



Llywodraeth Cymru  
Welsh Government

**LANDFILL DISPOSALS TAX (WALES)**  
**BILL**  
[AS AMENDED AT STAGE 2]

Explanatory Memorandum  
Incorporating the  
Regulatory Impact Assessment  
and Explanatory Notes

June 2017

# **LANDFILL DISPOSALS TAX (WALES) BILL**

[AS AMENDED AT STAGE 2]

## **Explanatory Memorandum to Landfill Disposals Tax (Wales) Bill**

This Explanatory Memorandum has been prepared by the Office of the First Minister and Cabinet Office of the Welsh Government and is laid before the National Assembly for Wales.

It was originally prepared and laid in accordance with Standing Order 26.6 in November 2016, and a revised Memorandum is now laid in accordance with Standing Order 26.28.

### **Member's Declaration**

In my view the provisions of the Landfill Disposals Tax (Wales) Bill, introduced by me on 28 November 2016 would be within the legislative competence of the National Assembly for Wales.

### **Mark Drakeford AM**

Cabinet Secretary for Finance and Local Government  
Ysgrifennydd y Cabinet dros Gyllid a Llywodraeth Leol  
Assembly Member in charge of the Bill

**13 June 2017**

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# PART 1 – EXPLANATORY MEMORANDUM

## Chapter 1: Description

- 1.1 It is intended that the Landfill Disposals Tax (Wales) Bill (“the Bill”) will make provision for a tax on disposals to landfill in Wales, to replace Landfill Tax (“LFT”) from 1 April 2018. The Bill is the third bill to establish devolved tax arrangements in Wales.
- 1.2 This legislation is linked to the Tax Collection and Management (Wales) Act 2016 (“TCMA”),<sup>1</sup> which sets out the arrangements for the collection and management of devolved taxes including the establishment of the Welsh Revenue Authority (“WRA”)<sup>2</sup>. The Bill is also linked to the Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017 (“LTTA”)<sup>3</sup> introduces a replacement for Stamp Duty Land Tax in Wales and measures to tackle devolved tax avoidance.
- 1.3 The Bill seeks to build on the administrative framework established through the TCMA by setting out the operational arrangements for Landfill Disposals Tax (“LDT”) in Wales. This will ensure that a tax on disposals to landfill may continue to be managed and collected in Wales once LFT is ‘switched off’ in respect to Wales in 2018. The introduction of LDT will protect tax revenue for continued investment in public services in Wales.
- 1.4 In particular, the Bill covers the following areas:
- The definition of a “taxable disposal” on which LDT will be charged;
  - What is meant by an authorised landfill site and what is expected of landfill site operators in terms of their liability to pay LDT, the duty to register with WRA, how to account for LDT etc.;
  - The application of LDT to disposals made other than at an authorised landfill site and who is liable for LDT on such disposals;
  - How LDT will be calculated, what rate of tax will apply and what exemptions, reliefs and credits may apply;
  - A duty on the Welsh Ministers to prepare and publish a Landfill Disposals Tax Communities Scheme;
  - Details of the groups of qualifying material, specified materials and conditions (if any) associated with the material that may qualify for the lower rate of tax;
  - Duties on taxpayers to make payments and pay penalties and interest in certain circumstances; and

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<sup>1</sup> <http://www.senedd.assembly.wales/mglIssueHistoryHome.aspx?IId=12989>

<sup>2</sup> <http://gov.wales/funding/fiscal-reform/welsh-revenue-authority/?lang=en>

<sup>3</sup> <http://www.senedd.assembly.wales/mglIssueHistoryHome.aspx?IId=15873>

- About the inspection of premises for the purpose of ascertaining a person's liability to LDT, and about the sharing of information between certain public authorities for the purpose of LDT.

## **Taking Wales Forward**

- 1.5 Taking Wales Forward<sup>4</sup> sets out how the Welsh Government will deliver more and better jobs through a stronger, fairer economy, improve and reform our public services, and build a united, connected and sustainable Wales.
- 1.6 The Bill will contribute to a number of this Government's priorities; namely through developing a Prosperous and Secure Wales:
  - Supporting business through continuity of the tax on waste going to landfill which provides the waste sector with security and a continued impetus to develop alternative technologies;
  - Supporting business through a tax on unauthorised disposals which creates a level playing field for legitimate waste businesses;
  - Supporting the environment by ensuring waste is diverted from landfill thereby reducing our greenhouse gas emissions;
  - Supporting the environment by ensuring the responsible disposal of waste which protects biodiversity, local ecosystems and public health; and
  - Supporting the environment by increasing recycling and minimising landfill.

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<sup>4</sup> <http://gov.wales/about/programme-for-government/?lang=en>

## Chapter 2: Legislative Competence

- 2.1 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.
- 2.2 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.
- 2.3 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).”

- 2.4 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 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).
- 2.5 Section 116N defines a tax on disposals to landfill as:

**“116N Tax on disposals to landfill**

(1) A tax charged on disposals to landfill made in Wales is a devolved tax.

(2) A disposal is a disposal to landfill if—

- (a) it is a disposal of material as waste, and
- (b) it is made by way of landfill.”

- 2.6 The provisions in GoWA 2006 that deal with devolved taxes were inserted by Wales Act 2014<sup>5</sup>. Section 18(2) of the Wales Act 2014 provides that:

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<sup>5</sup> Wales Act 2014 is available at:  
<http://www.legislation.gov.uk/ukpga/2014/29/contents/enacted>

“A devolved tax specified in section 116N of GOWA 2006 (as inserted by this section) may not be charged under an Act of the Assembly on a disposal if the disposal is made before the date appointed under section 19(3) (disapplication of landfill tax).”

- 2.7 Accordingly, the Assembly has legislative competence to make the provisions in the Bill.

## Chapter 3: Purpose and intended effect of the legislation

### Reason for the Bill and explanation of timing

- 3.1 The Welsh Ministers' purpose in relation to the Landfill Disposals Tax (Wales) Bill ("the Bill") is to establish Landfill Disposals Tax ("LDT") in Wales to replace Landfill Tax ("Lft") from April 2018.
- 3.2 As set out in paragraph 2.5, section 19 of the Wales Act 2014<sup>6</sup> provides for Lft to be dis-applied in Wales. This will take effect in relation to disposals of waste by way of landfill on a date to be appointed by the Treasury under Section 19(3) of that Act. *The Wales Bill: Financial Empowerment and Accountability Command Paper*<sup>7</sup> sets out the UK Government's intention that Lft will cease to apply in Wales from April 2018.
- 3.3 If the Welsh Ministers chose not to implement a tax on disposals of waste by way of landfill in Wales, then the Welsh Government would not receive the revenue from this tax. This would have a significant impact on the resources available to fund public services in Wales.

**Table 1: Estimated Revenue from Landfill Tax in Wales 2010-11 to 2015-16 (£m)**

	2010-11	2011-12	2012-13	2013-14	2014-15	2015-16
Landfill Tax	45	44	47	49	47	44

Source: HMRC Disaggregated Tax Receipts October 2016

- 3.4 The Office for Budget Responsibility (OBR) in its March 2017 "Economic and Fiscal Outlook"<sup>8</sup> published forecasts for Wales' annual revenue for tax on disposals to landfill until 2021-22. These forecasts are outlined in Table 2 and suggest that £25 million would be raised in 2018-19, the first year of Lft devolution.

<sup>6</sup> Wales Act 2014 is available at:

<http://www.legislation.gov.uk/ukpga/2014/29/contents/enacted>

<sup>7</sup> [http://budgetresponsibility.org.uk/docs/dlm\\_uploads/Wales\\_Bill\\_Command\\_Paper.pdf](http://budgetresponsibility.org.uk/docs/dlm_uploads/Wales_Bill_Command_Paper.pdf)

<sup>8</sup> <http://cdn.budgetresponsibility.org.uk/DevolvedtaxesforecastMarch2017.pdf>

**Table 2: Landfill Tax Forecasts**

	£ million						
	2015-16	2016-17	2017-18	2018-19	2019-20	2020-21	2021-22
<b>Welsh Forecast</b>	34	33	28	25	23	22	22

Source: Forecast - Office for Budget Responsibility (OBR) Economic and Fiscal Outlook March 2017

- 3.5 “The Wales Bill: Financial Empowerment and Accountability Command Paper” confirmed the UK Government’s intention that the process of devolving LfT will result in the Welsh Government’s block grant<sup>9</sup> being reduced. The block grant adjustment for 2018-19 will be known at the time of the UK Government’s Autumn Budget 2017.
- 3.6 The success of LfT in diverting waste from landfill is expected to result in reducing LfT revenues over future years and may eventually reach a ‘tipping point’ when the cost of administering the tax is higher than the revenue recovered. Likewise, the number of landfill sites in Wales is reducing and is expected to be less than 10 by 2020 (down from 25 in May 2016). However, if this tipping point were reached, (which it is not anticipated will happen in at least the next 6 years), there would need to be a wider consideration of the environmental objectives of the tax as well as other factors such as fiscal, commercial and health and well-being before any decision was taken on the future of LDT. A revocation of the tax would require an Act of the National Assembly for Wales.
- 3.7 The intended effect of the legislation is to introduce a replacement for LfT so that public services in Wales can continue to receive the benefit of the revenues raised by the tax. Also, as with the existing LfT, the intended effect of the LDT legislation is to encourage greater prevention, re-use, recycling and recovery of waste. The new tax will provide the Welsh Government with a useful additional lever to support Welsh Government waste policies.
- 3.8 The Welsh Government has produced a single coherent Bill and it will read differently to the existing LfT legislation. This is what stakeholders wanted – a coherent, logical, up-to-date Bill which reflects existing practices. We have taken the opportunity to make changes to better reflect Welsh circumstances and needs. The Bill will also enable the Welsh Revenue Authority (WRA) to charge tax on unauthorised

<sup>9</sup> <http://law.gov.wales/constitution-government/government-in-wales/finance/?lang=en#/constitution-government/government-in-wales/finance/?tab=overview&lang=en>

disposal of waste. This will tackle this known form of tax evasion and protect the revenue.

- 3.9 A clear priority for the business community is a smooth transition to the new tax in 2018. This is particularly the case with the setting of tax rates, where a change in tax rates could either significantly undermine tax receipts, or result in waste tourism: neither of which are particularly welcome.
- 3.10 The Tax Collection and Management Wales Act 2016 (“TCMA”) established a clear and strong governance framework in Wales that will support the effective collection and management of devolved taxes and establish WRA. TCMA provides WRA with the relevant functions and powers to enable it to meet its responsibilities. The intention is these new arrangements should come into force in April 2018.
- 3.11 WRA will need to establish the operational processes and procedures for the collection and management of LDT revenue prior to April 2018.

## **Policy Background**

- 3.12 LfT has been constantly evolving as new technologies and policy developments emerge. LfT has developed over the last 20 years and to gain a complete picture, it is necessary to consider primary and secondary legislation, directions, notices and guidance as well as relevant case law. This provides a very confusing landscape in which landfill sites operate.

## **Landfill Tax**

- 3.13 LfT was introduced in 1996 as a means of influencing positive environmental behavioural change.
- 3.14 Since its introduction in 1996 the standard rate of LfT has risen from £7/tonne to £86.10/tonne in 2017<sup>10</sup>. During this time the amount of waste disposed of at landfill sites has significantly reduced whilst there has been a corresponding increase in recycling. In Wales, the total tonnage of waste landfilled fell by 52% between 2001 and 2013<sup>11</sup>. This is illustrative of the success of LfT as a policy instrument.
- 3.15 In 2014 the UK Government announced tax rates would be maintained in real terms (by the rate of inflation as measured by the Retail Price

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<sup>10</sup> The lower tax rate was £2/tonne when the tax was introduced in 1996 and is £2.70/tonne in 2017.

<sup>11</sup> Source: Natural Resources Wales

Index). HMRC officials and stakeholders have commented that the standard rate of LfT has now reached an optimum level where landfilling these materials is the most expensive, and therefore least attractive, means of waste disposal.

### **Landfill Tax: Recent Developments**

- 3.16 In recent years HMRC has sought to provide greater clarity regarding how the tax is applied. This has included updating guidance and introducing revised legislation: the Landfill Tax (Prescribed Landfill Site Activities) Order 2009; the Landfill Tax (Qualifying Material) Order 2011 and the Landfill Tax (Qualifying Fines) (No.2) Order 2015.
- 3.17 There has been a notable string of legal challenge related to LfT and whether some material sent to landfill is being used (rather than discarded<sup>12</sup>) and therefore should not be treated as a taxable disposal. The values of the claims currently before the courts mean that a significant proportion of LfT revenue is at risk.
- 3.18 The Scotland Act 2012<sup>13</sup> provided for the devolution of LfT to Scotland from April 2015. Scottish Landfill Tax (“SLfT”) replaced LfT in Scotland on 1 April 2015. The Scottish system is broadly consistent with LfT but makes some changes to how the tax is administered including extending the scope of the tax to unauthorised disposals of waste. The Scottish Government decided to adopt the standard and lower tax rate approach and announced the tax rates in January 2015. The standard and lower tax rates are set at the same level as for LfT. The Scottish experience of devolution provides a useful comparator for Wales.

### **Developing Landfill Disposals Tax**

- 3.19 In spring 2015 a consultation *Developing Landfill Disposals Tax*<sup>14</sup> was published seeking views on the policy context of this Bill. In developing the policy and establishing LDT to meet the needs and circumstances of Wales, the Welsh Government has drawn on the responses to the consultation, a summary of which was published in September 2015<sup>15</sup>.

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<sup>12</sup> For there to be a taxable disposal there has to be a disposal of material as waste, which the legislation defines as occurring when “the person making the disposal does with the intention of discarding the material”

<sup>13</sup> Scotland Act 2012 available at:

<http://www.legislation.gov.uk/ukpga/2012/11/contents/enacted>

<sup>14</sup> *Developing a Landfill Disposals Tax* Consultation (24 February – 19 May 2015) available at: <http://gov.wales/consultations/finance/landfill-disposals-tax/?lang=en>

<sup>15</sup> *Developing a Landfill Disposals Tax Consultation - Summary of Responses* (September 2015) available at: <http://gov.wales/consultations/finance/landfill-disposals-tax/?lang=en>

3.20 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.

3.21 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.

3.22 The majority of landfill sites in Wales (and the Welsh population) are within 50 miles of the Wales/England border. There are even more landfill sites within 50 miles of the border on the English side. Many landfill sites in the north-east and south-east of Wales are much closer than this to sites in England. Analysis of haulage rates suggests that a relatively small differential of less than £10 in rates between Wales and England could introduce a significant financial incentive for waste tourism.

3.23 There would also be wellbeing and environmental impacts for communities, for example, from increased disruption for residents near landfill sites and waste transfer stations; increasing the carbon footprint of waste disposal and an increase in waste, including potentially hazardous waste, travelling further distances on major roads and through residential areas. In addition, if the rates in Wales were lower, there could be pressure on landfill sites in Wales and potential calls for new landfill sites to be developed.

3.24 An overview of the Bill can be found at paragraph 1.4 in Chapter 1 of this Explanatory Memorandum.

# **The Bill**

## **Part 1 – Overview**

3.25 This Part is self-explanatory and does not require any further explanation or comment.

## **Part 2 – The Tax and Taxable Disposals**

### **Part 2 - Chapter 1 - Landfill Disposals Tax**

3.26 The purpose and intended effect of this Part is that there will be a tax in Wales called landfill disposals tax and the tax will apply to disposals of material as waste by way of landfill in Wales and will be collected and managed by WRA.

### **Part 2 - Chapter 2 - Taxable Disposals**

#### **Background and current position**

3.27 The existing LfT is chargeable on taxable disposals. That is all material disposed of at an authorised landfill site (the definition of which includes a site that has been licensed or permitted under the Environmental Protection Act 1990<sup>16</sup>, authorising disposals in or on the land):

- as waste - this is any disposal a person makes with the intention of discarding the material;
- by way of landfill - where material is deposited on the surface of land, on a structure set into the surface, or under the surface.

unless an exemption applies.

#### **Purpose and intended effect**

3.28 Tax liability is established by reference to conditions set out in section 3 of the Bill, which sets out the four conditions that need to be met in order for there to be a taxable disposal, namely:

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<sup>16</sup> Part II of the Environmental Protection Act 1990; regulations made under section 2 of the Pollution Prevention and Control Act 1999; Part II of the Pollution Control and Local Government (Northern Ireland) Order 1978 (SI 1978 No. 1049 (N.I. 9)); regulations under Article 4 of the Environment (Northern Ireland) Order 2002 (SI 2002 No. 3153 (N.I. 7))

- that there is a disposal of material by way of landfill. This concept is further defined at section 4;
- that the disposal is made at an authorised landfill site (defined at section 5) or at a place other than an authorised landfill site but is a disposal that requires an environmental permit;
- that the disposal is a disposal of the material as waste. This concept is further defined at section 6(1) and related provisions are found at sections 6 and 7;
- that the disposal is made in Wales.

- 3.29 Condition 3 is developed at section 6(1) of the Bill, which provides that there will be a disposal of material as waste if “the person responsible for the disposal intends to discard the material.” This is the test for whether or not there is a disposal of material, which will need to be met (alongside the other three conditions at section 3) in order for there to be a taxable disposal. If material is being ‘used’ in some way, it can still be said that there is an intention to discard.
- 3.30 An intention to discard may be inferred from the circumstances of a disposal and in particular from the fact that material is deposited in a landfill disposal area; which in layman’s terms is the landfill void where the placement of waste generally occurs. This is intended to provide a clear steer that the objective circumstances of a deposit may be taken into account in deciding whether a person intended to discard the material so as to make it clear that there is more to the test at section 6(1) than whether or not a person accepts or denies having an intention to discard the material.
- 3.31 However, to suggest that the tax liability is established by inference is not entirely correct: any inference that may be drawn under section 6(2) will need to be considered alongside any other available evidence in determining whether the person responsible for the disposal had an intention to discard the material. It must also be remembered that an intention to discard (whether inferred or not) is only one of the tests that must be met for a tax liability to arise. An inferred intention will not of itself establish a tax liability if the other tests are not met.
- 3.32 Section 6(3) is also a new provision, which again, is intended to give WRA, operators and tribunals some guidance in determining whether or not there is an intention to discard material. It provides that the fact that someone has made a temporary or incidental use of the material or derived a benefit from the material doesn’t mean there was not an intention to discard the material.
- 3.33 In some circumstances, the Bill provides that a disposal will be treated as a taxable disposal regardless of whether the four conditions at section 3 are met. This is because section 8 sets out a list of specified landfill site activities, which, when taking place at an authorised landfill site, will automatically be treated as taxable disposals.

- 3.34 The Bill will provide clarity and certainty on the question of whose intention is relevant to the ‘intention to discard’ test, in that it clearly sets out the intention rests with the person responsible for the disposal. It is clear in the context of authorised landfill sites that this will usually be the landfill site operator.
- 3.35 The Bill includes a list of activities at section 8(3), which are to be treated as taxable disposals. The list draws from the activities listed in The Landfill Tax (Prescribed Activities Order) 2009<sup>17</sup>, which was broadly replicated by the Scottish Landfill Tax (Prescribed Landfill Site Activities) Order 2014<sup>18</sup>.
- 3.36 The Welsh Ministers may, by regulation, add, modify or remove a specified landfill site activity. While the list at section 8(3) is confined to authorised sites, the regulation making power could allow for specified activities to be added that apply to unauthorised sites. This provides additional flexibility to address any attempts to avoid paying tax by those liable for unauthorised disposals of waste.

## **Part 2 - Chapter 3 – Exempt Disposals**

### **Purpose and intended Effect**

- 3.37 Exempt disposals will not be a taxable disposal and there will be no need for the landfill site operator to account for the disposal of the material. The LDT Bill provides for the following exempt disposals:
- Pet cemeteries – this exemption is broadly consistent with the UK legislation. It ensures that disposals of the remains of dead pets (and any container or material in which the remains are contained), when made at an authorised landfill site will be exempt from tax, provided that the site does not accept any other types of disposal.
  - Multiple Disposals of waste – this will ensure that if material is disposed of more than once at the same authorised landfill site, a liability to LDT will only arise once. For example, this exemption could apply where material that is used in a specified landfill site activity (for example, to create a temporary road or hard standing) and so is liable to LDT and is then later used in another landfill site activity and/or disposed in the landfill void at the same site. There is no equivalent provision within the UK legislation but we believe that this reflects HMRC LfT guidance and operational practice.
- 3.38 The exempt disposals set out above only apply to authorised landfill sites. The Bill includes a regulation making power to add, modify or

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<sup>17</sup> SI 2009/1929

<sup>18</sup> SSI 2014/367

remove an exemption; and provides for an exemption to be subject to conditions.

### **Part 3 - Chapter 3 – Relief from Tax**

*To assist the reader, this section has been described here as the current LfT exemptions are broadly replicated as reliefs for LDT.*

#### **Purpose and intended effect**

- 3.39 The LDT Bill broadly replicates the existing exemptions consistent with the rest of the UK. However, LDT has defined a number of the LfT exemptions as 'reliefs'. Where a relief applies, tax is not chargeable; and a relief will only apply if it is claimed in a tax return. Reliefs are described in the Explanatory Notes.
- 3.40 **Material removed from bed of river, sea or other water:** This relief applies to the disposal of certain dredged material (commonly known as "dredgings").
- 3.41 **Material resulting from mining and quarrying operations:** The disposal of such material is relieved if the material has not been subject to any separate process or has not been chemically altered, between its extraction and disposal.
- 3.42 **Re-filling former open-cast mines and quarries:** This section provides relief for the disposal of qualifying material at an authorised landfill site (or part of a site) that was used for open-cast mining or quarrying operations. The relief is only available if there is a planning requirement that the site must be refilled and no other taxable disposals have been made at the site (or part of the site) since mining or quarrying operations ended.
- 3.43 **Site restoration:** Landfill site operators must apply for this relief in advance of claiming the relief on the tax return. It is anticipated that these provisions will enable WRA to fully assess material used for site restoration. WRA may approve a relief from tax for the use of material for site restoration; however, before doing so, WRA will need to be satisfied that the site restoration is required by an environmental permit or planning permission relating to the site. There may be occasions when WRA require further information in order to make a decision on whether to approve a relief for the site restoration and the Bill sets out the parameters of how this will work in practice. WRA and the landfill site operator may agree to extend a period of time specified by this section.

3.44 Only the minimum material required in order to comply with the permit or permission will benefit from the relief. The use of material for site restoration that does not receive WRA approval will not benefit from relief and the material used will be subject to tax.

## **Part 5 - Chapter 1 - Tax Credits**

*To assist the reader, this section has been described here.*

### **Background and current position**

3.45 There are three credits available within the existing LfT:

- Landfill Communities (Environmental Bodies) Credit – The Landfill Communities Fund (LCF) encourages landfill site operators to fund local community environmental projects by enabling landfill site operators to claim a tax credit worth 90% for the contributions they make.
- Bad Debt Relief – If the landfill site operator's customer becomes insolvent or is otherwise unable to pay the charges for landfilling taxable waste, a landfill site operator may claim bad debt relief provided that certain criteria is met, for example, the disposal of waste for consideration of money has taken place; the LfT on the disposal has already been accounted for and paid to HMRC; the debt has been written off and transferred to a bad debt account; and that 12 months have passed since the date of issue of the landfill invoice.
- Removals Credit – Under the LfT system landfill site operators can claim a credit for material that has been deposited and LfT has been accounted for and paid but is then later removed for recycling, incineration or reuse (provided certain conditions are met).

3.46 The processes and procedures for applying these credits have evolved over time and are contained in various pieces of legislation and in HMRC guidance.

3.47 The Landfill Tax (Scotland) Act 2014 and the Scottish Landfill Tax (Administration) Regulations 2015 mirror the UK provisions for the purposes of SLfT although the bad debt credit has been redefined to only apply where a debt is related to insolvency.

## **Purpose and intended effect**

- 3.48 In-keeping with the current approach in relation to LfT, the Bill proposes to take a regulation making power to put in place tax credit arrangements. This recognises that there may be circumstances in which, although a liability to LDT has arisen, and in some cases a payment has been made to the WRA in satisfaction of that liability, there are wider factors at play that mean that it will be appropriate to allow a tax credit to be claimed (provided certain conditions are met), so that the revenue is effectively refunded.
- 3.49 Similarly to Scotland, the intention is to make regulations which set out the credit arrangements for bad debt for landfill site operators as a result of customer insolvency. It is intended that an entitlement to such a credit will only arise where a landfill site operator has accounted for and paid LDT in respect of a disposal but has not received payment from the customer for that disposal due to an insolvency event having taken place.

## **Part 3 – Taxable Disposals made at Authorised Landfill Sites**

### **Background and current position**

- 3.50 LfT is known as an indirect tax, as the tax is charged on one person but the cost is ordinarily passed onto a third party. Liability for the payment of LfT rests with a relatively concentrated pool of people. Namely, those who are operating landfill sites and therefore receiving material for disposal as waste, rather than those who produce, collect or otherwise manage that material at other points in the waste lifecycle. The landfill site operator passes the cost of the tax liability on to customers as part of the landfill site 'gate fee'. The customer may in turn factor this cost into the prices that it charges its own customers.
- 3.51 There are two tax rates; a lower rate and a standard rate. The standard rate is currently £86.10 per tonne and the lower rate is currently £2.70 per tonne.
- 3.52 The Landfill Tax (Scotland) Act 2014<sup>19</sup> gives the Scottish Government power (by way of secondary legislation) to set different lower rates of tax for different categories of qualifying material. Stakeholders have suggested that this opportunity should be introduced in Wales to provide flexibility for the future if needed in order to be able to respond to economic changes, social circumstances and/or environmental developments.

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<sup>19</sup> S.13(6) Landfill Tax (Scotland) Act 2014

- 3.53 It is the Welsh Government's intention to announce and publish the proposed tax rates for LDT by 1 October 2017, in readiness for the implementation of this tax (in April 2018).

### **Part 3 - Chapter 1 - Persons Chargeable to Tax**

#### **Purpose and Intended effect**

- 3.54 The intended effect is to impose the liability for LDT on the landfill site operator or operators of an authorised landfill site.

### **Part 3 - Chapter 2 – Tax Chargeable on Taxable Disposals**

#### **Calculation of tax chargeable - Purpose and intended effect**

- 3.55 The Bill makes it the responsibility of the landfill site operator to ensure the correct rate of tax is applied and the right amount of tax is paid to WRA for each disposal at their site. The provisions clarify how the tax is to be calculated in order to assist the landfill site operator in meeting their tax liability.
- 3.56 Remaining consistent with the UK and Scotland there will be a standard and a lower rate of tax. [In addition, the Bill introduces a third rate of tax in relation to disposals at places other than authorised landfill sites. This is explained in detail at paragraphs 3.108-3.114 of this explanatory memorandum.]
- 3.57 In the absence of an annual Finance Act, to retain flexibility to readily amend the tax rates as appropriate, the Welsh Ministers will have power to set and amend the standard and lower rate of tax by way of secondary legislation. The affirmative procedure is to be adopted for the initial setting of the tax rates. Part 6 of the LDT Bill (Final Provisions) at section 91(3) provides for the provisional affirmative procedure to be adopted for the second and subsequent rates regulations. This procedure enables regulations specifying new rates to have effect from the date the regulations are made. However, the regulations must be approved by the Assembly within 28 days of being made if they are to have permanent legal effect. The intention is to provide flexibility and to enable the Welsh Ministers to respond quickly to economic, social or environmental factors, to deter any negative impacts whilst still providing the Assembly with a scrutiny role.
- 3.58 The Welsh Ministers have agreed to work with the National Assembly for Wales in discussing the need for an annual Finance (Wales) Act in the future.

- 3.59 Similar to Scotland, in exercising their powers to set LDT rates, the Welsh Ministers are able to set different standard or lower rates for different descriptions of materials. This further flexibility allows the Welsh Ministers to accommodate future circumstances and policy changes.

### **Qualifying materials - Purpose and intended effect**

- 3.60 The provisions set out the required conditions that must be met in order for a disposal of material to be a disposal of qualifying materials and chargeable at the lower rate of tax.
- 3.61 Firstly, the material must be listed as a 'qualifying material' in Table 1 that is found in Schedule 1 of the Bill.
- 3.62 Secondly, the material must meet each condition set out in Schedule 1 that applies to the material.
- 3.63 Thirdly, the landfill site operator is required to hold a written description of the material, often referred to as a waste transfer note, if this document is required by the Environmental Protection Act 1990. If a written description is not required, there must be other evidence from which it can be determined that the material is a qualifying material as prescribed in the regulations.
- 3.64 The written description or other evidence will be required to be kept and preserved by the landfill site operator as part of the tax records for a period of six years in accordance with section 37 TCMA. Broadly, these requirements have the effect of ensuring accountability within the waste industry as the landfill site operator must have regard to the contents of the relevant written description and check this corresponds with the waste being presented.
- 3.65 The effect of the legislation is to focus the responsibility on the landfill site operator to ensure the correct tax rate is applied and the right amount of tax is paid to WRA for each disposal at their site. The landfill site operator will be required to make a judgement based on the written description that accompanies the disposal and on a visual inspection of the waste. Other evidence, including documents, supplied to the landfill site operator may be used to support the decision but do not override the requirement for a written description.

### **Qualifying mixtures of materials - Purpose and intended effect**

- 3.66 The purpose of the provisions is to set out the test that a mixture of materials must meet in order to be categorised as a qualifying mixture of material and qualify for the lower rate of LDT.

- 3.67 The Bill aims to provide greater clarity around what may be considered as an acceptable amount of non-qualifying material (standard tax rate material) in a mixed load if that load is to be taxed at the lower rate. The Bill does so largely by seeking to bring together in primary legislation the effect of the LfT system as understood through primary and secondary legislation, guidance and current practice.
- 3.68 The Bill introduces a ‘small and incidental’ test into primary legislation when considering the tax rate for a mixed load. The idea behind including the words ‘small’ and ‘incidental’ on the face of the Bill is to reflect that the volume and weight of the standard rate material contained in a mixed load should be insignificant; its impact on the nature/composition of the load should also be insignificant and its presence is accidental and unavoidable rather than deliberate. It may be helpful to consider common interpretations, for example, the Oxford English Dictionary describes incidental as “*happening as a minor accompaniment to something else; occurring by chance in connection with something else and happening as a result of an activity*”.
- 3.69 To make it clear that a mixed load will only qualify for the lower rate of tax if the standard rate material is incidental, section 16 requirement 3 provides that material must not have been deliberately mixed for the purposes of or preparatory to disposal. This is strengthened by the fact that material cannot have been subject to any arrangements designed to avoid tax, in terms set out at section 16, requirement 6. This requirement is intended to address, for example, behaviour where a mixture is arranged or blended in a way that allows its composition to be disguised, such as deliberately crushing up or hiding non-qualifying (standard rate) material within a load of qualifying (lower rate) material so as to reduce the likelihood of it appearing to have more than a small and incidental amount of such material present in the load.
- 3.70 It is important that the right amount of tax is paid by the landfill site operator, and that the LDT revenues are in turn safeguarded. The WRA has the power to issue an assessment and/or penalties in relation to any misuse applying the lower rate for standard rate material.
- 3.71 The Bill also makes provision for a regulation making power to define a ‘small and incidental’ amount by reference to a prescribed percentage of non-qualifying materials. This power provides flexibility to respond to new issues and technological developments in the future and the ability to respond should there be a misuse of the principle surrounding mixed loads.

