistency with UK Landfill Tax

23. There are currently two tiers of rates for LfT: a standard tax rate (which has risen from £7 per tonne in 1996-7 to £84.40 per tonne in 2014-15); and a lower tax rate for certain qualifying materials of £2.65²⁰ per tonne.

24. The EM notes that Scottish Landfill Tax (SLfT), which replaced LfT on 1 April 2015, “is broadly consistent with LfT but makes some changes to how the tax is administered including extending the

¹⁵ Explanatory Memorandum, paragraph 3.14

¹⁶ National Assembly for Wales, Finance Committee, Record of Proceedings, 15 December 2016, paragraph 26

¹⁷ Explanatory Memorandum, page 10

¹⁸ [Office of Budget Responsibility: Devolved taxes forecast, November 2016](#)

¹⁹ National Assembly for Wales, Finance Committee, Record of Proceedings, 15 December 2016, paragraph 37

²⁰ Qualifying materials: Rocks and soils, ceramic or concrete materials, minerals, furnace slags, ash, low activity inorganic compounds, calcium sulphate, calcium hydroxide and brine ([HMRC, Excise Notice LFT1: a general guide to Landfill Tax, 4.2](#)).

scope of the tax to unauthorised disposals of waste” and confirms that Scotland has set its standard and lower tax rates at the same level as for LfT.²¹

25. The EM states:

“A key priority for the Welsh Government is a smooth transition to LDT in 2018. Whilst LDT rates will not be announced by the Welsh Government until autumn 2017, in readiness for the implementation of LDT in April 2018, it is recognised that consistency is important in this area. A specific area of concern amongst stakeholders was the impact on business if there were material differences between the tax rates charged in Wales and England, with several highlighting the potential for waste tourism where it is more economical for waste carriers to travel further across country borders to dispose of waste.”²²

26. There was general support among those who gave evidence to the Committee for the need to legislate in this area.

27. Representatives from the Welsh Local Government Association (WLGA) stated that “there would be serious issues for Wales if we didn’t have an equivalent measure”, identifying incoming waste tourism as a major concern.²³ The WLGA also supported the standard and lower rates of landfill tax remaining similar to England and welcomed the introduction of new provisions for unauthorised disposals and its “potential to make a big contribution to wider efforts in terms of environmental improvement”.²⁴

28. The UK Environmental Law Association (UKELA) acknowledged that lessons had been learned from the experience of the existing LfT and SLfT schemes, adding:

“It’s quite useful that it’s consolidated; so, under the old regime, there was the Finance Act, and there were various pieces of regulation that were enacted on an ad hoc basis, sometimes in response to case law. So, it’s in one useful place.”²⁵

29. The Institute of Chartered Accountants in England and Wales (ICAEW) stated:

“To help taxpayers and provide certainty, the WRA should publish a statement that reconciles these Bill provisions to those of the Landfill Tax provisions (as set out in the Finance Act 1996 as amended). It should identify the material differences between the two taxes, in particular the new provisions found in Part 4 on taxable disposals at unauthorised landfill sites. Some of this information is already included in the Explanatory Memorandum but it would be helpful to have a full summary available on the public record.”²⁶

²¹ Explanatory Memorandum, paragraph 3.18

²² Explanatory Memorandum, paragraph 3.21

²³ National Assembly for Wales, Finance Committee, Record of Proceedings, 11 January 2017, paragraph 159

²⁴ National Assembly for Wales, Finance Committee, Record of Proceedings, 11 January 2017, paragraph 167

²⁵ National Assembly for Wales, Finance Committee, Record of Proceedings, 19 January 2017, paragraph 519

²⁶ Written evidence, Finance Committee, [LDT 09, The Institute of Chartered Accountants in England and Wales](#)

30. The Cabinet Secretary agreed to provide a summary of the key differences between LDT and LfT,²⁷ which was subsequently included in his letter to the Committee on 15 February 2017.²⁸

Changes to LfT

31. In December 2016, HMRC published a draft Finance Bill 2017. Clause 47 of the draft Finance Bill amends Part 3 of the Finance Act 1996, which relates to LfT. It is possible that HMRC may make changes to LfT which would be relevant to landfill site operators in Wales, prior to April 2018.

32. Natural Resources Wales (NRW) referred to HMRC's intention to make changes to LfT in April 2017, as part of the Finance Act 2017. Should these changes apply to landfill sites in Wales, two significant sets of changes may be needed in consecutive years. NRW raised concern that this could be met with resistance or cause confusion and should be taken into account in the Regulatory Impact Assessment (RIA).²⁹

33. Deloitte also highlighted the proposed changes to LfT as a challenge, in terms of the extent to which revisions in England should be mirrored in Wales.³⁰

34. Representatives from Biffa and Cory Environmental stated that they would comply with the changes but it would be simpler for customers and their ICT systems to have one set of changes.³¹

35. In a letter to the Finance Committee on 4 January 2017, the Cabinet Secretary confirmed that he had written to the Financial Secretary to the Treasury regarding possible changes to the LfT legislation which would be relevant to landfill site operators in Wales, indicating that he would share his analysis once HMRC has published the relevant secondary legislation.³²

36. When asked for an update on the impact of the proposed changes to LfT on the position in Wales, the Cabinet Secretary confirmed that he had not yet had a response from HMRC to his letter of 4 January 2017. He continued:

“...we are unconvinced that this is the right moment to change the way the whole system operates. We don't think Scotland intends to change the system, and we're not tempted to do it in Wales. Until we see the colour of the regulations, it's difficult for us to make a fully-informed assessment of what the position would be one way or another. HMRC has assured officials that the changes will have no practical effect as far as Wales is concerned, because although the legislation may be changed, the scope and the administration of the tax will not. So, I'm bound to consider it, Chair. The timing is not helpful.”³³

Committee view

37. The Committee notes the support from stakeholders for the Bill and recognises that the Welsh Government needs to take steps to maintain the revenue stream, in light of tax being devolved and the consequential adjustments to the block grant. Additionally, the Committee recognises the need

²⁷ National Assembly for Wales, Finance Committee, Record of Proceedings, 2 February 2017, paragraph 31

²⁸ [Letter from the Cabinet Secretary for Finance and Local Government, 15 February 2017](#)

²⁹ Written evidence, Finance Committee, [LDT 08, Natural Resources Wales](#)

³⁰ Written evidence, Finance Committee, [LDT 14, Deloitte LLP](#)

³¹ National Assembly for Wales, Finance Committee, Record of Proceedings, 25 January 2017, paragraph 196

³² [Letter from the Cabinet Secretary for Finance and Local Government, 4 January 2017](#)

³³ National Assembly for Wales, Finance Committee, Record of Proceedings, 2 February 2017, paragraph 50

for legislation to avoid landfill becoming the cheapest waste management option available within Wales. This would undermine other environmental policies and encourage waste tourism.

38. The Committee acknowledges that charging for disposing of waste at landfill has been effective in changing behaviour in terms of reducing landfill waste. It was also clear that stakeholders want consistency between Wales and England to ease transition and to avoid unintended consequences, particularly in terms of the transporting of waste across the Wales-England border.

39. The Committee is concerned that the position in relation to LfT changes has not been clarified and is disappointed that the UK Government has not considered the potential impact on Wales of making possible changes to the UK legislation at this stage, which is likely to cause confusion and instability for stakeholders across Wales.

Recommendation 1. The Committee recommends that the National Assembly agrees the general principles of the Landfill Disposals Tax (Wales) Bill.

Recommendation 2. The Committee recommends that the Welsh Government continues to pursue the UK Government to gain assurances that the proposed changes to the Finance Bill 2017 will not adversely impact on landfill site operators in Wales prior to April 2018.

04. Regulation making powers in the Bill

40. The Bill contains 29 provisions allowing the Welsh Ministers to make regulations, including 19 which would permit amendment of primary legislation.

41. Section 14 contains regulation making powers to prescribe;

- The standard rate (14(3));
- The lower rate (14(6));
- Different rates for different descriptions of material (14(7)).

Regulation making powers

42. Whilst content with the balance of detail on the face of the Bill and what is likely to follow in regulations, both the Chartered Institution of Wastes Management (CIWM) and the Local Authority Recycling Advisory Committee (LARAC) emphasised the need to ensure that relevant stakeholders are consulted before secondary legislation is made.³⁴

43. NRW welcomed the flexibility that would be provided by allowing changes to be made through secondary legislation in order to “respond quickly through changes that are happening elsewhere in the UK, as we are becoming more familiar with our role and the context within Wales”.³⁵

44. This was echoed by representatives from Biffa and Cory Environmental, who thought the Bill was well drafted and supported the provisions which allow for details to be provided through regulations, which they believed would be more flexible.³⁶

45. However, the ICAEW’s view is that substantive tax provisions should be set out in primary legislation and “an opportunity has been missed to put the vast majority of the LDT provisions into primary legislation”.³⁷

46. The WLGA commented that it was difficult to have an opinion on some provisions as the detail would be provided in regulations.³⁸

47. CIWM said it was difficult to determine whether the Bill met the Welsh Government’s principles for devolved taxes as “there will be further need for assessment of compliance with these principles in relation to the regulations under this Bill”.³⁹

48. In terms of having tax rates on the face of the Bill, representatives of landfill site operators did not think this would make a difference but would have the advantage of giving more certainty to their customers.⁴⁰

Evidence from the Cabinet Secretary

49. The Cabinet Secretary explained that the opportunity had been taken to:

³⁴ National Assembly for Wales, Finance Committee, Record of Proceedings, 19 January 2017, paragraph 160 and 164

³⁵ National Assembly for Wales, Finance Committee, Record of Proceedings, 19 January 2017, paragraph 311

³⁶ National Assembly for Wales, Finance Committee, Record of Proceedings, 25 January 2017, paragraph 160

³⁷ Written evidence, Finance Committee, [LDT 09, Institute of Chartered Accountants in England and Wales](#)

³⁸ Written evidence, Finance Committee, [LDT 02, Welsh Local Government Association](#)

³⁹ Written evidence, Finance Committee, [LDT 11, Chartered Institution of Wastes Management](#)

⁴⁰ National Assembly for Wales, Finance Committee, Record of Proceedings, 19 January 2017, paragraph 260-263

“...draw together in one place, and as a piece of specific Welsh legislation, a pattern that, since the original Bill was passed in 1996, has grown up, as legislation tends to, in all sorts of disparate ways. So, if you are operating in this field under present legislation, you are relying on primary legislation, secondary legislation, Schedules, directions, notices, guidance, and it’s scattered in many different places. So we have definitely taken the opportunity here to draw it all together, to clarify and to improve, we believe, the state of the law in this area, and certainly to make it more accessible and workable, as far as users of this legislation will be concerned.”⁴¹

50. During the Cabinet Secretary’s evidence to the CLA Committee, he stated that the Welsh Government had tried to put as much detail as possible on the face of the Bill. He explained that regulations were needed in areas that are subject to regular reviews, are technical in nature and areas that are new and where technology is changing. He added that another reason for the number of regulation making powers was a result of the Bill being a financial piece of legislation and Wales not having an annual finance Bill.⁴²

51. When the Finance Committee questioned why more provisions are not included on the face of the Bill, the Cabinet Secretary said:

“...if you do put more things on the face of the Bill, it’s important to have flexibility to keep the Bill live, and the way to do that is to take powers to recreate the law through regulation-making powers, and that’s why there are 29 of them on the face of this Bill. So, there is a tension there. We have tried to respond to the call to put more things on the face of the Bill, but if we are to maintain the law in a way where it can respond to things that are happening outside Wales, or where there are developments in the field of technology—that’s why we’ve done it in the way that we have.

...

all but two of the regulation-making powers that we take to amend primary legislation are through the affirmative procedure. That means that those regulations have to come in front of the Assembly, they have to be accompanied by a regulatory impact assessment of their own, and the changes cannot be made without the direct guaranteed oversight of the legislature itself.”⁴³

52. In correspondence regarding the ability to list qualifying materials by secondary legislation, the Cabinet Secretary said this “is consistent with the position in UK and Scotland”.⁴⁴

⁴¹ National Assembly for Wales, Finance Committee, Record of Proceedings, 15 December 2016, paragraph 29

⁴² National Assembly for Wales, Constitutional and Legislative Affairs Committee, Record of Proceedings, 9 January 2017, paragraphs 18, 27-29 and 34

⁴³ National Assembly for Wales, Finance Committee, Record of Proceedings, 2 February 2017, paragraphs 12 and 15

⁴⁴ [Letter from the Cabinet Secretary for Finance and Local Government, 4 January 2017](#)

53. In evidence the Cabinet Secretary continued:

“... there are three key distinguishing principles that we’ve used for trying to distinguish between primary legislation and regulation powers. If something is subject to regular review, so listing of qualifying materials, for example, we’ve left that to regulations because it needs updating, potentially, regularly. Where something is new, the testing of fine material and loss-on-ignition testing, well, that’s something that’s only recently been embarked upon in Scotland and England, and we think we will learn from the experience so we leave that to regulations. And when there is a great deal of technical detail, for example in how credit powers will be operated, we think that’s better done through regulation. But other than in that relatively small numbers of examples, the Bill puts a great deal of material that is currently not in primary legislation onto the face of this Bill.”⁴⁵

54. The Cabinet Secretary said he was not attracted to putting the initial rates of tax on the face of the Bill:

“...we could put something on the face of this Bill on the basis that that was providing certainty, but it could turn very quickly into being a spurious certainty, because rates could change across our border, and then, in order to maintain consistency, I’d have to be coming forward to change the rates that are on the face of the Bill. So, I think the way that we construct it here is the right way.”⁴⁶

55. When pressed on this issue, the Cabinet Secretary indicated:

“I am very happy to give that general confirmation, but I understand the need for consistency and similarity. I’m not prepared to go as far as saying, at this stage, that the rates will be the same. I think there is a difference there. As I say, I could say today, and put them on the face of the Bill, that they are the same, and then they could change across our border while this Bill was going through the Assembly, and they wouldn’t be the same after all.”⁴⁷

