

Finance Committee

The Tax Collection and Management (Administration) (Wales) Regulations 2017

01. This Statutory Instrument is being considered by the Finance Committee under Standing Order 27.8A.

Background and Purpose

02. These Regulations make provision for various matters in respect of the administration of the devolved taxes.

03. Regulation 3 prescribes the Natural Resources Body for Wales as a person to whom the WRA may delegate any of its functions in respect of landfill disposals tax.

04. Regulation 4 establishes that the WRA's first planning period will be 1 April 2018 to 31 March 2019 (for the purposes of its corporate plan).

05. Part 3 of the Regulations provides for rates of late payment interest and repayment interest.

06. Part 4 provides procedures to determine disputes in respect of whether information or documentation, requested by the WRA, is protected by legal professional privilege.

Procedure

07. Negative

Merits Scrutiny

08. No points are identified for reporting in respect of this instrument.

Policy Scrutiny

Statement of policy intent

09. To support the Committee's scrutiny of the Tax Collection and Management (Wales) Bill, Welsh Government provided information on the policy intent for the delegated powers within the Bill.

Regulation 3



10. The regulation tabled by the Welsh Government is in accordance with related policy in the statement.
11. The statement notes this power will allow WRA to delegate tax collection and management functions from the point of its establishment.
12. In a written statement, the Cabinet Secretary for Finance and Local Government announced the Welsh Revenue Authority (WRA) would delegate Landfill Disposals Tax (LDT) compliance and enforcement to Natural Resources Wales (NRW).

Regulation 4

13. The regulation tabled by the Welsh Government is in accordance with related policy in the statement.
14. The statement notes this power will allow Welsh Ministers to set a first planning period which is to be exercised in readiness for WRA's establishment. The regulation sets out this planning period.

Part 3

Regulations 5–7

15. All regulations tabled by the Welsh Government are in accordance with related policies in the statement.
16. The statement includes regulations to set the rates of interest for late payments and repayments. Such powers would only be used to make adjustments to the amounts of interest (e.g. to ensure comparability with the rest of the UK).
17. Regulations tabled by Welsh Government establishes how the rates of interest are to be calculated and which Bank of England rate is to be used for calculating interest.

Part 4

Regulation 8

18. This provides the application of Part 4 relating to the determination of whether requested information is subject to legal professional privilege.

Regulations 9–14



19. All regulations tabled by the Welsh Government are in accordance with related policy in the statement.

20. The statement notes regulations are required to make provisions for the resolution by the Tribunal of any dispute as to whether any information or a document is legally privileged. Such provisions have been incorporated into these regulations.

Finance Committee Stage 1 scrutiny

21. No comments were made on the rates of late payment and repayment interest or dispute resolution procedures for legally privileged information during Stage 1 scrutiny.

Consultation responses

Assembly consultation

22. In terms of regulations 9–14, the Country Land and Business Association (CLA) noted in its evidence:

Legal professional privilege is a fundamental human right and it is imperative that any regulations **should be the subject to consultation** before being laid before the Welsh Assembly. We note that these regulations as with the majority of regulations to give effect to the Bill are to be passed by the negative procedure. This will inevitably mean that they will be passed with minimal scrutiny by legislators if any. We consider that these important regulations to ensure the protection of taxpayers' rights **should be passed** by way of affirmative resolution.

Welsh Government consultation

23. No comments made regarding rates of late payment and repayment interest or dispute resolution procedures for legally privileged information in the consultation.

UK regulations

Regulation 3

24. The delegation of functions regulation is similar to Scottish and UK Government regulations.

Regulation 4



25. The first planning period regulation is similar to Scottish regulations.

Regulations 5–7

26. Rates of late payment and repayment interest are the same as those used in Scottish regulations. The UK Government imposes the same interest rate for late payments but only includes 0.5% for repayments rather than the higher of 0.5% or the Bank of England rate.

Regulations 8–14

27. No notable differences between regulations introduced by Scottish Government, UK Government and Welsh Government in relation to disputes on whether a document is subject to legal professional privilege.

Government Response

28. We note the Committee's commentary on these regulations. With regard to the commentary on Part 4, there are no notable differences between the procedure established in these regulations and the existing procedures operating within the UK and Scottish tax systems, which is why informal engagement with key stakeholders took place before the regulations were made.

29. As for the appropriate procedure, section 189(3) of the Tax Collection and Management (Wales) Act 2016 provides that the Regulations are to be subject to the negative procedure.

30. Finally, in response to the commentary in the report on regulation 7, the Committee may wish to note that the repayment interest rate applied by HMRCⁱ is not fixed at 0.5%, but is determined by a formula which enables the repayment interest rate to track the Bank of England rate. This formula provides that the repayment interest rate is to be the higher of:

- (i) 0.5% per annum, and
- (ii) the percentage determined by deducing 1 from the Bank of England rate.

31. We have decided to adopt the same formula used in the Scottish regulations, as this is considered to provide a fairer result for taxpayers.

Committee View

32. The Committee noted the regulations.



ⁱ See regulation 3AB of the Taxes (Interest Rate) Regulations 1989 (in relation to SDLT) and regulation 5 of the Air Passenger Duty and Other Indirect Taxes (Interest Rate) Regulations 1998 (in relation to landfill tax).