### **Qualifying mixtures of materials: fines - Purpose and intended effect**

- 3.72 The Welsh Ministers are empowered to make regulations in respect of mixed loads of materials known as fines. Fines are defined in the Bill at section 17(3).
- 3.73 These regulations may require landfill site operators to carry out specified tests (for example, such as loss on ignition testing) as part of assessing a mixture of fines in order to determine whether it is a qualifying mixture or a non-qualifying mixture; the former being subject to the lower rate of tax.
- 3.74 Any requirements imposed through these regulations would be in addition to the requirements set out for loads of qualifying mixtures of materials in section 16, which would still need to be satisfied in the case of a load of fines.
- 3.75 The precise details of the testing regime for LDT will be set out in secondary legislation.

### **Taxable weight of material**

#### **Background and Current position**

- 3.76 Both the UK and Scottish tax systems state that the weight of material being disposed of is calculated by weighing the waste at the time the disposal is to be made.
- 3.77 The UK and Scotland have similar provisions relating to water discount contained within secondary legislation.

#### **Calculation of taxable weight of material - Purpose and intended effect**

- 3.78 The purpose of these provisions is to ensure that an appropriate amount of tax is charged, which reflects the weight of material in a taxable disposal. The provisions enable a taxable weight to be arrived at by requiring a landfill site operator to determine the weight of the material in a taxable disposal by using a weighbridge. For this purpose the operator must ensure that material is weighed on the weighbridge before the disposal is made. The provisions are silent at the point in time when the landfill site operator must determine the weight of material. This is to allow for practices on landfill sites, including the weighing on and off of lorries before and after the material has been disposed of. After the weight has been determined, the operator may then apply any agreed water discount.

- 3.79 However, a landfill site operator may make an application to WRA for approval to use an alternative weighing method (i.e. other than a weighbridge) and WRA may approve the use of an alternative method, either unconditionally or subject to conditions. WRA may also vary or revoke such an agreement if for example, WRA believes there is risk to the tax revenue.
- 3.80 When WRA needs to calculate the taxable weight of material it must do so by determining the weight of the material by using such weighing method as it thinks appropriate and then applying any agreed water discount. There are however circumstances in which WRA can ignore or reduce an agreed water discount, for example, where no return has been made in respect of the disposal or where the operator is in breach of a condition of the agreed water discount.
- 3.81 The intended effect of these provisions is to provide clarity and certainty with regard to the method of determining the weight of material comprised in a taxable disposal and to specify that material must be weighed before disposal. The Bill provides that the primary method for determining the weight of material is by using a weighbridge, although it acknowledges that there may be circumstances where this is not possible and therefore provides for an alternative method to be agreed with WRA.
- 3.82 There may be circumstances where it is not possible for a landfill site operator to use a weighbridge. For example where a landfill site does not have a weighbridge or its weighbridge has broken down and there is no alternative weighbridge available. In such circumstances, a landfill site operator would need to seek WRA's permission to use an alternative weighing method and would make the application in accordance with WRA's directions.
- 3.83 An alternative method can only be applied with WRA's agreement. By allowing for the possibility of agreeing alternative methods of weighing the Bill allows for flexibility in the future and recognises that technology will develop.
- 3.84 A further example of where an alternative method may be agreed is where the practical operation of the landfill site makes it preferable for the landfill site operator to send material being disposed of from a non-disposal area directly to a landfill disposal area without sending that material via a weighbridge, which is often located at the entrance to a landfill site.
- 3.85 The following are examples of alternative weighing methods that may be considered:
- calculation based on the maximum permitted weight of the container; or

- calculation of volume to weight conversion
- 3.86 A penalty may be imposed if the landfill site operator fails to comply with the requirement to use a weighbridge or if the weighbridge that is used does not comply with the relevant weights and measures legislation. This requirement, amongst other things, helps to ensure that the weighbridge is regularly calibrated so that it is giving an accurate measurement and also regularly maintained to minimise breakdowns. Moreover, a penalty can be imposed if an alternative weighing method has been agreed with WRA but weighing is not taking place in accordance with that agreed method.
- 3.87 It is intended that the proposed legislation will encourage compliance with the LDT requirements and minimise the potential for inconsistencies and inaccuracies in the weighing of taxable disposals and calculation of liability to LDT. It is anticipated that this will help to create a level playing field between operators and act as a financial deterrent that outweighs the profit to be made from under-declaring waste.

#### **Discount in respect of water content of material - Purpose and intended effect**

- 3.88 These provisions provide for the application of a water discount when calculating the taxable weight of material in a taxable disposal. The weight arrived at after such a discount is applied then becomes the taxable weight. Such a discount is only available where the landfill site operator has applied to WRA for approval of the application of a discount.
- 3.89 Where an approval is in place for the application of a water discount, the landfill site operator may apply the water discount subject to the conditions of the approval. Failure to do so will mean that the landfill site operator will be deemed to have failed to comply with the LDT weighing provisions and will be subject to a 'Weighing Penalty'. Also, any failure to keep a water discount record will result in a penalty under the record keeping provisions.
- 3.90 The Welsh Ministers may amend or repeal any provision in this Act relating to water discount.
- 3.91 A decision about weighing or water discount will be an appealable decision under Part 8 of TCMA, meaning that it will be possible to seek a review and/or appeal of a WRA decision.
- 3.92 The intended effect of these provisions is to remain broadly consistent with the UK and Scottish approach to applying a discount in respect of the water content of material in a taxable disposal. However, the LDT

provisions seek to clarify the arrangements and the processes for applying for and claiming water discount, not least by explicitly including provision for the discount in primary legislation.

- 3.93 In Wales, it is our intention that the landfill site operator, as the taxpayer, should be fully aware and accountable for the correct application of the water discount in respect of waste disposed of at the landfill site. The customer (waste producers) should provide any necessary documentation and evidence to the landfill site operator to inform the application, for example the percentage of water content in the waste, so that the landfill site operator if content to operate the discount, may request approval from WRA prior to applying the water discount.
- 3.94 The provisions are intended to make the landfill site operator more accountable for water discount because they are in fact the taxpayer and it is therefore the landfill site operator's responsibility to have the proper contracts and processes in place with its customers regarding the operation of the water discount before making an application as the taxpayer to WRA.
- 3.95 The eligibility conditions for the water discount are limited to specific and legitimate circumstances and the application of the water discount provision is restricted to those cases where the adding or use of water is necessary. The necessity test will assist in ensuring the water discount provisions are not subject to abuse in order to avoid paying the tax.
- 3.96 The water discount record imposes further accountability on a landfill site operator and allows WRA to keep track of all relevant disposals.

## **Part 3 - Chapter 4 – Tax Collection and Management**

### **Background and Current position**

- 3.97 The SLfT and LfT regimes require a register to be kept by HMRC and Revenue Scotland. In both cases the legislation provides HMRC and Revenue Scotland with the power to include within the register such information as they think is required. The registration requirements are detailed in primary and secondary legislation.

## **Registration - Purpose and intended effect**

- 3.98 To enable WRA to effectively collect and manage LDT, it is important that WRA are aware of who the taxpayers are. The Bill therefore places a duty on WRA to keep a register of those persons who operate authorised landfill sites at which taxable disposals are made (such persons are considered for the purposes of the Bill to be carrying out “taxable operations”). This will also provide WRA with a tool in forecasting receipts from LDT for the purposes of supporting public funding in Wales.
- 3.99 The information required to be held on the register is prescribed in Schedule 2 to the Bill. The register may also contain any other information WRA thinks appropriate for the purposes of collecting and managing LDT.
- 3.100 The provisions require a person who carries out taxable operations to be registered with WRA. The Bill imposes further requirements in relation to the application for registration and in relation to changes and corrections of information submitted to WRA for the purposes of registration.
- 3.101 It is anticipated that WRA will be able to register landfill site operators in advance of the ‘go live’ date for LDT to enable a smooth transition from LfT to LDT.
- 3.102 There are penalties associated with the registration requirements; these are set out in sections 63 and 65 of the Bill.

## **Accounting for Tax - Purpose and intended effect**

- 3.103 The purpose of these provisions is to require a person who carries out taxable operations to account for the tax by making a tax return which covers a specified accounting period. The provisions detail the accounting periods which apply in the case of registered and unregistered persons. WRA have the power to vary the duration of an accounting period on the application of a person or on their own initiative. Such a power may be used for example, where an existing landfill site operator requests to use non-standard accounting periods.

## **Payment of tax - Purpose and intended effect**

- 3.104 Section 41 places a duty on the person who makes a tax return to pay the amount of tax stated in that return. This section also specifies the

date by which such amount must be paid. The provision also specifies the payment date for an amount of tax which is assessed as a result of a taxpayer amendment (under section 41 of TCMA). Part 3 TCMA sets out the rules regarding the payment of tax where there has been an enquiry, determination or assessment by WRA.

3.105 For LDT, the UK approach to payment of tax has been broadly replicated as this ensures that an amount of tax stated in a tax return is required to be paid on or before the last working day of the month following that in which the accounting period ends.

### **Postponement of recovery - Purpose and intended effect**

3.106 The purpose of section 43 is to make LDT specific amendments to the postponement of recovery provisions that have been inserted into TCMA by paragraph 60 of Schedule 22 of the Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Bill (“LTTA Bill”)(as introduced)<sup>20</sup> and which apply to all devolved taxes. The effect of those provisions as introduced by the LTTA Bill is explained in the Explanatory Notes accompanying the LTTA Bill<sup>21</sup>.

3.107 The effect of these amendments are that:

- WRA, when considering whether or not to grant a postponement request for LDT, pending a review or first appeal, will need to consider the reasons why the person making the request thinks that recovery of the amount would cause financial hardship. This will be in addition to the requirement for WRA to consider whether the person making the postponement request has reasonable grounds for thinking that the amount of tax to which the request relates is excessive; which is the test for all devolved taxes.
- A person’s postponement request will therefore need to address why recovery would cause financial hardship in addition to the elements of the request that are common to all devolved taxes.
- If WRA thinks that the reasonable grounds or financial hardship test have only been met in relation to part of an amount, it is able to grant a postponement request in respect of such part of the amount as it thinks appropriate.

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<sup>20</sup> <http://www.senedd.assembly.wales/mglssueHistoryHome.aspx?lId=15873>

<sup>21</sup> <http://www.assembly.wales/laid%20documents/pri-ld10748-em/pri-ld10748-em-e.pdf>

## **Part 4 - Taxable disposals made at places other than authorised landfill sites**

### **Background and current position**

3.108 LfT legislation only applies to disposals made at an authorised landfill site. In 2015, Scotland introduced taxation of unauthorised disposals. Meanwhile, the Republic of Ireland has been charging Landfill Levy on unauthorised disposals since 2006<sup>22</sup>.

### **Purpose and intended effect**

3.109 Stakeholders have been keen for unauthorised disposals to be brought within the scope of the tax and these provisions accomplish this, by allowing WRA to require the payment of LDT on disposals at places other than landfill sites.

3.110 The provisions are intended primarily as a deterrent to tax evasion. They are intended to ensure that unauthorised disposals are more financially risky and so a less attractive option for those tempted to ignore their environmental obligations and evade tax. The provisions, therefore seek to realign the balance of risk, so that the consequences of making unauthorised disposals outweigh the perceived benefit of evading tax.

3.111 Whilst these provisions complement the existing environmental law and enforcement regime, they are not a substitute for it. Local authorities and NRW remain responsible for that. WRA will not, for example, be able to require the remediation of unlawful waste sites. Where unlawful waste sites are remediated, liability to the tax can arise on both the unauthorised disposal and for any subsequent disposal at an authorised landfill site.

3.112 The rate of tax (the unauthorised disposals rate) will be set by regulations made by the Welsh Ministers. The intention is that this rate will be higher than the standard rate, in order to reflect the increased negative impact on the environment of unauthorised disposals of waste.

3.113 The duty to pay tax on unauthorised disposals is established through WRA issuing a charging notice to a person (or more than one person) who meets the charging condition, namely a person who made the disposal or knowingly caused or permitted the disposal to be made. Ordinarily, that charging notice will be preceded by a preliminary notice,

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<sup>22</sup> SI 402/2006 Waste Management (Landfill Levy)(Amendment) Regulations 2006

although that need not be the case where WRA thinks that there is a risk of a loss of tax.

3.114 In a context where it can be difficult to identify a particular individual responsible for any given unauthorised disposal, it is important to ensure that the unauthorised disposals rate can be imposed in an efficient and practical way. The provisions facilitate this in a number of ways:

- any “controlling minds” who are ultimately responsible for unauthorised disposals (because they direct or control others) can be required to pay the tax, if it is established that they knowingly caused or permitted a disposal;
- certain persons will be treated as having knowingly caused or knowingly permitted unauthorised disposals, unless they satisfy WRA or the tribunal otherwise. This will be the case in relation to: a person who controlled (or was in a position to control) a vehicle or trailer from which waste is disposed; and a landowner, lessee or occupier of land where a disposal is made; and
- where more than one person is liable, each will be jointly and severally liable for the tax LDT (so WRA can pursue one or all of them for the full or partial tax liability).

## **Part 5 - Chapter 2 – Non-Disposal Areas**

### **Background and current position**

3.115 Currently, HMRC officers may require an area of a landfill site to be designated as an ‘information area’ for the purposes of LfT, in cases where material at a landfill site is not going to be disposed of as waste and HMRC considers there to be a risk to the revenue. The concept of information areas is an area of a landfill site where material not being disposed of as waste must be deposited and for information and record keeping requirements to be attached to that area (for example, requiring the weight and description of material entering and leaving the area, its intended use following removal etc.). The effect of not complying with a requirement to have an information area or failing to meet the requirements associated with an information area will be that the use or activity taking place will be treated as a taxable disposal and tax will be due on the material implicated in that activity.<sup>23</sup>

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<sup>23</sup> The Landfill Tax (Prescribed Activities) Order 2009, Article 3(1)(h)

3.116 The legislation has been broadly replicated in Scotland, but the term used to describe an information area has been changed to a non-disposal area.

### **Purpose and intended effect**

3.117 The Bill has made some changes, as compared to LfT and information areas, replicating the approach in Scotland by changing the name of an information area to a non-disposal area (NDA). The Bill sets out that WRA may designate part of an authorised landfill site in Wales as an NDA, the process for designating an NDA, the requirements associated with an NDA and the consequences of breaching those requirements, with a view to making the system more transparent and workable.

3.118 The purpose behind the provisions is to recognise that there are a wide range of activities that take place on a landfill site, for example, storage of materials for site restoration, re-processing and sorting of materials before onward re-use, recycling or disposal (for example, incineration), which it would not be appropriate to treat as taxable disposals, provided that the tax authority has a good understanding of what materials are being placed where, for how long and for what purpose. The provisions are intended to provide information and assurance to WRA as to what activities are taking place on a landfill site that constitute taxable disposals and what non-taxable activities are taking place. This is important to enable the efficient collection and management of the tax.

3.119 In contemplating the designation of an NDA it is anticipated that WRA will discuss the contents of a designation notice with a landfill site operator and that the landfill site operator will be expected to demonstrate that the NDA would be operated in accordance with its environmental permit and any planning conditions.

3.120 Where material that has been left in the NDA longer than the maximum time limit the Bill proposes that this will be deemed to be a taxable disposal. This is welcomed by stakeholders as a further means of discouraging indefinite storage of materials.

3.121 The Bill proposes applying a penalty for any breach of a requirement in relation to NDAs.

## **Part 5 - Chapter 3 - Investigation and Information**

### **Background and current position**

- 3.122 The purpose of TCMA was to put in place the legal framework necessary for the future collection and management of devolved taxes in Wales. In particular, TCMA provides for comprehensive civil investigation and enforcement powers, including powers allowing WRA to require information and documents and to access and inspect premises and other property.
- 3.123 The investigatory powers provided in TCMA allow for WRA to investigate liability to tax where they doubt the accuracy of a self-assessment of tax. WRA are able to enter business premises to assess the liability to tax by examining documents etc.
- 3.124 The Welsh tax regime is being designed to support taxpayer compliance and in the majority of cases such arrangements will work. There are occasions, however, when additional measures are necessary to investigate suspected non-compliance.
- 3.125 Without the civil investigation powers, any penalties relating to tax avoidance will be ineffective, as unless a person believes that they will be 'caught' and made liable for their full tax liability, then the penalties and tax liabilities will not be a deterrent to avoidance.

### **Powers of inspection - Purpose and intended effect**

- 3.126 WRA may need to inspect the business premises of a third party to ascertain the liability to tax of a landfill site operator. For example, WRA may be in a dispute with the landfill site operator about what deposits have taken place. The waste carrier may have records pertaining to the amount of and description of the waste that has been deposited at the landfill site that will assist WRA in resolving the dispute. Where the third party decides not to cooperate with WRA and refuses to permit it to inspect, these provisions extend the powers in TCMA and would allow WRA to assess and impose penalties on the third party for a refusal to cooperate.
- 3.127 The investigatory powers relating to unauthorised disposals are needed as it is anticipated that those involved in unauthorised disposals will be unwilling to cooperate with an investigation to ascertain their liability to tax. However, where an unauthorised disposal has taken place at a private premises and the owner (etc.) has not 'turned a blind eye', we would expect them to cooperate with the investigation; to assist in

finding the culprits and assist in the removal of the waste from their land. However, where an owner has ‘turned a blind eye’ we recognise that WRA may need to use investigatory powers to enter the premises (which may not be business premises) in order to investigate the liability to tax.

### **Disclosure of information - Purpose and intended effect**

- 3.128 In order for WRA to be able to effectively exercise its tax collection and management functions, it may find information from NRW and local authorities in Wales useful; as it is these bodies who are likely to identify when an unauthorised disposal has taken place, exercising their environmental functions. Generally, we would not expect WRA to seek information from these bodies in relation to authorised disposals, as it should obtain all the information it needs directly from the taxpayer (e.g. through self-assessment). However, there may be times when as part of assessing liability to tax WRA needs information held by NRW as part of the environmental permit, or the local authority in relation to planning consent, for example.
- 3.129 Where NRW or a local authority is considering the sharing of information with WRA, the sharing of information must not contravene the Data Protection Act 1998 or the Regulation of Investigatory Powers Act 2016.
- 3.130 Provisions governing when WRA is able to share taxpayer information are contained within Part 2 of TCMA. TCMA allows WRA to use and share information provided it does so in connection with a WRA function (i.e. the collection and management of taxes) unless that information is protected taxpayer information (defined at TCMA section 17), in which case there are tighter controls on the circumstances in which WRA may disclose it, which are set out at section 18 of TCMA.

## **Part 5 - Chapter 4 - Penalties under the Act**

### **Background and current position**

- 3.131 Appropriate provision for penalties is required to ensure compliance with the legislation. It is important that the penalties are sufficient to be a deterrent to non-compliance but also fair and proportionate in the circumstances. The application of penalties will help to safeguard the tax revenue and consequently the funding of Welsh public services.

3.132 The existing LfT legislation makes some provision for penalties in relation to a landfill site operator's non-compliance with the duties imposed by LfT legislation.

### **Purpose and intended effect**

3.133 The LDT Bill makes provision for a small number of new penalties. In respect of most of the penalties under this Bill, WRA must make an assessment of the penalty within the period of 12 months beginning with the day on which WRA first believed the person to have failed to comply with the relevant requirement. In respect of the daily default registration penalty, the penalty is assessed within the period of 12 months beginning with the day on which the penalty relates.

3.134 The following penalties are created that apply to authorised landfill sites and the liability falls on the landfill site operator:

- **Failure to determine weight properly.** Such a penalty could arise from a failure to operate an agreed weighing method.
- **Applying a water discount incorrectly.** Such a penalty arises where an operator applies a discount without having approval to do so, or where the operator applies a discount which is greater than the discount approved.
- **Failure to register with WRA** as a person carrying out taxable operations, with the possibility of further penalties if that failure continues.
- **Failure to comply with the requirements of a notice designating an NDA** on a landfill site or the record keeping requirements related to that NDA.

3.135 The provisions contained within sections 69 -72 all apply to penalties under Chapter 4 of Part 5 of the LDT Bill.

3.136 Penalties under the LDT Bill must be paid no later than 30 days beginning with the day on which the penalty notice is issued.

3.137 A liability to a penalty does not arise if a person has been convicted of an offence in relation to the penalty.

3.138 In the event a landfill site operator has died, any penalty that could have been assessed on the operator may be assessed on the personal representatives of the operator.

3.139 The Welsh Ministers have the power to make regulations about the procedure for assessing penalties and the amounts of penalties under Chapter 4 of this Part of the Bill.

3.140 It is recognised that the majority of taxpayers comply with their tax obligations. However, there may be circumstances where this is not the case, and non compliance with the tax regime may occur. The purpose of LDT is to raise revenue to support public funding in Wales and to encourage better waste management practices. Therefore it is important that penalties are in place to deter non compliance in the first instance and ensure that it is addressed (if it occurs) in a way which is fair and proportionate. The Bill seeks to provide clear and coherent legislation in this regard. The LDT legislation clearly sets out the duties that are to be complied with and the consequences of any failure to comply.

## **Part 5 - Chapter 5 - Additional Penalties under the TCMA**

### **Background and current position**

3.141 There are existing penalties in TCMA (as amended by Schedule 22 of the LTTA Bill) and the provisions in sections 73 to 75 amend TCMA so that these existing penalties are workable in the context of LDT.

### **Purpose and intended effect**

3.142 The LDT Bill amends TCMA and provides for additional higher penalty amounts if:

- a person fails to make additional LDT returns on time within a specified penalty period. In this case a penalty period begins with the day after the filing date for the tax return.
  
- a person fails to pay further amounts of LDT on time within a specified penalty period. In this case a penalty period is one which begins on the day after the penalty date.

3.143 In both cases unless the penalty period is extended, the penalty period will end 12 months later.

3.144 Section 74 amends section 122 of TCMA (as amended by Schedule 22 of LTTA) to provide that the penalty amount in respect of a failure to pay LDT on time is 1% of the amount of unpaid tax.

## **Part 5 - Chapter 6 - Special Cases**

### **Background and Current position**

3.145 The existing LfT and SLfT legislation make similar provision in relation to the treatment of groups of companies, partnerships and unincorporated bodies and a person carrying on the landfill business of an operator in specified circumstances.

### **Corporate Groups - Purpose and intended effect**

3.146 WRA may designate two or more bodies corporate as a group for the purposes of LDT. The effects of designating a group are that the representative member of the group will be treated for the purposes of LDT as the landfill site operator of each authorised landfill site operated by the members of the group. Accordingly, an amount of tax, penalty or interest (a “relevant amount”) that a member of the group would otherwise be required to pay as a result of anything done or omitted to be done while a member of the group must instead be paid by the representative member. The Bill makes further provision in relation to the joint and several liability of group members where a relevant amount remains unpaid after the date by which the representative member was required to pay it.

3.147 Such a provision offers administrative convenience to companies which are controlled by the same person. This is because the representative member accounts for the tax chargeable in relation to all the landfill sites operated by the members of the group in a single tax return.

## **Partnerships and unincorporated bodies - Purpose and intended effect**

- 3.148 The various administrative requirements that will be imposed on a landfill site operator by the LDT Bill will usually be the responsibility of a body corporate. However, there may be instances where a partnership (of two or more persons unincorporated) or an unincorporated body decide to carry on a landfill business and thus make an application to register with WRA before carrying out taxable operations. An unincorporated body could consist of a club or association, and do not have a legal identity.
- 3.149 The Bill identifies the person(s) in a partnership or unincorporated body responsible for compliance with the relevant LDT provisions. Further, the Bill provides that partners in a partnership or members in a unincorporated body will only be jointly and severally liable for a relevant amount (relevant amount is discussed in more detail above) as a result of anything that was required to be done or omitted to be done, if they were a member or partner at the time the thing was required to be done or omitted to be done. For example, a person who was a partner at the time a taxable disposal was made will be jointly and severally liable for the amount of tax chargeable on that disposal.

## **Change in persons carrying on landfill business**

### **Death incapacity and insolvency - Purpose and intended effect**

- 3.150 It is important that mechanisms are in place within the LDT legislation to ensure that in the event of a registered landfill site operator of an authorised landfill site becoming incapacitated, subject to insolvency procedure or dying, the person who carries on that business can be treated as the registered landfill site operator.
- 3.151 In so doing, the person carrying on the business will be required to comply with the LDT legislation and will be treated as if they were the landfill operator.
- 3.152 The person who carries on the business will not be required to register with WRA.
- 3.153 If the landfill site operator is no longer incapacitated or subject to an insolvency procedure; or if the person who had been carrying on the

landfill business does not continue to do so, WRA must cease to treat that person as the landfill site operator for the purposes of LDT.

### **Power to make provisions about transfer of business as going concern - Purpose and intended effect**

3.154 The Welsh Ministers may make provision in regulations in order to secure the continued application of this Bill and TCMA where a business is transferred from one person to another as a going concern. Where there is a transfer of a business as a going concern, it is normal for records, liabilities and assets to be transferred to the new owner. Therefore any such provisions that would be made in regulations will seek to provide administrative convenience to both the business concerned and to WRA. For example, WRA may make provisions so that in specified circumstances WRA may register the new owner of the business with the registration number that was allocated to the previous owner.

## **Part 5 - Chapter 7 - Miscellaneous**

### **Adjustment Contracts**

#### **Background and Current position**

3.155 Both LfT and SLfT provide for adjustment of contracts within legislation. Section 27 Landfill Tax (Scotland) Act 2014 (which has replicated paragraph 45 of Schedule 5 to Finance Act 1996) provides that where a contract is in place for the disposal of material by way of landfill and the tax position changes with regard to that material (for example, so that the amount of tax chargeable changes), then any payment relating to the disposal of that material in the contract is to be adjusted (unless the contract provides otherwise) to reflect the change.

3.156 This ensures that contractors and landfill site operators are not disadvantaged as a result of tax increases not being reflected in historical contracts.

#### **Purpose and intended effect**

3.157 The Bill makes similar provision to that in the UK and Scotland to provide similar effect.

## **LDT Communities Scheme**

3.158 Section 90 of the Bill places a duty on Welsh Ministers to prepare and publish a landfill disposals tax communities scheme, which will provide grant funding for the benefit of communities affected by landfill disposals and activities preparatory to the making of landfill disposals (for example communities affected by waste transfer stations). The section specifies that the scheme must be reviewed at least once in the period of 4 years and subsequently every 4 years following the review and following consultation with appropriate persons. The scheme may be revised or revoked following a review but the scheme may not be revoked in the first 4 years. If the scheme is revised Welsh Ministers must publish the revised scheme and lay the scheme before the National Assembly for Wales.

## **Part 6 – Final Provisions**

3.159 The Final Provisions include the meaning of key terms referred to throughout the Bill, the subordinate legislation procedure to be used in relation to the various powers conferred throughout the Bill and allow the Welsh Ministers to make incidental, consequential, supplemental, transitional, transitory or saving provision to give effect to provisions made by or under the Bill.

## **Schedule 1 – Qualifying Materials**

3.160 This schedule is introduced by section 15 and sets out the materials and conditions (if any) that must be met in order to qualify for the lower rate of tax.

## **Schedule 2 – Contents of a register**

3.161 This schedule is introduced by section 33(3) and sets out the information that must be included in a person's entry in the register (to be kept by WRA). This includes specific information about a person's name, business address and the registration number assigned to the person by WRA. If the registered person is the representative member of a partnership or group of bodies corporate then the entry in the register must among other things, include a statement of that fact.

### **Schedule 3 – Contents of landfill invoice**

- 3.162 Section 40 of the Bill introduces the concept of a landfill invoice. This schedule which is introduced by that section specifies the information that must be contained in a landfill invoice for the purposes of that section. The contents of a landfill invoice must include (among other things) the date on which the invoice is issued; the name and address of the person issuing the invoice and that of the person to whom the invoice is issued.
- 3.163 The purpose of these provisions is to regulate the invoice that can be issued in order for the operator to take advantage of the 14 day rule. This will ensure that the invoice records all the detail needed by WRA and that the correct information is recorded for the purposes of making the correct assessment of tax.

### **Schedule 4 – Minor and Consequential Amendments to the Tax Collection and Management (Wales) Act 2016**

- 3.164 Schedule 4 of the Bill makes a number of minor and consequential amendments to TCMA, for the purposes of implementing LDT.

## Purpose and Intended Effect – Summary

### Who is affected by the Bill?

- 3.165 Like the existing LfT and SLfT, LDT has two main environmental objectives: to ensure that landfill waste disposal is properly priced, so as to reflect its environmental cost; and to promote a more sustainable approach to waste management in which less waste is produced and more waste is either reused or has value recovered from it. In other words, it aims to reduce the amount of waste being sent to landfill and encourage greater prevention, reuse, recycling and recovery of waste. The tax is paid by landfill site operators who reclaim costs from waste operators through their gate fees. This Bill therefore may affect those people who are disposing of waste or who are associated with, or have some connection to the waste industry.
- 3.166 The Bill also proposes to charge tax on unauthorised disposals of waste whereby any person who knowingly causes or permits the disposal and any person who knowingly causes or knowingly permits the disposal to be made, will be liable to the tax.
- 3.167 The Bill will also affect WRA as the future tax collection and management authority for Wales. The Bill sets out the powers of WRA and the parameters in which it and any delegated partners may operate. For example, Natural Resources Wales who will undertake compliance and enforcement work for LDT under delegation from WRA.
- 3.168 The potential impact of the proposals of the Bill is explored in detail in the [Regulatory Impact Assessment \(RIA\)](#).