56. With regards to the regulation making power to define multiple rates of tax, the Cabinet Secretary explained:

“At the moment, it’s a power that we think of as potentially being there for the future. There would be practical issues we would have to work through with landfill operators because the IT systems that they have are designed to cope with the current way. We have two rates at the moment and this Bill proposes a third, unauthorised rate. If we were to go down the route of a more fine-tuned set of rates, they would face issues of updating their IT systems to cope with that. So, we want to do it with the sector. While I don’t have immediate intentions in this area, reading the evidence that you’ve received has made me

⁴⁵ National Assembly for Wales, Finance Committee, Record of Proceedings, 2 February 2017, paragraph 10

⁴⁶ National Assembly for Wales, Finance Committee, Record of Proceedings, 2 February 2017, paragraph 19

⁴⁷ National Assembly for Wales, Finance Committee, Record of Proceedings, 2 February 2017, paragraph 24

think that this may be a power that's got more potential in it than maybe I had realised starting off on this journey.”⁴⁸

57. When asked whether the Welsh Government had undertaken any work to scope how long a tax on landfill may be needed in Wales, the Cabinet Secretary said:

“...we have to, as a Government, be alert to the inevitability that, at some point in the future, the costs of collecting the tax will outweigh the tax itself. So, we are making some projections into the future, but we are reliant on the OBR for doing so.”⁴⁹

58. The Cabinet Secretary agreed to draw the Assembly's attention to the OBR figures each time they are updated.⁵⁰

Committee View

59. The Committee recognises that there are reasons for the regulation making powers which are included within the Bill, and notes that the majority of stakeholders were content with the provisions. However, the Committee is disappointed that more detail has not been included on the face of the Bill, such as a list of qualifying materials, the definition of a small amount, provisions for bad debt relief, all of which are referred to later in this report. The Committee notes that the Cabinet Secretary referred to the position which has been taken in Scotland and England in terms of regulation making powers, however it does not believe that practice elsewhere in the UK should determine the route taken in Wales. The re-use of elements of legislation found elsewhere is something the Committee has referred to in other parts of this report.

60. The Committee notes the assertion by the Cabinet Secretary that the majority of provisions will be subject to the affirmative procedure, however, statutory instruments cannot be amended when they are considered by the Assembly. This leaves the Assembly with the stark choice of voting down a statutory instrument or accepting less satisfactory provisions, whereas including provisions on the face of the Bill would allow for full scrutiny and amendment by Assembly Members.

61. The Committee notes the Cabinet Secretary has called for flexibility and has stated that this is why the Bill contains a number of regulation making powers. In considering this argument, the Committee has referred to the Welsh Government's own principles of providing “stability and reassurance to businesses”.⁵¹ It is clear to the Committee that a stable tax system is vital for businesses within Wales and this level of flexibility with regulation making powers does not meet the Welsh Government's own principles, and has the potential to reduce business confidence. The Committee firmly believes that the Welsh Government should avoid unnecessary changes to tax legislation, and this includes changes to regulations where provisions could be included on the face of the Bill.

62. Furthermore, the Cabinet Secretary has said that the rates are not included on the face of the Bill due to the Assembly not having an annual budget bill. Following Royal Assent of the Wales Act 2017, the Assembly will have legislative competence to bring forward a financial framework bill, which would lead to an annual finance bill. The Committee believes this is something that should be actively

⁴⁸ National Assembly for Wales, Finance Committee, Record of Proceedings, 2 February 2017, paragraph 114

⁴⁹ National Assembly for Wales, Finance Committee, Record of Proceedings, 2 February 2017, paragraph 35

⁵⁰ National Assembly for Wales, Finance Committee, Record of Proceedings, 2 February 2017, paragraph 37

⁵¹ <http://gov.wales/docs/caecd/publications/161128-LDT-leaflet-en.pdf>

pursued, as recommended by the Finance Committee in the Fourth Assembly.⁵² The Welsh Government is able to change tax rates through the affirmative procedure, therefore the Welsh Government is not precluded from detailing rates on the face of the Bill.

Recommendation 3. The Committee recommends that the Welsh Government considers the provisions which are detailed on the face of the Bill and the provisions which will be implemented via regulations. The Committee believes there should be further detail on the face of the Bill, including the proposed rates of taxation, or as a minimum the proposed rates should be published before 1st October 2017.

Recommendation 4. The Committee recommends that the Welsh Government commits to working with the Committee to bring forward a financial framework bill as soon as possible, to allow an annual budget/finance bill to be introduced.

⁵² Best Practice Budget Process Part 2 - Planning and implementing new budget procedures

05. Part 2 – The tax and taxable disposals

63. Part 2 of the Bill establishes a landfill disposals tax that will be charged on taxable disposals and will be collected and managed by the WRA. It also defines taxable disposals, disposal of material by way of landfill, authorised landfill sites and environmental permits, disposal of material as waste, identifies the person responsible for disposal and landfill activities to be treated as taxable disposals.

Taxable disposals

64. Section 3 of the Bill defines the concept of a taxable disposal by specifying four conditions which are further defined by sections 4, 5 and 6.

65. ICAEW, LARAC, the WLGA and UKELA supported the definition of a ‘taxable disposable’ in the Bill, UKELA stated:

“...the definition provided by clause 3 of the Bill is clear and the use of four conditions in order to determine whether a taxable disposal is made should provide a clear checklist for enforcement officers and operators of landfill sites. Clause 3 can only be fully understood by reference to clauses 4, 5 and 6, which provide definitions of the conditions provided in clause 3.”⁵³

Section 6 – Disposal of material as waste

66. Section 6 was highlighted as an area of concern by witnesses. Deloitte said that the Bill contains a similar definition to the UK legislation for determining whether material is considered to be waste and therefore whether it is a taxable disposal. The UK legislation states that if the person making the disposal does so with the *intention* of discarding the material then the material is considered to be waste for the purposes of landfill tax.⁵⁴ Deloitte explained that the current UK landfill legislation has been the subject of high profile litigation:

“HMRC v Waste Recycling Group Limited (2008) EWCA Civ 849, which found that putting material to use within a landfill site meant that there could not have been an intention to discard it as waste and therefore the material was not part of a taxable disposal.”⁵⁵

67. Deloitte noted that HMRC has sought to address this ‘apparent gap’ in the definition by introducing legislation (under the Finance Act 1996) that prescribes the uses of material that would always be taxable even if the material has a useful function on the landfill site. Deloitte recommended that consideration should be given to adopting a similar definition in Wales:

“In light of this litigation and the perception that defining taxable material by reference to what is in the mind of the person discarding it is difficult to establish empirically, HMRC consulted stakeholders during 2016 and on 5 December 2016 published plans to remove the waste criteria from the definition of taxable disposal....Therefore unless similar changes are introduced in Wales, there will be a fundamental difference between definitions of taxable disposals in Wales and those in England....it will be important to consider the

⁵³ Written evidence, Finance Committee, [LDT 05, UK Environmental Law Association](#)

⁵⁴ Explanatory Memorandum, paragraph 18

⁵⁵ Written evidence, Finance Committee, [LDT 14, Deloitte LLP](#)

potential impact it may have on behaviour in the waste sector and whether the difference has the potential to draw waste into Wales or drive it out of Wales.”⁵⁶

68. Whilst UKELA said:

“The definition of ‘disposal of material as waste’ (cl.6) utilises the familiar concept of “intention to discard” (utilised in the EU Waste Framework Directive); historically this concept has generated litigation but is now fairly settled as a legal concept. Clause 6(2) creates an inferred intention to discard from the fact that material is deposited in a landfill disposal area; this represents a common sense approach to the issue which should reduce the scope for protracted legal argument. However, there might be cases where it is argued that the inference has been rebutted by contrary evidence.”⁵⁷

69. Deloitte was also unclear about the inference in section 6(2):

“Section 6(2) states that whether or not a person has the intention to discard material may be ‘inferred from the circumstances of its disposal’ – i.e. if the material is deposited in a landfill then it is likely to be discarded as waste. In general, establishing tax liability by inference is challenging and we wonder whether this section provides any practical assistance.”⁵⁸

70. Tata Steel questioned how the definition would operate in practice, including how the Welsh Government would define ‘intention’.⁵⁹

71. Representatives of landfill site operators also thought it would be easier if this could be stipulated rather than inferred as it could lead to different interpretations:

“...it would be easier if it was stipulated rather than by inference because what one company views as being right and proper, another company potentially might view it slightly differently, and you get differences in interpretation.”⁶⁰

Section 7 - Person responsible for disposal

72. Deloitte noted that there are occasions where someone other than the recognised site operator controls material being deposited at the site with the full permission of the site operator. Deloitte stated that “the Bill as drafted does not recognise a ‘controller’ as having any responsibility for landfill tax”⁶¹ due on material deposited while the landfill site was under their control:

“...under the Bill as drafted, the site operator holds all responsibility for this material even though the site operator may have little detailed knowledge of the quantum and weight of material being deposited by a site controller. We wonder whether a ‘controller’ of waste entering a landfill site should also be recognised by the Bill so as to ensure that such a person is held to account for the tax (perhaps jointly and severally with the site operator as is the case in

⁵⁶ Written evidence, Finance Committee, [LDT 14, Deloitte LLP](#)

⁵⁷ Written evidence, Finance Committee, [LDT 05, UK Environmental Law Association](#)

⁵⁸ Written evidence, Finance Committee, [LDT 14, Deloitte LLP](#)

⁵⁹ Written evidence, Finance Committee, [LDT 17, Tata Steel UK Ltd](#)

⁶⁰ National Assembly for Wales, Finance Committee, Record of Proceedings, 25 January 2017, paragraph 198

⁶¹ Written evidence, Finance Committee, [LDT 14, Deloitte LLP](#)

extant legislation in England) and also to remove from the site operator a risk of exposure to tax on operations for which he has little detailed knowledge.”⁶²

73. However, representatives of landfill site operators did not consider that this was an issue of concern as they have full control on their sites and think the responsibility is in the right place.⁶³

Evidence from the Cabinet Secretary

74. In CLA Committee on 9 January 2017 the Cabinet Secretary stated that, “one of the areas of constant litigation has been around the definition of a taxable disposal” and therefore this is one of the reasons that the power to amend this section⁶⁴ has been retained:

“If, as a result of litigation, the definition of a taxable disposal needs to be amended, I thought it was worth keeping the power in the Bill against that day. Fourthly, and maybe most importantly, this power is available to Ministers in England and we hadn’t included the power in this Bill for Welsh Ministers, then we wouldn’t be able to act to take account of the change that they had made. For all those reasons, although it is a closely balanced argument, I felt that it just tipped into the area of keeping it rather than excluding it, albeit that it’s not a power that has had any very great use so far.”⁶⁵

75. In response to the concerns raised about the inference in section 6(2), the Cabinet Secretary stressed that the Welsh Government’s view is that the Bill does not establish tax liability by inference.⁶⁶ He explained:

“Section 3 of the Bill sets out four conditions that need to be met in order for there to be a taxable disposal. One of those - in a carefully crafted way and taking account of some of the case law that I’ve just outlined to you - does have as a test whether there was an intention to discard. That’s the inference issue that I think Deloitte was getting at. That is one of four tests, and it allows a more objective understanding of whether, when something ends up in a landfill void, the intention of the disposer was that a disposal should have taken place.”⁶⁷

76. The Welsh Government lawyer expanded on this:

“Section 6(1) is the test of whether there is an intention to discard, and then subsections (2) and (3) are sort of assisting with the understanding of that. So, (3) is then going on to say that if somebody is making temporary use of material or deriving a benefit from it, such as the production of gas, that doesn’t mean there can’t be an intention to discard as well. So, they’ve been very carefully and specifically drafted to address the issues that we’re aware of to try and reduce the risk of further litigation.

⁶² Written evidence, Finance Committee, [LDT 14, Deloitte LLP](#)

⁶³ National Assembly for Wales, Finance Committee, Record of Proceedings, 25 January 2017, paragraph 204 and 205

⁶⁴ Section 4(3) Regulations may modify the meaning of a disposal of material by way of landfill including by amending this section or any other enactment relating to the tax

⁶⁵ Written evidence, Finance Committee, [LDT 14, Deloitte LLP](#)

⁶⁶ National Assembly for Wales, Finance Committee, Record of Proceedings, 2 February 2017, paragraph 54

⁶⁷ National Assembly for Wales, Finance Committee, Record of Proceedings, 2 February 2017, paragraph 55

...

We think it makes our position clearer in terms of where we would be coming from as a tax collection authority on those cases. And I think it could also be relevant if you think about unauthorised disposals as well that don't apply in the UK. So, if you think about a lorry load of black bags found in a secluded area, this would allow you to say, 'We could infer from the circumstances of that deposit of material that there's been an intention to discard it'"⁶⁸

77. In relation to the concerns expressed by Deloitte that the Bill does not recognise a 'controller' as having any responsibility for landfill tax, the Cabinet Secretary said:

"...our investigation suggests that it doesn't happen in any landfill sites in Wales and we weren't able to discover from any landfill operators any intention to move in this direction either. However, the Scottish legislation takes a regulation-making power to make provision for controllers to be liable for tax where they exist—so, we have done the same, but it's a futureproofing part of the Bill."⁶⁹

Committee view

78. The Committee notes the concerns raised by witnesses that section 6 (Disposal of material as Waste) of the Bill could cause confusion. It notes that section 6(2) and 6(1) refer to whether the person intends to discard and what may be inferred from the circumstances of disposal and believes that this is confusing and unhelpful. There is an element of circularity to assessing whether there is the required intention to discard. Material is intended to be discarded if it is deposited in a 'landfill disposal area', but a 'landfill disposal area' is defined in section 93(1) as "an area of a landfill site where landfill disposals are made, or where such disposals have been or will be made". 'Landfill disposals' in turn are defined as "a disposal of material (a) by way of landfill, and (b) as waste". To work out whether the inference applies it needs to be known whether the place is an area where things are disposed of as waste. However, in order to know that, it needs to be known whether the inference applies.