### Implementation and delivery plan

- 3.169 The tax structure and the arrangements for how it will be administered are set out in the Bill. The Bill also provides for the Welsh Ministers to make subordinate legislation and these powers are summarised in [Table 4](#) of this Explanatory Memorandum.
- 3.170 It is anticipated that the legislation will come into force on such day or days as the Welsh Ministers may appoint by order made by statutory instrument.

## **Risks if the legislation is not made**

- 3.171 If the Bill is not approved by the National Assembly for Wales or does not receive Royal Assent, LDT will not be able to come into existence. An inability or delay in relation to LDT legislation being made would require the Welsh Government to liaise with the UK Government to revise the proposed 'switching off' of LfT in Wales, planned currently for April 2018. Such an inability or delay would impact on the economies of scale of the delivery of tax collection and management by WRA as WRA is being established on the basis of delivering two devolved taxes (the other being Land Transaction Tax).
- 3.172 Any gap between 'switching off' LfT and introducing a replacement tax could have significant consequences for the waste industry; the sum of funding available for public services in Wales; and Welsh Government policies; particularly in relation to Towards Zero Waste. The consequences of not having a replacement for LfT are set out in further detail in the [RIA](#).

## **Territorial extent**

- 3.173 The Bill applies in relation to Wales.

## **Timescale of transition**

- 3.174 It is considered that an implementation period of at least 6 months before LDT is introduced in April 2018 will be appropriate to create the necessary processes and engage with stakeholders for the smooth transition to LDT. This timeline draws from the experience of the Scottish Government in relation to the establishment of Revenue Scotland and the implementation of SLfT.
- 3.175 An announcement on tax rates is expected in autumn 2017 and LDT will be introduced from April 2018.

## Chapter 4: Consultation

### Consultation on proposals for Landfill Disposals Tax

- 4.1 The Welsh Government published a consultation<sup>24</sup> *Developing a Landfill Disposals Tax*, on 24 February 2015. The consultation sought views on proposals to help inform the policy and structure of Landfill Disposals Tax ('LDT'). LDT will replace Landfill Tax ('LFT') in April 2018 when LFT is devolved to Wales.
- 4.2 The LDT consultation was the third in a series of Welsh Government consultations aimed at developing devolved tax arrangements in Wales. In preparation for the devolution of taxes, the Welsh Government initially consulted on the collection and management arrangements in September 2014<sup>25</sup>. The issues discussed in that consultation and the subsequent provisions of the Tax Collection and Management (Wales) Act 2016 ('TCMA'), link directly to the development of both LDT and the proposed Land Transaction Tax ('LTT')<sup>26</sup>. A public consultation on the development of LTT, which will replace Stamp Duty Land Tax in Wales, was also held in spring 2015<sup>27</sup>.

### Consultation responses

- 4.3 The level of interest in the LDT 12 week public consultation was excellent with nearly 300 responses received. The consultation closed on 19 May 2015 and a summary of the responses was published in September 2015<sup>28</sup>. The responses were received from a wide range of stakeholders including contributions from individuals and various organisations representing different sectors from across Wales and the UK including the waste industry, environmental bodies and the third sector as well as tax experts.

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<sup>24</sup> *Landfill Disposals Tax Consultation – summary of responses* (September 2015) available at: <http://gov.wales/betaconsultations/finance/landfill-disposals-tax/?lang=en>

<sup>25</sup> *Collection and management of devolved taxes in Wales - Summary of responses* (February 2015) available at: <https://consultations.gov.wales/consultations/collection-and-management-devolved-taxes-wales>

<sup>26</sup> The Land Transaction and Anti-avoidance of Devolved Taxes (Wales) Bill, which provides for the introduction of LTT, was introduced into the National Assembly for Wales on 12 September 2016. Information about this Bill is available at: <http://www.senedd.assembly.wales/mglIssueHistoryHome.aspx?lId=15873>

<sup>27</sup> *Tax Devolution in Wales - Land Transaction Tax Consultation* (February 2015) and *summary of responses* (September 2015) available at: <http://gov.wales/docs/caecd/consultation/150210-land-transaction-tax-en.pdf>

<sup>28</sup> *Landfill Disposals Tax Consultation – summary of responses* (September 2015) available at: <http://gov.wales/betaconsultations/finance/landfill-disposals-tax/?lang=en>

- 4.4 The Welsh Government, as part of the consultation, received 138 letters from members of Wildlife Trusts Wales in support of allocating a proportion of LDT revenue to support biodiversity projects.
- 4.5 Table 3 shows the number of responses by respondent category.

**Table 3: Breakdown of response by Respondent Category**

<b>Respondent category</b>	<b>Number</b>	<b>%*</b>
Businesses	17	6
Environmental Organisations	4	1
Individuals	68	24
Legal, Tax & Accountancy Professionals	4	1
Local Authorities & Town Councils	8	3
Political Parties	1	1
Professional Bodies & Associations	9	3
Public Bodies	1	1
Third Sector	29	10
Wildlife Trusts Wales letters	138	49
<b>Total</b>	<b>279</b>	<b>100%</b>

*\*Percentages have been rounded up to the nearest whole number.*

- 4.6 Respondents were able to submit their views and comments on paper or online, and in either Welsh or English. The consultation was widely publicised via digital media, newsletters and other publications
- 4.7 The Welsh Government held several stakeholder engagement events during the consultation period. These included meetings open to all stakeholders and the public in Cardiff on 23 April 2015 and Llandudno on 29 April 2015. Officials also visited Landfill Communities Fund

(“LCF”) Projects and observed a Distributive Environmental Body’s panel meeting.

- 4.8 During the consultation process and throughout policy development engagement with multiple stakeholders took place at meetings of the Welsh Government’s Tax Advisory Group for Wales<sup>29</sup>, Tax Forum<sup>30</sup>, LDT Technical Experts Group (“TEG”) and with the landfill site operators’ stakeholder group established by the Welsh Government. Landfill site operators will primarily be the taxpayers of LDT. There are currently 25 landfill sites in Wales and 20 landfill site operators. The landfill site operators’ stakeholder group has representation from a number of these businesses. The LDT Technical Experts Group has representation from organisations including the Welsh Local Government Association, Natural Resources Wales, Confederation of British Industry, Federation of Small Businesses, Institution of Civil Engineers, Chartered Institution of Waste Management, Constructing Excellence in Wales and tax professionals. The Group was established to assist the Welsh Government in its understanding of the practical application of LfT through the sharing of the groups knowledge and expertise.
- 4.9 The consultation responses and engagement events were particularly helpful in highlighting areas where it will be important to maintain consistency with arrangements in the rest of the UK; and where there are opportunities for clarifying and updating the existing legislation and making changes to better reflect Welsh circumstances and needs.
- 4.10 A number of key themes emerged from the consultation:
- a smooth transition with as little disruption for taxpayers as possible;
  - clarity, with existing areas of confusion addressed;
  - stability and certainty on which to base business plans and investments, particularly with regard to ensuring that there are no material differences in the tax rates between Wales and England;
  - a robust compliance and enforcement framework with strong support for including unauthorised disposals of waste within the scope of the tax;
  - support for community wellbeing initiatives which support environmental enhancements including biodiversity and waste minimisation; and
  - a simple, modern and cost effective administrative system.

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<sup>29</sup> Information about the Welsh Government’s Tax Advisory Group for Wales is available at: <http://gov.wales/funding/fiscal-reform/tax-policy-development/tax-advisory-group/?lang=en>

<sup>30</sup> Information about the Welsh Government’s Tax Forum is available at: <http://gov.wales/funding/fiscal-reform/tax-policy-development/tax-forum/?lang=en>

4.11 A summary of the responses to the consultation, together with details of all the responses received is available on the Welsh Government website<sup>31</sup>.

### **Additional Consultation and Engagement with Stakeholders**

4.12 The Welsh Government has engaged significantly with landfill site operators in Wales, through regular meetings of the landfill site operators' stakeholder group established in 2015. Initially the purpose of the meetings was to gain a practical understanding of the operation of LfT to inform the development of LDT policy. The meetings have also served as a platform to test the proposed legislative approach and to draw awareness to any differences between LDT and the existing LfT.

4.13 In order to inform the LDT policy and legislative proposals the importance of gaining a greater insight into the operation of a landfill site and the practical application of existing LfT legislation was recognised. Accordingly, Welsh Government officials visited representative landfill sites, including:

- a commercial landfill site (that takes in both commercial and municipal waste);
- a private landfill site (which deals in its own waste); and
- a local authority run landfill site (that deals mainly in local authority collected waste).

4.14 This engagement also included meeting landfill site operators' finance teams one of their head offices to see how LfT is administered. Officials have also visited waste transfer stations and illegal waste sites.

4.15 Work has been carried out with stakeholders to help shape the development of the landfill disposals tax communities scheme. A workshop was held in December 2015 aimed at establishing the principles that should underpin the scheme. A further workshop was held in March 2016 which looked in more detail at the principles and administration of the scheme as well as the types of projects that should be supported and the geographical focus of the scheme. A number of meetings have also been held with landfill site operators in March and September 2016 and the LDT Technical Experts Group in March and November 2016.

4.16 The Welsh Government including the WRA Implementation Team will continue to engage with landfill site operators, particularly following introduction of the Bill, and if passed, during the development of

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<sup>31</sup> *Landfill Disposals Tax Consultation – summary of responses* (September 2015) available at: <http://gov.wales/betaconsultations/finance/landfill-disposals-tax/?lang=en>

transitional arrangements between LfT and LDT and the preparation of LDT guidance and secondary legislation.

- 4.17 The Welsh Government has engaged with the LDT TEG throughout the development of Bill to help inform and shape the policy and legislative proposals.
- 4.18 Elements of the proposed legislation have been tested with members of the LDT TEG including Natural Resources Wales, an independent external advisor, tax professionals and landfill site operators to examine the practical implications and the impact of the provisions.
- 4.19 Quarterly teleconferences are held between the Scottish Government, Revenue Scotland, HMRC and the Welsh Government as a method of keeping up-to-date on key developments. The Welsh Government has also engaged with the Government of the Republic of Ireland.

## Conclusion

- 4.20 As set out above in paragraphs 4.1 and 4.2, the Welsh Government consulted on both the collection and management arrangements<sup>32</sup> and on the detail of this specific Bill, both through formal public consultations<sup>33</sup> and extensive engagement with stakeholders throughout the LDT policy development process. These have all helped in the shaping of the legislative proposals. Although there has not been a consultation on a Draft Bill, the Bill as introduced is strongly aligned to the responses and feedback of stakeholders. Where there are specific aspects of the Bill which differ from the LfT legislation, for example the introduction of a charge on unauthorised disposals of waste to landfill, these are clearly outlined in this Explanatory Memorandum.
- 4.21 LfT is very technical as many of the legislative provisions intertwine with wider waste and environmental policies and legislation. There are interdependencies between the different areas of the Bill also, which mean that changing one aspect of the tax has the potential to cause unintended consequences elsewhere. The proposals in the Bill have been carefully developed with this in mind; they are informed and have been tested through stakeholder engagement, as outlined in this Chapter.

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<sup>32</sup> *Collection and Management of Devolved Taxes in Wales* – summary of responses (February 2015) available to view at: <https://consultations.gov.wales/consultations/collection-and-management-devolved-taxes-wales>

<sup>33</sup> *Developing a Landfill Disposals Tax* – summary of responses (September 2015) available to view at: <http://gov.wales/betaconsultations/finance/landfill-disposals-tax/?lang=en>

## Chapter 5: Power to make subordinate legislation

- 5.1 The Bill contains provisions to make subordinate legislation. Table 4 below sets out in relation to each provision of the Bill:
- i. the person upon whom, or the body upon which, the power is conferred;
  - ii. the form in which the power is to be exercised;
  - iii. the appropriateness of the delegated power;
  - iv. the applied procedure; that is, whether it is “affirmative”, “provisional affirmative”, “negative”, or “no procedure”, together with reasons why it is considered appropriate.
- 5.2 The Welsh Government will consult on the content of the subordinate legislation where it is considered appropriate to do so. The precise nature of consultation will be decided when the proposals have been formalised.

**Table 4: Summary of powers to make subordinate legislation in the provisions of the Landfill Disposals Tax (Wales) Bill**

<b>Table 4 – Regulations</b>					
<b>Section or Paragraph</b>	<b>Power conferred on</b>	<b>Form</b>	<b>Appropriateness of delegated power</b>	<b>Procedure</b>	<b>Reason for procedure</b>
Section 4(3)	The Welsh Ministers	Regulations	<p><b>Disposal of material by way of landfill -</b>                      The Welsh Ministers require the power to modify the meaning of ‘a disposal of material by way of landfill’ to accommodate future circumstances or policy changes.</p>	Affirmative	The affirmative procedure is prescribed because the regulation making power could be used to change the meaning of a concept that underlies one of the conditions that need to be met in order for there to be a taxable disposal. As such any variation could impact on the scope of Landfill Disposals Tax (LDT) and the amount of tax chargeable.
Section 6(4)	The Welsh Ministers	Regulations	<p><b>Disposal of material as waste -</b>                      The Welsh Ministers require the power to modify the meaning of ‘a disposal of material as waste’ to accommodate future circumstances</p>	Affirmative	The affirmative procedure is prescribed because the regulation making power could be used to change the meaning of a concept

Table 4 – Regulations					
Section or Paragraph	Power conferred on	Form	Appropriateness of delegated power	Procedure	Reason for procedure
			or policy changes.		that underlies one of the conditions that need to be met in order for there to be a taxable disposal. As such any variation could impact on the scope of LDT and the amount of tax chargeable.
Section 8(5)	The Welsh Ministers	Regulations	<b>Landfill site activities to be treated as taxable disposals –</b> The Welsh Ministers require the power to create new specified landfill site activities (at an authorised site or elsewhere) or to modify or remove specified landfill site activities; (specified landfill site activities will be treated as taxable disposals). This power will enable the Welsh Ministers to accommodate future circumstances or policy changes, for example changes in the operation of landfill sites and technological advances or to deal with potential avoidance	Affirmative	The affirmative procedure is prescribed because the regulation making power relates to the question of whether or not an activity carried out at an authorised landfill site or elsewhere falls will be treated as a taxable disposal and therefore has the potential to impact on the amount of tax chargeable.

Table 4 – Regulations					
Section or Paragraph	Power conferred on	Form	Appropriateness of delegated power	Procedure	Reason for procedure
			activity.		
Section 12	The Welsh Ministers	Regulations	<b>Power to vary exemptions</b> - This power is required to enable the Welsh Ministers to create new exemptions from LDT or to modify or remove an existing exemption. The Welsh Ministers may provide that an exemption will only apply subject to specified conditions being met. This will allow the Welsh Ministers to accommodate future circumstances and policy changes.	Affirmative	The affirmative procedure is prescribed because the regulation making power could be used to determine whether or not a disposal of material is exempt from the tax and could therefore affect the amount of tax chargeable.
Section 14(2)	The Welsh Ministers	Regulations	<b>Calculation of tax chargeable on taxable disposal (standard rate)</b> - The ability to set and vary tax rates is an integral feature of the tax regime. This power enables the Welsh Ministers to set the standard rate of tax and to set out different standard rates of tax for different	Affirmative in the first instance and Provisional Affirmative <sup>34</sup> thereafter	The affirmative procedure is prescribed for the first regulations made under this power because the regulation will be used to prescribe the amount of tax

<sup>34</sup> Section 92 explains that this procedure enables regulations specifying the standard rate to have effect from the date the regulations are made. However, the regulations must be approved by the Assembly within 28 days of being made if they are to have permanent legal effect.

Table 4 – Regulations					
Section or Paragraph	Power conferred on	Form	Appropriateness of delegated power	Procedure	Reason for procedure
			<p>descriptions of materials.</p> <p>This power is required to enable the Welsh Ministers to prescribe the amount of tax chargeable in respect of LDT. This will allow the Welsh Ministers to determine the amount of revenue to be raised to invest in public services in Wales whilst taking into consideration its wider policy objectives such as <i>Towards Zero Waste</i>. This power will further enable the Welsh Ministers to vary tax rates in the future to reflect policy changes and the circumstances of the time. This will also assist in protecting public funding in Wales in the future.</p>		<p>chargeable in respect of LDT and may create additional administrative burdens on taxpayers. The first set of rates will be set before the tax goes live, and therefore there will be no need for the rates to come into force immediately.</p> <p>The provisional affirmative procedure is prescribed for second and subsequent regulations because this will allow the Welsh Ministers to respond quickly to sudden changes in circumstances (for example, a change in Landfill Tax rates in England) to minimise any negative impacts</p>

Table 4 – Regulations					
Section or Paragraph	Power conferred on	Form	Appropriateness of delegated power	Procedure	Reason for procedure
					(such as waste tourism).
Section 14(5)	The Welsh Ministers	Regulations	<p><b>Calculation of tax chargeable on taxable disposal (lower rate) -</b> The ability to set and vary tax rates is an integral feature of the tax regime. This power enables the Welsh Ministers to set the lower rate of tax and to set out different lower rates of tax for different descriptions of materials.</p> <p>This power is required to enable the Welsh Ministers to prescribe the amount of tax chargeable in respect of LDT. This will allow the Welsh Ministers to determine the amount of revenue to be raised to invest in public services in Wales whilst taking into consideration its wider policy objectives such as <i>Towards</i></p>	Affirmative in the first instance and Provisional Affirmative <sup>35</sup> thereafter	<p>The affirmative procedure is prescribed for the first regulations made under this power because the regulation will be used to prescribe the amount of tax chargeable in respect of LDT and may create additional administrative burdens on taxpayers. The first set of rates will be set before the tax goes live, and therefore there will be no need for the rates to come into force immediately.</p> <p>The provisional</p>

<sup>35</sup> Section 92 explains that this procedure enables regulations specifying the lower rate to have effect from the date the regulations are made. However, the regulations must be approved by the Assembly within 28 days of being made if they are to have permanent legal effect.

Table 4 – Regulations					
Section or Paragraph	Power conferred on	Form	Appropriateness of delegated power	Procedure	Reason for procedure
			<i>Zero Waste.</i> This power will further enable the Welsh Ministers to vary tax rates in the future to reflect policy changes and the circumstances of the time. This will also assist in protecting public funding in Wales in the future.		affirmative procedure is prescribed for second and subsequent regulations because this will allow the Welsh Ministers to respond quickly to sudden changes in circumstances (for example, a change in Landfill Tax rates in England) to minimise any negative impacts (such as waste tourism).
Section 15	The Welsh Ministers	Regulations	<b>Qualifying Materials</b> - The Welsh Ministers require a power to be able to amend the list of qualifying materials and conditions (if any), as set out in Schedule 1, that must be met in order to accommodate future circumstances and policy changes.	Affirmative	The affirmative procedure is prescribed because the exercise of this regulation making power could affect the amount of tax that will be chargeable.

<b>Table 4 – Regulations</b>					
<b>Section or Paragraph</b>	<b>Power conferred on</b>	<b>Form</b>	<b>Appropriateness of delegated power</b>	<b>Procedure</b>	<b>Reason for procedure</b>
Section 16(1)	The Welsh Ministers	Regulations	<b>Qualifying mixture of materials: requirement 4</b> - The Welsh Ministers require powers to prescribe in regulations any materials that must not be included in a qualifying mixture of materials to accommodate future circumstances and policy changes.	Affirmative	The affirmative procedure is prescribed because the regulation making power could affect the amount of tax that will be chargeable.
Section 16(3)	The Welsh Ministers	Regulations	<b>Qualifying mixture of materials: requirement 1(b)</b> - The Welsh Ministers require powers to accommodate future circumstances and policy changes through specifying a percentage (by weight, volume or both) to give further definition to the existing requirement at section 16(1), requirement 1(b) that a mixture must consist of a small amount of one or more non-qualifying materials that is incidental to the qualifying materials.	Negative	The negative procedure is prescribed as regulations made will provide technical detail as to the application of the Bill to qualifying mixtures of materials, specifically to provide further definition to the existing requirement at section 16(1) requirement 1(b).
Section 16(4)	The Welsh	Regulations	<b>Qualifying mixture of materials: requirements</b> - This power is	Affirmative	The affirmative

Table 4 – Regulations					
Section or Paragraph	Power conferred on	Form	Appropriateness of delegated power	Procedure	Reason for procedure
	Ministers		required to enable the Welsh Ministers to add, modify or remove requirements that must be met for a mixture to be a qualifying mixture of materials to which the lower rate of tax may be applied. In addition, the Welsh Ministers may make further provision about matters that must or may be taken into account for the purposes of determining whether a requirement is met, or modify or remove existing provision on those matters. This will allow the Welsh Ministers to accommodate future circumstances and policy changes.		procedure is prescribed because the regulation making power could affect the amount of tax that will be chargeable and create additional administrative burdens on taxpayers.
Section 17(1)	The Welsh Ministers	Regulations	<b>Qualifying mixture of materials: fines</b> –The Welsh Ministers require powers to set out further requirements that must be met in the case of a mixture of materials consisting entirely of fines, in order for that mixture to be treated as a qualifying mixture of materials for	Affirmative	The affirmative procedure is prescribed because the regulation making power could affect the amount of tax chargeable and create additional administrative and financial burdens

<b>Table 4 – Regulations</b>					
<b>Section or Paragraph</b>	<b>Power conferred on</b>	<b>Form</b>	<b>Appropriateness of delegated power</b>	<b>Procedure</b>	<b>Reason for procedure</b>
			<p>the purposes of applying the correct rate of LDT.</p> <p>This power would also enable the Welsh Ministers to prescribe a test that would need to be met in order for fines<sup>36</sup> to qualify for the lower rate.</p> <p>A loss on ignition testing regime was introduced for UK Landfill Tax in April 2015 (and for Scottish Landfill Tax in October 2016). This power enables the Welsh Ministers to learn from the implementation of these and introduce its own arrangements. This will enable consistency with the rest of the UK and minimise the risk of waste tourism. It also allows the Welsh Ministers to accommodate future circumstances and policy changes.</p>		on taxpayers.

<sup>36</sup> particles produced by a waste treatment process that involves mechanical treatment

<b>Table 4 – Regulations</b>					
<b>Section or Paragraph</b>	<b>Power conferred on</b>	<b>Form</b>	<b>Appropriateness of delegated power</b>	<b>Procedure</b>	<b>Reason for procedure</b>
Section 21(9)	The Welsh Ministers	Regulations	<b>Discount in respect of water content of material</b> - This power is required as it enables the Welsh Ministers to amend or repeal the provisions relating to the discounting of water present in material in order to reflect future circumstances and policy changes.	Affirmative	The affirmative procedure is prescribed because the regulation making power could affect the amount of tax chargeable and create additional administrative burdens on taxpayers.
Section 32(1)	The Welsh Ministers	Regulations	<b>Power to vary reliefs</b> - This power is required to enable the Welsh Ministers to create an additional relief from tax or modify or remove an existing relief from tax in order to accommodate future circumstances and policy changes.	Affirmative	The affirmative procedure is prescribed because the regulation making power could affect the amount of tax chargeable and create additional administrative burdens on taxpayers.
Section 40(9)	The Welsh Ministers	Regulations	<b>Tax chargeable in respect of an accounting period</b> – This power is required to enable the Welsh Ministers to amend the list at Schedule 3 which sets out the information required to be included	Negative	The negative procedure is prescribed as regulations made will prescribe technical detail as to the application of the Bill to

Table 4 – Regulations					
Section or Paragraph	Power conferred on	Form	Appropriateness of delegated power	Procedure	Reason for procedure
			in a landfill invoice in order to accommodate future circumstances including changes in operational practice and policy changes.		the contents of an invoice and will not impose additional tax liabilities on taxpayers.
Section 45(4)	The Welsh Ministers	Regulations	<p><b>Calculation of tax chargeable on taxable disposal</b> – The ability to set and vary tax rates is an integral feature of the tax regime. This power is required to enable the Welsh Ministers to set the unauthorised disposals rate of tax which may be applied to a taxable disposal made at a place that is not, and does not form part of, an authorised landfill site and to set out different rates for different descriptions of material.</p> <p>This power is required to enable the Welsh Ministers to prescribe the amount of tax chargeable in respect</p>	Affirmative in the first instance and Provisional Affirmative <sup>37</sup> thereafter	<p>The affirmative procedure is prescribed for the first regulations made under this power because the regulation will be used to prescribe the amount of tax chargeable in respect of LDT. The first set of rates will be set before the tax goes live, and therefore there will be no need for the rates to come into force immediately.</p> <p>The provisional</p>

<sup>37</sup> Section 92 explains that this procedure enables regulations specifying the unauthorised disposals tax rate to have effect from the date the regulations are made. However, the regulations must be approved by the Assembly within 28 days of being made if they are to have permanent legal effect.

Table 4 – Regulations					
Section or Paragraph	Power conferred on	Form	Appropriateness of delegated power	Procedure	Reason for procedure
			<p>of LDT. This will allow the Welsh Ministers to determine the rate of tax taking into consideration its desire to deter a potential source of tax evasion and protect public funding in Wales and that these persons will not have been subject to the same administrative obligations as authorised landfill site operators whilst balancing these with human rights considerations.</p> <p>This power will further enable the Welsh Ministers to vary tax rates in the future to reflect policy changes and the circumstances of the time.</p>		<p>affirmative procedure is prescribed for second and subsequent regulations because this will allow the Welsh Ministers to change the unauthorised disposals rate of tax in parallel with the standard and lower tax rates. It further enables Welsh Ministers to respond quickly to sudden changes in circumstances (for example, an increase in unauthorised disposals) to protect tax revenue and deter this behaviour thus minimising any negative impacts for businesses and communities in Wales.</p>
Section 46(3)	The Welsh	Regulations	<b>The charging condition</b> - This	Affirmative	The affirmative

Table 4 – Regulations					
Section or Paragraph	Power conferred on	Form	Appropriateness of delegated power	Procedure	Reason for procedure
	Ministers		power is required to enable the Welsh Ministers to make further provision about the circumstances in which a person is (or is not) to be treated as meeting the charging condition, and matters that are to be taken into account in determining whether a person does (or does not) meet that condition. This will allow the Welsh Ministers to update the situations in which the charging conditions are met and the factors to be taken into account so as to accommodate future circumstances and policy changes.		procedure is prescribed because the regulation making power could be used to impose liability to pay LDT. It may also place an administrative burden on a person where there was none before.
Section 51(1)	The Welsh Ministers	Regulations	<b>Power to make further provision</b> - This enables the Welsh Ministers to make further or different provision about the procedures for issuing preliminary notices and charging notices; the payment of an amount of tax charged by a charging notice and; any other matters relating to or arising from the charging or payment of an	Affirmative	The affirmative procedure is prescribed because the regulation making power could be used to impose liability to pay LDT. It may also place an administrative burden on a person where there was none before.

Table 4 – Regulations					
Section or Paragraph	Power conferred on	Form	Appropriateness of delegated power	Procedure	Reason for procedure
			amount of tax under this Chapter. This will allow the Welsh Ministers to accommodate future circumstances and policy changes.		
Section 53(1)	The Welsh Ministers	Regulations	<b>Tax Credits</b> - This power is required to enable the Welsh Ministers to make provision for circumstances in which a person will be entitled to claim a tax credit in relation to LDT, including the requirements that must be met. This will allow the Welsh Ministers to, for example, establish a bad debt credit as well as accommodate future circumstances and policy changes.	Affirmative	The affirmative procedure is prescribed because the regulation making power could affect the amount of tax chargeable and create additional administrative burdens on taxpayers.
Section 54(10)	Welsh Ministers	Regulations	<b>Designation of non-disposal area: contents of a notice</b> – This power is required to enable the Welsh Ministers to amend this section to make further or different provisions about the contents of a	Affirmative	The affirmative procedure is prescribed because the regulation making power could affect the amount of tax chargeable and create

<b>Table 4 – Regulations</b>					
<b>Section or Paragraph</b>	<b>Power conferred on</b>	<b>Form</b>	<b>Appropriateness of delegated power</b>	<b>Procedure</b>	<b>Reason for procedure</b>
			notice designating a non-disposal area. This will allow the Welsh Ministers to accommodate future circumstances and policy changes.		additional administrative burdens on taxpayers.
Section 55(7)	The Welsh Ministers	Regulations	<b>Duties of operator in relation to non-disposal area</b> - The Welsh Ministers require this power to amend this section to make further or different provisions about circumstances in which an operator's duty under section 55(1) to ensure that material is dealt with in accordance with the designation notice does not apply. This will allow the Welsh Ministers to accommodate future circumstances and policy changes.	Affirmative	The affirmative procedure is prescribed because the regulation making power could affect the amount of tax chargeable and create additional administrative burdens on taxpayers.
Section 59(5)	The Welsh Ministers	Regulations	<b>Disclosure of information to WRA</b> - This power is required to enable the Welsh Ministers to add, modify or remove persons or descriptions of persons from the list of those who may disclose	Affirmative	The affirmative procedure is prescribed as regulations may affect a persons rights in relation to the disclosure of

Table 4 – Regulations					
Section or Paragraph	Power conferred on	Form	Appropriateness of delegated power	Procedure	Reason for procedure
			information to the Welsh Revenue Authority for the purpose of assisting it in the collection and management of LDT. This will allow the Welsh Ministers to accommodate future circumstances, for example to update the list as public bodies change over time.		information.
Section 72(1)	The Welsh Ministers	Regulations	<b>Power to make regulations about penalties</b> – This power is required to enable the Welsh Ministers to make further or different provision for the procedure for assessing penalties and the amounts of penalties under this chapter. This power will allow the Welsh Ministers to accommodate future circumstances and policy changes.	Affirmative	The affirmative procedure is prescribed because the regulation making power could increase the financial burden on the taxpayer.
Section 80(1)	The Welsh Ministers	Regulations	<b>Power to make further provision about groups of companies</b> – This power is required to enable the Welsh Ministers to add to, repeal or	Affirmative	The affirmative procedure is prescribed because the regulation

Table 4 – Regulations					
Section or Paragraph	Power conferred on	Form	Appropriateness of delegated power	Procedure	Reason for procedure
			otherwise amend provisions about the designation of groups of bodies corporate, in relation to LDT. The regulations may (among other things) make provision about the bodies corporate that may be designated as members of a group and about the effects of designation. This will allow the Welsh Ministers to respond to future circumstances and policy changes.		making power could be used to impose liability to pay LDT. It may also increase the administrative burden on bodies corporate that are part of a group.
Section 83	The Welsh Ministers	Regulations	<b>Power to make further provision about partnerships and unincorporated bodies</b> – This power is required to enable the Welsh Ministers to add to, repeal or otherwise amend provisions about cases where persons carry on business in partnership or as an unincorporated body, in relation to LDT. This will allow the Welsh Ministers to accommodate future circumstances and policy changes.	Affirmative	The affirmative procedure is prescribed because the regulation making power could be used to impose liability to pay LDT. It may also increase the administrative burden on the taxpayer.

<b>Table 4 – Regulations</b>					
<b>Section or Paragraph</b>	<b>Power conferred on</b>	<b>Form</b>	<b>Appropriateness of delegated power</b>	<b>Procedure</b>	<b>Reason for procedure</b>
section 85(1)	The Welsh Ministers	Regulations	<p><b>Power to make further provision about death, incapacity and insolvency</b> - This power is required to enable the Welsh Ministers to add to, repeal or otherwise amend provisions relating to the tax about cases where a person who has carried on a landfill business dies, becomes incapacitated or becomes subject to an insolvency procedure. The regulations may (amongst other things) make provisions relating to the circumstances in which a person becomes, or ceases to be, incapacitated or subject to insolvency procedure and duties, liabilities and entitlements relating to the tax where a person has died, become incapacitated or become subject to insolvency procedure. This will allow the Welsh Ministers to accommodate future circumstances and policy changes.</p>	Affirmative	The affirmative procedure is prescribed because the regulation making power could be used to impose liability to pay LDT. It may also increase the administrative burden on the taxpayer.

Table 4 – Regulations					
Section or Paragraph	Power conferred on	Form	Appropriateness of delegated power	Procedure	Reason for procedure
Section 86(1)	The Welsh Ministers	Regulations	<b>Transfer of businesses as going concerns</b> – This power is required to enable the Welsh Ministers to make provision, in a case where a landfill business is transferred from one person to another as a going concern, for securing continuity in the application of any enactment relating to LDT. The regulations may (among other things) make provisions about the procedural arrangements including notification arrangements; liability or entitlement relating to the tax; anything done before the transfer and; record keeping. The regulations may also make the arrangements subject to conditions; such as requiring the approval of WRA. The regulations may further make provision in respect of i) penalties for failures to comply with the regulations and ii) reviews and appeals. This will allow the Welsh Ministers to accommodate future	Affirmative	The affirmative procedure is prescribed because the regulation making power could be used to transfer the liability to pay LDT from one person to another. It may also increase the administrative and financial burdens on a taxpayer.

Table 4 – Regulations					
Section or Paragraph	Power conferred on	Form	Appropriateness of delegated power	Procedure	Reason for procedure
			circumstances and policy changes.		
section 88(1)	The Welsh Ministers	Regulations	<b>Power to impose secondary liability on controllers of authorised landfill sites</b> - This power is required to enable the Welsh Ministers to make provision for and in connection with requiring a controller of an authorised landfill site to be liable to LDT. The regulations may (among other things) make provision about the procedural arrangements as set out in section 88(3). This power will allow the Welsh Ministers to accommodate future circumstances and policy changes.	Affirmative	The affirmative procedure is prescribed because the regulation making power could be used to impose liability to pay LDT. It may also increase the administrative burden on the taxpayer.
Section 90(1)	The Welsh Ministers	Regulations	<b>Power to make consequential and transitional etc. provision</b> – The Welsh Ministers may by regulations make such incidental, consequential, supplemental or transitional, transitory or saving	Negative (unless the Welsh Ministers consider that the effect of	The negative procedure is prescribed provided that the Welsh Ministers are satisfied that the regulations do not make provision that may

<b>Table 4 – Regulations</b>					
<b>Section or Paragraph</b>	<b>Power conferred on</b>	<b>Form</b>	<b>Appropriateness of delegated power</b>	<b>Procedure</b>	<b>Reason for procedure</b>
			provision as they think appropriate for the purpose of, or in connection with, or for giving full effect to, any provision made by or under this Bill. Regulations under this section may amend, revoke or repeal any enactment (including any enactment contained in, or made under, this Bill)	the regulations may lead to the imposition or an increase in an individual's liability to pay tax).	cause tax to be chargeable when it would not otherwise have been or to increase the amount of tax chargeable. In cases where the Welsh Ministers are not satisfied of this, the affirmative is prescribed.
Section 94(2)	The Welsh Ministers	Order	<b>Coming into force</b> – The Welsh Ministers may appoint by order made under a statutory instrument the coming into force date of provisions in the Bill, save for Part 1 (overview) and Part 6 (final provisions) that will come into force on the day the Bill receives Royal Assent.	No procedure	

## **Chapter 6: Regulatory Impact Assessment**

- 6.1 A Regulatory Impact Assessment has been completed for the Bill and it follows below.
- 6.2 There are no specific provisions in the Bill which charge expenditure on the Welsh Consolidated Fund.

## PART 2 – REGULATORY IMPACT ASSESSMENT

Table 5

### SUMMARY – REGULATORY IMPACT ASSESSMENT (RIA)

<b>Landfill Disposals Tax</b>		
<b>Preferred option:</b> <i>To implement a replacement to Landfill Tax by establishing Landfill Disposals Tax (pages 8.49-8.82)</i>		
<b>Stage:</b> Introduction	<b>Appraisal period:</b> 2016/17 - 2020/21	<b>Price base year:</b> 2016/17
<b>Total cost</b> Total: £13.7m - £18.8m Present value: £12.7m - £17.4m	<b>Total benefits</b> Total: £- Present value: £-	<b>Net Present Value (NPV):</b> £12.7m - £17.4m

#### Administrative cost

**Costs:** The RIA presents an estimate of the cost of collecting and managing devolved taxes more broadly in Wales. It has not been possible to separate the administrative costs relating specifically to Landfill Disposals Tax (LDT). Set up costs are estimated to be £4.8m - £6.3m over the period 2016/17 to 2018/19. Operating costs are estimated to be £2.8m to £4m per annum from 2018/19.

The Welsh Revenue Authority (WRA) will delegate compliance and enforcement functions to Natural Resources Wales (NRW). NRW has existing relationships with the landfill site operators and extensive knowledge of the waste industry. The funding allocated to NRW to carry out these functions is included in the operating costs identified above.

The Welsh Ministers are committed to providing further details on likely costs of collection and management as they become available, and operational decisions on the scale and scope of the WRA are clarified.

There will be an additional cost to the Welsh Government estimated to be £1m associated with HM Revenue and Customs (HMRC) switching off the collection of Landfill Tax and Stamp Duty Land Tax (SDLT) in Wales.

The Welsh Government will delegate responsibility for the administration of the LDT Communities Scheme to a distributive body. The current best estimate suggests the administrative costs will be approximately £100,000 per annum. This is dependant upon the final block grant adjustment about LDT which will not be concluded until after the UK Autumn Budget. Assumptions have been made about the outcome of that process to arrive at the proposals here and the final position will not be known until the autumn budget making process is complete.

<b>Transitional:</b> £5.8m – £7.3m	<b>Recurrent:</b> £8.7m - £12.3m	<b>Total:</b> £14.5m - £19.6m	<b>PV:</b> £13.4m - £18.2m
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**Cost-savings:** HMRC will no longer incur the costs associated with collecting SDLT and Landfill Tax in Wales and is expected to reimburse this money to the Welsh Government. Based on data from Scotland, the reimbursement is estimated to be £275,000 per annum. This reimbursement will apply from 2018-19 (there will be three payments during the appraisal period).

<b>Transitional: £</b>	<b>Recurrent: £0.8m</b>	<b>Total: £0.8m</b>	<b>PV: £0.7m</b>
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**Net administrative cost: £13.7 – 18.8m** (undiscounted)

### Compliance costs

There will be a one-off cost to landfill site operators and tax experts for the time required to familiarise themselves with the legislation, estimated to be £6,600 and £13,000 respectively. This cost will be incurred in 2017-18.

Those operators with landfill sites in England and Wales will need to submit separate quarterly tax returns in each country. The total cost of this is estimated to be £150 per annum (from 2018-19).

Tax rates for LDT will be set in secondary legislation. This legislation will be subject to a separate RIA.

<b>Transitional: £0.02m</b>	<b>Recurrent: £0.00m</b>	<b>Total: £0.02m</b>	<b>PV: £0.02m</b>
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### Other costs

There are no costs to report here.

<b>Transitional: £</b>	<b>Recurrent: £</b>	<b>Total: £</b>	<b>PV: £</b>
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### Unquantified costs and disbenefits

LDT will incorporate unauthorised disposals within the scope of the tax. As such anyone caught making unauthorised disposals or anyone that knowingly allows an unauthorised disposal to be made can be charged LDT on that disposal. The legislation also introduces a number of new penalties to deal with cases of non-compliance. These provisions will only impose costs on those individuals or businesses that choose to operate outside of the law. At this stage, levels of non-compliance are not known and so these costs cannot be quantified. Any penalty or tax payments represent a transfer from the individual or business to the tax authority. There will be a cost for those wishing to apply for a grant under the LDT Communities Scheme. However, applying for a grant will be voluntary and we anticipate this application cost will be lower than the amount of grant awarded. The grant application process will be developed following the appointment of the distributive body later this year.

## Benefits

The key benefit of establishing a replacement tax is to provide certainty and stability for the waste industry, by broadly enabling consistency with how landfilled waste is treated in England and Wales the risk of waste tourism is reduced. It also ensures that the benefit of the tax revenue can continue to be secured for investment in public services in Wales.

Wider benefits include supporting the delivery of the Welsh Government's *Taking Wales Forward* Programme for Government and its wider waste and environment policies. In particular, continuing to enable the *Towards Zero Waste Strategy* and helping to deliver the goals set out in the *Environment (Wales) Act 2016* and *Climate Change Strategy for Wales*.

The main changes made in response to the concerns raised by stakeholders through the LDT consultation in spring 2015 are around providing clarity and addressing existing areas of confusion and concern; revising outdated legislation and removing provisions that do not have relevance in Wales and; better reflecting established practices.

The main area of change to include unauthorised disposals within the scope of the tax will not only bring benefit to the communities who are affected by unauthorised disposals by seeking to deter this activity in future but also aims to minimise opportunities to evade tax and thus protect revenue for investment in public services in Wales.

The key benefit of establishing a LDT Communities Scheme to replace the Landfill Communities Fund (LCF) in Wales is to continue to support communities affected by the disposal of waste to landfill.

The distributive body is expected to distribute in the region of £1.4m of grants per annum to local community and environmental projects. This is dependant upon the final block grant adjustment about LDT which will not be concluded until after the UK Autumn Budget. Assumptions have been made about the outcome of that process to arrive at the proposals here and the final position will not be known until the autumn budget making process is complete.

**Total: £-**

**PV: £-**

## Key evidence, assumptions and uncertainties

As noted above, the administrative costs identified for the WRA relate to the collection and management of devolved taxes more broadly and not specifically to LDT.

## Chapter 7: Options

### Impact of establishing Landfill Disposals Tax (LDT)

7.1 Three options have been considered in relation to LDT:

- Option 1 – Do nothing
- Option 2 – Replicate existing Landfill Tax (“LfT”)
- Option 3 – Develop a ‘Welsh specific’ tax

7.2 A brief description of each option is outlined below followed by an analysis of the costs and benefits at Chapter 7.

#### Option 1 - Do nothing

7.3 The Wales Act 2014 provides for the disapplication of LfT in Wales, which is scheduled to occur in April 2018. Therefore the *do nothing* option is not to replace LfT.

7.4 This option would be fundamentally at odds with the well-established Welsh Government priorities and policies of working towards a Zero Waste Wales. Sending waste to landfill would become the cheapest waste management option which would undermine efforts in Wales to promote the waste hierarchy through greater prevention, re-use, recovery and recycling of waste.

7.5 In addition, the *Wales Bill: Financial Empowerment and Accountability* Command Paper<sup>38</sup> confirmed that the process of devolving LfT (and Stamp Duty Land Tax (“SDLT”)) will result in a corresponding reduction in the Welsh Government's block grant<sup>39</sup>. Not replacing LfT would therefore result in the Welsh Government operating with a reduced budget, with a corresponding impact on the delivery of public services.

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<sup>38</sup>the *Wales Bill: Financial Empowerment and Accountability* Command Paper available at: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/294421/Wales\\_Bill\\_Command\\_Paper\\_-\\_English.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/294421/Wales_Bill_Command_Paper_-_English.pdf)

<sup>39</sup><http://law.gov.wales/constitution-government/government-in-wales/finance/?lang=en#/constitution-government/government-in-wales/finance/?tab=overview&lang=en>

## Option 2 - Replicate the existing Landfill Tax (LfT)

- 7.6 The do minimum option is to introduce LDT in April 2018 by replicating the existing LfT.
- 7.7 A clear message from stakeholders was the need to implement a replacement tax which provides consistency, certainty and stability for businesses. Replicating the existing LfT could achieve this.
- 7.8 That said, stakeholders also commented there are areas of confusion with the existing LfT legislation and greater clarity would be welcomed.
- 7.9 LfT legislation has been the subject of considerable legal challenge and a significant proportion of the tax revenue is at risk as a consequence. Replicating the LfT legislation would mean that these legal challenges could arise in Wales and the risk to tax revenue transferred to the Welsh Consolidated Fund.
- 7.10 Added to that, there is evidence that LfT is susceptible to some tax evasion. The rise in the standard tax rate whilst driving good waste management behaviour by dis-incentivising the landfilling of waste may also be perceived to have had negative effects. Stakeholders have suggested that the difference between the two tax rates (standard rate £86.10 – lower rate £2.70) incentivises tax evasion, including through unauthorised disposals of waste. Often, the profit to be made by carrying out this activity outweighs the consequences of being caught. The structure of the existing LfT means that it cannot be charged on unauthorised disposals of waste.

## Option 3 - Develop a Welsh specific tax

- 7.11 The third option is to broadly replicate LfT but to also introduce some changes to deliver a clear and coherent piece of legislation which seeks to address the issues mentioned above.
- 7.12 LfT is constantly evolving as new policy developments emerge from HMRC and the Scottish Government. LfT has developed over the last 20 years and to gain a complete picture, it is necessary to consider primary and secondary legislation, directions, notices and guidance that have been issued and case law. In discussions with stakeholders it has become evident that there is inconsistency between the existing legislation and what happens in practice. Under option 3, changes would be sought to:
- a) ***clarify and simplify existing areas of confusion, revise outdated legislation and remove provisions that do not have relevance in Wales***
- 7.13 The definition of a taxable disposal, in particular the question of whether there has been a disposal of material as waste, has been the source of significant

legal challenge for HMRC. The value of the claims currently before the courts means that a significant proportion of LfT revenue is at risk.

7.14 To provide clarity for the taxpayer and the Welsh Revenue Authority (WRA) and to prevent new areas of confusion from emerging, it would be helpful to reflect clearly on the policy approach, and introduce some changes to the drafting of the legislation.

**b) *clarify how LDT is calculated and better reflect established practices in relation to:***

***(i) Weighing material***

***(ii) Exemptions and Reliefs***

***(iii) Water Discount***

***(iv) Non Disposal Areas (Information Areas)***

7.15 The changes above would seek to make the system more transparent and workable and would include:

- making it a duty for the landfill site operator to use a weighbridge or an alternative weighing method agreed with WRA to determine the weight of material in each taxable disposal;
- clarifying the processes for applying for and claiming reliefs and water discount and the consequences for failing to comply
- clarifying the process for designating a non-disposal area and the consequences for failing to comply.

**c) *address key policy issues highlighted by stakeholders by:***

***(i) Extending the scope of LfT to include unauthorised disposals within the scope of the tax;***

7.16 Under the existing LfT legislation, tax cannot be charged on unauthorised disposals as they are not recognised in the legislation. This potentially exposes the tax to evasion.

7.17 By extending the scope of LDT to capture unauthorised disposals and to enable the WRA to charge tax on them, it is hoped that this activity will be seen as a financial risk and a less attractive option for those tempted to evade tax by making unauthorised disposals of waste.

## **Impact of Establishing a Landfill Disposals Tax Communities Scheme**

- 7.18 A fund to support local community and environment projects is provided for through the current UK Government's landfill tax. The Landfill Communities Fund (LCF) aims to offset some of the impact of living near a landfill site.
- 7.19 It is a voluntary tax credit scheme that enables landfill site operators to contribute a proportion of their tax liability to projects. The maximum percentage of landfill tax that can be contributed by landfill site operators is set by HM Treasury and may change each year.
- 7.20 The contribution made to the LCF results in a corresponding reduction in landfill tax receipts and as such, is tax foregone, which would otherwise have been used to support public services.
- 7.21 Three options have been considered in relation to whether and how Landfill Disposals Tax (LDT) should be used to enhance community wellbeing.
- Option 1 – Do nothing
  - Option 2 – Replicate existing LCF
  - Option 3 – Develop a Wales specific LDT Communities Scheme
- 7.22 A brief description of each option is outlined below followed by an analysis of the costs and benefits at Chapter 8.

### **Option 1 – Do nothing**

- 7.23 The do nothing option is not to replace the LCF. Instead, all the revenue raised from LDT would be used to support public services in Wales.
- 7.24 The Welsh Government consultation on the development of LDT in spring 2015 included a chapter about whether and how LDT revenue could be used to enhance community wellbeing, similar to the LCF.
- 7.25 This chapter received the highest number of responses with more than half the 279 respondents providing views about this issue. The responses demonstrated wide-ranging support for the Welsh Government to continue to allocate some tax revenue to enhance the wellbeing of communities.
- 7.26 Many respondents commented that the current LCF compensated communities for the impact of living near landfill sites and was a vital and much needed source of funding for community projects which should be maintained in some form in Wales.
- 7.27 A decision not to replace the scheme would remove a source of funding from these projects.

## **Option 2 – Replicate the existing Landfill Communities Fund**

7.28 The do minimum option is to replicate the existing LCF in Wales from April 2018.

### **The Landfill Communities Fund**

7.29 The framework for how the LCF operates as a tax credit is set out in secondary legislation<sup>40</sup>. In short, HMRC appoint a regulatory body (Entrust) who in turn sanction the appointment of approved bodies (Distributive Environmental Bodies (DEBs)) to distribute contributions made to the LCF (projects may also be funded directly from a landfill site operator - by doing this the project must register as an Environmental Body (EB) with Entrust).

7.30 Projects supported must be within 10 miles of a landfill site and must relate to one or more objectives including the provision, maintenance or improvement of a public park or other public amenity and the conservation or promotion of biodiversity. As a result of the high demand for funding, some DEBs only support a selection (or just one) of the objects and may apply additional conditions.

7.31 Following a consultation by HMRC in 2015 a cap was placed on DEBs/EBs administrative costs of 7.5%. On top of this, Entrust is funded by a levy of the LCF contribution of 2.96% (2016-17) bringing administrative costs to just over 10%.

7.32 The continuation of the existing LCF arrangements may have relatively large benefits for projects who might otherwise find it difficult to receive the level of funding needed through different sources.

### **Wales Context**

7.33 LDT seeks to reduce the amount of waste sent to landfill in line with the Welsh Government's ambition of a zero waste Wales. The level of the revenue generated from the tax will correspondingly decrease and the amount available for a scheme will also reduce. Landfill tax revenues are forecast to fall by 35% between 2015-16 and 2021-22, according to the Office for Budget Responsibility. Consequently, it is important to give consideration to how to maximise the amount of funding reaching projects for the benefit of communities.

7.34 A clear message from the consultation responses and engagement with stakeholders has been the need for a streamlined and cost effective administrative model.

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<sup>40</sup> Part VII of the Landfill Tax Regulations 1996 (SI1996/1527)

7.35 The majority of consultation respondents called for a reduction in the number of DEBs involved in administering a scheme with most suggesting there should be a single distributive body.

### **Option 3 – Develop a Wales specific LDT Communities Scheme**

7.36 The third option is to introduce a Wales specific scheme. A range of meetings and workshops have been held with stakeholders including the Third Sector, community groups and landfill site operators to better understand how a Wales specific scheme might look.

7.37 Under option 3 a Wales specific scheme would be delivered as follows:

- a) A grant scheme with funds generated by allocating some of the LDT revenues collected to a single distributive body
- b) Funding will be awarded to projects which support biodiversity, waste minimisation and other environmental enhancements.
- c) The geographical focus of the scheme will be reduced to five miles around a landfill site (until taxable disposals have been completed) and extended to five miles around a waste transfer station which sends a minimum of 2,000 tonnes of waste to landfill each year

7.38 The continuation of a scheme may have relatively large benefits to projects who might otherwise find it difficult to receive the level of funding needed through different sources.

## Chapter 8: Costs and benefits

- 8.1 This Regulatory Impact Assessment details the costs and benefits of the three options outlined in Chapter 6, and sets out the preferred option for the Welsh Government to introduce a Welsh specific replacement for Landfill Tax ('LFT').
- 8.2 The costs and benefits associated with each option have been produced using the best available information at the time. This information has been prepared through discussion with stakeholders including taxpayers (landfill site operators), the wider waste industry, tax experts and professional industry bodies.

### Option 1 - Do nothing

- 8.3 The do nothing option would involve not replacing LFT in Wales.

### The effect on the delivery of Welsh Government policies

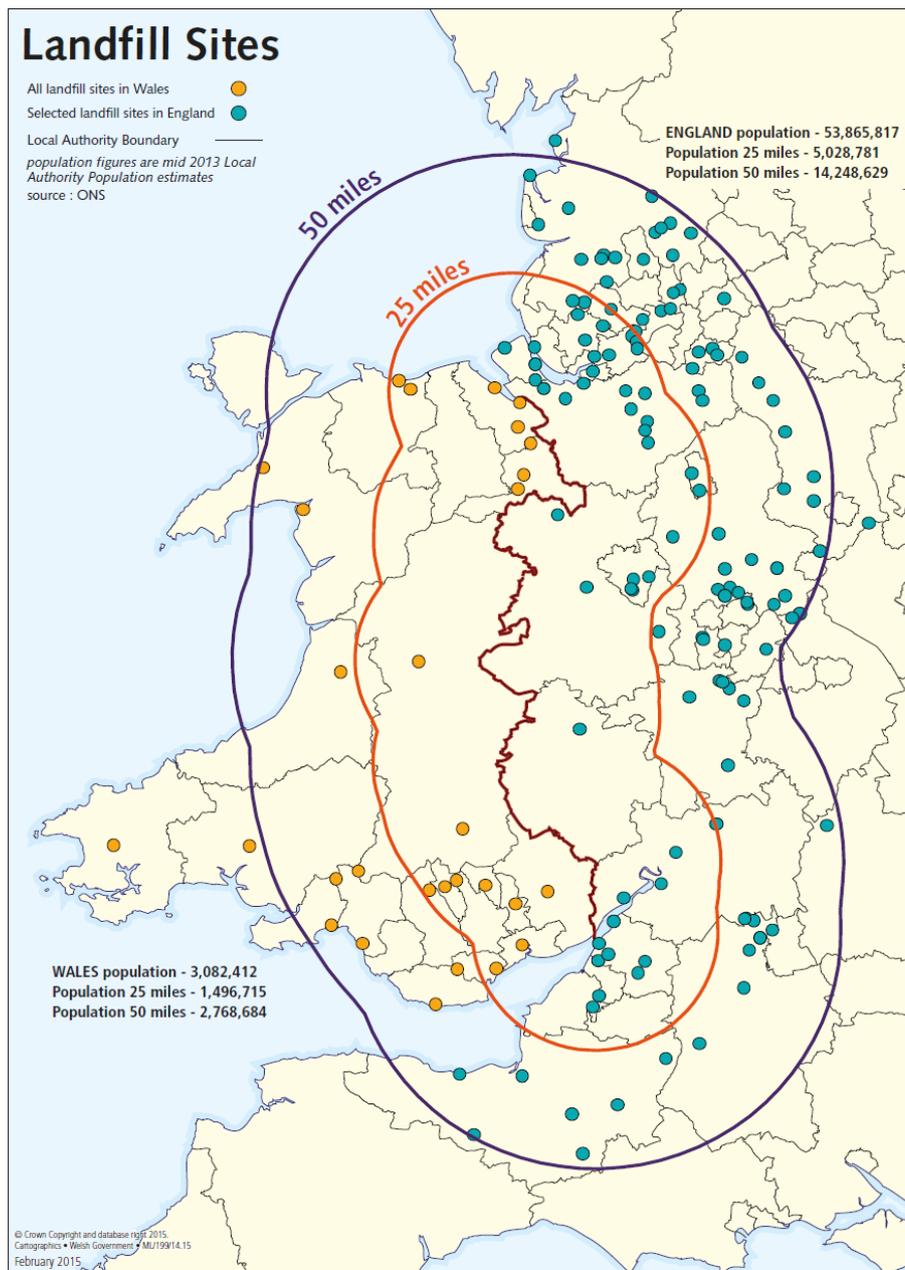
- 8.4 Without a replacement LFT, sending waste to landfill would become the cheapest waste management option. As a result of this, many businesses and individuals would be likely to benefit from a reduction in the costs of waste disposal. This would particularly be the case for industries whose activities produce relatively large amounts of waste material which is charged at the standard rate of LFT on disposal to landfill.
- 8.5 However, not replacing LFT would also result in considerable environmental impacts and prevent the realisation of significant benefits from other Welsh Government policies.
- 8.6 Taking Wales Forward sets out how the Welsh Government will deliver more and better jobs through a stronger, fairer economy, improve and reform our public services, and build a united, connected and sustainable Wales. Introducing a replacement for LFT will contribute to a number of the Welsh Government's priorities; namely through developing a Prosperous and Secure Wales:
- Supporting business through continuity of the tax on waste going to landfill which provides the waste sector with security and a continued impetus to develop alternative technologies;
  - Supporting business through a tax on unauthorised disposals which creates a level playing field for legitimate waste businesses;
  - Supporting the environment by ensuring waste is diverted from landfill thereby reducing our greenhouse gas emissions;
  - Supporting the environment by ensuring the responsible disposal of waste which protects biodiversity, local ecosystems and public health; and
  - Supporting the environment by increasing recycling and minimising landfill.

- 8.7 Not replacing LfT would therefore have impacts for the waste management system in Wales and would undermine efforts in Wales to divert waste from landfill through greater prevention, re-use, recycling and recovery of waste.
- 8.8 The Welsh Government's *Towards Zero Waste Strategy*<sup>41</sup> sets out how we will deal with waste in Wales to produce benefits for the environment, economy and social wellbeing. It seeks to achieve the sustainable use of resources by reducing waste and managing any waste that is produced in a way that ensures valuable materials are kept within the Welsh economy and are protected for future generations.
- 8.9 It sets goals of significant waste reduction by at least 27% (from a 2007 baseline) and a recycling rate of at least 70% with as close to zero (<5%) landfill as possible by 2025 with an ambition of zero waste (100% recycling) by 2050. These targets are measures to ensure the realisation of benefits set out in the EU Waste Framework Directive, which notes that Member States' waste policy should '*minimise the negative effect of the generation and management of waste on human health and the environment*'. To help deliver these goals the Environment (Wales) Act 2016 sets out actions to ensure Wales' natural resources are used to best effect and that waste is recycled.
- 8.10 These goals support the delivery of the Welsh Government's *Climate Change Strategy for Wales* which sets out its commitment to reduce the greenhouse gas emissions that Wales produces. The 2006 *Stern Review* on climate change pointed to landfill sites as one of the primary causes of climate change-causing emissions from waste. Food and other biodegradable wastes when landfilled produce methane, a powerful climate change-causing gas.
- 8.11 Further, the Wales/England border is populous and has a range of waste management businesses including landfill sites along both sides which can be seen at Figure 1 below.

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<sup>41</sup> [http://gov.wales/topics/environmentcountryside/epq/waste\\_recycling/zerowaste/?lang=en](http://gov.wales/topics/environmentcountryside/epq/waste_recycling/zerowaste/?lang=en)

Figure 1 - Landfill Sites and Populations – Wales/England Border<sup>42</sup>



8.12 Not introducing a replacement tax in Wales would likely trigger waste tourism with waste carriers in England and further afield travelling to Wales to dispose of their waste. Initial estimates suggest that a relatively small difference in tax rates could encourage waste tourism. These estimates are imprecise and subject to uncertainty around non-financial incentives for disposing of waste at a particular landfill site (for instance vertical integration within a company – a single company may perform services to both carry waste and dispose of it). Even allowing for this uncertainty, a tax differential of less than £10 is still likely to provide an incentive for waste tourism.

<sup>42</sup> Location of landfill sites based on HMRC data 2012  
[http://customs.hmrc.gov.uk/channelsPortalWebApp/channelsPortalWebApp.portal?\\_nfpb=true&\\_pageLabel=pageExcise\\_ShowContent&id=HMCE\\_PROD\\_009941&propertyType=document](http://customs.hmrc.gov.uk/channelsPortalWebApp/channelsPortalWebApp.portal?_nfpb=true&_pageLabel=pageExcise_ShowContent&id=HMCE_PROD_009941&propertyType=document)

- 8.13 There would also be wellbeing and environmental impacts for communities, for example, from increased disruption for residents near landfill sites and waste transfer stations and growing pressure on Wales' remaining landfill sites with potential calls for new landfill sites to be developed.

### Effect on public services

- 8.14 The disapplication of LfT also results in a corresponding reduction in the block grant therefore not replacing LfT in Wales would result in the Welsh Government operating with a reduced budget.
- 8.15 The block grant adjustment for 2018-19 will be known at the time of the UK Government's Autumn Budget 2017. .
- 8.16 That said, not introducing a replacement tax would mean that the Welsh Government would only have the associated costs of establishing a tax collection and management body to administer one devolved tax (Land Transaction Tax<sup>43</sup> ('LTT')), the replacement to Stamp Duty Land Tax ('SDLT'). The costs associated with the establishment of the Welsh Revenue Authority ('WRA') and its ongoing operational costs will be discussed further at options 2 and 3.
- 8.17 The reduction in revenue for the Welsh Government from not introducing LDT would result in reduced spending on public services in Wales. It is not possible to identify which areas of spending would be reduced. However, if it is assumed that this reduction was spread across all public services, it is likely that those on relatively lower incomes would be disproportionately affected.
- 8.18 According to the Office of National Statistics ('ONS'), in 2015 the poorest fifth of UK households received more benefits in kind than the top fifth of households<sup>44</sup>. Benefits in kind include education, health, transport and housing, the majority of which are devolved to the Welsh Government. These services constitute around 70% of devolved spending in Wales. The single biggest area of devolved spending in Wales is health, and again evidence also shows benefits disproportionately going to lower income groups (Institute of Fiscal Studies (IFS) 2010 *The distributional impact of public spending in the UK*). As those who benefit the most from public services are those on below average incomes, reduced government spending, from not introducing LDT, is likely to have a disproportionately large affect on lower income households in Wales.