79. The Committee is not persuaded by the evidence in relation to 6(2), the example given of disposing bags in a secluded area was an obvious example and it did not assist the Committee in reaching a view on this. The Committee believes that the definitions around disposal of waste could be simplified, and is unclear as to how the Welsh Government has taken account of recent Court of Appeal judgements (*Patersons of Greenoakhill Ltd v HM Revenue & Customs* [2016] EWCA Civ 1250) regarding the provisions in sections 40 and 64 of the Finance Act 1994.

80. The Committee recognises that the Cabinet Secretary has found that there were no controllers in Wales. However, the evidence from Deloitte, whilst not specifying whether the specific example was England or Wales based, did identify that there was scope for issues around operators and controllers. The Committee recognises that section 88 (Power to impose secondary liability on controllers of authorised landfill sites) of the Bill provides a regulation making power for the Welsh Government to impose secondary liability.

⁶⁸ National Assembly for Wales, Finance Committee, Record of Proceedings, 2 February 2017, paragraphs 61 and 63

⁶⁹ National Assembly for Wales, Finance Committee, Record of Proceedings, 2 February 2017, paragraph 66

Recommendation 5. The Committee recommends that the Welsh Government considers the definition of disposal of material as waste in section 6 (Disposal of Waste) to ensure clarity and simplicity.

Recommendation 6. The Committee recommends that the Welsh Government addresses the issues raised regarding operator and controller to satisfy itself, and the Committee, that this will not be an issue in Wales.

Exempt disposals and relief from tax

81. Sections 9-11 of the Bill cover exempt disposals and identifies two disposals that are exempt from tax; pet cemeteries and multiple disposals of waste. Sections 25-32 cover reliefs from tax.

82. The EM explains that reliefs in the Bill are broadly in line with the UK legislation apart from where LDT has defined a number of LfT exemptions as reliefs. Under the current tax system these are classed as exemptions and there is no need to pay tax, but the Bill proposes that these exemptions are classed as reliefs and have to be claimed in tax returns. The reliefs include:

- Material removed from the bed of a river, sea or other water: This relief applies to the disposal of certain dredged material;
- Material resulting from mining and quarrying operations: This relief applies if the material has not been subject to any separate process or chemically altered between extraction and disposal;
- Re-filling former quarries: This relief applies for the disposal of qualifying material at certain quarries which must be refilled as a result of planning permission and may under their environmental permit only accept qualifying material;
- Site restoration: Landfill site operators must apply for this relief in advance of starting work on site restoration and the provision allow WRA to fully assess material used for site restoration.⁷⁰

83. Deloitte questioned why some materials are classed as exemptions and others are reliefs, it said:

“It is not entirely clear to us why some tax free material is classified as relived from the tax in the Bill rather than exempt from the tax as in the extant legislation in England. Material falling into both categories will need to be reported in tax returns. We note that a relief is only available for relevant disposals made at authorised landfill sites so we query whether the underlying reason here is to restrict tax free status for unauthorised sites. In the absence of any strategic aims we consider that tax free treatment might be applied through exemptions only.”⁷¹

84. NRW noted that it does not have sight of the activities that are currently going on at landfill sites or have access to the relevant information from HMRC. NRW believes that once it is aware of the activities and starts comparing them with records then changes will occur.⁷²

⁷⁰ Explanatory Memorandum, page 111-113

⁷¹ Written evidence, Finance Committee, **LDT 14, Deloitte LLP**

⁷² National Assembly for Wales, Finance Committee, Record of Proceedings, 19 January 2017, paragraph 314

85. In terms of removing or modifying the current exemptions, CIWM stated that further clarification is needed in respect of quarries:

“The proposed reliefs are comprehensive; however, it is possible that the relief proposed for refilling former quarries might exclude many of the authorised landfill sites from payment of landfill disposal tax due to the fact that many of such sites were quarries and have conditions within the planning permission requiring the resultant void to be wholly or partially refilled. This matter should be examined to establish the impact of this issue”⁷³

86. LARAC also questioned the relief given to mining and quarrying waste stating that it is not helping to deliver environmental benefits:

“In the UK household waste makes up approximately 8% of the total whereas mining and quarry waste is approximately 20% of the total. With the household waste stream now heavily regulated and subject to statutory targets and fines if these targets are missed, LDT is no longer a real policy driver in that area of waste. LDT could be a real policy driver for mining and quarry waste and so LARAC does not believe that the exemption in that instance is helping to deliver environmental benefits.”⁷⁴

Evidence from the Cabinet Secretary

87. The Cabinet Secretary explained that the Welsh Government does not know how reliefs are currently being used and is keen to gather more data in this area:

“...we will in future have much better data about some of these reliefs. We don't have much sense, to be honest, of how these reliefs are used at the moment, and whether they are reliefs that we would think if as serving a direct public purpose.”⁷⁵

88. When asked about the reliefs and exemptions within the Bill, the Cabinet Secretary said:

“...the principle that we have taken is that if you know you would never wish to charge for something, then we provide an exemption, because that means you don't have to, you know, provide paperwork for it, you don't have to—. So, in pet cemeteries, we know we never want pet cemeteries to be captured by landfill legislation, so we give an exemption for that. We've given an exemption in the case where a temporary use has been made of material. So, it's come through the gates of the landfill site, it's been taxed, it's been used temporarily as a road, and then it's going to go into landfill. Now, you could- without an exemption, it could be taxed twice, because it's now been moved and put into landfill. That's not our intention; we give an exemption for that. You need never fill in a form and tell us about it and things, because it's an exemption.”⁷⁶

⁷³ Written evidence, Finance Committee, [LDT 11, The Chartered Institution of Wastes Management](#)

⁷⁴ Written evidence, Finance Committee, [LDT 07, Local Authority Recycling Advisory Committee](#)

⁷⁵ National Assembly for Wales, Finance Committee, Record of Proceedings, 15 December 2016, paragraph 87

⁷⁶ National Assembly for Wales, Finance Committee, Record of Proceedings, 2 February 2017, paragraph 139

89. The Cabinet Secretary was asked why some current exemptions have become reliefs, his official said:

“...they’re all called exemptions under the existing legislation, but some just say, ‘These things won’t be taxable if’; and some say, ‘These things won’t be taxable if you can satisfy HMRC of the following’. So, we’ve sort of divided those, basically, and said, ‘These things just won’t be within the scope of the tax, and won’t be taxable disposals, so they’ll be exemptions’ and ‘These things will be taxable, but you’ll have to account for them on a tax return, and satisfy certain evidential requirements to claim them as a relief’. So, there’s a clear distinction between what’s expected of the taxpayer in each scenario.

...

I think what we’re doing is trying to define quite clearly what we expect of the taxpayer in each circumstance. So, by calling them exemptions, they are outside of the scope of the taxpayer, we expect nothing, whereas the others, we expect a tax return and certain criteria to be met.”⁷⁷

90. The Cabinet Secretary continued:

“...policy purpose behind identifying some of these circumstances as reliefs is to make sure that we have a stronger set of insights into the way that those reliefs are being operated and claimed in the future, so that this Assembly can have oversight over any proposed changes to reliefs that a Government might want to bring forward in future. So, if I were sitting here, you’d be saying to me, ‘Well, what evidence do you have?’ I am saying to you today that, actually, because of the way the system has been, we don’t have enough’ but in a few years’ time, that would be a question that someone would be better able to answer.”⁷⁸

91. The accompanying official went on to explain that exemptions can, in future, apply to unauthorised disposals:

“... you could have an exemption that applies in an unauthorised context—though, these two don’t - Whereas the reliefs only apply in that authorised context, because they’re more, filing a tax return, and producing evidence, which just couldn’t happen in an unauthorised context ... but the power to create new exemptions could apply to unauthorised.”⁷⁹

92. In relation to section 11 the Committee asked for clarification as to why the phrase ‘dead domestic pet’ included the word domestic. The Cabinet Secretary advised that the phrase was taken from “the current legislation”⁸⁰ and problems had not occurred. The Committee identified that in the Welsh language text of the Bill, the corresponding phrase does not include the word domestic and

⁷⁷ National Assembly for Wales, Finance Committee, Record of Proceedings, 2 February 2017, paragraphs 145 and 149

⁷⁸ National Assembly for Wales, Finance Committee, Record of Proceedings, 2 February 2017, paragraph 160

⁷⁹ National Assembly for Wales, Finance Committee, Record of Proceedings, 2 February 2017, paragraphs 151 and 153

⁸⁰ National Assembly for Wales, Finance Committee, Record of Proceedings, 2 February 2017, paragraph 186

refers purely to 'dead pets' [*anifeiliaid anwes meirw*]. The Cabinet Secretary committed to looking at this.⁸¹

93. In relation to the reliefs provided by section 26, the Cabinet Secretary was asked why the relief only applied to material removed 'in the interests of navigation' but not in relation to material removed to prevent flooding. The Cabinet Secretary's official said this was "the same sort of relief as existing in the UK legislation at the moment ... the secondary benefit of that that we'd welcome is to minimise that risk of flooding".⁸²

94. The Cabinet Secretary confirmed:

"As a secondary benefit of removal of debris for navigation purposes, you get flood protection benefits. As currently constructed, there is no relief if the primary purposes of the activity is flood prevention. I'm very willing to take that away and discuss it to see why that could be the case."⁸³

95. The Cabinet Secretary queried the figures provided by LARAC in relation to mining and quarrying (section 27) and said that the Welsh Government's view is that "quarrying and mining waste makes up less than 1 per cent of total waste going to landfill".⁸⁴

Committee view

96. The Committee notes the reasons for the reclassification of some exemptions as reliefs and is content with this. However, it believes that there are some areas where there is potential for confusion.

97. The Committee notes the Cabinet Secretary's explanation that the phrase 'dead domestic pet' in section 11 (Pet cemeteries) is taken from the existing legislation, but would question the need to copy this legislation when there is the opportunity to simplify the law. It believes that consideration should be given, when deciding whether to lift definitions from monolingual legislation that the definition also works for bilingual legislation. The Committee believes that the use of the word 'domestic' does not add anything to the definition and considers that nothing is lost by removing the word 'domestic' from the English language text of the Bill, which would then mirror the definition the Welsh language text of the Bill.

98. The Committee is unclear about the circumstances where it might be desirable for exemptions to apply to unauthorised disposals. It is not clear about the circumstances which may warrant an exemption being created for unauthorised disposals.

99. The Committee believes that section 26 (Material removed from bed of river, sea or other waste) should be amended to ensure that material removed in the course of flood prevention should be subject to the same reliefs as materials removed in the interest of navigation. It believes this to be another example where Welsh legislation should not replicate the provisions in English legislation, when there is the opportunity to improve existing provisions.

100. In relation to the provisions in section 26, the Committee questions the provisions under subsection (5) regarding a material being 'removed by dredging or in any other way'. The Committee

⁸¹ National Assembly for Wales, Finance Committee, Record of Proceedings, 2 February 2017, paragraph 188

⁸² National Assembly for Wales, Finance Committee, Record of Proceedings, 2 February 2017, paragraph 174

⁸³ National Assembly for Wales, Finance Committee, Record of Proceedings, 2 February 2017, paragraph 178

⁸⁴ National Assembly for Wales, Finance Committee, Record of Proceedings, 2 February 2017, paragraph 163

queries why this provision is included, if material can be removed in any way, and what potential for misunderstanding is being addressed by its inclusion in the Bill.

101. The Committee believes the differences in the figures provided by LARAC and the Welsh Government in relation to materials from mining and quarrying identify that there is scope for confusion regarding the provisions and reliefs allowed for under section 27 (Material resulting from mining and quarrying) and this should be clarified.

Recommendation 7. The Committee recommends that the Welsh Government considers the wording of section 11 (Pet cemeteries) regarding the disposal of dead pets, with particular consideration to simplifying the law and ensuring bilingual consistency.

Recommendation 8. The Committee remains unsure of occasions when an exemption may be applied to an unauthorised disposal and recommends that the Welsh Government review Chapter 3 of Part 2 of the Bill, giving consideration to where exemptions may be applied to unauthorised disposals in the future.

Recommendation 9. The Committee recommends that the Welsh Government review section 26 (Material removed from bed of river, sea or other water) to ensure that material removed in the course of flood prevention is subject to the same reliefs as materials removed in the interest of navigation.

Recommendation 10. The Committee recommends that the Welsh Government review section 27 (Materials resulting from mining and quarrying) to ensure there is no scope for confusion amongst stakeholders.

06. Part 3 – Taxable disposals made at authorised landfill sites

102. Part 3 sets out the arrangements for taxable disposals made at authorised landfill sites, such as liability to pay, calculation of tax, duty to register with the WRA and how to account for tax, including reliefs.

Section 14 – Calculation of tax chargeable on taxable disposal

103. Section 14 defines the amount of tax chargeable on the disposal as to be calculated by multiplying the taxable weight of the material in tonnes by either the standard rate or the lower rate for qualifying materials.