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<sup>43</sup> The Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Bill introduced into the National Assembly for Wales on 12 September 2016 establishes a new Land Transaction Tax to replace Stamp Duty Land Tax in Wales. Information on the Bill and Land Transaction Tax, is available at: <http://www.senedd.assembly.wales/mglIssueHistoryHome.aspx?Id=15873>; and <http://gov.wales/funding/fiscal-reform/welsh-taxes/land-transaction-tax/?lang=en>

<sup>44</sup> ONS (2016) *The Effects of Taxes and Benefits on UK Household Income, Financial Year Ending 2015* available at <https://www.ons.gov.uk/peoplepopulationandcommunity/personalandhouseholdfinances/incomeandwealth/bulletins/theeffectsoftaxesandbenefitsonhouseholdincome/financialyearending2016>

## Well-being of Future Generations Act 2015

- 8.19 For the last 15 years Wales has been recognised as leading the way in respect of sustainable development, which has been at the heart of Welsh Government policy from the very start of devolution. Sustainable development is the best way to help us plan better for the future, so that the big problems facing people and communities across Wales such as climate change, poverty, jobs and growth, and making people safer, can be addressed. The Well-being of Future Generations (Wales) Act 2015 puts in place a sustainable development principle, which informs the policy development process and establishes ways of working for organisations covered by the Act.
- 8.20 The Well-being of Future Generations (Wales) Act 2015 also establishes a set of clear, integrated, wellbeing goals for Wales. They provide a shared vision of the Wales we want to see now and in the future, and ensure that present needs are met without compromising the ability of future generations to meet their own needs. Not replacing LfT in Wales would run contrary to the sustainable development principle and restrict our ability to deliver benefits to both current and future generations.

### Summary

- 8.21 The do nothing option would result in the Welsh Government not meeting a number of policy targets and ambitions which are designed to improve the environment and the well-being of current and future generations of people in Wales.
- 8.22 Furthermore, it would result in a reduced budget for the Welsh Government and a lower level of public expenditure in Wales. Lower income households tend to benefit most from public services, so it is likely that lower income households would be disproportionately affected by the revenue effect of not levying LDT in Wales.
- 8.23 While some businesses and individuals would likely experience a reduction in the cost of waste disposal under this option, these benefits are significantly outweighed by the benefits delivered through maintaining sustainable development principles and public services. Moreover, the absence of a tax on waste sent to landfill would violate the “polluter-pays” principle. This is a guiding principle at European and international levels, and represents the commonly accepted practice that the polluter should, in principle, bear the cost of pollution. A landfill tax helps to maintain this principle in practice given that it seeks to internalise the environmental costs associated with landfilling, therefore ensuring that its private costs more closely reflect its true social cost.

## Cost of Change

- 8.24 Options 2 and 3 both make the case for change, i.e. introducing a replacement to LfT. Although there are differences between these options explained further below, the general operational and administrative costs to establish a tax collection and management body to administer LDT are the same. The cost of change set out below therefore is in relation to options **2** and **3**.
- 8.25 It is important to note however, these costs are associated with the implementation of devolved taxes more broadly in Wales and have been scoped out on that basis. This includes, for example, consideration of online service provision, compliance and enforcement effort, the level of customer services and the need for Welsh language capability. Many of these do not derive directly from the provisions within the Bill, but from the policy decisions premised on these.
- 8.26 The Tax Collection and Management (Wales) Act 2016 ('the TCMA') provides the powers to establish WRA whose role will be the collection and management of devolved taxes in Wales. The Regulatory Impact Assessment prepared for the TCMA<sup>45</sup> set out costs at Table 3 for a comparator organisation to provide a best estimate of the potential scale of costs.
- 8.27 Following this assessment, the former Minister for Finance and Government Business published a letter in November 2015<sup>46</sup> setting out further details on the proposed roles and responsibilities of WRA, HM Revenue and Customs (HMRC) and Natural Resources Wales (NRW) in the collection and management of devolved taxes. This sets out an initial estimate of costs for the establishment of WRA and the operation of collection and management arrangements for devolved taxes.
- 8.28 In relation to LDT, the letter sets out that NRW is the preferred partner for LDT compliance and enforcement. NRW lead on permitting of landfill sites in Wales, so already have extensive knowledge of the tax base and established relationships with the landfill site operators who will be paying LDT. The Annex<sup>47</sup> to the letter provides the details of the operational costs allocated to NRW for this role.
- 8.29 The estimated cost to set up WRA is between £4.8 million to £6.3 million over the 3 year period 2016/17 to 2018/19. These costs include production and issuing of guidance, development and delivery of training and the implementation of transitional arrangements to enable the effective collection and management of devolved taxes. There will be an additional cost to Welsh Government estimated to be £1m associated with HMRC switching off the collection of SDLT and LfT in Wales. This one-off cost will be incurred in 2018-19.

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<sup>45</sup> Available at: <http://www.assembly.wales/laid%20documents/pri-ld10293-em/pri-ld10293-em-e.pdf>

<sup>46</sup> Available at: <http://www.senedd.assembly.wales/mglIssueHistoryHome.aspx?IId=12989>

<sup>47</sup> Available at: <http://www.senedd.assembly.wales/mglIssueHistoryHome.aspx?IId=12989>

- 8.30 Operating costs have been estimated at between £2.8 million to £4 million annually beginning in 2018/19 which includes NRW's delegated operational costs for compliance and enforcement activity.
- 8.31 The WRA Implementation Director took up post in August 2016 and the WRA Chair was appointed in March 2017.
- 8.32 It is important to note that the administrative costs of LDT are dependent on the delivery of LTT. On 1 July 2016 the Cabinet Secretary for Finance and Local Government confirmed that WRA would undertake all collection and management functions of LDT and LTT; with NRW carrying out the role of compliance and enforcement for LDT and HMRC providing expertise and knowledge through secondments to develop and enhance WRA's LTT compliance expertise.
- 8.33 As a result, LDT services will benefit from the economies of scale of delivering both taxes and provides the opportunity for the development of LDT digital services.
- 8.34 Further detail of these costs will be published at the appropriate time as operational decisions on the scale and scope of WRA are clarified. LDT represents only one element of this work, and it is therefore not appropriate or feasible to try to separate out and provide direct administrative costs for LDT in this RIA. These costs are operational and not predicated specifically on this Bill and therefore not included in this assessment.
- 8.35 The Regulatory Impact Assessment for the TCMA<sup>48</sup> also sets out that HMRC is expected to reimburse the Welsh Government with the costs of not collecting SDLT and LfT in Wales from April 2018. The equivalent amount reimbursed to the Scottish Government is £275,000 per annum (according to Revenue Scotland figures).

### **Impacts of Introducing a Replacement to LfT**

- 8.36 Devolved taxation also provides an opportunity to develop taxes to meet Welsh needs, which are adaptable to Welsh circumstances and priorities and to create a tax system which is more efficient, effective and simpler. It is anticipated that any future operational changes will create additional benefits over the longer-term.
- 8.37 The general benefits of change are set out below. The specific benefits to each option are discussed under the relevant option headings.

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<sup>48</sup> Tax Collection and Management (Wales) Bill Explanatory Memorandum and incorporating the Regulatory Impact Assessment available at: <http://www.assembly.wales/laid%20documents/pri-ld10293-em/pri-ld10293-em-e.pdf>

- 8.38 The key benefit of introducing a replacement LfT in Wales is to enable the delivery of the Welsh Government's waste and environment policies, in particular promoting the waste hierarchy.
- 8.39 Paras 7.4 – 7.11 discuss the effects on the Welsh Government's policies should a replacement to LfT not be introduced. The benefits of introducing a replacement are therefore around continuing to enable the *Zero Waste Wales Strategy*<sup>49</sup>, helping to deliver the goals set out in the *Environment (Wales) Act 2016*<sup>50</sup> and *Climate Change Strategy for Wales*.<sup>51</sup>
- 8.40 In addition, by introducing a replacement, there is consistency with how landfilled waste is treated in England and Wales which reduces the risk of waste tourism.
- 8.41 Overall, three key benefits have been identified as potentially deriving from devolved tax powers, which includes the introduction of a LDT in Wales. It is clear that these long-term benefits are aligned to the requirements of the Well-being of Future Generations (Wales) Act 2015<sup>52</sup> which came into effect in April 2016. The Act is about improving social, environmental, economic and cultural well-being in Wales and helping us to create a sustainable country that we all want to live in, now and in the future. Devolved taxation generally will help to achieve this through:
- (i) Improving the efficiency and effectiveness with which public resources are used;
  - (ii) Boosting the resources available for public bodies in Wales to invest in improving well-being;
  - (iii) Delivering enhanced fiscal levers.

## **Option 2 - Do minimum (replicate the existing Landfill Tax)**

- 8.42 The do minimum option is to introduce LDT in April 2018 by replicating the existing LfT.

### **Costs**

- 8.43 LfT is a well established tax which has been in operation since 1996. This option involves replicating the current regime therefore there will only be minimal changes that incur an additional cost to stakeholders. These are set out in paragraph 7.46.

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<sup>49</sup> *Zero Waste Wales Strategy* available at:

<http://gov.wales/docs/desh/publications/100621wastetowardszeroen.pdf>

<sup>50</sup> *Environment (Wales) Act 2016* available at:

<http://www.legislation.gov.uk/anaw/2016/3/contents/enacted>

<sup>51</sup> *Climate Change Strategy for Wales* available at:

<http://gov.wales/docs/desh/publications/101006ccstratfinalen.pdf>

<sup>52</sup> Well-being of Future Generations (Wales) Act 2015, available at:

<http://www.legislation.gov.uk/anaw/2015/2/contents/enacted>

8.44 As per the Cabinet Secretary's announcement on 1 July 2016, NRW will carry out the role of compliance and enforcement for LDT. There will be minimal cost to NRW to carry out this function which will include additional resource and training to undertake the tax-related functions alongside their environmental ones. As set out in the letter<sup>53</sup> from the former Minister for Finance and Government Business, these costs have been considered and NRW will be funded appropriately for their role. These costs fall within the envelope announced by the Minister for Finance and Government Business in November 2015.

### **Direct Impacts**

8.45 There are minimal direct impacts on stakeholders with this option.

8.46 As explained LfT is a well established tax with established processes and procedures. A clear message from LDT consultation responses was the need to remain consistent to provide certainty and stability for business. By replicating the current legislation, the only change therefore will be that landfill sites that operate in England and Wales will need to submit a separate self assessed LDT return to WRA. We have anticipated that this will take minimal effort (around an additional 10 minutes each quarter) for the operators that have sites in England and Wales. HMRC's Register of landfill site operators lists 10 landfill site operators with sites in England and Wales at May 2016<sup>54</sup>. Using the ONS' Survey of Hours and Earnings for 'Waste disposal and environmental services managers'; this is calculated as an annual total cost of £150 (or £15 for each of the landfill site operators affected). This cost will be incurred from 2018-19.

### **Indirect Impacts**

8.47 This option has the potential to also indirectly impact WRA and the Welsh Consolidated Fund. As stated previously, LfT is open to considerable legal challenge, in particular around whether or not a taxable disposal has taken place.

8.48 By replicating the current legislation in Wales, these uncertainties and the risk of legal challenge will be transferred to WRA. This would have an impact on the level of WRA resource involved in responding to legal challenges which may detract from other day to day operations and would put LDT revenues at risk. Given uncertainty around any potential future legal challenges, it is not possible to quantify this cost at this stage.

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<sup>53</sup> Available at: <http://www.senedd.assembly.wales/mglIssueHistoryHome.aspx?lId=12989>

<sup>54</sup> <https://www.gov.uk/government/publications/landfill-tax-site-operators>

### Option 3 - Develop a Welsh specific tax

8.49 The do something option is to introduce LDT in April 2018 by broadly replicating LfT but addressing some key policy issues highlighted by stakeholders.

#### Costs

8.50 As with option 2 (para 7.46), by replicating the current legislation, there will be a minor change in that landfill sites that operate in England and Wales will need to submit a separate self assessed LDT return to WRA. This is estimated to cost a total of £150 per annum from 2018-19.

8.51 In addition, with this option, there may be a small cost to landfill site operators and tax experts and professional bodies for training to understand the minor differences between LDT and LfT.

8.52 The main aim around developing the legislation is to be consistent yet provide clarity and certainty around existing practices; landfill site operators, tax experts and professional bodies within the waste industry have been well engaged during the development of the Bill and a number of meetings have been held to explain where there are differences. As such the amount of effort needed for them to become familiar with the minor changes should be minimal.

8.53 It is anticipated that this would take a total of 2 days of a landfill site operators' time. HMRC's register of landfill site operators<sup>55</sup> lists 20 operators in Wales as at May 2016 (although it should be noted that there are likely to be fewer landfill sites operating by the time LDT is introduced in April 2018). Using the ONS' Annual Survey of Hours and Earnings for 'waste disposal and environmental services managers' then the one-off total cost for landfill site operators to familiarise themselves with LDT in 2017-2018 is expected to be no greater than £6600 (or £330 per landfill site operator).

8.54 For tax experts and professional bodies we have sought views on the average time taken to become familiar with legislation. This might take a little longer due to the new section of the Bill relating to unauthorised disposals. It is anticipated that it would take a total of 5 days of the tax experts and professional bodies time to become familiar with the changes in the Bill, particularly so that they may support their customers and members. Taking the LDT Technical Experts Group which includes 11 members representing a range of tax experts and professional bodies within the waste industry and using the ONS' Annual Survey of Hours and Earnings for 'tax experts' then the total one-off costs for these to familiarise themselves with LDT in 2017-2018 is estimated to be £13,000 (or £1200 per tax expert/professional body).

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<sup>55</sup> <https://www.gov.uk/government/publications/landfill-tax-site-operators>

- 8.55 The Bill will introduce a small number of new penalties associated with non-compliance. These are in the areas of determining the taxable weight of the material; non-disposal areas and registration. This will only impact on the landfill site operator if they are found to be in non-compliance. The number of future cases of non-compliance is not known and it is therefore not possible to estimate this cost at this stage. Any penalties paid represent a transfer payment from the site operator to the tax authority.

## Impacts of changes

**a) *clarify and simplify existing areas of confusion, revise outdated legislation and remove provisions that do not have relevance in Wales***

- 8.56 For there to be a taxable disposal there has to be a disposal of material as waste, which the LFT legislation defines as occurring when “the person making the disposal does so with the intention of discarding the material”. There has been a string of legal challenges related to whether some material sent to landfill is being ‘used’, rather than discarded and should not therefore be treated as a taxable disposal. The value of the claims currently before the courts means that a significant proportion of the LFT revenue is at risk.
- 8.57 Whilst the current test for determining whether a taxable disposal has been made may not be perfect; taking a different approach would bring risks and complications of its own. This option therefore seeks to retain the basic structure of the existing legislation but to clarify and tighten it where possible, by strengthening and updating the definition of a taxable disposal and seeking to bring law that is currently in secondary legislation (e.g. activities that will be treated as taxable disposals) and case law (e.g. whose intention is relevant in considering whether there is an intention to discard) together in the primary legislation. This approach fits well with stakeholder responses to the consultation on *developing LDT* in spring 2015.
- 8.58 This option should therefore have a positive impact on the landfill site operator. The approach seeks to provide taxpayers with the clarity to ensure that compliance is straightforward so that they can meet their tax obligations. It is also expected that WRA will publish guidance and will seek to establish a positive relationship with landfill site operators.
- 8.59 Whilst this approach does not remove the risk of legal challenges in Wales, it seeks to minimise it. On introduction of LDT any new legal challenges in Wales will be dealt with by WRA and as such will be deducted from its operational budget. The costs of which would be additional to the figures provided by the former Minister for Finance and Government Business’s letter in November 2015. As noted above, the number of potential future legal challenges is not known and it is therefore not possible to quantify this cost at this stage.

**b) clarify how LDT is calculated and better reflect established practices in relation to:**

- (i) Weighing material including water discount**
- (ii) Exemptions and Reliefs**
- (iii) Non-Disposal Areas**

8.60 The purpose of this is to make the arrangements in each of these areas more transparent, pragmatic, workable and proportionate. In doing so this approach seeks to tighten up arrangements to safeguard them from abuse; ensure that compliance is straightforward so that landfill site operators can meet their tax obligations and; enable the WRA to identify those who have failed to adhere to these rules and take appropriate enforcement action.

**(i) Weighing material including water discount**

8.61 The Bill provisions for weighing material will require the landfill site operator to determine the weight of the material in a taxable disposal by using a weighbridge. For this purpose, the operator must ensure that the material is weighed on the weighbridge before the disposal is made and that the weighbridge meets the requirements in applicable weights and measures legislation. The Bill recognises that there may be circumstances in which it is not possible to use a weighbridge, in light of this the landfill site operator may make an application to WRA for approval to use an alternative method to determine the weight of the material. This is designed to simplify the existing arrangements by combining the concepts of agreed and specified methods.

8.62 The landfill site operator may apply to WRA for approval to apply a water discount when calculating the taxable weight of the material in a taxable disposal. This is intended to make it clear that the landfill site operator is accountable for water discount because they are the taxpayer and it is their responsibility to have the proper contracts and processes in place with its customers (waste producers) regarding the operation of the water discount

8.63 The waste producer will need to provide any necessary documentation and evidence to inform the application so that the landfill site operator, if content to operate the discount, may request approval from WRA prior to applying the water discount. The Bill clarifies that an approval to apply a water discount may only be agreed by WRA if 'qualifying conditions' are met. These conditions now include a necessity test where, for example, the adding or use of water is "necessary" for the purposes as described in the provision.

**(ii) Exemptions and Reliefs**

8.64 The Bill proposes allowing relief from tax for certain taxable disposals broadly consistent with the rest of the UK, except that it suggests a slightly different approach in terms of terminology (as they will be provided for as reliefs) and will clarify the process (the taxpayer will need to claim the relief on the tax return and keep appropriate evidence to support the claim).

- 8.65 The Bill also seeks to formalise the separate arrangements for site restoration which require the landfill site operator to seek approval for relief from tax in advance of claiming on the tax return.
- 8.66 We anticipate that this will be a positive change for the landfill site operators overall. It will enable the landfill site operator and the WRA to understand which reliefs are being claimed; and for the latter help inform compliance work. On making an application or claiming a relief the conditions and process will be clearly set out. This should reduce the time and effort involved in determining whether landfill site operators are eligible to claim such reliefs and give greater certainty regarding tax liability.

***(iii) Non-Disposal Areas***

- 8.67 The Bill sets out that the WRA may designate part of an authorised landfill site as a Non-Disposal Area (NDA). The concept of an NDA also exists within the current arrangements where they are called information areas. The Bill proposes some changes to the process for designating a NDA, the requirements associated with an NDA and the consequences of breaching those requirements.
- 8.68 In particular, in the rest of the UK, the consequences of failure to comply with a requirement linked to a NDA (for example, an inaccuracy in a record) will result in all the material being automatically taxable. The Bill proposes applying a penalty in these circumstances; this provides the WRA with the ability to take a more proportional and pragmatic approach given that the material may never have been destined for the landfill void and so that consideration may be given to the gravity of the breach in issue. For material that has been left in the NDA longer than the maximum time limit the Bill proposes that this will be deemed to be a taxable disposal.

***c) address key policy issues highlighted by stakeholders by extending the scope of LfT to include unauthorised disposals of waste within the scope of the tax***

***Charging LDT on unauthorised disposals***

- 8.69 The reason for imposing a tax on unauthorised disposals is to close the loophole that currently exists whereby the tax can be easily evaded by disposing of waste outside of an authorised landfill site.
- 8.70 As at September 2016, Natural Resources Wales (NRW) reports that there are 60 illegal waste sites<sup>56</sup> in Wales with approximately 55,000 tonnes of waste across these sites. If this was all calculated at the standard tax rate it would represent approximately £4.7m in evaded tax.

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<sup>56</sup> where an environmental permit is required but not in place

- 8.71 This has the effect of reducing the amount of tax revenue raised which is used to fund public services. The imposition of tax on unauthorised disposals is intended to address the loophole through:
- encouraging people to choose to dispose of their waste lawfully (and pay tax on it) rather than unlawfully; and
  - where there is an unlawful disposal, by enabling WRA to collect the relevant amount of tax on that waste.
- 8.72 This may also have wider benefits for waste businesses, communities and regulators and government. Unauthorised disposals of waste present a range of environmental, public health and social concerns for communities. It also places legitimate waste businesses at a disadvantage as illegal operators avoid waste disposal costs and undercut those who abide by the law. It undermines financial confidence in the waste industry, which impacts on investment in green technology and is a loss of invaluable secondary resources.
- 8.73 Charging tax on unauthorised disposals will complement wider Welsh Government policies including its Fly tipping Strategy, and mission to deter and tackle waste crime. In addition, if LDT were chargeable on unauthorised disposals the potential impact on an authorised landfill operator's profitability could be significant. Whilst modelling presented in an industry report<sup>57</sup> found that for every £1 spent on waste crime enforcement there is an expected return to Government of between £3.60 and £5.60.
- 8.74 The UK legislation only enables LfT to be charged on disposals of waste at authorised landfill sites. In 2015, Scotland introduced taxation of unauthorised disposals by its Scottish Landfill Tax, whilst the Republic of Ireland has been charging Landfill Levy on unauthorised disposals for the past 10 years. There has been strong support amongst stakeholders for charging tax on unauthorised disposals in Wales.
- 8.75 The Bill proposes that the person who makes the unauthorised disposal and any person who knowingly causes or knowingly permits the disposal to be made, will be liable to pay tax. Where there are two or more persons, they will be jointly and severally liable. The Bill proposes to introduce an 'unauthorised disposals' tax rate which is expected to be higher than the standard tax rate. In developing proposals, officials have sought to ensure that this regime fits and complements the existing environmental law regime.
- 8.76 This would offer a simple to administer solution and a higher rate of tax would recognise that offenders would not be subject to the same administrative obligations (and penalties) in relation to registration, filling and preserving records met by authorised landfill site operators. This could provide a financial deterrent to unauthorised disposals of waste and re-align the balance of risk

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<sup>57</sup> Waste Crime: Tackling Britain's Dirty Secret (2014) – Eunomia Research and Consulting commissioned on behalf of Environmental Services Association Education Trust

so that the consequences of being caught outweigh the profit to be made. Consequently, this could increase the amount of tax revenue collected to support the delivery of public services in Wales.

- 8.77 Operationally, WRA will be expected to take a cost-effectiveness approach to enforcing these provisions. WRA will have administrative discretion as to how it carries out its collection and management functions. Decisions on whether or not to pursue tax on unauthorised disposals will be taken within the wider context of resources, priorities and the value of the revenue collected. As explained, WRA will delegate the compliance and enforcement function to NRW and these costs are included in the broad envelope set out in section 8.29.

### **Summary of the preferred option**

- 8.78 The preferred option is Option 3, to implement a replacement to LfT by establishing LDT. This will provide a 'Welsh specific' solution taking account of approaches in Scotland and other countries (where different from the existing legislation). This will be achieved via the Bill and subject to the will of the Assembly is expected to come into force in April 2018 when LfT will be dis-applied in Wales.
- 8.79 The key benefit of establishing a replacement tax is to provide certainty and stability for the waste industry, by broadly enabling consistency with how landfilled waste is treated in England and Wales the risk of waste tourism is reduced. It also ensures that the benefit of the tax revenue can continue to be secured for investment in public services in Wales.
- 8.80 Wider benefits include supporting the delivery of the Welsh Government's *Taking Wales Forward* Programme for Government and its wider waste and environment policies. In particular, continuing to enable the *Towards Zero Waste Strategy* and helping to deliver the goals set out in the *Environment (Wales) Act 2016* and *Climate Change Strategy for Wales*.
- 8.81 The main changes made in response to the concerns raised by stakeholders through the LDT consultation in spring 2015 are around providing clarity and addressing existing areas of confusion and concern; revising outdated legislation and removing provisions that do not have relevance in Wales and; better reflecting established practices.
- 8.82 The main area of change to include unauthorised disposals within the scope of the tax will not only bring benefit to the communities who are affected by unauthorised disposals by seeking to deter this activity in future but also aims to minimise opportunities to evade tax and thus protect revenue for investment in public services in Wales.

## **Impact of Establishing a Landfill Disposals Tax Communities Scheme - Costs and Benefits**

- 8.83 This section details the costs and benefits of the three options outlined in Chapter 7 and sets out the preferred option for the Welsh Government to introduce a Wales specific Landfill Disposals Tax Communities Scheme (LDT CS).
- 8.84 The costs and benefits of each option have been produced using the best available information at the time. The information has been prepared through discussion with stakeholders including the Third Sector, community groups and landfill site operators.

### **Option 1 – Do nothing**

#### **Costs**

- 8.85 Without a replacement for the Landfill Communities Fund (LCF) there would be a saving to the public purse in the region of £1.4 million per annum enabling all the revenue raised from LDT to be used to support public services in Wales. A small number of respondents to the 2015 LDT consultation commented the “declining revenue” expected from LDT in the coming years would mean that this fund was no longer a “cost effective approach” and argued that it would “seem more sensible for the revenue raised to contribute to strategic funding within the Welsh Government to protect public services”.

#### **Impacts of not introducing a replacement to LCF**

- 8.86 However, not replacing the fund in Wales would remove a source of funding from community and environmental projects which the majority of the respondents to the 2015 LDT consultation considered to be vital and much needed. Respondents noted that these projects may find it difficult to secure the level of funding needed through different sources. It may also impact on organisations (responsible for distributing funds) which use their distributive role to support their own administrative costs. Many respondents commented that projects delivered direct benefits for the communities and the environment, for example, by improving local facilities and protecting natural habitats and consequently delivered indirect benefits such as supporting community cohesion, promoting health and wellbeing and enabling skills development through volunteering opportunities.
- 8.87 Respondents highlighted the current fund compensated communities for the impact of living near landfill sites; this can include the impact of increased traffic and noise. It also enabled landfill site operators to demonstrate their corporate social responsibility by supporting their local communities.

## Impacts of introducing a replacement to LCF

- 8.88 Options 2 and 3 both make the case for change – introducing a replacement to the LCF in Wales. The key benefit of introducing a replacement to the LCF in Wales is to continue to support communities affected by the disposal of waste to landfill. It will enable projects that may otherwise go unfunded to continue benefitting communities and the environment.
- 8.89 In doing so it will contribute to the delivery of the Welsh Government's *Taking Wales Forward* programme of government and wellbeing objectives<sup>58</sup> which seek to give effect to the seven national wellbeing goals set out in the Wellbeing and Future Generations Act 2015. The intention is to create a sustainable county that we all want to live in, now and in the future through creating a Wales which is prosperous and secure; healthy and active; ambitious and learning and; united and connected.

## Option 2 – Replicate the existing Landfill Communities Fund

- 8.90 The do minimum option is to replicate the existing LCF in Wales from April 2018.

### Costs

- 8.91 Using the OBR landfill tax forecast, the cost of replicating the existing LCF (based on the current maximum LCF contribution credit of 5.3%) and an administration cost of 10% (reflecting the current 7.5% administrative cap on DEBs and 2.5% administrative costs for the regulator) would be £1.3m in 2018-19 reducing to £1.2m in 2021-22. This is on the assumption that landfill site operators are able to continue to make voluntary contributions to the fund at current levels. Note: This is the total cost of the scheme, deducting the administrative costs would leave available funds for projects of £1.2m in 2018-19 reducing to £1m in 2021-22.
- 8.92 As with the existing scheme, there will be a cost for those wishing to apply for funding. However, applying to the LCF will be voluntary and the expectation is that this application cost will be lower than the amount of funding awarded.

## Impacts of replicating the existing LCF in Wales

- 8.93 The benefit of replicating the existing LCF in Wales is that stakeholders including the Third Sector, community groups and landfill site operators are familiar with the fund and how it operates. It may also benefit organisations (responsible for distributing funds) which use their distributive role to support their own administrative costs.
- 8.94 However, stakeholders have expressed concern that the level of the revenue generated from the tax is decreasing and the amount available for a scheme will also reduce. This is reflected in comments by landfill site operators who

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<sup>58</sup> <http://gov.wales/about/programme-for-government/?lang=en>

say they are finding it increasingly difficult to make voluntary contributions to the fund. There have also been concerns that money has not reached communities as quickly as it should; in 2015, the LCF was reviewed by HMRC in light of figures showing that DEBs/EBs had accumulated large amounts of unspent funds (£140 million).

- 8.95 Consideration has been given to how to maximise the amount of funding reaching projects for the benefit of communities. A clear message from the consultation responses and engagement with stakeholders has been the need for a streamlined and cost effective administrative model. In 2015 there were 191 DEBs/EBs registered in Wales with approximately 50 active. The majority of consultation respondents called for a reduction in the number of DEBs involved in administering a scheme with most suggesting there should be a single distributive body.

### **Option 3 – Develop a Wales specific LDT Communities Scheme**

- 8.96 The third option is to introduce a Wales specific scheme. Under this option the LDT Communities Scheme will not operate as a voluntary tax credit scheme. Instead it will be delivered as a grant scheme with funds generated by allocating some of the LDT revenues collected to a third party to distribute directly to projects; thus providing a more stable funding stream. This option offers a simple, affordable administrative solution and ensures costs are kept low to enable the maximum amount of funding is available to benefit communities.