104. The EM highlights that one of stakeholders’ key concerns was the impact on businesses if there were significant differences between the tax rates charged in Wales and England.⁸⁵

105. Deloitte said that differences in the tax rates between England and Wales would have an effect on where waste is taken to landfill, it said:

“As the tax is geographical – revenue arising according to the location of the landfill site – differences between the structure of Landfill Disposals Tax in Wales and Landfill Tax in England and differences in the approaches adopted by the different revenue agencies, can affect the level of waste being brought to landfill sites in Wales (on the border with England) and the revenue arising from the tax.”⁸⁶

106. The WLGA said “it would be unfair to businesses if there were to be sudden and significant differences in the tax rates between Wales and England”.⁸⁷

107. Representatives of landfill site operators stated that they believe the rates should stay similar between Wales and England.⁸⁸ Biffa noted that the industry was very price sensitive with a 50 pence difference in rates per tonne having an effect on customers’ behaviour.⁸⁹

108. Environmental issues were also cited by a number of organisations as a reason for having comparable tax rates. The RSPB said:

“If Welsh Landfill Tax rates are not comparable when introduced this would become the cheapest option for waste disposal and would not result in the behavioural change desired in reducing waste to landfill. A lower rate of tax compared to England could result in ‘waste tourism’ and increased transportation of waste into Wales. This will cause an increase in the disamenity to local communities due to higher levels of noise and pollution and increase of carbon emissions.”⁹⁰

⁸⁵ Explanatory Memorandum, paragraph 3.21

⁸⁶ Written evidence, Finance Committee, [LDT 14, Deloitte LLP](#)

⁸⁷ Written evidence, Finance Committee, [LDT 02, Welsh Local Government Association](#)

⁸⁸ National Assembly for Wales, Finance Committee, Record of Proceedings, 25 January 2017, paragraphs 252 and 254

⁸⁹ National Assembly for Wales, Finance Committee, Record of Proceedings, 25 January 2017, paragraph 254

⁹⁰ Written evidence, Finance Committee, [LDT 03, RSPB Cymru](#)

109. This point was echoed by both the Woodland Trust⁹¹ and The National Trust⁹².

110. The WLGA raised an issue regarding the provision under section 14(7) which states that regulations ‘may prescribe different rates for different descriptions of material’. The WLGA said “whilst the presumption is that there will be one higher rate and one lower rate the potential is there to specify multiple rates, which would be more complex”.⁹³

111. Whilst CIWM and LARAC agreed that multiple rates might add complication, it was noted that careful thought should be given to this, as it could create beneficial environmental consequences.⁹⁴

Section 15 & 16 – Qualifying material & Qualifying mixtures of materials

112. Section 15 defines the materials which will qualify for the lower rate of tax which will be prescribed in regulations.

113. Section 16 defines the test that mixtures of materials will need to meet in order to qualify for the lower rate of tax.

114. Section 16(1) refers to a “small amount of one or more non-qualifying materials”. The EM states that the Bill aims to provide more clarity around what is considered to be an acceptable amount of non-qualifying material (standard rate material) in a mixed load, if the load is going to be taxed at the lower rate. The EM explains that the Bill introduces a ‘small and incidental’ test into primary legislation when deciding the tax rate for a mixed load. The EM argues that the reason for putting this in primary legislation is that in the mixed load, the volume and weight of the standard rate material should be insignificant and its presence is accidental and unavoidable rather than deliberate.⁹⁵

115. Section 16(3) makes provision for a regulation making power to define a ‘small and incidental’ amount as a prescribed percentage of non-qualifying materials. The EM notes that this power is used to provide flexibility and respond to technological advancements or any misuse of the mixed loads principle.⁹⁶

116. Tata Steel questioned when the list of qualifying materials referred to in Section 15 would be available and whether the Welsh Government would “follow the Qualifying Materials Order 2011 currently being used under UK legislation”.⁹⁷

117. Deloitte said that it supports the regulation making power in the Bill to define the percentage of what constitutes ‘a small amount’. It said:

“Taking a view on what is ‘small’ and ‘incidental’ will be difficult for taxpayers and for the WRA but given the inevitability that many loads will contain a mix of materials a subjective test of this type is unavoidable. We therefore endorse the inclusion in the Bill (s16 (3)) of a provision that regulations can prescribe what percentage constitutes a ‘small’ amount. Determining a percentage by weight or volume will also be challenging for taxpayers but this measure will

⁹¹ Written evidence, Finance Committee, [LDT 10, Woodland Trust](#)

⁹² Written evidence, Finance Committee, [LDT 12, National Trust](#)

⁹³ Written evidence, Finance Committee, [LDT 02, Welsh Local Government Association](#)

⁹⁴ National Assembly for Wales, Finance Committee, Record of Proceedings, 19 January 2017, paragraph 199

⁹⁵ Explanatory Memorandum, paragraph 3.62

⁹⁶ Explanatory Memorandum, paragraph 3.65

⁹⁷ Written evidence, Finance Committee, [LDT 17, Tata Steel UK Ltd](#)

provide greater clarity than that provided by the subjective terms ‘small’ and ‘incidental’ – particularly where there are disputes.”⁹⁸

118. In relation to the use of the phrase ‘a small amount’, FCC Environment noted that the definition needed further work but percentages should be consistent with England and Scotland.⁹⁹

119. The UKELA commented on the ‘omission of a specific threshold to define small quantity’, it said:

“Natural Resources Wales has argued against the use of a threshold on the basis that it would encourage less efficient methods for segregating waste and might encourage some operators to deliberately mix wastes to achieve the limit set. While there is some force in this argument, it is contended that the issue is finely balanced; the argument advanced by NRW is premised on the assumption that the threshold will be relatively high (the example given is 10 per cent), a considerably lower threshold might not be problematic. Further, requirement 3 of clause 16 provides that a mixture will not qualify for the lower rate of tax where non-qualifying materials have been deliberately mixed with qualifying material. In theory, this provision would alleviate the problem of operators mixing wastes up to the threshold (although issues of evidence and proof would arise). Finally, a threshold approach would be more objective than the current use of the ambiguous test of ‘small quantity’. Ultimately, UKELA will support the approach which has the greatest potential to reduce landfill. As such before any future regulations designed to introduce a threshold (as provided for by clause 16(3)) are enacted, we would advocate the development of an evidence base to ascertain how the ‘small quantity’ test is administered in practice.”¹⁰⁰

120. CIWM also raised concerns about the ‘small amount’ phrase, it said:

“... how do you determine the amount of materials? Is it by weight or is it by volume? ‘Small quantity’ is mentioned, but what does that actually mean? There’s a huge difference between weight, for example, and volume. If you think of polystyrene in a load, then when it’s in weight there’s a heck of a lot of it. So, we certainly have that issue to raise.”¹⁰¹

121. CIWM continued to say “if you have a threshold, then I think it has to be defined; it has to be quantifiable; it has to be measurable”.¹⁰²

122. Biffa said that it would welcome more clarity on the definition of small, as HMRC currently has no definition. Biffa stated that it usually relies on contact with the waste producer at the start of a contract to determine the nature of a mixed load and if there is any doubt it conducts a site visit or carries out a chemical analysis. Biffa stated that it would be helpful if the WRA were to issue

⁹⁸ Written evidence, Finance Committee, [LDT 14, Deloitte LLP](#)

⁹⁹ Written evidence, Finance Committee, [LDT 16, FCC Environment](#)

¹⁰⁰ Written evidence, Finance Committee, [LDT 05, UK Environmental Law Association](#)

¹⁰¹ National Assembly for Wales, Finance Committee, Record of Proceedings, 19 January 2017, paragraph 155

¹⁰² National Assembly for Wales, Finance Committee, Record of Proceedings, 19 January 2017, paragraph 212

“examples of materials where material should be at the standard rate, or where it would qualify for the lower rate”.¹⁰³

123. Cory Environmental guarded against “stipulating measures that you can’t measure”, explaining that it is difficult to ascertain the proportion of higher rate material once a truck has emptied its load, adding that defining ‘small’ will always be an issue and putting a specific percentage in regulations will not help.¹⁰⁴

Section 18 - 20 Taxable weight of material

124. Section 20(1) requires that the landfill site operator determines the weight of the taxable disposal **before** the disposal is made by weighing the material on a weighbridge.

125. The Bill recognises that there may be circumstances where it is not possible to use a weighbridge where, for example, a landfill site may not have a weighbridge or it has broken down. The Bill therefore makes provision for the landfill site operator to make an application to the WRA for approval to use an alternative weighing method such as a calculation based on the maximum permitted weight of a container.

126. In the Scottish legislation, unless otherwise agreed with an authorised person or specified by Revenue Scotland, the weighing of material is to be carried out using a weighbridge. If a weighbridge breaks down (and the use of any other weighbridge would incur unreasonable cost for the registrable person), the registrable person must contact Revenue Scotland to make alternative arrangements for weighing disposals.

127. Also in the Scottish legislation, where a weighbridge is to be used (as opposed to when there is a different agreed or specified method for determining weight in place), the weighing of the material is to be carried out “at the time of the disposal”.¹⁰⁵ (Where an agreed or specified method for weighing are in place in Scotland, different provision can be made about the time the weight is to be determined).

128. When visiting the landfill site at Lamby Way, Cardiff, the Committee observed the weighbridge practice where the vehicle containing the waste was weighed before the disposal on entering the landfill site and was subsequently weighed following disposal of the waste on exiting the landfill site. Therefore, in the case of this particular landfill site the weight of the disposal could not be determined until *after* the vehicle had deposited the waste.

129. Not all landfill sites in Wales have a weighbridge. Additionally representatives from Biffa and Cory Environmental stated that sometimes weighbridges do malfunction.

Evidence from the Cabinet Secretary

130. In evidence to the CLA Committee on the Bill, the Cabinet Secretary explained that he believes the setting of tax rates and qualifying materials on which tax is charged at the lower rate are linked:

“What’s relevant to people working in this area is to know what’s on the list and how much we will tax them and so on. I’m not going to make those decisions until the autumn of this year. For me, it will be more useful to the businesses, but also to those Assembly Members scrutinising all of these

¹⁰³ National Assembly for Wales, Finance Committee, Record of Proceedings, 25 January 2017, paragraph 241

¹⁰⁴ National Assembly for Wales, Finance Committee, Record of Proceedings, 25 January 2017, paragraph 219

¹⁰⁵ [Landfill Tax \(Scotland\) Act 2014](#)

issues, to have those two things together because they do go hand in hand...What they (businesses) have told us is that they're happy with the Bill as it currently stands."¹⁰⁶

131. During evidence to the Finance Committee, the official accompanying the Cabinet Secretary said:

"The list of qualifying materials will be set out in secondary legislation, and that will be brought forward under the affirmative procedure, so you will be able to have a look at it then. The existing list you can already see—it's the Landfill Tax (Qualifying Material) Order 2011—and we'll be looking at that list in terms of setting our own list."¹⁰⁷

132. In relation to why the list of qualifying materials was being set by regulations, in correspondence with the Committee the Cabinet Secretary said "the specification of qualifying materials by secondary legislation is consistent with the position in UK and Scotland".¹⁰⁸

133. When asked whether it is his intention to define a 'small and incidental' amount as a prescribed percentage of non-qualifying materials, the Cabinet Secretary said:

"I don't have any immediate intention to trigger that power in the Bill that would allow a percentage to be identified to calibrate the 'small and incidental' test. It is there in case we find that the six tests that are there already, and their subdivisions, don't do the trick, and to see whether that will be helpful. The closely balanced nature of the argument would mean that, if we were to think of doing it, we would only do it with a further, very careful, stakeholder consultation, weighing up—sorry, not 'weighing up'... deciding whether or not the balance of arguments comes down in favour of using it."¹⁰⁹

134. When asked about the requirement under section 20(1) to determine the weight of material 'before' the disposal is made, the Cabinet Secretary said:

"Our formulation just reflects our view of what normal practice is in the field, and the normal practice is that material, on entering the landfill site, is weighed on a weighbridge prior to it being taken to the void where the taxable disposal is made. Our form of words is designed to reflect that prevailing practice."¹¹⁰

135. The Committee questioned the Cabinet Secretary regarding the evidence it had seen at the Cardiff landfill site in relation to the weighbridge practice, he said:

"I'm aware that, in some sites, some vehicles may be weighed on the way in and on the way out so that the weight of the vehicle is excluded from the calculation of a taxable disposal. I'm willing to ask officials to look at that issue

¹⁰⁶ National Assembly for Wales, Constitutional and Legislative Affairs Committee, Record of Proceedings, 9 January 2017, paragraphs 58 and 60

¹⁰⁷ National Assembly for Wales, Finance Committee, Record of Proceedings, 15 December 2016, paragraph 95

¹⁰⁸ Correspondence from the Cabinet Secretary for Local Government and Finance, 4 January 2017

¹⁰⁹ National Assembly for Wales, Finance Committee, Record of Proceedings, 2 February 2017, paragraphs 104 and 106

¹¹⁰ National Assembly for Wales, Finance Committee, Record of Proceedings, 2 February 2017, paragraph 206

and to see whether or not we need to respond to it in the way that we are currently intending to.”¹¹¹

Committee view

136. With regards to the list of qualifying materials being set by the regulation making power under section 15 (Qualifying material), the Committee notes the Cabinet Secretary’s view that this is consistent with the approach taken in the UK and in Scotland. However, the Committee reiterates that existing practice elsewhere should not necessarily set a precedent for the way things should be done in Wales.

137. The Committee believes that the list of qualifying materials should be on the face of the Bill, and should the Cabinet Secretary believe that this list may need to be changed in future, this provision could be included as a regulation making power. It concluded that including the list in its current form on the face of the Bill would be a more transparent approach.

138. The Committee recognises that the majority of evidence has suggested it would be helpful to have clarity on the provisions under section 16 (Qualifying mixtures of materials) referring to a ‘small amount’. The Cabinet Secretary said he did not intend utilising the regulation making power relating to ‘small amount’, but the Committee believes this is an area in which the Welsh Government should consider making changes.

139. In relation to the provisions under section 20 (Determination of weight of material by operator) and the requirement to ‘determine the weight of the material in a taxable disposal **before** the disposal is made’, the Committee remains concerned that this is an unfeasible provision for some landfill sites, specifically the landfill site qualifying materials at Lamby Way in Cardiff.

Recommendation 11. The Committee recommends that section 15 (Qualifying material) should specify the list of qualifying materials, and that the Bill should include a power to amend this list by regulation.

Recommendation 12. The Committee recommends that the Welsh Government should review the Bill in relation to section 16 (Qualifying mixtures of materials) with particular reference to the provisions under this section which refer to a ‘small amount’.

Recommendation 13. The Committee recommends that the Welsh Government should review the Bill in relation to section 20 (Determination of weight of material by operator) with particular reference to the requirement to ‘determine the weight of the material in a taxable disposal **before** the disposal is made’.

¹¹¹ National Assembly for Wales, Finance Committee, Record of Proceedings, 2 February 2017, paragraph 208

07. Part 4 – Taxable disposals made at places other than authorised landfill sites

140. Part 4 of the Bill enables the WRA to charge tax on unauthorised disposals of waste at places other than authorised landfill sites. The provisions are intended to deter tax evasion by making unauthorised disposals more financially risky than paying to dispose of waste at an authorised landfill site. The EM states that the unauthorised disposals rate, to be set by regulations made by Ministers, is intended to be higher than the standard rate.¹¹²

141. The EM notes that these provisions are intended to complement, not replace, the existing environmental law and enforcement regime, which NRW and local authorities are responsible for.¹¹³

142. Under option 3 detailed in the RIA, it states that in September 2016, NRW reported that there are 60 illegal waste sites in Wales with approximately 55,000 tonnes of waste across these sites. If charged at the standard tax rate this would represent an estimated £2.1 million in evaded tax.¹¹⁴

143. The EM notes that the WRA will delegate compliance and enforcement functions to NRW who have existing relationships with landfill site operators and extensive knowledge of the waste industry. The funding allocated to NRW to carry out these functions is included in the overall operating costs for the WRA of between £2.8 million and £4 million per annum from 2018-19.¹¹⁵

144. Deloitte welcomed the “novel approach” introduced by the Bill to tackle unauthorised disposals stating:

“Given that landfill tax has proven successful in changing behaviour in the legitimate waste treatment sector there are good grounds for using landfill disposals tax to encourage further behaviour change in Wales (...) The deterrent effect of this measure may depend upon how readily and effectively it can be applied, and this would be hindered if the provisions are too complicated or difficult to apply.”¹¹⁶

145. The representative from LARAC expressed concern that the unauthorised disposals provisions alone would not provide a deterrent, he stated:

“...you apply the tax on these unauthorised disposals but you can only apply it ... if you actually catch the person who’s caused the tipping in the first place and if the likelihood of catching them is fairly small because the resources aren’t put into it then you’re not going to recover the money in the first place. So, the expense then potentially becomes less of an issue for the person who’s doing it. If the expense is high and the likelihood of getting caught is high then both of these together become potentially a very big deterrent.”¹¹⁷

¹¹² Explanatory Memorandum, paragraph 8.76

¹¹³ Explanatory Memorandum, paragraph 3.105

¹¹⁴ Explanatory Memorandum, paragraph 8.71

¹¹⁵ Explanatory Memorandum, page 70

¹¹⁶ Finance Committee, Written evidence, [LDT 14, Deloitte LLP](#)

¹¹⁷ National Assembly for Wales, Finance Committee, Record of Proceedings, 19 January 2017, paragraph 237

146. Whilst the WLGA welcomed the ability for the WRA to charge tax on unauthorised disposals at places other than authorised landfill sites, it also questioned whether the threat of being taxed will change behaviour.¹¹⁸ The WLGA said:

“... it would be very, very useful ... to be able to leverage much higher penalties on them once they’re actually caught and fined. Because one of our frustrations has been in courts; when we do take it through to court level, the fines don’t often impact significantly on the operator. So having that additional fiscal leverage would certainly help.”¹¹⁹

Sections 47- 50 Preliminary notices

147. Sections 47-50 contain provisions regarding the WRA’s ability to issue a preliminary notice and a charging notice where it appears a taxable disposal has been made outside an authorised landfill site.

148. Section 48(1)(a) enables the WRA to increase the time between issuing the preliminary notice and issuing a charging notice upwards from 45 days. Section 50 requires a person to whom a charging notice is issued to pay the tax before the end of the period of 30 days (beginning with the day on the day which the charging notice is issued). Section 172 of the Tax Collection and Management (Wales) Act 2016 (although this section is not yet in force) will enable a person to appeal e.g. a decision which affects whether they are chargeable to a devolved tax or the amount of a devolved tax to which they are chargeable.

149. Deloitte queried the timescale of 75 days to pay tax on unauthorised disposals (45 days and 30 days). It stated that this seems “disproportionately short” considering the WRA will have 20 years after an unauthorised disposal is believed to have taken place to issue a Preliminary Notice. Deloitte also questioned whether there are any provisions in the Bill for the person to seek time to pay the assessed tax where the matter is disputed and they are in financial hardship.¹²⁰

Evidence from the Cabinet Secretary

150. When asked why the Cabinet Secretary felt that a tax for unauthorised disposals, even at the higher rate, would be a useful weapon given that the current system does not always prove effective, he stated:

“This Bill is not going to change things fundamentally, but with the other things that NRW can do with the powers they currently have it’s just something else to help them to try and go after people who are doing this type of thing.”¹²¹

151. The Cabinet Secretary said that, by setting another tax rate for unauthorised disposals, this part of the Bill should pay for itself:

“...there will be additional costs involved for NRW and local authorities in pursuing illegal waste sites that wouldn’t be there otherwise. So, setting the tax

¹¹⁸ Written evidence, Finance Committee, [LDT 02, Welsh Local Government Association](#)

¹¹⁹ National Assembly for Wales, Finance Committee, Record of Proceedings, 11 January 2017, paragraph 215

¹²⁰ Finance Committee, Written evidence, [LDT 14, Deloitte LLP](#)

¹²¹ National Assembly for Wales, Finance Committee, Record of Proceedings, 15 December 2016, paragraph 150

at a level that reflects some of those additional burdens will be part of the way in which we will be able to make this part of the Act pay for itself.”¹²²

152. In relation to the 75 day period, the Cabinet Secretary said:

“As far as the 75 days is concerned, I think it’s important to distinguish between a preliminary notice and the charging notice because they sometimes are conflated in the way that people talk about it. The preliminary notice is about the WRA gathering facts and deciding whether or not to issue a charging notice, so they have time to do that. When they’ve decided whether or not to go ahead, they then have a separate charging notice which is a request for tax where the WRA has formed the view that there is a liability to tax. The WRA can issue, too, an extension period if they think that a person needs more time to respond to a preliminary notice, and there are other safeguards then, of the sort I’ve described already, in terms of asking the WRA to examine its own course of action, then to challenge its course of action in front of a tribunal if the person concerned thinks that they would need to do that ... the 75 days is mitigated in a number of ways in what I’ve just described.”¹²³

Committee view

153. Respondents to the Committee’s consultation were uncertain whether the provisions in the Bill to hold certain persons responsible for unauthorised disposals in certain circumstances will make it easier to address unauthorised disposals. However, the Committee accepts the Cabinet Secretary’s explanation for the inclusion of these provisions and would be interested to note if they have been utilised in the future.

154. The Committee agrees with the evidence that the 75 day period to pay the tax on unauthorised disposals is a short amount of time, particularly if the unauthorised disposal was made up to 20 years previously and the WRA has been investigating for four years. The Committee believes, particularly in the case of historic unauthorised disposals or where the person being charged is innocent, that this does not allow the taxpayer adequate time to prepare the evidence refuting the claims.

Recommendation 14. The Committee recommends that the Welsh Government monitors and publishes the number of unauthorised disposals and subsequent prosecutions to measure the success of the provisions around unauthorised disposals.

Recommendation 15. The Committee recommends that the Welsh Government gives consideration to changing the 75 day period to pay the tax on unauthorised disposals which could have occurred up to 20 years before action is taken.

¹²² National Assembly for Wales, Finance Committee, Record of Proceedings, 15 December 2016, paragraph 126

¹²³ National Assembly for Wales, Finance Committee, Record of Proceedings, 2 February 2017, paragraph 243

08. Part 5 – Supplementary provisions

155. Part 5 makes supplementary provision for credits, non-disposal areas, investigation and information sharing and sets out arrangements in relation to persons, groups, partnerships and unincorporated bodies.

Chapter 4 – Penalties under this Act

156. The Bill makes provision for a number of new penalties that apply to authorised landfill sites and the liabilities fall on the landfill site operator. Penalties cover provisions relating to weighing requirements, water discounts, registering with the WRA and non-disposal areas.

157. Provision is included in section 72 to amend the amounts of penalties and the procedure for assessing penalties through regulations.

158. Local government representatives voiced their support for the inclusion of the penalty provisions in the Bill. The representative from the WLGA said that the provisions help “to have clarity over what is required, and the fact there is a penalty there in place if those requirements aren’t met, which, perhaps, previously haven’t been quite so clear”.¹²⁴ He also welcomed the flexibility to amend the level of the penalties as necessary.¹²⁵

159. The representative from CIWM also supported the penalties provided for in the Bill:

“failure to comply with a weighing requirement, failure to register, failure to comply with requirements of notices. All certainly are welcomed and supported.”¹²⁶

160. The representative from the UKELA said that he was comfortable with the level of the penalties specified in the Bill, but added:

“No matter how high the penalties are, if they’re not enforced and there’s no chance, or a very small chance, of them being enforced, then they won’t have the necessary deterrent effect.”¹²⁷

Sections 60 – 62 Penalty for failure to determine weight properly

161. Sections 60 – 62 set out that a landfill site operator who fails to comply with a requirement relating to the determination of the weight of material is liable to a penalty up to a maximum of £500 of each taxable disposal to which the failure relates. This penalty could occur from a failure to weigh on a compliant weighbridge, a failure to operate an agreed weighing method.

Section 61 – Penalty for applying water discount incorrectly

162. The Bill makes provisions for the landfill site operator to apply to the WRA for approval to apply a water discount when calculating the taxable weight of the material in a taxable disposal. The provisions also require landfill site operators to keep a water discount record for each taxable disposal which has a water discount applies. The penalty for landfill site operators who incorrectly apply a water discount is the same as the penalty for failing to determine weight properly,

¹²⁴ National Assembly for Wales, Finance Committee, Record of Proceedings, 11 January 2017, paragraph 206

¹²⁵ National Assembly for Wales, Finance Committee, Record of Proceedings, 11 January 2017, paragraph 208

¹²⁶ National Assembly for Wales, Finance Committee, Record of Proceedings, 19 January 2017, paragraph 252

¹²⁷ National Assembly for Wales, Finance Committee, Record of Proceedings, 19 January 2017, paragraph 623

163. The representative from LARAC welcomed the inclusion of a penalty for not correctly applying an agreed water discount, he explained:

“if you’re not registered properly and the agreements aren’t in place for proper calculations, then that could start to cast doubt on the calculations and their validity, and then whether you’re paying the right amount of tax or whether the right amount of tax is being recovered. So, having that penalty for not going through the proper process in the first place, hopefully, would act as a deterrent for people looking to use that as a potential loophole or potential way of avoiding paying some of the tax.”¹²⁸

164. This view was supported by the representative from CIWM:

“waste is a lot heavier and, therefore, ensuring that there is a requirement to give information regarding that is incredibly important because, otherwise, you would be paying over and above what you should be.”¹²⁹

165. Deloitte stated that it endorses the inclusion of water discounting within the Bill as it is currently applied elsewhere in the UK. It continued:

“Current legislation restricts water discounting to material where added water constitutes 25% or more of the waste material. In prescribing the conditions where discounting is available, section 21 of the Bill does not include such a requirement and, given that setting a minimum would appear to be quite arbitrary, we endorse this. It seems to us that the WRA, perhaps assisted by NRW will be better placed to determine whether the discount applies in the context of the specific material being deposited.”¹³⁰

166. However, FCC Environment is of the view that the requirement for the site operator to apply to the WRA for approval of a water discount is not consistent with arrangements in England and Scotland.¹³¹

167. Representatives of landfill site operators believe that water discount is important and gave examples of where they have seen it applied.¹³² The representative from Biffa explained that water discount is used as part of an industrial process and not for transportation.¹³³

168. NRW explained that currently it does not know which sites in Wales are claiming water discount.¹³⁴

Section 63 - 66 Penalties relating to registration

169. Sections 63- 66 set out that a person who carries out a taxable disposal without being registered is liable to a penalty of £300.