#### **Costs**

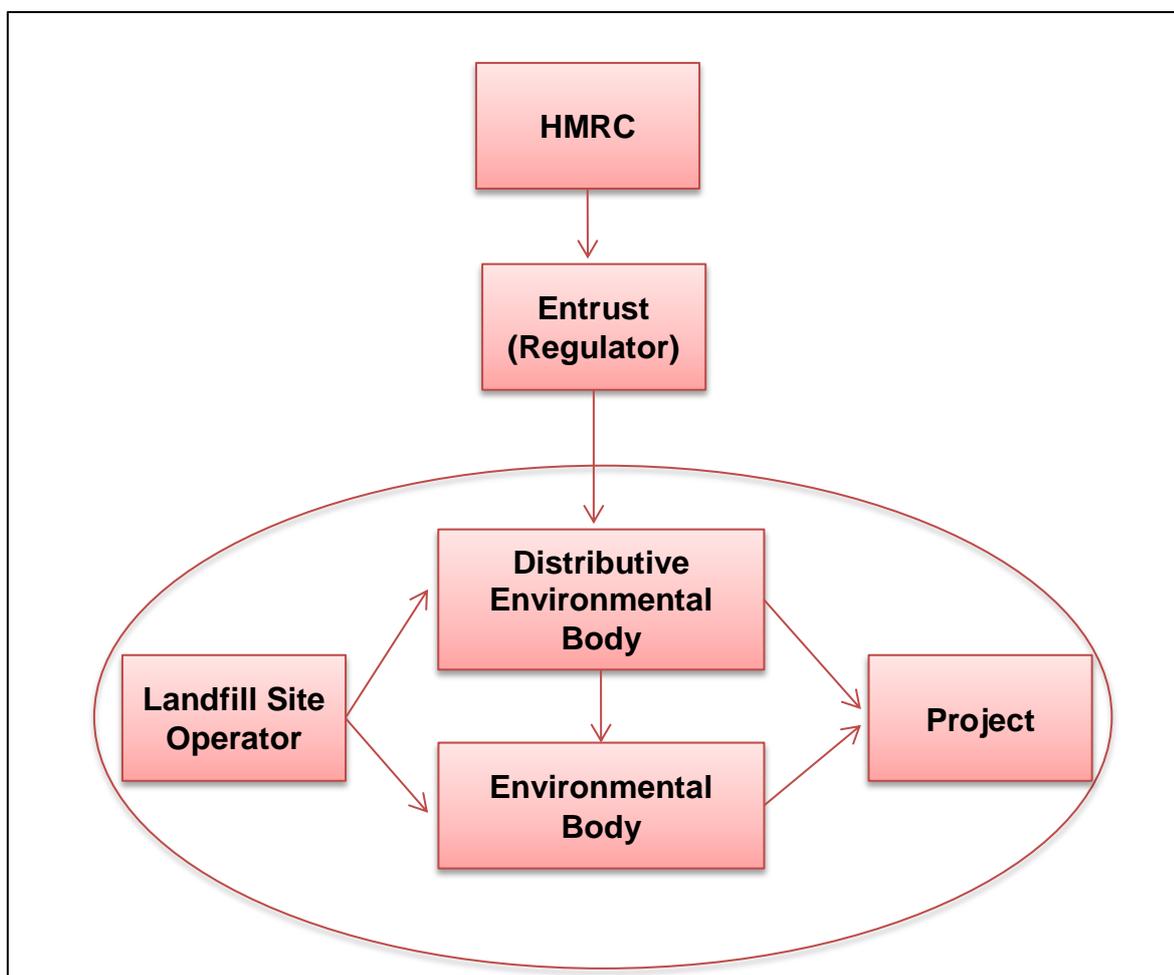
- 8.97 Under this option the Welsh Government will delegate responsibility for the administration of the LDT Communities Scheme to a distributive body. The distributive body is expected to distribute in the region of £1.4m of grants to projects per annum. This seeks to ensure that funding available for projects in Wales is at least at the same level, if not higher than were the existing LCF to be replicated. The current best estimate suggests the administrative costs will be approximately £100,000 per annum. This brings the total cost of the scheme to in the region of £1.5m. This figure is dependant upon the final block grant adjustment about LDT which will not be concluded until after the UK Autumn Budget. Assumptions have been made about the outcome of that process to arrive at the proposals here and the final position will not be known until the autumn budget making process is complete.
- 8.98 There will be a cost for those wishing to apply for a grant under the LDT Communities Scheme. The application process is still to be determined but the expectation is that it will be straight forward and simple and as such the time requirement will be less than the existing LCF application process. In any case, applying for a grant will be voluntary and we anticipate this application cost will be lower than the amount of grant awarded. The grant application process will be developed following the appointment of the distributive body later this year.

## Impacts of changes

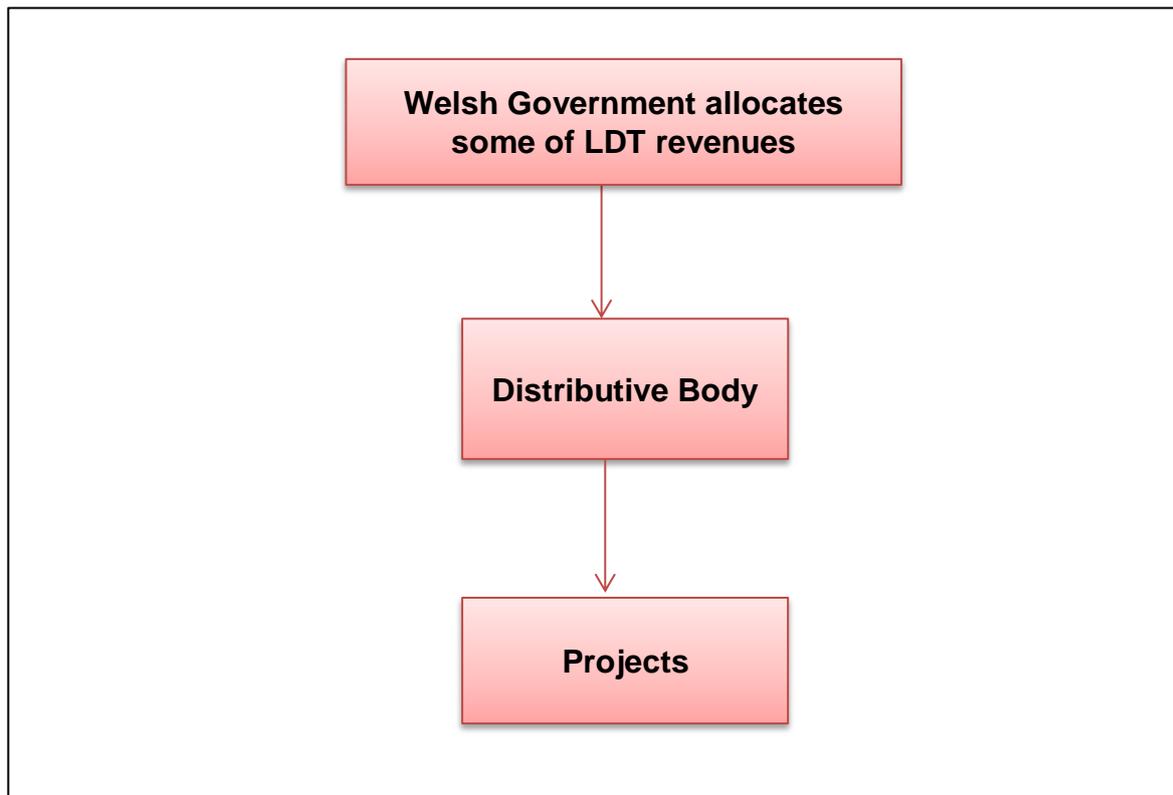
### a) A grant scheme with funds generated by allocating some of the LDT revenue collected to a single distributive body

8.99 Under this option the administration will be simplified from the current distribution process (figure 1) so that one distributive body will administer grants in Wales (figure 2). A single distributive body will help to provide clear assurance and governance framework, as well as minimising administrative costs. It will also ensure that there is an easier application process, providing applicants with a single point of contact.

**Figure 1: Current LCF Distribution Process**



**Figure 2: Proposed LDT CS Distribution Process**



8.100 Further, under the current LCF each DEB is able to set their own criteria. This means that projects close to a landfill site may have been declined because they didn't meet the criteria. In contrast, the LDT Communities Scheme will have a universal criteria for all projects and the applications will be made to a single distributive body. This should be a more transparent and readily understandable system.

8.101 This approach provides an opportunity to work with a distributive body to maximise the funding from the scheme that goes to communities in Wales. A distributive body will be able to offer their own experience and innovative approaches to influence how the scheme may best be operated. For example, they may have ideas about how to produce accessible guidance and a straight-forward application process so that the scheme can reach new and local communities and initiatives that may not have been aware of this funding stream previously and they may also have views on how to best monitor and evaluate individual projects that have received funding.

8.102 By allocating some of the LDT revenue to the scheme it will enable all landfill site operators in Wales to have a stake in the Communities Scheme; thus helping them to demonstrate their corporate social responsibility.

**b) Funding will be awarded to projects which support biodiversity, waste minimisation and other environmental enhancements**

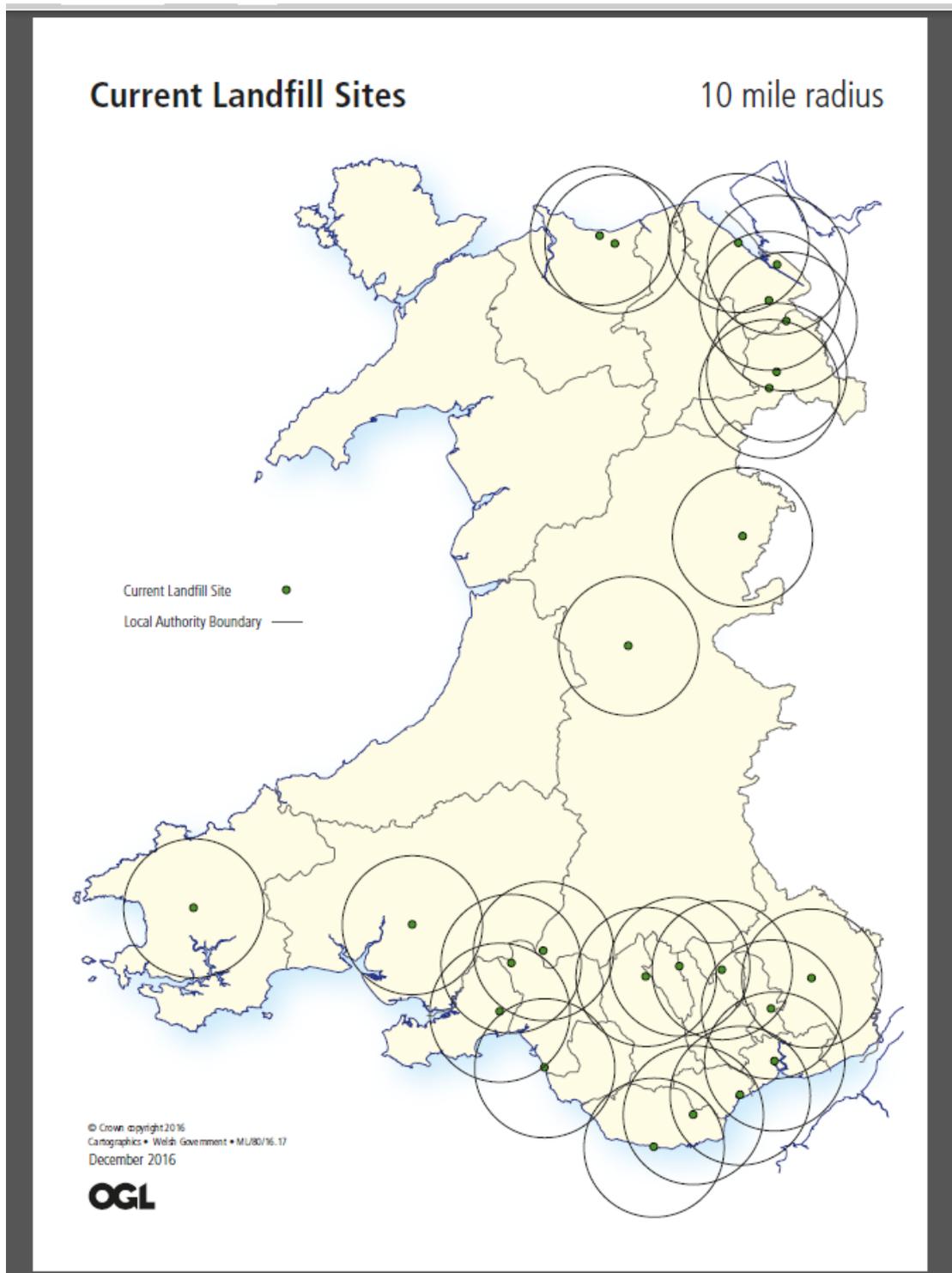
8.103 These funding areas were those supported by respondents to the 2015 consultation. Biodiversity projects will seek to support the conservation and promotion of a specific species or a specific habitat where it naturally occurs. Waste Minimisation projects will seek to promote awareness and best practice to reduce the amount of waste produced. Projects supporting wider environmental enhancements will seek to bring wider community benefit through improving quality of place – creating green spaces, bringing neglected and run down areas back into use and maintaining or improving community facilities.

**c) The geographical focus of the scheme will be reduced to five miles around a landfill site (until taxable disposals have been completed) and extended to five miles around a waste transfer station which sends a minimum of 2,000 tonnes of waste to landfill each year**

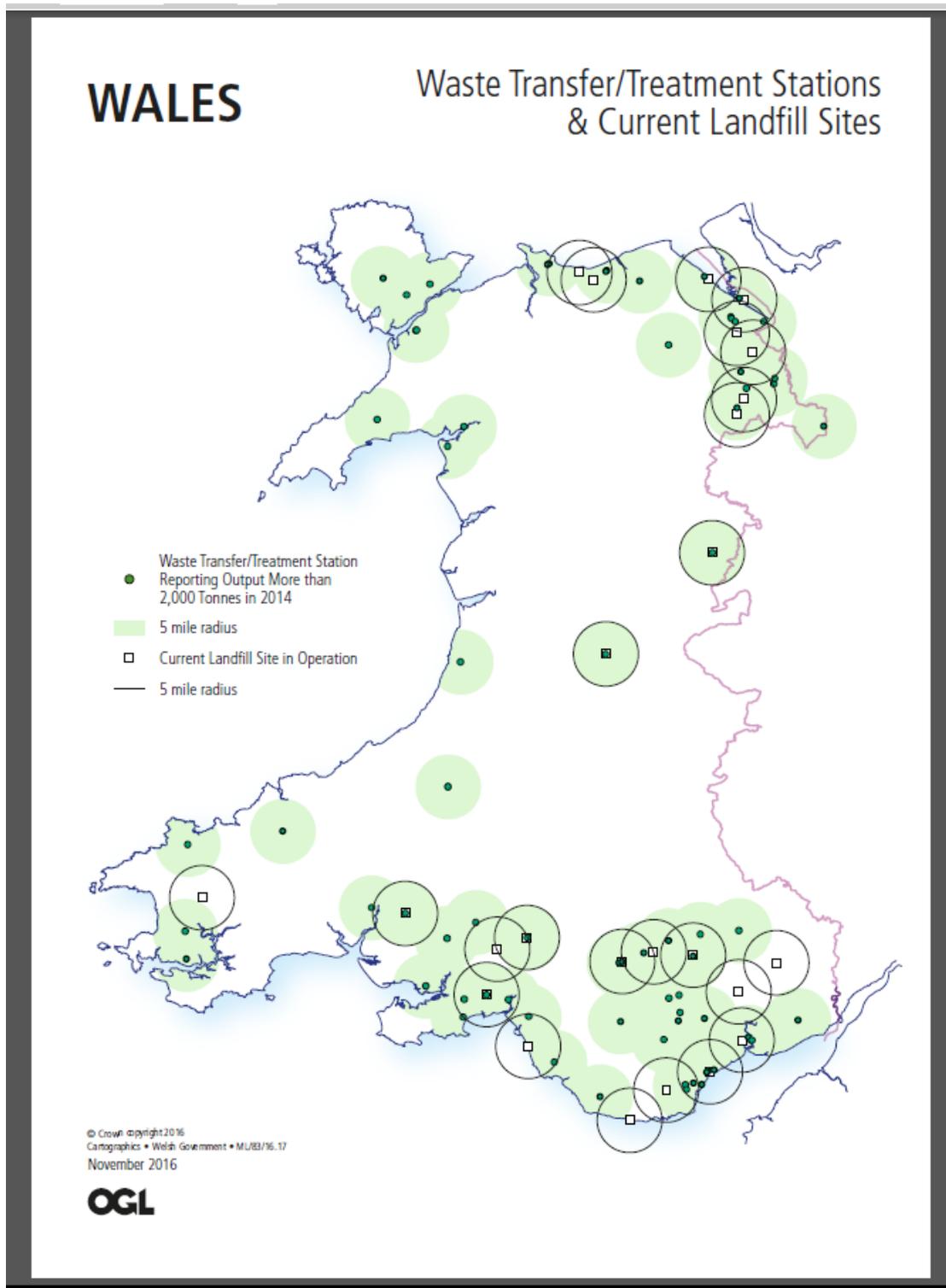
8.104 This approach seeks to recognise that the number of landfill sites in Wales could be fewer than 10 by 2020; support those communities which are most affected by the disposal of waste to landfill and; achieve a balance between maximising eligibility without spreading funding too thinly.

8.105 Further, extending eligibility to communities located around waste transfer stations has the advantage of broadening the eligibility to areas which have previously not been eligible for funding and will enable projects to be supported that extend across different parts of Wales - whilst still ensuring that those most affected by the disposal of waste to landfill benefit.

**Areas eligible for LCF funding (within 10 miles of a landfill site) as at May 2016  
(note: there are currently 25 landfill sites in Wales).**



**Areas eligible for funding under the LDT Communities Scheme from April 2018.**



**Wider benefits and scheme evaluation**

- 8.106 The Welsh Government will provide overall governance of the scheme; ensuring funds are distributed in line with the aims and principles of the scheme. Given the scheme's wider environmental objectives, this function will sit within the Cabinet Secretary for Environment and Rural Affairs portfolio and will be met from within existing budgets.
- 8.107 As set out in the LDT Communities Scheme Update paper<sup>59</sup> published in December 2016, the scheme will be underpinned by a set of general principles, which will provide a framework to shape the operational delivery of the scheme – it will seek to improve quality of place; deliver wider community benefits and maximise the amount of money that reaches initiatives
- 8.108 The general principles have been developed with stakeholders. Improve quality of place will focus on promoting positive environmental behaviours, offsetting the negative impacts on communities affected by the disposal of waste to landfill and enhance existing spaces. Delivering wider community benefits will focus on supporting community participation, in particular volunteering and skills development; promoting and maintaining good relationships between landfill site operators, communities and the distributive body and supporting sustainable projects that do not rely on continuous funding. Maximising the amount of money that reaches initiatives will focus on maintaining a cost effective administrative model and making funding accessible by providing clear and understandable objectives and a straightforward application process.
- 8.109 The distributive body will be required to publish an annual report on the scheme including monitoring data outlining how the money is being allocated and the outcomes delivered so it is clear how the money is being spent and that there is a fair distribution. The cost of this is included in the £100,000 administrative cost. As part of this the distributive body will be expected to ensure that an evaluation framework is built into the scheme from the outset.
- 8.110 All projects will be required to demonstrate how they align with the Welsh Government's programme for government *Taking Wales Forward*, the Well-being of Future Generations goals and other Welsh Government initiatives, including tackling poverty and supporting growth and jobs. These are at the heart of the Welsh Government's tax policy principles.
- 8.111 A review of the scheme will be undertaken within 4 years of the Scheme being published.

### **Summary of the Preferred Option**

- 8.112 The key benefit of establishing a LDT Communities Scheme to replace the Landfill Communities Fund (LCF) in Wales is to continue to support communities affected by the disposal of waste to landfill. It provides a stable funding stream and a streamlined and cost effective administrative model

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<sup>59</sup><http://gov.wales/funding/fiscal-reform/welsh-taxes/landfill-disposals-tax/communities-scheme/?lang=en>

which seeks to maximise the amount of funding reaching projects for the benefit of communities. It enables the scheme to be tailored to support Welsh Government priorities and focuses on the funding areas supported by stakeholders – biodiversity, waste minimisation and wider environmental enhancements. Further engagement with stakeholders will take place to refine and develop the detail of the preferred option. In particular it will seek to ensure accessible guidance and a straightforward application process to enable successful applications from local community initiatives and it will look at the geographical focus of the scheme ensuring that a common sense approach is applied. The procurement process to appoint a distributive body began on 29 May with the publication of the prior information notice<sup>60</sup> and is expected to complete in autumn 2017.

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<sup>60</sup> [https://www.sell2wales.gov.wales/search/show/search\\_view.aspx?ID=MAY200752](https://www.sell2wales.gov.wales/search/show/search_view.aspx?ID=MAY200752)

## Chapter 9: Specific impact assessments

- 9.1 A series of impact assessments on the draft Bill were completed as part of this RIA. Initial impact assessments were completed prior to the 2015 *Developing a Landfill Disposals Tax* consultation<sup>61</sup> and these were reviewed following the closure of the consultation and the drafting of the Bill.
- 9.2 Overall, the establishment of Landfill Disposals Tax (LDT) as a replacement for Landfill Tax (LFT) is not expected to have a significant impact on most businesses or people. While there are some minor variations in the structure of LDT in comparison to LFT, the requirement to pay tax for landfill exists now and will still exist when the tax is devolved to Wales.
- 9.3 The Bill will establish the procedural framework for the Welsh Government to set its own tax rates for LDT in Wales. The full impact of LDT will not be known until tax rates have been announced by the Welsh Government in autumn 2017. The tax rates for LDT will be set in secondary legislation when a separate impact assessment will need to be completed.
- 9.4 There are likely to be impacts for specific groups in relation to the collection and management of LDT and as such preliminary impact assessments have already been made and are available in the RIA for the Tax Collection and Management (Wales) Act 2016 (TCMA)<sup>62</sup>. There are also future operational decisions to be made on the collection and management of this tax by WRA during its establishment and separate impact assessments may be required.

### Equality Impact Assessment

- 9.5 An impact assessment has been carried out to evaluate if this legislation has any significant impacts on protected groups and to ensure that it does not contravene the Human Rights Act 1998. An assessment of the impact on Human Rights is set out at paragraph 4.10 of the Equality Impact Assessment.
- 9.6 The collection and management of LDT will be undertaken by WRA. As a public body, WRA will need to comply with the requirements of the Equality Act 2010.
- 9.7 Overall, not implementing LDT would result in a reduced budget for the Welsh Government, which would mean fewer resources to invest in public services in Wales. It is likely therefore that not introducing LDT would have a disproportionately large effect and dis-benefit on lower income households in Wales, as those who benefit the most from the public services tend to be

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<sup>61</sup> *Developing a Landfill Disposals Tax* (Spring 2015) and the summary of responses (September 2015) available to view at: <http://gov.wales/betaconsultations/finance/landfill-disposals-tax/?lang=en>

<sup>62</sup> Tax Collection and Management (Wales) Bill Explanatory Memorandum incorporating the Regulatory Impact Assessment, July 2015. Available to view at: <http://www.assembly.wales/laid%20documents/pri-ld10293-em/pri-ld10293-em-e.pdf>

those on below average income. Some protected groups are proportionally more likely to fall into this category. Therefore, introducing a replacement tax and protecting public services spend is a positive action for these groups.

- 9.8 There has been significant external stakeholder engagement throughout the policy development process, including workshops across Wales during the 2015 consultation on LDT legislative proposals. Although no responses to this consultation were received from specific equalities organisations, relevant responses included the Wales Council for Voluntary Action, the Bevan Foundation and other third sector organisations. These organisations broadly supported proposals for a replacement tax, but emphasised the need to allocate a proportion of LDT revenue to support community well being initiatives (as the disposal of waste to landfill can have a disproportionate impact on communities located nearby specific protected groups). The Cabinet Secretary for Finance and Local Government has confirmed that this will be achieved through a LDT Communities Scheme (LDT CS) which is being developed with stakeholders including landfill site operators and the third sector.

## **Protected Groups**

### *Age*

- 9.9 Younger people: a Child's Rights Impact Assessment been undertaken to inform the provisions of the Bill and found that there will be no direct impact on children as a result of the legislation.
- 9.10 People aged 18 and older may be affected by the LDT legislation, but the tax itself is not considered to have an age related differential impact.

### *Disability*

- 9.11 The Bill itself is procedural and sets out the framework and structure for taxing disposals of waste by way of landfill. The Bill does not have any direct impact for this protected group. However, the collection and management of LDT will be undertaken by WRA, and in terms of the operational delivery of WRA there may be minimal impacts; as such preliminary impact assessments have already been made and are available in the RIA for the TCMA<sup>63</sup>.

### *Gender*

- 9.12 The provisions of the Bill and establishment of LDT are not considered to have a differential impact in relation to gender.

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<sup>63</sup> Tax Collection and Management (Wales) Bill Explanatory Memorandum incorporating the Regulatory Impact Assessment, July 2015. Available to view at: <http://www.assembly.wales/laid%20documents/pri-ld10293-em/pri-ld10293-em-e.pdf>

### *Transgender*

- 9.13 The provisions of the Bill and establishment of LDT are not considered to have a differential impact on those who are transgender.

### *Marriage and civil partnership*

- 9.14 The provisions of the Bill and establishment of LDT are not considered to have a differential impact in relation to marriage or civil partnership.

### *Pregnancy and Maternity*

- 9.15 The provisions of the Bill and establishment of LDT are not considered to have a differential impact on those who are pregnant or during maternity or paternity leave.

### *Race*

- 9.16 This protected group consists of ethnic minority people, national origin, asylum seekers and refugees, Gypsies and Travellers, migrants and others. The provisions of the Bill and establishment of LDT are not considered to have a differential impact on those in the race protected group.

### *Religion and belief or non-belief*

- 9.17 The provisions of the Bill and establishment of LDT are not considered to have a differential impact on those in the religion and belief, or non-belief, protected group.

### *Sexual orientation*

- 9.18 This protected group consists of gay men, lesbians and bi-sexual people. The provisions of the Bill and establishment of LDT are not considered to have a differential impact on those within this protected group.

## **Human Rights**

- 9.19 The Human Rights Act 1998, which partially incorporates the European Convention on Human Rights (ECHR), has been considered in the equality impact assessment.

- 9.20 The Government of Wales Act 2006 states that a Bill will not be within the legislative competence of the National Assembly for Wales if it is incompatible with the ECHR and could not become law (section 108(6) (c) GOWA 2006).

- 9.21 The principal Articles of the ECHR which are relevant for the purposes of this Bill are:

- Article 1 of the 1<sup>st</sup> Protocol which guarantees the right to peaceful enjoyment of property;
- Article 6 which guarantees the right to a fair and public hearing in the determination of civil rights and obligations and criminal charges and affords further rights where a person is charged with a criminal offence;
- Article 8 which requires respect for private and family life; and
- Article 14 which provides freedom for a person to enjoy their rights under the Convention without discrimination.

- 9.22 Article 1 of the 1<sup>st</sup> Protocol is relevant because the Bill provides for the control of the use of property. For example, the inspection powers under section 58 provide for WRA to access premises and material relating to the assessment of tax such as documents, including those held on electronic devices. This may ensure compliance with and payment of the tax and penalties in certain circumstances. The provisions of the Bill have however been devised with the principle of proportionality in mind and ensuring that there are adequate safeguards built into the system.
- 9.23 Article 6 is complied with as the taxpayer will have rights of appeal against WRA decisions in relation to LDT.
- 9.24 Article 8 is relevant as the Bill supplements powers of inspection contained in the TCMA – the use of these may interfere with a person’s privacy rights. However, the Welsh Government believes that any interference is justified and proportionate – in particular it is subject to a number of safeguards, including the requirement to obtain prior consent from the relevant person or authorisation from the Tax Tribunal.
- 9.25 Although the Bill does contain special provisions which treat certain persons differently from others (for example corporate groups, partnerships), the Welsh Government does not consider that any such treatment constitutes unlawful discrimination in breach of Article 14. To the extent that Article 14 (along with, say, Article 1 Protocol 1) is engaged, any difference in treatment pursues a legitimate aim (for example it takes account of a specific characteristic of partnerships), and is not disproportionate. The compatibility of the Bill with the ECHR (including the Articles above) has been considered prior to the introduction of the legislation. That analysis has found that the bill does not contain provisions that are incompatible with the ECHR.

### **United Nations Conventions on the Rights of the Child**

- 9.26 A Child’s Rights Impact Assessment was undertaken to inform the provisions of the Bill and found that there will be no direct impact on children as a result of the legislation.

## **Impact on Welsh Language**

- 9.27 A Welsh Language Impact Assessment has been carried out which has found there to be no clear link to the Welsh Language Standards given the tax's narrow focus. That said; there are very close links between this Bill and TCMA which sets out the governance around how devolved taxes will be collected and managed in Wales and provides the powers to establish the WRA to carry out this function.
- 9.28 As a new Welsh public body in Wales, WRA will be subject to the Welsh Language Standards and the goals of the Well-being of Future Generations (WFG) Act 2015 and will take advice from both the Welsh Language and WFG commissioners. The benefits therefore of devolving LfT are around the bilingual service offering available to customers and the approach will ensure the parity of language provision in the services it delivers.

## **Sustainable Development**

- 9.29 Sustainable development means enhancing the economic, social and environmental well-being of people and communities, achieving a long term better quality of life for our own and future generations in ways which promote social justice and equality of opportunity. For the last 15 years Wales has been recognised as leading the way in respect of sustainable development, which has been at the heart of Welsh Government policy from the outset of devolution. The Welsh Government's long term vision for Wales by 2050 is to be the best place to live, learn, work, and do business, with an environment that is respected and enjoyed. The Welsh Government wants to strengthen the conditions that will enable businesses to create jobs and sustainable economic growth. The Bill seeks to promote this principle by introducing LDT as a replacement to the existing LfT following the disapplication of LfT in Wales.
- 9.30 LDT will be a tax on disposals of waste by way of landfill and will ensure that the costs of landfilling waste reflect the environmental impact that can occur, such as the damage caused by the generation of methane (which contributes to global warming) and pollution of groundwater. However, responsible landfill operation is a requirement of the environmental permitting regime, which an authorised landfill site must obtain before it can operate, and the LDT will work alongside this regime.
- 9.31 Like LfT, LDT seeks to alter the balance of incentives to encourage the diversion of waste from landfill and greater prevention, recycling, reuse and recovery of waste. The introduction of LDT will support the Welsh Government's waste policies including its ambitious target of zero waste to landfill by 2050. This will assist in safeguarding the environment for future generations.

- 9.32 If LDT was not introduced, one of the key waste minimisation incentives would be removed and there would be negative wellbeing and environmental impacts from increased disruption for residents near landfill sites and waste transfer stations; increasing the carbon footprint of waste disposal and growing pressure on Wales' remaining landfill sites with potential calls for new landfill sites to be developed.
- 9.33 LDT will provide a financial incentive for the waste industry to continue to adopt better waste management practices, ensuring that landfill is the least cost effective method of disposing of waste. It is anticipated that LDT will encourage investment in alternative environmentally friendly technologies for the disposal of waste. LDT aims to be consistent with the current tax regime where appropriate to provide certainty for business and to assist with their financial planning and investment strategies. This will have positive impact on growth within the economy in Wales and will not stifle growth nationally.
- 9.34 Finally, the introduction of LDT will ensure that the provision of public services in Wales can continue to receive the benefit of the revenues currently raised by LfT, thereby having a positive impact on communities in Wales. This is explored in paragraph 9.7.
- 9.35 Overall the Bill supports the Welsh Government's principle of sustainable development and the objective of the WFG Act 2015 by having a positive impact on communities' health and wellbeing, the environment and economic growth.