¹²⁸ National Assembly for Wales, Finance Committee, Record of Proceedings, 19 January 2017, paragraph 254

¹²⁹ National Assembly for Wales, Finance Committee, Record of Proceedings, 19 January 2017, paragraph 258

¹³⁰ Written evidence, Finance Committee, [LDT 14, Deloitte LLP](#)

¹³¹ Written evidence, Finance Committee, [LDT 16, FCC Environment Wales](#)

¹³² National Assembly for Wales, Finance Committee, Record of Proceedings, 25 January 2017, paragraphs 306 and 308

¹³³ National Assembly for Wales, Finance Committee, Record of Proceedings, 25 January 2017, paragraph 309

¹³⁴ National Assembly for Wales, Finance Committee, Record of Proceedings, 19 January 2017, paragraph 449

170. Representatives of landfill operators voiced support for setting the penalty for failing to register with the WRA at a higher amount, the representative from Biffa said:

“£300 is not a great deal of money, quite frankly, in considering how much landfill tax actually incurs.”¹³⁵

Evidence from the Cabinet Secretary

171. The Cabinet Secretary told the Committee that a penalty regime was necessary “in order to discourage non-compliance with the legislation and to protect the revenue”.¹³⁶ He explained that the level of penalty was decided upon by:

“contact with HMRC and Revenue Scotland to see what they believe the appropriate level of penalty would be. We looked at the TCMA, to make sure the penalties set up through this Bill were consistent with the TCMA.”¹³⁷

172. The Cabinet Secretary also said that the regulation making power would allow the Welsh Ministers to amend the penalty regime, including the level of the penalty if they “felt that it needed updating or that it wasn’t being effective in helping to eliminate the sort of behaviour that we’re seeking to address”.¹³⁸

173. In relation to the water content provisions, the Cabinet Secretary told the CLA Committee :

“A second contentious area is in relation to water discount. There are very good public health reasons why people are encouraged to put water in with material that is being brought for disposal, but you then have to discount the water when it comes to paying the tax because the water either just evaporates or sort of leaks away from the landfill site. How you do that— how you measure the amount of water and the water discount and how it operates—has also been litigiously contentious in the past. We put all that on the face of this Bill.”¹³⁹

174. The Cabinet Secretary was asked why people who fail to apply for a water tax discount would be penalised, he said:

“The reason we would want to penalise it, Chair, is that the water discount, we know, is an area that has been open to abuse in the past, so, in order to be able to claim the discount, you will need to have had an agreement to it. There will be a document that sets out the extent to which you are able to claim a discount for that relief, and we just want to be clear that if that agreement is not sustained, if people try to claim relief beyond what the agreement would allow them to, there will be a penalty for doing so.”¹⁴⁰

175. When questioned further as to why somebody would be penalised for not claiming a discount, the Cabinet Secretary said:

¹³⁵ National Assembly for Wales, Finance Committee, Record of Proceedings, 25 January 2017, paragraph 324

¹³⁶ National Assembly for Wales, Finance Committee, Record of Proceedings, 15 December 2016, paragraph 105

¹³⁷ National Assembly for Wales, Finance Committee, Record of Proceedings, 15 December 2016, paragraph 105

¹³⁸ National Assembly for Wales, Finance Committee, Record of Proceedings, 15 December 2016, paragraph 105

¹³⁹ National Assembly for Wales, Constitutional and Legislative Affairs Committee, Record of Proceedings, 9 January 2017, paragraph 105

¹⁴⁰ National Assembly for Wales, Finance Committee, Record of Proceedings, 2 February 2017, paragraph 198

“It’s is not our intention to apply a penalty where an honest customer declares to the landfill site operator that there is less water content in the waste than stated in their water discount agreement. I am happy to say to the committee today that, having looked at the discussions you’ve already had, I’m willing to consider whether any amendment or other steps should be taken to clarify the position and put beyond any doubt the fact that we don’t intend a penalty to apply in the circumstances that have just been identified.”¹⁴¹

176. In response to questions about the level of the £300 penalty for not registering with the WRA, the Cabinet Secretary said:

“The process of getting a landfill site registered, approved and ready to operate is an onerous one, and the idea that, at the end of it, you would fail to register is a pretty remote contingency. We put a penalty in because if you did fail to register, it’s right that there should be a penalty. And it’s not just £300, because it goes up by £60 a day after that, as well, and it’s allied to other powers in the Tax Collection and Management (Wales) Act 2016, which would add to that penalty as well. But in practice, it’s very hard to imagine how any company that has gone to all the efforts it would have to make in order to establish a new landfill site would, at the very end of all of that, forget that it had to be registered, as well. So, we think it’s a proportionate power there.”¹⁴²

177. With regard to the £5,000 penalty for failing to comply with a non-disposal area, the Cabinet Secretary said:

“...the point I would make there is just to be clear that it’s an ‘up to’ penalty. It isn’t that you’ll be guaranteed to be penalised £5,000 for a breach that would be caught up by it. It allows the Welsh Revenue Authority quite a lot of latitude to calibrate the penalty to the nature of the offence. It allows the WRA, for example, to impose no penalty at all if the landfill site operator were able to provide a different sort of evidence than the one that the WRA was originally looking for in terms of records, for example. So, this is an area of the Bill where we are actually proposing a less draconian penalty than the one that currently operates, because the current penalty is, if you get this wrong, everything becomes taxable, and that’s even if it’s quite a small breach of something. The result is that that penalty is almost never used, because it is so disproportionate that it’s practically not practical to use it, really. So, what we’ve tried to do is to find a different way that allows the WRA to have a better handle on what is going on on the landfill site, and if there are breaches, to be able to impose a penalty that is commensurate with the nature of the breach, and £5,000 is the top end of it. Because it’s new, we will need to keep it under careful review to see that it is working out in the way that is intended, and the Bill allows for that to happen.”¹⁴³

¹⁴¹ National Assembly for Wales, Finance Committee, Record of Proceedings, 2 February 2017, paragraph 200

¹⁴² National Assembly for Wales, Finance Committee, Record of Proceedings, 2 February 2017, paragraph 225

¹⁴³ National Assembly for Wales, Finance Committee, Record of Proceedings, 2 February 2017, paragraph 226

Committee view

178. The Committee believes that the issues raised around the water discount (section 61 Penalty for applying water discount incorrectly) warrant further consideration to ensure that operators are not penalised for not claiming a full discount. The Committee believes that should an operator choose not to claim the full discount available to them, this is a matter for them and they should not be penalised for this choice.

179. The Committee believes that the penalty of £300 for carrying out a taxable disposal without being registered with the WRA is lower than expected, particularly considering the cost of disposing waste via landfill and notes that Revenue Scotland and HMRC are able to implement a penalty as a percentage of potential lost revenue. However, the Committee does recognise that having an amount prescribed on the face of the Bill is a more transparent approach.

180. With regard to the £5,000 penalty for failing to comply with a non-disposal area, the Committee accepts the Cabinet Secretary's evidence that this is an 'up to' penalty and circumstances would dictate the actual penalty.

Recommendation 16. The Committee recommends that the Welsh Government should review the provisions in section 61 (Penalty for applying water discount incorrectly) to ensure that operators are not penalised should they not apply for the full discount available to them.

Recommendation 17. The Committee recommends that the Welsh Government should review the penalty associated with failing to register with the Welsh Revenue Authority.

Section 53 – Power to make provisions for tax credit

181. Section 53 gives the Welsh Ministers the power to make regulations in relation to tax credits. The Explanatory Notes state that it is envisaged that this power might be used where a landfill site operator has made a disposal, invoiced the customer and paid the WRA tax owed under LDT. However, should the site operator discover that the customer had become insolvent in the meantime, the debt cannot be recovered. The EM states:

“As is the case in Scotland, it is anticipated the Welsh Government may introduce a bad debt credit which could allow for a landfill site operator to claim a credit in relation to insolvency.”¹⁴⁴

182. Biffa explained that the contract is with the producer of the waste not the transporter. The producer is the person tipping the waste not the person transporting it. Biffa told the Committee that it has had instances where it has not been paid by certain waste producers. Biffa gave the specific example of a producer arranging for a transport company to take the waste to its site. The waste was landfilled but the producer (with whom Biffa had entered into a contract) did not pay the invoice as required. Biffa said that in these circumstances it had no claim against the transport company for the unpaid monies and no way to trace the producer of the waste (particularly where the producer used the name of another company who had no involvement with the waste contract with Biffa). It is unlikely that a contract for the tipping of waste would include an obligation for a transport company to pay an invoice in the event of non-payment by the producer (especially given that the parties to the contract will be the waste producer and Biffa). So it will be unlikely that the transport company could be legally responsible for the unpaid invoice. It is likely that a transport company would be

¹⁴⁴ Explanatory Memorandum

acting as an agent to the waste producer. However, in circumstances where a producer pretends to be a third party company it may be that an allegation of fraud can be made against the producer. If the police consider that a crime may have been committed they would be able to investigate the allegations (including by contacting the transport company to try and ascertain the identity of the waste producer).¹⁴⁵

183. Representatives from Biffa and Cory Environmental highlighted that under the current legislation in the UK they were able to claim bad debt relief and they would like to see this on the face of the Bill.¹⁴⁶

Evidence from the Cabinet Secretary

184. During his evidence to the CLA Committee, the Cabinet Secretary referred to bad debt relief in relation to regulation making powers:

“... there are some areas that are just genuinely technical in detail. There are some tax credit powers that come with this Bill. We intend to use them in relation to bad debt credit. We think it’s of such technical detail that the Assembly will get a better sight of it through regulations.”¹⁴⁷

185. The Cabinet Secretary was further questioned on why these provision do not appear on the face of the Bill in Committee, he said:

“this is one of the areas in which we’ve taken a regulation-making power because of the complexity of constructing bad debt relief. I’m happy to provide an assurance that we do intend to bring regulations forward for this purpose and that we aim to introduce them in the autumn of this year ... the provision in the Bill is there and we do intend to use it. I think I ought to be clear with the committee as well that, at present, my intention would be to use it for insolvency—bad debt. So, drawing the bad debt credit more narrowly than it is currently drawn.

...

I intend to introduce a credit for bad debt, which is similar to that in Scotland. There, a landfill site operator is only able to claim a credit where their customer has become insolvent and where that insolvency means that the operator has been unable to recover some or all of the debt owed to them. We’d anticipate there would be a number of criteria that the operator would have to fulfil to demonstrate that. What I don’t intend to do, at present, is to extend the credit to circumstances where a landfill operator is owed money by somebody—they haven’t gone into insolvency, they’re just not paying the money. Now, at the moment, in some circumstances, landfill operators can get the taxpayer to pick up that Bill for them. I’m not sure that I think the taxpayer’s interests are fully defended in those circumstances. Where it is simply a bad commercial decision and a landfill operator has entered into a relationship with someone and then

¹⁴⁵ National Assembly for Wales, Finance Committee, Record of Proceedings, 19 January 2017, paragraph 165-171

¹⁴⁶ National Assembly for Wales, Finance Committee, Record of Proceedings, 25 January 2017, paragraph 165

¹⁴⁷ National Assembly for Wales, Constitutional and Legislative Affairs Committee, Record of Proceedings, 9 January 2017, paragraph 29

that person turns out not to be reliable, is it right that the taxpayer picks up the consequences? Well, I think probably not. Insolvency; a different matter, because there's nowhere for the operator to go. So, I intend to make provision, but not to the extent that the provision is currently."¹⁴⁸

Committee view

186. The Committee recognises the need for bad debt provision and is content with the Cabinet Secretary's explanation that this would only apply in the case of insolvency. However, it believes that the complexity of the provisions should not prevent details being included on the face of the Bill. The Committee would like to have seen detail on these provisions to ensure that revenue is not lost and waste disposed of without adequate checks. Specifically, the Committee would like to know:

- what conditions a site operator would need to comply with in order to be able to claim any such relief; and
- whether requiring operators to carry out adequate due diligence on potential customers should be a requirement.

Recommendation 18. The Committee recommends that the provision for bad debt relief and the circumstances in which it may be applied should be on the face of the Bill, supplemented by a regulation making power subject to the affirmative procedure.

¹⁴⁸ National Assembly for Wales, Finance Committee, Record of Proceedings, 2 February 2017, paragraph 72

09. Landfill Disposals Tax Communities Scheme

Background

187. The Landfill Communities Fund (LCF) is a fund provided by the current LFT regime to support local community and environment projects within a 10 mile radius of a landfill site. The LCF is a tax credit scheme that enables landfill site operators to contribute a proportion of their tax liability to eligible projects. The LCF was introduced on a UK-wide basis alongside LFT in 1996 through secondary legislation. It is currently administered as a private sector fund through the Environmental Trust Scheme Regulatory Body, Entrust.¹⁴⁹

188. In Wales, 2,700 projects have been approved since the LCF was established – 4.7 per cent of the UK total. A total of £66.6m has been spent on projects in Wales, including £4.6m in 2015-16. Of the projects approved in Wales, 2,500 are complete.¹⁵⁰

189. Scotland also operates a tax credit scheme, the Scottish Landfill Communities Fund (SLCF), which replaced the UK scheme in Scotland on 1 April 2015.

Welsh Government Landfill Disposals Tax Communities Scheme

190. In contrast to the approach taken by the UK and Scottish Governments, the Welsh Government has developed a Landfill Disposals Tax Communities Scheme (LDT CS) outside of the Bill. The EM states that the LDT CS:

“...will not be delivered as a tax credit and as such will not be required to be made in legislation. It is the Welsh Government’s intention to create the scheme using existing powers under the Government of Wales Act (GOWA) 2006 enabling it to be established as a grant scheme. This approach is intended to simplify the administration of the scheme and maximise the amount of funding reaching projects.”¹⁵¹

191. The Cabinet Secretary published details of the Welsh Government’s LDT CS¹⁵² on 13 December 2016, confirming that it will be delivered as a grant scheme with funds generated by allocating some of the LDT revenues to a distributive body. In this document, the Welsh Government expressed the expectation that this will create a more predictable funding stream and address consultation responses to establish a streamlined and cost effective administrative model.¹⁵³ It stated that a decision about the amount of revenue allocated to the scheme will be made during 2017.¹⁵⁴

192. Respondents to the Committee’s consultation broadly welcomed the introduction of the LDT CS, subject to the need to clarify the funding arrangements. Woodland Trust,¹⁵⁵ Wildlife Trusts Wales¹⁵⁶ (WTW), the RSPB¹⁵⁷ and the National Trust¹⁵⁸ reported that the basis for apportionment of tax

¹⁴⁹ [ENTRUST, Landfill Communities Fund](#)

¹⁵⁰ Welsh Government – [Landfill Disposals Tax Communities Scheme](#), December 2016, paragraph 1.16

¹⁵¹ Explanatory Memorandum, paragraph 3.45

¹⁵² Welsh Government – [Landfill Disposals Tax Communities Scheme](#), December 2016

¹⁵³ Welsh Government – [Landfill Disposals Tax Communities Scheme](#), December 2016, paragraph 2.3 and 2.5

¹⁵⁴ Welsh Government – [Landfill Disposals Tax Communities Scheme](#), December 2016, paragraph 3.7

¹⁵⁵ Written evidence, Finance Committee, [LDT10, Woodland Trust](#)

¹⁵⁶ Written evidence, Finance Committee, [LDT 18, Wildlife Trusts Wales](#)

¹⁵⁷ Written evidence, Finance Committee, [LDT 03, RSPB Cymru](#)

¹⁵⁸ Written evidence, Finance Committee, [LDT 12, National Trust](#)

revenue to LDT CS needed to be clarified to retain transparency and safeguard the funding mechanism. The RSPB said:

“...as it stands, there is no mention, or no link, between the actual tax and any kind of fund, whereas, in the current legislation for the UK, there is. Our concern is that the visibility and the protection of that fund, if it’s not actually referenced, it’s then under the goodwill, shall we say, of the Welsh Government, and later initiatives may somehow take precedence, and it would disappear. We commend trying to simplify it, because it is horribly complicated at the moment, but actually that link that’s missing, and no reference, is a major concern.”¹⁵⁹

193. These concerns were also shared by UKELA, which suggested:

“In order to avoid funding levels changing in accordance with political vagaries, we would advocate a statutory duty to allocate a certain percentage of the revenue generated by the landfill disposals tax to the Landfill Communities Scheme.”¹⁶⁰

194. Cory Environmental recommended that the Welsh Government “exercises caution in any commitments it makes regarding expenditure of the new income and does not raise expectations too high”, given the likely reduction in the amount to be raised in taxation and consequently available for the LDT CS.¹⁶¹

195. The RSPB,¹⁶² Afonydd Cymru¹⁶³ and WTW¹⁶⁴ were supportive of the Welsh Government’s proposal to appoint a single distributive body to administer the scheme and welcomed the simplification and reduced administrative costs afforded by this approach.

196. The RSPB said that the LDT CS was an improvement on the current UK scheme:

“That will save costs, because at the moment the regulator, Entrust, takes between 2 and 5 per cent, as a levy, of the scheme, so that would cut that out. It’s good to see in the memorandum that it’s going to be a procured, open process. Because it’s going to be really important that whoever gives that money out has got a really good knowledge of the areas that are hoping to seek funding, that it’s transparent, and that there aren’t any arbitrary, shall we say, restrictions. Because the current regulator seems to interpret the legislation, which is quite broad in its initial sort of sense, and, over the years, the restrictions have got tighter and tighter in all sorts of areas. It will good to see that those principles of transparency are set up from the beginning.”¹⁶⁵

¹⁵⁹ National Assembly for Wales, Finance Committee, Record of Proceedings, 19 January 2017, paragraph 513

¹⁶⁰ Written evidence, Finance Committee, [LDT 05, UK Environmental Law Association](#)

¹⁶¹ Written evidence, Finance Committee, [LDT 20, Cory Environmental](#)

¹⁶² Written evidence, Finance Committee, [LDT 03, RSPB Cymru](#)

¹⁶³ Written evidence, Finance Committee, [LDT 06, Afonydd Cymru](#)

¹⁶⁴ Written evidence, Finance Committee, [LDT 18, Wildlife Trusts Wales](#)

¹⁶⁵ National Assembly for Wales, Finance Committee, Record of Proceedings, 19 January 2017, paragraph 563

197. Cory Environmental and Biffa felt that landfill site operators would lose the connection they had built up with the local community as a result of the fund operating through a centralised distributive body, but acknowledged the advantages of a streamlined scheme.¹⁶⁶

Criteria for eligible projects

198. It is proposed that the LDT CS will:

- fund projects that support biodiversity, waste minimisation and other environmental enhancements within a five mile radius of a landfill site or waste transfer station (which sends a minimum of 2,000 tonnes of waste to landfill each year);
- require projects to demonstrate how they align with the Welsh Government’s **Programme for Government**; the **Wellbeing of Future Generations (Wales) Act 2015** and other Welsh Government initiatives, including tackling poverty and supporting growth and jobs;
- offer grants in the range of £5,000 to £50,000, with consideration being given to funding one significant project (greater than £50,000) on an annual basis.¹⁶⁷

199. The Committee heard mixed views on the scheme’s geographical coverage, although there was general support for including waste transfer stations.

200. Biffa indicated its support for the reduced five mile radius, commenting that:

“With the current Biffa Award, we’ve had to reduce the distance anyway, because 10 miles is when we had an awful lot going into the scheme. That has, with the tonnages reducing, dwindled dramatically. So, as a matter of course, we’ve had to refocus where we are putting moneys to, and it is going back to the communities directly around the landfill sites that are impacted by the trucks, et cetera. So, yes, around transfer stations would make perfect sense, because they get a tremendous amount of traffic on their roads.”¹⁶⁸

201. However, Afonydd Cymru¹⁶⁹ and Cory Environmental suggested that the reduced coverage could eventually lead to difficulties finding local projects in the five mile zone. Cory Environmental stated:

“from our perspective, because a lot of the sites that we’ve got have been running for many, many years, sometimes it’s quite difficult to get schemes to come forward that are within the locale anymore, because they’ve taken quite a lot over a long period. So, in our experience, sometimes a little—we’ve been, in some places, doing the opposite to [Biffa] and looking further afield.”¹⁷⁰

202. The British Heart Foundation stated that changing the geographical restriction to projects from within 10 to 5 miles of relevant sites “may be a reasonable restriction for biodiversity and environmental enhancement projects mitigating local impacts” but is not relevant or practical for

¹⁶⁶ National Assembly for Wales, Finance Committee, Record of Proceedings, 25 January 2017, paragraphs 413-416

¹⁶⁷ Welsh Government – **Landfill Disposals Tax Communities Scheme**, December 2016, pages 7-8

¹⁶⁸ National Assembly for Wales, Finance Committee, Record of Proceedings, 25 January 2017, paragraph 395

¹⁶⁹ National Assembly for Wales, Finance Committee, Record of Proceedings, 19 January 2017, paragraph 567

¹⁷⁰ National Assembly for Wales, Finance Committee, Record of Proceedings, 25 January 2017, paragraph 396

waste prevention projects as these would cover “a wide range of activities and communications carried out at local, regional and national levels”.¹⁷¹

203. Afonydd Cymru also questioned how the LDT CS would deal with cross-border projects and pointed out that rivers do not conform to a five mile circle.¹⁷² The RSPB agreed that “biodiversity, in particular, doesn’t take any notice of borders or arbitrary things on maps”.¹⁷³

204. UKELA welcomed the proposed geographical coverage from a community standpoint, acknowledging that this might cause issues from an environmental, ecological perspective.¹⁷⁴

205. WTW suggested that the geographical coverage for ecological projects could be wider than for community projects,¹⁷⁵ whilst UKELA proposed “giving the power to whoever administers the scheme, in exceptional circumstances, to fund projects outside that radius”.¹⁷⁶

206. Afonydd Cymru suggested that consideration should be given to adopting a ‘whole catchment management’ concept, using “the presence of a landfill in any given catchment as the proximal yardstick rather than the arbitrary 5 mile circle”.¹⁷⁷

207. The RSPB and WTW called for an equitable distribution of funding between the three key themes of biodiversity, waste minimisation and other environmental enhancements.¹⁷⁸

208. WLGA asked that consideration be given, in the event that tax was charged, to making the LDT CS available to communities with repeated instances of unauthorised waste disposals.¹⁷⁹

209. It was suggested by CIWM that the remediation of abandoned or orphaned waste disposal sites should be included in the scope of the LDT CS.¹⁸⁰

Evidence from the Cabinet Secretary

210. When questioned on the Welsh Government’s decision to introduce a grant scheme rather than replicating the existing LCF tax credit scheme, the Cabinet Secretary explained that:

“the income from this tax is falling, and therefore the amount of money available for community use is falling as well. So, we wanted to try and design a scheme that was as simple and direct as possible and that minimised administration costs—the costs of administering the current scheme are that just over 10 per cent of the income it gets goes into administration. We think we can reduce that significantly, and that will squeeze more money out of a declining pot into community use. We think that doing it in this way will make it more flexible to deal with falling revenue streams, and that it will be a more stable arrangement than the current one, which relied on voluntary

¹⁷¹ Written evidence, Finance Committee, [LDT 01, British Heart Foundation](#)

¹⁷² National Assembly for Wales, Finance Committee, Record of Proceedings, 19 January 2017, paragraph 567

¹⁷³ National Assembly for Wales, Finance Committee, Record of Proceedings, 19 January 2017, paragraph 568

¹⁷⁴ National Assembly for Wales, Finance Committee, Record of Proceedings, 19 January 2017, paragraph 569

¹⁷⁵ National Assembly for Wales, Finance Committee, Record of Proceedings, 19 January 2017, paragraph 570

¹⁷⁶ National Assembly for Wales, Finance Committee, Record of Proceedings, 19 January 2017, paragraph 571

¹⁷⁷ Written evidence, Finance Committee, [LDT 06, Afonydd Cymru](#)

¹⁷⁸ National Assembly for Wales, Finance Committee, Record of Proceedings, 19 January 2017, paragraph 577 and 586

¹⁷⁹ Written evidence, Finance Committee, [LDT 02, Welsh Local Government Association](#)

¹⁸⁰ National Assembly for Wales, Finance Committee, Record of Proceedings, 19 January 2017, paragraph 296

contributions from operators. Obviously, as their incomes fall, so either their ability or willingness to make voluntary contributions gets squeezed as well.”¹⁸¹

211. In response to the suggestion that the single distributive body may not have any linkage to particular communities, the Cabinet Secretary stated:

“...the reason for wanting a single body, Chair, is that there will be a simple, one-step relationship here—the current system is a lot more complicated than that—where, if you are a community group and you have a scheme that meets one of the three main purposes that we set out for the drive behind the use of the money in the scheme, then you will go straight to that awarding body and they will make the decision. There’ll be no intermediaries between you and it. We think there are a number of awarding bodies that already offer it on a Wales-wide basis, and which have very good coverage in all parts of Wales. We think it’s possible to bring those two things together in a way that is both effective and simpler, particularly simpler for the small groups that very often get awarded grants from this fund.”¹⁸²

212. The Cabinet Secretary confirmed that the LDT CS would be funded from revenue generated from LDT.¹⁸³ Clarification was sought in relation to the proportion of revenue to be allocated to the LDT CS and whether the proportion of funding would increase as the amount of tax collected decreases, in order to keep the scheme stable. The Cabinet Secretary said:

“I imagine that would be a choice for a future Government. The message I have had to give to those organisations that have benefitted from the scheme so far is that the amount available will decline alongside the tax. That’s part of the reason why we’re trying to design it in this more proportionate and, sort of, modest way, so that more of the money does get directly to the benefitting organisations, and that there’s more flexibility for how we can manage that in future.”¹⁸⁴

213. In terms of the rationale for reducing the geographical coverage, the Cabinet Secretary said that the LDT CS “tries to narrow in one way and extend in another, so that the shrinking amount of money that’s going to be available for this purpose ends up benefiting those people who are most adversely affected by the operation of landfill”.¹⁸⁵

214. Responding to the issue of cross-border projects, the Cabinet Secretary said he hopes the Welsh Government “will be able to design the scheme in a way that allows for some common sense at the borders: both the five-mile limit inside Wales and in relation to cross-border activity”.¹⁸⁶ He added:

“The general principle I’m sure the committee would endorse is that Welsh taxpayers money ought primarily to be spent for the benefit of people in Wales. But where an organisation on the other side of the border wanted to put some

¹⁸¹ National Assembly for Wales, Finance Committee, Record of Proceedings, 15 December 2016, paragraph 154

¹⁸² National Assembly for Wales, Finance Committee, Record of Proceedings, 15 December 2016, paragraph 164

¹⁸³ National Assembly for Wales, Finance Committee, Record of Proceedings, 15 December 2016, paragraph 170

¹⁸⁴ National Assembly for Wales, Finance Committee, Record of Proceedings, 15 December 2016, paragraph 186

¹⁸⁵ National Assembly for Wales, Finance Committee, Record of Proceedings, 2 February 2017, paragraph 274

¹⁸⁶ National Assembly for Wales, Finance Committee, Record of Proceedings, 2 February 2017, paragraph 267

money on the table to match some money that we were putting on the table to pursue a sensible course of action in relation to it I don't want our scheme to artificially stand in the way of sensible ways of doing things.”¹⁸⁷

215. When asked whether money would be available from the LDT CS in order to remediate orphaned and abandoned waste disposal sites, the Welsh Government official supporting the Cabinet Secretary indicated that it had not been raised as part of the Welsh Government's consultation. The Cabinet Secretary agreed to give it further consideration.¹⁸⁸

Committee view

216. The Committee welcomes the Welsh Government's commitment to establishing the LDT CS and to simplifying its operation in order to maximise the amount of funding reaching projects. The Committee acknowledges that expectations need to be managed as the amount of tax collected is declining, but recognises the range of views expressed in the representations it received relating to the LDT CS.

Recommendation 19. The Committee recommends that a provision to establish a communities scheme should be referred to on the face of the Bill, but details relating to the application of the actual scheme could be provided for by other means.

Recommendation 20. The Committee recommends that the Welsh Government should confirm the proportion of land disposal tax revenues that will be allocated to the Landfill Disposals Tax Communities Scheme prior to the Bill coming into force.

Recommendation 21. The Committee recommends that, in considering the implementation of a Landfill Disposals Tax Communities Scheme, the Welsh Government should give consideration to the following areas raised in evidence:

- reviewing the geographical coverage of the scheme to address potential difficulties finding local projects over time, or too much demand within the 5 mile radius;
- the need to ensure the eligibility of cross-border projects;
- an equitable split of funding allocated to the three themes of biodiversity, waste minimisation and other environmental enhancements;
- making the scheme available to communities with repeated instances of unauthorised waste disposals (in the event that tax was charged);
- including the remediation of orphaned or abandoned waste disposal sites within the scope of the scheme.

¹⁸⁷ National Assembly for Wales, Finance Committee, Record of Proceedings, 2 February 2017, paragraph 267

¹⁸⁸ National Assembly for Wales, Finance Committee, Record of Proceedings, 2 February 2017, paragraph 272

10. Financial implications of the Bill

217. The financial implications of introducing and implementing LDT as a replacement tax for LFT are set out in Chapter 8 of the EM. The RIA, set out in Chapter 6, considers three options in relation to LDT:

- Option 1 – Do nothing;
- Option 2 – Replicate existing Landfill Tax;
- Option 3 – Develop a ‘Welsh specific’ tax.