## **Health and Wellbeing**

- 9.36 Extending the scope of LfT to include charging LDT on unauthorised disposals is likely to have a positive impact on the communities that live near illegal waste sites. These illegal sites often operate without the relevant infrastructure and safeguards in place which could impact on the health of nearby communities. Currently, it is considered that the financial benefit of operating these sites outweighs the risk of being caught. As WRA will have the power to collect the tax from these illegal sites, there is a much higher financial risk to these sites. This may help to deter further illegal waste sites from being established and deter current sites from continuing to trade without the relevant environmental permits in place.

## **Rural Proofing**

- 9.37 As at May 2016, there are 25 landfill sites and 20 operators in Wales<sup>64</sup> and a number of these are located in rural areas.

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<sup>64</sup> <https://www.gov.uk/government/publications/landfill-tax-site-operators>

- 9.38 Extending the scope of the tax so that LDT can be charged on unauthorised disposals of waste is likely to have a positive impact on rural communities in Wales. Unauthorised disposals of waste can pose environmental and health concerns for our rural communities as well as being an eyesore. This proposal will be an additional financial deterrence to this activity positively impacting on rural communities where some of this activity occurs.
- 9.39 Were a replacement tax on disposals by way of landfill not to be introduced in Wales, then sending waste to landfill would become the cheapest waste management option. This would have significant environmental impacts and would also impact upon the waste management system in Wales. This may also have a detrimental impact on rural communities/areas where landfill sites and waste transfer stations are located from increased disruption and an increase in waste travelling further distances on roads and through rural areas; and the growing pressure on the few remaining landfill sites may result in calls for new landfill sites to be developed, potentially in rural areas.
- 9.40 The tax itself is not expected to have a detrimental impact on the rural community. However the collection and management of the tax will be the responsibility of WRA and a 'digital by default' approach – if adopted by WRA – could have an impact in rural areas with a poor broadband connection. To mitigate this, the WRA, as part of the development of its digital platform, will seek the views of landfill site operators based in rural locations to understand any internet/broadband challenges before finalising its approach.
- 9.41 There is no direct impact on the Welsh language resulting from this Bill but see paragraphs 9.27 and 9.28 for further analysis.
- 9.42 LDT, like LfT, is an environmental behavioural tax aimed at prevention of waste and diversion from landfill towards greater recycling, recovery and reuse. As such, success will mean that waste being sent to landfill will continue to reduce and the number of landfill sites in Wales will decrease. Likewise, there is expected to be simultaneous growth in other areas of the waste management industry related to reuse, recycling and recovery.

### **Impact on Privacy**

- 9.43 The powers to establish WRA are set out in the TCMA, along with powers on information handling and sharing. A PIA screening was completed during the preparation of TCMA.
- 9.44 A Privacy Impact Assessment (PIA) screening has been completed for LDT and the recommendation is that as LfT is already collected (albeit on a UK basis) and the proposal is for that function to be devolved to Wales, there is not necessarily a change in the privacy expectations of individuals. There is currently a process for taxes to be paid which includes the processing of data.

- 9.45 The personal data being processed is minimal in relation to LDT and is effectively only in the form of the contact details of the individual processing the LDT payment on behalf of the landfill site operator. Therefore, a full Privacy Impact Assessment is not required.

### **Impact on the voluntary sector**

- 9.46 It is not expected that the voluntary sector organisations will be impacted by this Bill. As there will be minimal changes from how LfT currently operates. The changes to the actual method of collection of LDT are not expected to create any additional burden on the voluntary sector.

### **Impact on small business**

- 9.47 Whilst landfill site operators will be liable to pay LDT where a taxable disposal of waste is made at an authorised landfill site, the landfill site operator, as with the existing regime will pass on these costs to the waste carriers disposing of waste at their site, and the carriers in turn pass on the cost to waste producers, including businesses and local authorities. In essence, the requirement to pay tax for landfill exists now and will still exist when the tax is devolved to Wales. As a result there will be no positive or negative impact on the relevant business in Wales.
- 9.48 Like the existing LfT, LDT will positively influence/encourage businesses to review their waste management practices and move towards investment in greater prevention, reuse, recycling and recovery of waste. So, whilst success of LDT will mean that waste being sent to landfill will continue to reduce and the number of landfill sites in Wales will decrease; there is expected to be simultaneous growth in green technology.
- 9.49 Tax evasion can give people an unfair advantage over those that pay tax. The proposal to charge tax on unauthorised disposals of waste has been welcomed by legitimate businesses who often find themselves undercut by those who seek to evade waste disposal costs.
- 9.50 There are currently 25 landfill sites and 20 operators in Wales<sup>65</sup>, and whilst the landfill operators themselves are a concentrated group of businesses, as outlined above, a range of businesses may be affected by the introduction of LDT. The Welsh Government recognises that a key priority for the business community is a smooth transition to new taxes in 2018 with as little disruption for taxpayers as possible. A particular area of concern amongst respondents to the spring 2015 consultation *Developing a landfill disposals tax* was the impact on business if there were material differences between the tax rates

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<sup>65</sup> <https://www.gov.uk/government/publications/landfill-tax-site-operators>

charged in Wales and England, with several highlighting the potential for 'waste tourism'.

- 9.51 Wherever possible in the development of LDT, the Welsh Government has sought to minimise burdens on business and minimise compliance and administration costs. A detailed exploration of the impacts of the Bill is set out in Chapter 7 of this Regulatory Impact Assessment. The Welsh Government also appreciates that the waste industry requires long-term stability and certainty on which to base their business planning and investments in confidence. The LDT tax rates will be set in autumn 2017 in readiness for the implementation of the proposed new tax in April 2018. It is recognised that consistency with the rates in England is particularly important in this area.

## Chapter 10: Competition Assessment

10.1 There are two stages to the Competition Assessment for this legislation. The first is a simple filter that assesses whether there is a risk of a significant detrimental effect on competition.

10.2 The results of the competition filter are presented in the table below:

The competition filter test	
Question	Answer yes or no
<b>Q1:</b> In the market(s) affected by the new regulation, does any firm have more than 10% market share?	Yes
<b>Q2:</b> In the market(s) affected by the new regulation, does any firm have more than 20% market share?	No
<b>Q3:</b> In the market(s) affected by the new regulation, do the largest three firms together have at least 50% market share?	No
<b>Q4:</b> Would the costs of the regulation affect some firms substantially more than others?	No
<b>Q5:</b> Is the regulation likely to affect the market structure, changing the number or size of firms?	No
<b>Q6:</b> Would the regulation lead to higher set-up costs for new or potential suppliers that existing suppliers do not have to meet?	No
<b>Q7:</b> Would the regulation lead to higher ongoing costs for new or potential suppliers that existing suppliers do not have to meet?	No
<b>Q8:</b> Is the sector characterised by rapid technological change?	No
<b>Q9:</b> Would the regulation restrict the ability of suppliers to choose the price, quality, range or location of their products?	No

10.3 The second stage is a detailed consideration of the limited impact of the provision of the Landfill Disposals Tax (Wales) Bill on competition and the consideration is outlined below.

10.4 Q1. In considering the market share: this answer has been based on comparing the tonnage of waste deposited at each landfill site in Wales. The most recent data available to Welsh Government from NRW is for financial year 2012/2013. From this data it would seem that one landfill site took in marginally more than 10% of the total tonnage of waste deposited that year. As a result, Q1 has been answered as Yes.

10.5 That said, the legislation does not favour or disadvantage any landfill site more than another. Currently, tax rates are set per tonne, one rate for lower rated material and another for standard rated material. All landfill site operators must pay the relevant amount of tax for the waste deposited at their

site. To demonstrate why each tax rate has been applied to certain waste, LSOs are required to maintain a number of documents as evidence. Therefore, market share does not influence the tax rate as a landfill site receiving 20,000 tonnes would pay the same rates of tax as a landfill site receiving 200,000 tonnes.

- 10.6 As a devolved tax there is already an established sector. The amendments being made to the LDT legislation are minor and therefore not expected to have any negative impact on the sector.
- 10.7 These amendments do not change the environmental policy intent of tax on waste going to landfill as there is a need to mitigate the risk of cross border movement of waste from one jurisdiction to another. As per the pre devolution position, Landfill Site Operators (LSOs) in England and Wales will be required to adhere to the same rules and conditions and therefore neither is at an advantage/disadvantage.
- 10.8 That said, the area where a major change is being implemented, through extending the scope of the tax to include unauthorised deposits of waste, there is a potential to have a very positive impact on the sector in Wales. It will enable a fairer playing field for those law abiding landfill site operators that will no longer have to compete with the reduced gate fees of illegal sites.

## Chapter 11: Post implementation review

- 11.1 The effect of the Landfill Disposals Tax (LDT) (Wales) Bill ('the Bill') will be assessed in a number of ways.
- 11.2 A programme of monitoring activity will be developed to correspond with key activities including: tax collected, weight of materials disposed of to landfill, site registration and the application of tax reliefs. These activities will be monitored quarterly, annually or at a time scale to be determined appropriate.
- 11.3 Other activities will require a reasonable period of time to have elapsed before the outcome of the provisions can be assessed. For example, compliance with the Loss on Ignition Tests, penalties and enforcement activity on unauthorised disposals. The programme of monitoring will reflect these different timescales.
- 11.4 Data will be collected as part of LDT tax returns and these will provide an evidence base from which evaluation of a number of Welsh Government policies can be undertaken. The data will include information on LDT revenue and the tax base directly, for example, the tonnage of standard and lower rate materials sent to landfill in Wales or the amount of tax raised at the unauthorised rate of tax. These data, used alongside other sources, could also help identify progress towards targets set out in Towards Zero Waste such as landfilling less than 5% of waste by 2024/25.
- 11.5 Any post implementation assessment of more qualitative aspects of LDT's introduction will require the collection of further data. For example, direct engagement with taxpayers (meetings/surveys etc.) would be needed to establish whether, as planned, the administrative burden of filling in a tax return form had been kept to a minimum, whether electronic returns had been user friendly etc. Assessing the impact of operational matters would be the responsibility of WRA although there is potential for collaborative evaluation with the Welsh Government.
- 11.6 The Welsh Treasury has a dedicated communications and engagement team leading work to raise awareness and understanding of tax devolution and wider fiscal reform in Wales. The Welsh Treasury has arranged for a series of questions in the National Survey to measure public awareness of tax devolution.

## **Annex 1: Explanatory Notes**

# **LANDFILL DISPOSALS TAX (WALES) BILL 2016**

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## **EXPLANATORY NOTES**

### **INTRODUCTION**

1. These Explanatory Notes are for the Landfill Disposals Tax (Wales) Bill 2016 (“the Bill”) as introduced to the National Assembly for Wales on 28 November 2016 and amended following stage 2 proceedings on 11 May.
2. They have been prepared by the Office of the First Minister and Cabinet Office of the Welsh Government in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the National Assembly for Wales.
3. The Explanatory Notes should be read in conjunction with the Bill. They are not meant to be a comprehensive description of the Bill. Where a section or part of a section is self-explanatory and does not seem to require any further explanation or comment, none is provided.
4. The National Assembly for Wales has the power to make this Bill by virtue of the provisions contained in Parts 4 and 4A of, and paragraphs 14 and 16A of Schedule 7 to, the Government of Wales Act 2006 (“GoWA 2006”), as amended by the Wales Act 2014. These provisions give the National Assembly for Wales the legislative competence to make provision in relation to devolved taxes (which includes a tax charged on disposals to landfill in Wales), the status of staff employed by a body responsible for the collection and management of devolved taxes, and in relation to the Public Services Ombudsman for Wales and Auditor General for Wales.
5. The Wales Act 2014 provides for the disapplication of Landfill Tax (LfT) in Wales. The Command Paper accompanying the Wales Act 2014 sets the target date for the “switching off” of LfT in Wales with effect from April 2018, therefore it is intended that Landfill Disposals Tax (LDT) will replace LfT from that date.

### **SUMMARY AND BACKGROUND**

6. This is the third of three related items of legislation. The Tax Collection and Management (Wales) Act 2016 (TCMA) was the first of these pieces of legislation and sets the legal framework necessary for the devolved tax regime in Wales, covering the arrangements for the collection and management of tax, including the establishment of the Welsh Revenue Authority (WRA), whose main function will be

*These notes refer to the Landfill Disposals Tax (Wales) Bill which was amended following Stage 2 proceedings in the National Assembly for Wales on 11 May 2017.*

to collect and manage devolved Welsh taxes. TCMA also includes provisions in relation to:

- a. steps that can be taken in relation to tax returns, including amendment, enquiries and assessments;
- b. record keeping duties on persons making a tax return;
- c. the investigatory powers of WRA;
- d. penalties and interest;
- e. payment and enforcement;
- f. reviews and appeals; and
- g. powers relating to the investigation of criminal offences.

7. The second item of tax legislation is the Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act (LTTA). The LTTA Act provides for Land Transaction Tax (LTT) to replace Stamp Duty Land Tax (SDLT) in Wales and is the first of the devolved taxes to fall under WRA's remit. LTTA makes amendments to TCMA; of relevance to LDT are those in the areas of postponement of recovery of devolved taxes; late payment penalties and interest and; the introduction of a General Anti Avoidance Rule (GAAR) to the devolved taxes.
8. This Bill provides for the establishment of LDT, which it is anticipated will replace LfT in Wales from April 2018. The context and background to this Bill was set out in Chapter 1 of the Welsh Government's consultation on *Developing a Landfill Disposals Tax*, published on 24 February 2015<sup>66</sup>.
9. In summary the Bill makes provision for a Welsh tax to be charged on disposals to landfill in Wales. It establishes LDT and sets out when a taxable disposal is made and it provides the statutory framework for the responsibilities on taxpayers to make tax returns and calculate their tax liabilities as well as setting out the reliefs and exemptions from the charge to tax that are available and empowering Welsh Ministers to create tax credits through regulations. It further sets out the penalties for non-compliance. The Bill also makes provision for tax to be chargeable on a disposal of material as waste made at a place other than at an authorised landfill site if an environmental permit would have been required for the disposal in question (an "unauthorised disposal"). It further makes changes to the processes for obtaining and sharing information and the investigatory powers of WRA as set out in TCMA for the purposes of how they will work in a LDT context.

## **APPLICATION OF THE BILL**

10. The LDT Bill is a tax on disposals to landfill in Wales. WRA is responsible for the collection and management of the tax. Landfill site operators in Wales will be responsible for registering with WRA, notifying and paying tax on all relevant disposals made at their landfill site(s). This will involve submitting a quarterly tax return and paying any tax due within 30 days. The tax liability is calculated by reference to the taxable weight of the material being disposed. A lower tax rate will be applied to qualifying materials or qualifying mixtures of material and a standard rate to all other materials. There are some exemptions that may affect the liability to tax and some reliefs that may affect the amount of tax chargeable. The Bill also

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<sup>66</sup> <http://gov.wales/consultations/finance/landfill-disposals-tax/?status=closed&lang=en>

*These notes refer to the Landfill Disposals Tax (Wales) Bill which was amended following Stage 2 proceedings in the National Assembly for Wales on 11 May 2017.*

extends the scope of LDT to disposals made other than at an authorised landfill site (“unauthorised disposals”) and provides for there to be an unauthorised disposals rate of tax. All LDT tax rates will be set through regulations.

11. At its most basic, landfill site operators in Wales will be responsible for registering for, accounting for and paying tax on all disposals to authorised landfill sites in Wales. Where an unauthorised disposal occurs, WRA will seek to determine liability to tax and secure payment of that tax.

## **GENERAL OVERVIEW OF THE BILL**

12. The Bill comprises ninety five sections and three Schedules and is divided into six Parts as follows:

### **Part 1 – Overview**

This Part sets out how the Bill is structured.

### **Part 2 – The Tax and Taxable Disposals**

This Part establishes LDT and sets out the fundamental concepts that underpin the operation of the tax.

### **Part 3 – Taxable Disposals Made at Authorised Landfill Sites**

This Part sets out how the amount of tax will be calculated for a taxable disposal at an authorised landfill site, who is liable to tax, reliefs that may be claimed, registration and accounting procedures, payment and recovery of tax and that there will be a standard rate and a lower rate of tax. This Part also introduces Schedule 1 which sets out the qualifying material and the conditions (if any) that must be met in order to qualify for the lower rate of tax; Schedule 2 which sets out the contents of the register of landfill site operators and Schedule 3 which sets out the contents of a landfill invoice.

### **Part 4 – Taxable Disposals Made at Places Other than Authorised Landfill Sites**

This Part provides that a taxable disposal can be made at places other than at an authorised landfill site if an environmental permit would have been required for the disposal in question (an “unauthorised disposal”). It sets out who will be liable to tax on unauthorised disposals, how the tax liability will be notified, the arrangements for payment and late payment interest on unpaid tax. In addition, this Part establishes that an unauthorised disposals rate will be set in regulations.

### **Part 5 – Supplementary Provision**

This Part makes supplementary provisions connected with the tax. This includes a power to provide for tax credits, provision for the creation and regulation of non-disposal areas within an authorised landfill site, inspection powers and information sharing and penalties. This Part sets out how special cases, such as corporate groups, partnerships and other bodies will be dealt with in respect of tax and the requirement for the Welsh Ministers to prepare and publish a the Landfill Disposals Tax Communities Scheme. This Part also introduces Schedule 3 which sets out the amendments that this Bill makes to TCMA.

*These notes refer to the Landfill Disposals Tax (Wales) Bill which was amended following Stage 2 proceedings in the National Assembly for Wales on 11 May 2017.*

**Part 6 - Final Provisions**

This Part contains provisions on subordinate legislation procedures, transitional, consequential etc. powers, commencement, interpretation and other final and ancillary provisions.

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## **COMMENTARY ON SECTIONS**

### **Part 1 – Overview**

13. This Part sets out how the Bill is arranged and provides a brief summary of each of the Parts.

### **Part 2 – The Tax and Taxable Disposals**

#### **Chapter 1 – Landfill Disposals Tax**

14. Section 2 establishes that there will be a tax called landfill disposals tax to be charged on taxable disposals and that WRA will collect and manage the tax.

#### **Chapter 2 – Taxable Disposals**

#### **Sections 3 to 5 – Taxable disposals; disposal of material by way of landfill; and authorised landfill sites and environmental permits**

15. These sections define the concept of a taxable disposal by specifying that a taxable disposal takes place when all of the following conditions are met:
- a. Material is disposed of by way of landfill (which is the case when it is deposited on or under the surface of land, as defined at section 4);
  - b. The land where the material is deposited:
    - is an authorised landfill site (as defined in section 5(1)), or
    - is not or does not form part of an authorised landfill site, but the disposal requires an environmental permit (as defined in section 5(2));
  - c. The material is disposed of as waste (as defined in section 6 and 7); and
  - d. The disposal takes place in Wales.
16. Regulations may modify the meaning of a disposal of material by way of landfill set out in section 4.
17. Further provisions relating to disposals made other than at an authorised landfill site are found at Part 4 of the Bill.

#### **Section 6 – Disposal of material as waste**

18. This section explains that a disposal of material is a disposal of waste if the person responsible for the disposal intends to discard the material. An intention to discard may be inferred from the circumstances of the disposal and in particular from the deposit of material into a landfill disposal area, such as a void, that is generally used for landfill disposals on a site. An intention to discard (whether inferred or not) is only one of the four conditions that must be met for a tax liability to arise.
19. The fact that a person makes a temporary or incidental use of material deposited in a landfill disposals area, or derives a benefit from it (or anything, such as gas, emitted by it), does not necessarily prevent that person from intending to discard the material. Subsection (3) clarifies that a person may intend to discard material, even

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though it is being used. Where that is the case (and the other conditions in this Part are met), the tax is chargeable on the disposal of that material.

20. Regulations may modify the meaning of a disposal of material as waste as set out in section 6.

### **Section 7 - Disposal of material as waste: person responsible for disposal**

21. This section explains who is the person that is responsible for the disposal for the purposes of understanding section [6]. It provides that where a disposal is made at an authorised landfill site, the landfill site operator is the person responsible for the disposal. Where a disposal is made without the permission of the landfill site operator, the person responsible for the disposal is the person who disposes of the material. Section 13 (persons chargeable to tax) makes it clear that a landfill site operator will be liable for tax, even if another person was responsible for the disposal. For example, if a disposal is made out of hours without the knowledge of the landfill site operator, it will be the landfill site operator who is liable to pay the tax even though it may not have been an unknown third party's intention to discard the material.
22. Where a disposal is an unauthorised disposal (i.e. is a taxable disposal made other than at an authorised landfill site - see section 3) the person responsible is the person who disposes of the material. Part 4 sets out the procedure for imposing a charge to tax in relation to unauthorised disposals.

### **Section 8 - Landfill site activities to be treated as taxable disposals**

23. This section lists landfill site activities (as defined in section 93) that are to be considered as specified landfill site activities and therefore treated as taxable disposals. If an activity is a specified landfill site activity as listed in 8(3)(a) to (i) and takes place in Wales then it is treated as a taxable disposal regardless of whether the disposal would have otherwise have met the conditions as set out at section 3. This section also provides that the disposal is to be treated as taking place when material is first used in relation to a specified activity. So for example, the point at which material was used to create a temporary road would trigger a taxable disposal and if further material was subsequently used to maintain or repair that road, that material would be the subject of a taxable disposal on the date on which it was used.
24. Section 8(3)(e) refers to using material to cover a landfill disposal area during a temporary cessation in landfill disposals. This is often commonly known as daily cover and is used to prevent litter and pests.
25. The Welsh Ministers may, by regulation, add, modify or remove a specified landfill site activity. While the list at section 8 (3) is confined to authorised sites, specified activities could be provided for in relation to unauthorised sites. This provides additional flexibility to address any attempts to avoid paying tax by those liable for unauthorised disposals of waste.

*These notes refer to the Landfill Disposals Tax (Wales) Bill which was amended following Stage 2 proceedings in the National Assembly for Wales on 11 May 2017.*

### **Chapter 3 - Exempt Disposals**

#### **Sections 9 to 12 - Exemptions: general; multiple disposals; pet cemeteries and; power to modify exemptions**

26. These sections make provision for the application of exemptions and, where they apply, it means that there is no taxable disposal, and therefore no need for the landfill site operator to account for the disposal of material.
27. Section 10 provides an exemption for a disposal of material where the material has already been chargeable to LDT and where the subsequent disposal is made at the same authorised landfill site. The effect of this provision is to ensure that multiple taxable disposals of the same material at the same authorised site will only be chargeable to LDT once.
28. It is anticipated that this exemption could arise in relation to specified landfill site activities where material that has been used in one specified landfill site activity could be removed and used in another specified landfill site activity and/or disposed of in the landfill disposal area, such as a void at the same site. In this situation the material would only be taxed once.
29. Section 11 provides an exemption for a disposal of material consisting entirely of the remains of dead pets and any container or material in which they are contained, provided that the disposal takes place on a landfill site where no other types of disposal take place (generally known as pet cemeteries). This exemption is designed to ensure that pet cemeteries, accepting only disposals of dead pet carcasses or ashes (and any box or urn in which they are contained) will not be liable to pay LDT.
30. The exemptions set out at sections 10 and 11 apply only to authorised landfill sites. However, the Welsh Ministers may use the regulation making power under section 12 to add, modify or remove exemptions and in so doing, may apply specific conditions to the exemptions.

### **Part 3 - Taxable Disposals Made at Authorised Landfill Sites**

#### **Chapter 1 - Persons Chargeable to Tax**

31. Section 13 explains that for disposals made at authorised landfill sites, the person liable for paying the tax is the landfill site operator at the time the relevant disposal takes place.
32. If there are two or more persons liable, then WRA will be able to take steps to recover any outstanding LDT from all or any of them. As an example, if a landfill site is operated by persons carrying on business in partnership, then all partners at the time of the relevant disposal are jointly and severally liable to pay LDT (i.e. if any of the partners do not have enough money or assets to cover an equal share then the other partners must make up the difference).

#### **Chapter 2 - Tax Chargeable on Taxable Disposals**

##### *Calculation of tax chargeable*

*These notes refer to the Landfill Disposals Tax (Wales) Bill which was amended following Stage 2 proceedings in the National Assembly for Wales on 11 May 2017.*

### **Section 14 – Calculation of tax chargeable on taxable disposal**

33. This section sets out how the amount of tax will be calculated for a taxable disposal at an authorised landfill site; that there will be a standard rate of LDT and a lower rate of LDT for qualifying materials (as defined in section 15) and qualifying mixtures of materials (as defined in section 16); and that the tax rates will be prescribed in regulations.
34. It is the responsibility of the landfill site operator to ensure the correct tax rate is applied and the right amount of tax is paid to WRA for each disposal at their site.

### *Qualifying materials and qualifying mixtures of materials*

### **Section 15 – Qualifying material**

35. This section sets out the circumstances in which material will qualify for the lower rate of tax. Firstly, the material needs to be listed in a Table 1 in Schedule 1. Secondly, each applicable condition (if any) that are set out in Schedule 1 need to be met. Thirdly, landfill site operators must hold a written description of the material, often referred to as a waste transfer note, if such a document is required by the Environmental Protection Act 1990 or, if it is not, other evidence which establishes that the material is in fact a qualifying material. Welsh Ministers may, by regulations, amend Schedule 1.

### **Section 16 – Qualifying mixtures of materials**

36. This section sets out the tests that a mixture of materials must meet in order to qualify for the lower rate of LDT. Requirements 1-6 apply to all qualifying mixtures and requirement 7 provides for the possibility of there being additional requirements to be met when the mixture is made up of fines.
37. It should be noted that requirement 1 provides that the load must be of one or more qualifying materials and only a small amount of non-qualifying material which is incidental to the qualifying material. A definition of small and incidental is provided in section 16(2).
38. Requirement 3 states that the non-qualifying material must not have been mixed with the qualifying materials deliberately for the purposes of disposal or matters preparatory for disposal, for example for transportation. This test will for example distinguish between a case where there are fragments of non-qualifying material attached to qualifying material because the complete removal of it was not possible and a case where a non-qualifying material has been separately and deliberately added to the load. The latter would not satisfy requirement 3.
39. Requirement 4 allows for the Welsh Ministers to prescribe in regulations any materials which must not be included in a qualifying mixture of materials. This will mean that where a mixture of materials contains any of these specified materials, regardless of whether it is small and is incidental, then the standard rate of tax would apply to the whole load.

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40. Requirement 6 states that no arrangements (this includes any actions or operations) should be made in respect of the mixture that has, as their main purpose, or as one of their main purposes, the avoidance of tax liability. For example, this is intended to address behaviour where a mixture is arranged or blended in a way that allows its composition to be disguised, such as deliberately crushing up or hiding standard rate material within a load of qualifying material so as to reduce the likelihood of it appearing to have more than a small and incidental amount of such material present in the load.

### **Section 17 - Qualifying mixtures of materials: fines**

41. This section empowers the Welsh Ministers to make regulations in respect of fines (as defined at section 17(3)). The regulations may require landfill site operators to carry out specified steps in relation to assessing the nature of fines in order to determine whether the mixture of material is a qualifying mixture or a non-qualifying mixture. The regulations may also require the landfill site operator to carry out a prescribed test on the fines to determine whether the mixture is a qualifying mixture or a non-qualifying mixture. These requirements are in addition to the requirements set out for qualifying mixtures of loads in section 16.

### *Taxable weight of material*

### **Sections 18 to 20 - Calculation of taxable weight of material**

42. LDT is charged on a taxable disposal by multiplying the taxable weight of the material by the tax rate applicable, as set out at section 14(1). Therefore an accurate calculation of the taxable weight of the material being disposed of is important.
43. Section 18 provides that the taxable weight of material in a taxable disposal must be calculated by the landfill site operator and may be calculated by WRA where it thinks it appropriate to do so.
44. Section 19 sets out how an operator must calculate the taxable weight of the material in a taxable disposal. The landfill site operator must determine the weight of the material in tonnes in accordance with section 20. Where a landfill site operator has approval to apply a discount in respect of water present in material, the landfill site operator may apply the discount (or a lesser discount) to the weight determined, subject to the conditions of the approval (if any).
45. Section 20 requires the landfill site operator to determine the weight of the material in a taxable disposal by using a weighbridge. For this purpose, the landfill site operator must ensure that the material is weighed on the weighbridge before the disposal is made, and that the weighbridge meets the requirements set out in applicable weights and measures legislation.
46. There may however be circumstances where it is not possible for a landfill site operator to use a weighbridge. For example, a landfill site may not have a weighbridge or a weighbridge may have broken down. Section 20(3) therefore makes provision for a landfill site operator to make an application to WRA for approval to use an alternative method to determine the weight of material in a taxable disposal.

*These notes refer to the Landfill Disposals Tax (Wales) Bill which was amended following Stage 2 proceedings in the National Assembly for Wales on 11 May 2017.*

For example, an alternative method may include a calculation based on the maximum permitted weight of a container.

47. Section 20 also makes provision for WRA to specify the manner in which an application for an alternative method is to be made and the information it must contain. This section makes further provision about the powers of WRA in relation to an approval for an alternative method. For example, WRA may give approval in relation to all taxable disposals or to particular descriptions of taxable disposals. WRA may give approval unconditionally or subject to conditions. Further, WRA may vary or revoke an agreement; this may occur if WRA consider the alternative method is not giving an accurate indication of the weight or is not being fully observed and there is a risk to the tax revenue.

### **Section 21 – Discount in respect of water content of material**

48. Section 21(1) and (2) provide that a landfill site operator may apply in writing to WRA for approval to apply a discount in respect of water present in material when calculating the taxable weight of the material. Section 21(4) sets out the conditions that must be met in order for WRA to give approval for a water discount.
49. This section makes further provision about the powers of WRA in relation to an approval to discount water. For example, approval may be subject to conditions or may be given for a fixed period.
50. The provisions also require a landfill site operator to keep a water discount record in relation to each taxable disposal to which a discount is applied. The record is to be treated as being a record required to be kept and preserved in accordance with section 38 of TCMA, which sets out the relevant time period for retaining records.
51. The Welsh Ministers may by regulations amend or repeal any provisions relating to water discount.

### **Sections 22 and 23 – Calculation of taxable weight of material by WRA including in cases of non-compliance**

52. Section 22 details how WRA is to calculate the taxable weight of material where it thinks it is appropriate to do so.
53. Section 23 provides that in cases of non-compliance that are set out in this section, WRA may ignore or reduce the water discount when calculating the taxable weight of material.