218. Option 3 is the Welsh Government’s preferred option and the RIA details the costs and benefits associated with this option. However, the EM states that the administrative costs identified relate to the collection and management of devolved taxes more broadly and not LDT specifically.¹⁸⁹

Welsh Government costs

219. The EM states that the estimated cost to set up the WRA is between £4.8 million and £6.3 million for the three-year period 2016-17 to 2018-19.¹⁹⁰ These costs fall to the Welsh Government and include the production and issuing of guidance, development and delivery of training and the implementation of transitional arrangements to enable the effective collection and management of all devolved taxes.¹⁹¹ The RIA highlights that it has not been possible to separate the administrative costs relating specifically to LDT.¹⁹²

220. WRA operating costs have been estimated at between £2.8 million and £4 million annually from 2018-19 and includes NRW’s delegated operational costs for compliance and enforcement activity.¹⁹³ This also incorporates new compliance and enforcement functions for unauthorised disposals of waste at places other than authorised landfill sites (Chapter 7 (Part 4 – Taxable disposals made at places other than authorised landfill sites)).¹⁹⁴

221. The EM identifies an additional one-off cost to the Welsh Government, estimated to be £1 million, for HMRC to switch off the collection of both LFT and SDLT in Wales.¹⁹⁵

222. NRW indicated that it has been working closely with the Welsh Government, particularly on ensuring that its resources are based on agreed service levels and that funding reflects the priorities and practicalities of the delivery. When asked whether the RIA accurately reflects its costs, NRW stated:

“Those figures came from our original estimate last year, so those need to be refined, and the level of resource that we’ll need to expend on this will really depend on some of the decisions that the WRA and we make, in terms of prioritisation. And also, to some extent, whether the WRA gets criminal powers.

¹⁸⁹ Explanatory Memorandum, page 70

¹⁹⁰ *ibid*

¹⁹¹ Explanatory Memorandum, paragraph 8.36

¹⁹² Explanatory Memorandum, page 70

¹⁹³ Explanatory Memorandum, paragraph 8.37

¹⁹⁴ Explanatory Memorandum, paragraph 8.78

¹⁹⁵ Explanatory Memorandum, page 71

So, if it gets criminal powers, there'll be a different response from us, and a different level of input, in terms of legal and enforcement and prosecution.”¹⁹⁶

223. NRW expressed concerns that without criminal powers there may be certain actions taken by site operators to avoid tax which could not otherwise be prosecuted. The General Anti Avoidance Rule proposed by Part 7 of the Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Bill does not provide for criminal sanctions (as currently drafted).

224. In relation to the new provisions for unauthorised waste disposals, the WLGA suggested that LDT “could result in pressure from residents for local authorities to investigate the small scale instances of unauthorised disposals for which they, rather than NRW, are responsible”. The WLGA also noted that there could be unintended consequences in terms of smaller quantities of fly tipping in multiple locations, which could increase clean-up costs for local authorities.¹⁹⁷

225. When the Committee explored this issue further, the WLGA representative said:

“I think there is provision for NRW to get additional resource to undertake enforcement activity. Now, if there was additional resource made available to local authorities so they had more capacity to do this then, clearly, more of the sort of activity Tara mentioned could be undertaken. So we would certainly welcome that, and I think there have been some indications that Welsh Government are prepared to look at that.”¹⁹⁸

226. Both LARAC and UKELA were in agreement that, in order to successfully deter unauthorised disposals, the extension of the tax must be supported by a meaningful enforcement and inspection regime.¹⁹⁹

Transitional costs associated with the legislation

227. The RIA identifies one-off costs in 2017-18 to landfill site operators (£6,600) and tax experts (£13,000) for the time taken to familiarise themselves with the legislation. Operators with landfill sites in England and Wales are required to submit separate quarterly tax returns in each country. The total cost of this is estimated to be £150 per annum from 2018-19.²⁰⁰

228. Both Biffa and Cory Environmental agreed that the RIA adequately reflected the impact that the Bill will have on landfill site operators.²⁰¹

Savings

229. The RIA states that HMRC will no longer incur the costs associated with collecting SDLT and LfT in Wales and it is expected that it will reimburse the Welsh Government. Based on data from Revenue Scotland, it is estimated that the reimbursement will be £275,000 per annum from 2018-19.²⁰²

230. The RIA notes that LDT will include charges on unauthorised disposals and a number of new penalties to deal with non-compliance. The RIA states that levels of non-compliance are not known at

¹⁹⁶ National Assembly for Wales, Finance Committee, Record of Proceedings, 19 January 2017, paragraph 335

¹⁹⁷ Written evidence, Finance Committee, [LDT 02, Welsh Local Government Association](#)

¹⁹⁸ National Assembly for Wales, Finance Committee, Record of Proceedings, 11 January 2017, paragraph 221

¹⁹⁹ National Assembly for Wales, Finance Committee, Record of Proceedings, 19 January 2017, paragraphs 237 and 602

²⁰⁰ [Explanatory Memorandum, page 71](#)

²⁰¹ National Assembly for Wales, Finance Committee, Record of Proceedings, 25 January 2017, paragraphs 369-370

²⁰² [Explanatory Memorandum, page 70](#)

this stage, so these costs cannot be quantified.²⁰³ Under option 3, the RIA states that in September 2016, NRW reported that there are 60 illegal waste sites in Wales with approximately 55,000 tonnes of waste across these sites. If charged at the standard tax rate this would represent an estimated £2.1 million in evaded tax.²⁰⁴

231. The RIA identifies other non-monetised benefits including:

- supporting the Welsh Government’s waste and environment policies;
- updating and consolidating existing legislation; and
- providing certainty and stability for the waste industry in Wales.²⁰⁵

Evidence from the Cabinet Secretary

232. The Cabinet Secretary explained that funding will be allocated to the WRA and then the WRA will provide funding to NRW to carry out compliance and enforcement responsibilities on its behalf. He added:

“We are, at the moment, funding a post in NRW to consider how the compliance and enforcement functions will be carried out in practice. So, we’re putting some extra money in upfront to prepare for this, but the funding route in future will be Government to WRA, WRA to NRW.”²⁰⁶

233. In relation to the new provisions for unauthorised waste disposals, the Cabinet Secretary said that, by setting another tax rate for unauthorised disposals, this part of the Bill should pay for itself:

“...there will be additional costs involved for NRW and local authorities in pursuing illegal waste sites that wouldn’t be there otherwise. So, setting the tax at a level that reflects some of those additional burdens will be part of the way in which we will be able to make this part of the Act pay for itself.”²⁰⁷

234. When the Bill was introduced in Plenary on 29 November 2016, several Assembly Members questioned whether NRW is sufficiently resourced to carry out its new duties. The Cabinet Secretary responded:

“We are already providing some additional funding to NRW in order to allow it to prepare for these new duties. We will see whether it is necessary to go on doing that in future in that way. I am certainly open to discussions as the Bill proceeds as to some revenue-sharing arrangements. If Natural Resources Wales is able, by bearing down on illegal waste sites, to increase the flow of revenue into the WRA, it does not seem unreasonable to me that they should not be allowed to keep a share of that additional revenue in order to promote it to do more work in this area. I look forward to discussing that possibility as the Bill moves through the process of scrutiny.”²⁰⁸

²⁰³ [Explanatory Memorandum, paragraph 8.56](#)

²⁰⁴ [Explanatory Memorandum, paragraph 8.71](#)

²⁰⁵ [Explanatory Memorandum, page 72](#)

²⁰⁶ National Assembly for Wales, Finance Committee, Record of Proceedings, 15 December 2016, paragraph 67

²⁰⁷ National Assembly for Wales, Finance Committee, Record of Proceedings, 15 December 2016, paragraph 126

²⁰⁸ National Assembly for Wales, Plenary, Record of Proceedings, 29 November 2016

235. This was reiterated by the Cabinet Secretary when the Committee questioned the adequacy of resources to police unauthorised disposals:

“During the passage of the Bill so far, Chair, I’ve also indicated a willingness to discuss with local authorities and NRW a—I was going to say ‘profit sharing’, but that wasn’t what I meant. But if, as a result of these new powers, a greater tax income is generated as a result of their efforts, then I’m willing to discuss with them a way in which those benefits could be shared with them in order to incentivise them and to allow them to do more in that field. So, I think there are two different ways there in which we can support the work that will be required.”²⁰⁹

236. In response to the comments made by NRW regarding the WRA potentially gaining criminal powers in respect of LDT, the Committee asked the Cabinet Secretary whether he would be updating the RIA to reflect this. The Cabinet Secretary confirmed that, if he “were to decide to put in front of the Assembly regulations to give the WRA those powers, there would have to be a separate RIA provided alongside those regulations”.²¹⁰

237. When asked whether the Cabinet Secretary had anything to add in terms of the set-up and switch-off costs during the final evidence session, he added:

“I’ve got not further costs information to add. The costs for switch-off from HMRC and what will follow from that are bound up in the Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Bill as well as this one. I’ve taken to the committee that I would provide an update with information on LTTA as it proceeds through the committee. I’m still intending to do that. Maybe slightly artificially, in the Scottish context HMRC did not charge for turning off LDT arrangements because they were all paper-based. They don’t do it electronically, so there was nothing to switch off, in that sense, but they still charged them £1 million for LTTA and it’s a single figure, even though they sort of distinguish between the two taxes in charging that figure.”²¹¹

Committee view

238. The Committee acknowledges that the introduction of LDT will ensure that public services in Wales will continue to receive the benefit of the revenues raised by the tax. The Committee also recognises that the primary purpose of LDT, to drive environmental behavioural change diversion of waste from landfill, will lead to a decline in tax revenue and fully supports this approach.

239. The Committee notes the estimated WRA operating costs, which include NRW’s delegated operational costs for compliance and enforcement activity. The Committee recognises that it is difficult to quantify the costs associated with enforcing the new provisions relating to unauthorised waste disposals, as levels of non-compliance are not known, however, it notes that the RIA contains no indication of estimated costs.

²⁰⁹ National Assembly for Wales, Finance Committee, Record of Proceedings, 2 February 2017, paragraph 232

²¹⁰ National Assembly for Wales, Finance Committee, Record of Proceedings, 2 February 2017, paragraph 248

²¹¹ National Assembly for Wales, Finance Committee, Record of Proceedings, 2 February 2017, paragraph 250

240. The Committee acknowledges the comments raised in evidence and encourages the Welsh Government to develop a revenue-sharing arrangement with NRW and local authorities, in order to support meaningful enforcement of unauthorised disposals.

241. The Committee notes the estimated WRA set-up costs and HMRC switch-off costs provided and welcomes the updated information provided by the Cabinet Secretary in his letter of 15 February 2017.²¹² The Committee would be grateful for further updates from the Cabinet Secretary and for updated switch-off costs for LfT as this information becomes available.

Recommendation 22. The Committee recommends that the Welsh Government provides more detailed costs for enforcing the provisions relation to unauthorised waste disposal.

Recommendation 23. The Committee recommends that the Welsh Government commits to reviewing the tax yield from unauthorised waste disposals and establishes a revenue sharing arrangement to support NRW and local authority compliance and enforcement activities.

Recommendation 24. The Committee recommends that the Welsh Government publishes revised further set-up costs for the Welsh Revenue Authority and the switch-off costs for Landfill Tax when available.

²¹² [Letter from the Cabinet Secretary for Finance and Local Government, 15 February 2017](#)

Annex A – List of oral evidence sessions

The following witnesses provided oral evidence to the Committee on the dates noted below.

Transcripts of all oral evidence sessions can be viewed on the Committee’s website.

Date	Name and Organisation
15 December 2016	Mark Drakeford AM, Cabinet Secretary for Finance and Local Government Emma Cordingley, Welsh Government Sarah Tully, Welsh Government
11 January 2017	Tim Peppin, Welsh Local Government Association Tara King, Cardiff Council
19 January 2017	Brian Mayne, Chartered Institution of Wastes Management Lee Marshall, Local Authority Recycling Advisory Committee Clare McCallan, Natural Resources Wales Becky Favager, Natural Resources Wales Kim Gutteridge, RSPB Dr Stephen Marsh-Smith, Afonydd Cymru Dr Patrick Bishop, UK Environmental Law Association James Byrne, Wildlife Trusts Wales
25 January 2017	Mike Trotman, Deloitte LLP Gareth Pritchard, Deloitte LLP Jennifer Doyle, Cory Environmental Jacqueline Doone, Biffa Group Limited
2 February 2017	Mark Drakeford AM, Cabinet Secretary for Finance and Local Government Emma Cordingley, Welsh Government Sarah Tully, Welsh Government

Annex B – List of written evidence

The following people and organisations provided written evidence to the Committee. All [consultation responses and additional written information](#) can be viewed on the Committee's website.

Organisation	Reference
British Heart Foundation	<u>LDT 01</u>
Welsh Local Government Association	<u>LDT 02</u>
RSPB Cymru	<u>LDT 03</u>
One Voice Wales	<u>LDT 04</u>
UK Environmental Law Association	<u>LDT 05</u>
Afonydd Cymru	<u>LDT 06</u>
Local Authority Recycling Advisory Committee	<u>LDT 07</u>
Natural Resources Wales	<u>LDT 08</u>
The Institute of Chartered Accountants in England and Wales	<u>LDT 09</u>
Woodland Trust	<u>LDT 10</u>
The Chartered Institution Of Wastes Management	<u>LDT 11</u>
National Trust	<u>LDT 12</u>
Alan Rees	<u>LDT 13</u>
Deloitte LLP	<u>LDT 14</u>
Welsh Environmental Services Association	<u>LDT 15</u>
FCC Environment Wales	<u>LDT 16</u>
Tata Steel	<u>LDT 17</u>
Wildlife Trusts Wales	<u>LDT 18</u>
RWE Generation UK plc	<u>LDT 19</u>
Cory Environmental	<u>LDT 20</u>