### **Section 24 – Reviews and appeals relating to method for determining weight of material**

54. Section 24 amends section 172(2) of TCMA so that the review and appeals procedures in Part 8 of that Act apply to decisions under section 20 of this Act.

## **Chapter 3 – Relief from Tax**

### **Section 25 – Reliefs: general**

*These notes refer to the Landfill Disposals Tax (Wales) Bill which was amended following Stage 2 proceedings in the National Assembly for Wales on 11 May 2017.*

55. This section introduces the chapter on reliefs and establishes the following principles: reliefs apply only in relation to disposals at authorised landfill sites (so do not apply in relation to unauthorised disposals); where a relief applies, tax is not chargeable; and a relief will only apply if it is claimed in a tax return. WRA will specify the form of the return and the information that must be contained in it (under section 191 TCMA), the landfill site operator will be required to keep and preserve any records relevant to this claim, in accordance with section 38 TCMA (6 years from making the return or the completion of an enquiry).

#### **Section 26 – Material removed from bed of river, sea or other water**

56. This relief applies to the disposal of:
- a. material removed from the bed of certain waterways; and
  - b. naturally occurring material removed from the sea bed as part of the process of obtaining materials such as sand and gravel.
57. The relief could apply to material removed for any purpose, including in the interests of navigation or for flood prevention.
58. The relief also covers such qualifying material added to the dredged material as is necessary for the purposes of securing that it is not in liquid form (and so to allow its disposal to landfill). It is anticipated that the qualifying material which is added would have dehydrating properties or bind the excess moisture content within the waste.

#### **Section 27 – Material resulting from mining and quarrying**

59. This relief relates to the disposal of naturally occurring material extracted from the earth as a result of mining or quarrying operations. The disposal of such material is relieved if the material has not been subject to any separate process, or has not been chemically altered, between its extraction and disposal.

#### **Sections 28 to 30 – Site Restoration**

60. Site restoration is a specified landfill site activity to be treated as a taxable disposal (see section 8(3)(i)). These provisions provide for the relief of the disposal of material for the purposes of restoring a landfill site (or part of it) to another use. These sections require landfill site operators to seek approval for relief from tax for site restoration in advance of claiming the relief on the tax return. The use of material for site restoration without WRA approval will not benefit from the relief. It is anticipated that these provisions will enable WRA to fully assess material used for site restoration and to ensure that the relief is not open to abuse.
61. Section 28 provides that WRA may approve a relief from tax for the use of material for site restoration; however, before doing so, WRA will need to be satisfied that the site restoration is required by an environmental permit or planning permission relating to the site. Only the necessary amount of material required to comply with the permit or permission will benefit from the relief.
62. Whilst the landfill site operator must apply to WRA for the relief before the restoration work begins, they need not wait for WRA's approval before beginning

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site restoration. That might be the case where the landfill site operator wishes to take advantage of good weather conditions or the availability of suitable material. However, this is at the landfill site operator's own risk as there is no guarantee that WRA will approve a relief for the site restoration.

63. Section 29 provides for occasions when WRA require further information in order to make a decision on whether to approve a relief for the site restoration and sets out the parameters of how this will work in practice. The WRA and landfill site operator may agree to extend a period of time specified by this section.
64. Section 30 recognises that the requirements of the site restoration in the environmental permit or planning permission may change and allows WRA to vary the approval for relief. A variation can arise following an application by a landfill site operator or can be initiated by WRA. If WRA varies the approval for relief on its own initiative then it must issue a notice setting out the details of that variation to the landfill site operator. Any variation to the approval for relief does not affect the restoration work that was carried out in accordance with the approval before it was varied.
65. A decision whether to approve restoration work will be an appealable decision by virtue of section 172(2) TCMA.

### **Section 31 - Refilling open-cast mines and quarries**

66. This section provides relief for a disposal of qualifying material at a landfill site (or part of it) when:
  - a. The landfill site (or part of it) was formerly an open cast mine or quarry;
  - b. it is a requirement of the planning permission that the site must be wholly or partially refilled following the open-cast mining or quarrying operations; and
  - c. no other taxable disposals have been made at the site (or part of it), other than disposals qualifying for a relief under section 27 or 31.

### **Section 32 - Power to modify reliefs**

67. This section allows the Welsh Ministers, by regulations, to amend primary legislation so as to create, modify or remove a relief; and provide for a relief to be subject to conditions.

## **Chapter 4 - Tax Collection and Management**

### ***Registration***

#### **Sections 33 to 36 - Registration**

68. To enable WRA to effectively collect and manage LDT, it is important that it is aware of who the taxpayers are. Section 33 places a duty on WRA to keep a register of those persons who operate authorised landfill sites at which taxable disposals are made. Such persons are considered to be carrying out "taxable operations" for the purposes of this Act. A person's entry in the register must contain the information specified in Schedule 1. WRA may wish to publish any information that is contained in the

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register so that among other things, businesses can ensure they are sending their waste to authorised landfill sites.

69. Section 34 requires a person who carries out taxable operations to be registered with WRA. A person who intends to carry out taxable operations must apply to WRA to be registered and the application must be made at least 14 days before taxable operations begin.
70. It is important for the register to remain accurate and reflect the most up-to-date information available regarding landfill site operators. Therefore, section 35 requires a registered person or a person who has applied for registration, to give notice to WRA of any changes or inaccuracies in the information they have provided and to do so in a way that complies with the requirements of that section.
71. Section 36 requires a registered person who ceases to carry out taxable operations to apply to WRA for the cancellation of their registration no later than 30 days after taxable operations end.
72. There are penalties associated with the registration requirements in sections 34 and 35. These are at sections 63 to 66 of the Bill.
73. Section 37 amends section 172(2) of TCMA so that the review and appeals procedures in Part 8 of that Act apply to decisions relating to the registration of a person with WRA for the purposes of LDT.

### *Accounting for tax*

#### **Sections 38 to 40 - Accounting for Tax**

74. This section of the Bill and these notes should be read in conjunction with Part 3, Chapter 3 of TCMA and the relevant explanatory notes (paragraphs 46 and 47), which accompany TCMA.
75. Section 38 places a duty on the operator of an authorised landfill site at which taxable disposals are made to make a tax return in respect of each accounting period. The return must contain an assessment of the amount of tax chargeable on the operator and make a declaration that, to the best of their knowledge, the information they have provided is correct and complete.
76. Tax returns must be submitted along with any payment of tax no later than the last working day of the month following that in which the accounting period ends (the "filing date"). For example, if an accounting period ends on the 30 June, a tax return must be submitted and payment of tax made by the last working day in July.
77. For registered landfill site operators, the first accounting period begins on the day they begin to carry out taxable operations and ends on the day notified to them by WRA. From then on, their accounting period will be each subsequent period of 3 months.
78. For landfill site operators that have not registered, the first accounting period begins on the day they begin to carry out taxable operations until the end of the calendar

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quarter in which the person begins to carry out taxable operations. For example, if taxable operations begin on the 3 April, the first accounting period will end on the 30 June. From then on, each accounting period will be every calendar quarter (i.e. a period of 3 months ending with 31 March, 30 June, 30 September or 31 December).

79. Section 39 provides WRA with the power to amend the duration of an accounting period and the filing date for a tax return. Any such amendment is to be made by issuing a notice to a landfill site operator.
80. Section 40 provides that the tax chargeable on a taxable disposal made at an authorised landfill site is chargeable in respect of the accounting period in which the disposal is made. The exception to this is if a landfill site operator issues a landfill invoice in respect of a disposal within 14 days beginning with the day the disposal is made, the tax then becomes chargeable in respect of the accounting period in which the invoice is issued. If a landfill site operator is using calendar quarters as their accounting period, an example of this would be if a taxable disposal is made on the 28 June and the landfill invoice is issued on the 1 July the accounting period for that taxable disposal will be the calendar quarter ending 30 September instead of 30 June. This section defines a landfill invoice and outlines in Schedule 2 the information that needs to be contained in the landfill invoice. It also gives the Welsh Ministers the power to make regulations and further amendments to this schedule.

#### *Payment, recovery and repayment of tax*

##### **Section 41 - Payment of tax**

81. Subsection (1) states that the amount of tax assessed as being chargeable needs to be paid by the filing date for the tax return. Subsection (2) sets out the position where a tax return is amended under section 41 of TCMA and results in an additional amount of tax needing to be paid. It states that the tax must be paid no later than that filing date, if the amendment is made before the filing date, or, if the amendment is made later, that the tax must be paid at the same time as the amendment is made.

##### **Section 42 - Duty to maintain landfill disposals tax summary**

82. Section 42 requires a person who carries out taxable operations to keep a LDT summary in respect of each accounting period. This record must record the amount of tax chargeable on the person and the tax paid by that person in respect of each accounting period. WRA has the power to specify the form in which the LDT summary must be kept and the information that must be contained in it. This record is to be treated as a record required to be kept and preserved under section 38 of TCMA, which requires records to be kept for six years from the making of a return or notice of amendment, unless WRA specify a shorter period.

##### **Section 43 - Postponement of recovery**

83. Paragraph 60 of Schedule 22 of the Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Bill ("LTTA Bill") inserts sections 181A-181I into TCMA. These provisions allow for circumstances in which a person may apply to postpone the recovery of devolved tax pending a review or appeal of a WRA decision, the process for making such an application and the effect of a postponement request

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being granted. The LTTA Bill provisions will apply to LDT and so should be read along with their explanatory notes (paragraphs 383 to 392) in conjunction with this section of the Bill.

84. Section 43 amends section 181B of TCMA for the purposes of LDT. The effect of the amendments are that when considering an LDT postponement request pending a review or first appeal, in addition to considering whether a person has reasonable grounds for stating that the amount of tax is excessive (as would be the case for other devolved taxes), WRA will also need to consider whether recovery of the amount would cause financial hardship in order to decide whether or not to grant a postponement request. A person's request for postponement must therefore address the reasons why that person thinks that recovery would cause financial hardship, in addition to setting out the amount that they are seeking to postpone and why they think the amount of tax that WRA is seeking to recover is excessive, as would be the case for other devolved taxes.
85. A postponement request may be granted in full when the tests at section 181B(4) TCMA as amended by 43(3) are met or a postponement request may be granted in relation to part of a disputed amount, in accordance with 181B(5) as amended by section 43(4)(b).
86. These sections also make a number of minor and consequential amendments to TCMA for the purposes of LDT.

## **Part 4 - Taxable Disposals Made at Places Other than Authorised Landfill Sites**

### **Chapter 1 - Tax Chargeable on Taxable Disposals**

#### **Section 45 - Calculation of tax chargeable on taxable disposal**

87. This section provides that the amount of tax chargeable on a disposal made at a place other than an authorised landfill site (see section 3 for the definition of a taxable disposal) will be calculated by multiplying the taxable weight of the material by the unauthorised disposals rate. The taxable weight is to be determined by WRA using any method it considers appropriate. The unauthorised disposals rate is to be prescribed by the Welsh Ministers in regulations. The tax only becomes payable following the issue of a charging notice under Chapter 2 of this Part.

### **Chapter 2 - Procedure for Charging Tax**

#### **Section 46 - The charging condition**

88. Subsection (1) sets out when a person will meet the charging condition, which is relevant to the issuing of a preliminary and charging notice. A person meets the charging condition where they made the disposal or knowingly caused or knowingly permitted the taxable disposal to be made.
89. Subsection (2) builds on subsection (1)(b) and provides that unless a person can satisfy WRA or (on appeal) the tribunal otherwise, they will be treated as having knowingly caused or permitted the disposal to have been made if, at the time of the disposal that person:

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- a. Controlled, or was in a position to control, a motor vehicle or trailer from which the disposal was made; or
  - b. Was the owner, lessee or occupier of the land where the disposal was made
90. In considering whether a person has overturned the presumption that they meet the charging condition, it is anticipated that WRA or the tribunal may take account of whether the person:
- took reasonable efforts to prevent the waste from being dumped on their land (e.g. sturdy fencing);
  - took reasonable efforts to have the waste removed (e.g. contacted a registered waste carrier regarding removal);
  - actively assisted in any (potential) environmental action against the offenders (e.g. contacted the police, local authority, NRW about the waste – and/or helped them in their investigations);
  - had no knowledge of the waste, and couldn't reasonably have had knowledge (e.g. given where the waste was deposited, size of estate etc.);
  - was ill or otherwise incapacitated.
91. Paragraph (3) confers a power on the Welsh Ministers, by regulations, to make further or different provision about the circumstances in which a person is (or is not) to be treated as meeting the charging condition, and matters that are to be taken into account in determining whether a person does (or does not) meet that condition.

#### **Section 47 – Power to issue preliminary notice**

92. WRA may issue a preliminary notice to a person where it appears that a taxable disposal has been made outside an authorised landfill site and the person meets the charging condition in respect of that disposal (i.e. that the person knowingly caused or permitted the disposal to be made). The preliminary notice may relate to more than one taxable disposal. It must include the information listed in (2) and inform the person of the matters listed in (3). A preliminary notice may not be issued more than 4 years after WRA becomes aware of the taxable disposal and, in any case, not more than 20 years after WRA thinks that the taxable disposal was made.

#### **Sections 48 and 49 – Power to issue charging notice**

93. After a period of at least 45 days has passed from issuing a preliminary notice, and after considering any written representations made by the recipient of the preliminary notice, WRA must issue either:
- a. a charging notice to the person; or
  - b. a notice to the person stating that it does not intend to issue a charging notice.
94. WRA may only issue a charging notice where it is satisfied that a taxable disposal has been made outside an authorised landfill site and that that the person meets the charging condition in relation to it. A charging notice must include the matters listed in 48(5).

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95. WRA may issue a charging notice without having issued a preliminary notice where, in addition to being satisfied about the matters referred to above, it thinks that there is likely to be a loss of tax if WRA issues a preliminary notice (because, for example, the person may enter into administration). In these circumstances, the notice must also include WRA's reasons for issuing a charging notice without having issued a preliminary notice.

#### **Section 50 - Payment of tax**

96. This section imposes an obligation on the recipient of a charging notice to pay the tax charged by that notice, within a period of 30 days. Where charging notices are issued to more than one person in respect of the same taxable disposal, all of those persons are jointly and severally liable (i.e. WRA will be able to recover tax from all or any of them).

#### **Section 51 - Power to make further provision**

97. Regulations may make further or different provision (including by amending an enactment) about the procedures for issuing preliminary notices and charging notices; the payment of an amount of tax charged by a charging notice and; any other matters relating to or arising from the charging or payment of an amount of tax under this chapter.

#### **Section 52 - Late payment interest**

98. This section updates section 157 TCMA to allow late payment interest to be applied to an amount of LDT charged by a charging notice which is not paid.

### **Part 5 - Supplementary Provision**

#### **Chapter 1 - Tax Credits**

#### **Section 53 - Power to make provision for tax credits**

99. Section 53 gives the Welsh Ministers the power to make regulations setting out circumstances in which a person will be entitled to a tax credit in relation to LDT, subject to any specified conditions and procedures being met and followed.
100. It is envisaged that this power will be used, for example, to establish an entitlement to credit in situations where a landfill site operator:
- has properly invoiced a customer in relation to a taxable disposal that has been made;
  - has meanwhile accounted for and paid LDT on that disposal to WRA; and
  - has then discovered that the customer has become insolvent and that the debt cannot be recovered.
101. In the example outlined above, regulations might set out the conditions that the landfill site operator would be required to meet in order to be eligible to apply for a credit, including details of the records or supporting evidence needed. Further, the regulations might explain how the landfill site operator would go about claiming the

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credit: this might be through deducting the amount from the overall tax owed in an existing or future LDT return.

102. Regulations may also set out the circumstances in which WRA may refuse a claim for a tax credit and the way in which a person can challenge a decision taken by WRA about a tax credit. Regulations can set penalties that could apply if a credit were claimed contrary to the requirements set out in the regulations.

## **Chapter 2 - Non-Disposal Areas**

### **Section 54 - Designation of Non-Disposal Area**

103. Non-disposal areas will be created on a landfill site either because a landfill site operator makes an application for a non-disposal area to be created or because WRA requires the creation of such an area.
104. This section allows WRA to designate a part of an authorised landfill site as a non-disposal area by issuing a notice to the operator of the site. This is intended to enable WRA to distinguish between those activities on a landfill site which constitute a taxable disposal and those which are non-taxable uses of waste. This is important to determine correct tax liability.
105. Subsection (3) sets out the information WRA may or must specify in the designation notice to enable the landfill site operator to manage the non-disposal area. Amongst other things, WRA must state what material has to go in an area and it may also state what material must not go in an area; for example WRA could issue a notice stating that standard rate material must not go in a non-disposal area where qualifying material is being stored.
106. Subsection (3)(a) requires a designation notice to specify descriptions of material that must be deposited in a non-disposal area. Section 93(4) of the Bill provides that a description can be framed by reference to any circumstances or matters whatsoever. In the context of designation notice a description of material could, for example, refer to the nature or origin of material or its intended use or disposal.
107. Subsection (5) provides that the notice may include conditions or exceptions and may make different provision for different cases. A condition could for example, require the landfill site operator to act in a way that is acceptable under the terms of its environmental permit. This provision provides flexibility to enable WRA to adapt a non-disposal area designation on a case by case basis, recognising that every landfill site is different.
108. Subsections (6) and (7) give WRA power to vary or cancel a designation notice and sets out the process for doing so. As with the original designation of a non-disposal area, a variation or cancellation can arise as a result of an application from the landfill site operator or can be instigated by WRA.
109. Applications to make, vary or cancel a non-disposal area designation notice must be made in writing and WRA may specify the form, content and manner of delivery of such a notice (under section 191 TCMA). Subsection (9) explains that if WRA refuses

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an application to make, vary or cancel a non-disposal area designation, it must issue a notice informing the landfill site operator of this decision.

110. Regulations may amend this section to make further or different provision about the contents of a notice issued under this section.

### **Section 55 - Duties of operator in relation to non-disposal area**

111. Subsection (1) puts a duty on landfill site operators to comply with the terms of a non-disposal area designation notice. Subsections (2)-(4) set out the circumstances in which this duty will not apply. This includes cases where material is disposed of elsewhere on the site, as set out at subsection (2) and where material brought onto the site is being immediately disposed of or removed from the landfill site (for example, because it is a split load), as set out at subsection (3). Subsection (4) provides WRA with the flexibility to agree to material being treated in a way that is outside of the terms of the designation in particular cases. This could for example, include a situation where a burning load arrives at the landfill site and needs to be immediately treated.
112. Subsection (5) explains that an agreement by WRA under subsection (4) may be unconditional or subject to conditions. Subsection (5)(b) specifically contemplates that such an agreement may relate to the issue of storage of large amounts of similar material (often referred to as bulk waste), as it means that WRA could agree to treat removals from the area as movements of earlier stored waste.

### **Section 56 - Duty to keep and preserve records**

113. Subsections (1) and (2) require the landfill site operator to keep appropriate records of material in a non-disposal area to evidence that the non-disposal area is being operated in accordance with the designation notice made under 54(3). WRA can specify the form and contents of such records.
114. Records must be preserved until the end of the period of 6 years beginning with the date on which the material is removed from the non-disposal area, or ceases to be material of a description that must be deposited in the area, whichever is earlier. An agreement under [section 55(4)(a)] may specify a different date from which the period of 6 years begins, which could for example be used in cases involving the storage of bulk waste.

### **Section 57 - Reviews and appeals relating to non-disposal areas**

115. This section inserts a decision relating to the designation of a non-disposal area (including in relation to its variation or cancellation) into the list of decisions that can be reviewed and/or appealed in accordance with the provisions in Part 8 of TCMA.

## **Chapter 3 - Investigation and Information**

### **Section 58 - Powers of inspection**

116. Section 58 makes amendments to Part 4, Chapter 4 (Investigatory Powers of WRA: Inspections of Premises and Other Property) of TCMA for the purposes of LDT. This

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section of the Bill and these notes should be read in conjunction with Part 4, Chapter 4 of TCMA and the explanatory notes (paragraphs 117 to 142), which accompany TCMA.

117. Section 103A of TCMA (inserted by this Bill) provides that WRA can enter and inspect a business premises (including relevant business assets and documents that are on the premises) of a third party to check a landfill site operator's liability to LDT. Business premises are defined in section 111 of TCMA. WRA may only inspect assets and documents which relate to the landfill site operator's liability to LDT. These powers are limited to circumstances where WRA has reason to believe that:
  - a. A person has been involved in any capacity with a taxable disposal (this may include a waste transfer station or a waste carrier); and
  - b. The inspection is required in order to help WRA to check the position of another person's liability to LDT.
118. Failure to permit WRA to inspect under this power can give rise to a penalty under section 146 of TCMA.
119. It is envisaged that this power will be used by WRA where they have reason to believe that a landfill site operator has provided a self-assessment that is not a true reflection of their liability to tax, and inspecting the third party's business premises would assist any connected investigation. We anticipate that most third parties would voluntarily co-operate without WRA needing to invoke this power.
120. Section 103B of TCMA (inserted by this Bill) provides that where WRA is investigating an unauthorised disposal (i.e. is a taxable disposal made other than at an authorised landfill site - see section 3), WRA can enter property, including non-business premises, and carry out an inspection (including of assets and documents that are on the premises) where WRA has reason to believe that:
  - a. A disposal has occurred at the premises; or
  - b. The occupier meets or may meet the charging condition in relation to LDT on the disposal that is being investigated.
121. This power will enable WRA to investigate unauthorised disposals in order to decide whether to issue a preliminary notice or charging notice under Part 4, Chapter 2 of the Bill. Again, failure to permit WRA to inspect under this power can give rise to a penalty under section 146 of TCMA.
122. There are a number of safeguards within Chapter 4 of TCMA which will apply equally to WRA's powers of inspection in relation to LDT, for example section 103(2) of TCMA states that WRA may only exercise its powers with the agreement of the occupier of the premises or the approval of the Tribunal. Schedule 3 of this Bill proposes to amend section 108 of TCMA to ensure that the tribunal may approve the inspection of premises:
  - a. In all cases, only where WRA can satisfy the tribunal that the necessary conditions are met, or circumstances exist, as required by sections 103(1), 103A(2)-(3) or 103B(1), as applicable; and

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- b. In a case where WRA proposes to inspect without giving the taxpayer notice, only where WRA can satisfy the tribunal that an inspection without notice is necessary as giving the taxpayer any warning might prevent the assessment and collection of tax.
123. This section also makes a number of minor and consequential amendments to TCMA for the purposes of LDT.

#### **Section 59 – Disclosure of information to WRA**

124. Section 59 allows information acquired by local authorities in Wales or Natural Resources Wales (NRW) to be disclosed to WRA to help WRA collect and manage LDT, and to investigate liability to tax where necessary.
125. Section 59 does not authorise the disclosure of information to WRA if the disclosure would contravene the Data Protection Act 1998 or is prohibited by relevant sections of the Investigatory Powers Act 2016.
126. It is envisaged that this power of disclosure may be used where, as part of their day-to-day functions, a local authority or NRW identifies any activity, such as an unauthorised disposal, which could give rise to a liability to LDT. This power allows these bodies to pass on information relating to the activity and any associated potential liability to WRA so that it can be used in a tax investigation or tax enforcement action.
127. The Welsh Ministers may by regulations specify other individuals or organisations that are allowed to share information with WRA under this section. These could, for example, include public bodies such as National Parks Authorities.
128. It is not envisaged that local authorities and NRW will routinely share information with WRA about authorised landfill sites and their operators. These operators should already be providing WRA with all of the information it needs through the tax registration system and in their regular tax returns. However, where local authorities or NRW believe that information may be of interest to WRA in relation to the collection or management of the tax it may be possible for this information to be shared with WRA, and this may lead to a tax investigation.
129. The use and disclosure of information held by WRA is dealt with in Part 2 of TCMA, which includes special provision to safeguard the disclosure of protected taxpayer information. These rules allow for sensitive tax payer information held by WRA to be disclosed to other persons or organisations in specified circumstances only. These circumstances include those in which the disclosure is made for the purposes of a criminal investigation or criminal proceedings, or to prevent or detect crime, or to assist in civil proceedings.

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#### **Chapter 4 - Penalties under this Act**

130. The deadlines for assessing the majority of penalties under this Act are 12 months beginning with the day on which WRA first believed the person to have breached or failed to comply with the relevant requirement. In the case of daily default penalties in relation to registration, the penalty must be assessed within the period of 12 months beginning with the day to which the penalty relates.

#### *Penalties relating to calculation of taxable weight*

#### **Sections 60 to 62 - Penalties relating to the calculation of taxable weight of material (as defined in Part 3 Chapter 2, sections 18 to 24)**

131. Section 60 provides that a landfill site operator who fails to determine the weight of the material in a taxable disposal in accordance with section 20 is liable to a penalty not exceeding £500 in respect of each taxable disposal to which the failure relates.
132. Section 61 provides that where a landfill site operator applies a discount without having approval to do so under section 21 or applies a discount which is greater than the discount approved under section 21, the landfill site operator is liable to a penalty not exceeding £500 in respect of each taxable disposal to which a discount is applied in either of those ways.
133. These penalties apply to authorised landfill sites only.

#### *Penalties relating to registration*

#### **Sections 63 to 65 - Penalties relating to registration (as defined in Part 3, Chapter 4, sections 33 to 37) and reasonable excuse for non-compliance**

134. Section 63 provides that a person who carries out taxable operations without being registered is liable to a penalty of £300 (the “registration penalty”). Where a person continues to carry out taxable operations without being registered after the end of 10 days beginning with the day on which notice of the registration penalty is issued, that person will be liable to a further penalty or penalties not exceeding £60 for each day they continue to do so.
135. Section 64 explains that where a person carries out taxable operations without being registered in breach of section 34, that person will not be liable to a penalty under section 63 if they can satisfy WRA or (on appeal) the tribunal that there is a reasonable excuse for the breach.
136. Section 65 also makes provision for a penalty not exceeding £300 in relation to the failure by an operator to comply with any of the registration requirements specified at subsection (1), subject to subsection (2).

#### *Penalties relating to non-disposal areas*

#### **Section 67 - Penalties relating to non-disposal areas (as defined in Part 5 Chapter 2 sections 54 to 57)**

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137. This section provides that should a landfill site operator fail to comply with the terms of a non-disposal area designation as required by section 55 or corresponding record keeping records as required by section 56 then they will be liable to a penalty not exceeding £3000.
138. No penalty will be incurred in respect of a failure to keep or preserve records if the landfill site operator provides other evidence which proves to the satisfaction of WRA any facts that it reasonably requires to be proved.
139. Separate provision is made at section 8(2)(g) for when material is kept in a non-disposal area for longer than permitted. In such a case, a taxable disposal will be deemed to have occurred without the need for any further consideration of the circumstances by WRA.

#### **Section 68 - Assessment of penalties**

140. This section makes it clear that an assessment of a penalty under section 67 may be combined with an assessment to tax. For example, if the landfill site operator fails to rectify the non-compliance, particularly when it relates to the placement of the material, then WRA may determine that a taxable disposal has taken place and issue an assessment to tax under TCMA.

#### *General*

#### **Sections 71 - Liability of personal representatives**

141. Section 71 establishes that in the event a landfill site operator has died, any penalty that could have been assessed on the operator may be assessed on the personal representatives of the operator.

#### **Section 72 - Power to make regulations about penalties**

142. Section 72 provides the Welsh Ministers with a regulation making power to make provision about the procedure for assessing penalties and the amounts of penalties under this Chapter of Part 5 of the Bill.

#### **Chapter 5 - Additional penalties under the Tax Collection and Management (Wales) Act 2016**

#### **Sections 73 to 75 - penalties for multiple failures to make tax returns; failure to pay tax on time and; multiple failures to pay tax on time**

143. These sections of the Bill and these notes should be read in conjunction with Part 5 of TCMA and the explanatory notes (paragraphs 147 to 151), which accompany TCMA.
144. Section 73 amends TCMA and provides for additional higher penalty amounts if a person who has failed to make an LDT return then fails to make other LDT returns on time within a specified penalty period. A penalty period is one which begins with the day after the filing date for the tax return, and unless extended under subsection (2)(b), ends 12 months later.

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145. Section 74 amends section 122 of TCMA (as amended by Schedule 22 of LTTA) to provide that the penalty amount in respect of a failure to pay LDT on time is 1% of the amount of unpaid tax.
146. Section 75 amends TCMA and provides for additional higher penalty amounts if a person who has failed to pay LDT then fails to pay further amounts of LDT on time within a specified penalty period. A penalty period is one which begins with the day after the penalty date and unless extended under section (2)(b), ends 12 months later.

## **Chapter 6 – Special Cases**

### *Corporate groups*

#### **Sections 76 and 77 Designation of group of companies and conditions for designation as member of group**

147. Section 76 allows WRA to designate two or more bodies corporate as a group for the purposes of the tax. The effect of a group designation is that the representative member of the group is treated for the purposes of the tax as the landfill site operator of the sites that are operated by the members of the group. Accordingly, an amount of tax, penalty or interest that a member of the group would otherwise be required to pay as a result of anything done or omitted to be done while it is a member of the group must instead be paid by the representative member. This section makes further provision in relation to the joint and several liability of group members.
148. To be designated as a group an application needs to be made to WRA. WRA must be satisfied that the application is made with the agreement of every proposed group member. A group designation may only be made where all members of the group carry out taxable operations or intend to do so. All members of the group must be under the control of the same body corporate, individual or individuals. If WRA refuses a group application, it must issue notice of the refusal.

#### **Section 78 – Variation or cancellation of designation**

149. Where a group designation has been made, WRA may vary the designation by adding or removing a member of the group or by changing the representative member. WRA also has the power to cancel a group designation. WRA can vary or cancel a group designation on its own initiative or following an application by the representative member. An application to vary a group designation may also be made by any member of the group where that application relates to that member wishing to be removed from the group designation.
150. However, WRA must vary or cancel the group designation if it is satisfied that the conditions for designation are no longer met.
151. A variation or cancellation by WRA is made by issuing a notice to each member of the group, including those that are being added or removed from the group. If WRA refuses to vary or cancel the group designation it must issue notice of the refusal.

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## **Section 79 – Reviews and appeals relating to designation of groups of companies**

152. Section 79 amends section 172(2) of TCMA so that the review and appeals procedures in that Act apply to decisions relating to the designation of a group for the purposes of LDT.

## *Partnerships and unincorporated bodies*

### **Sections 81 to 83 - Registration, duties and liabilities of partnerships and unincorporated bodies and power to make further provision**

153. Section 81 provides that where two or more persons carry on a landfill business in partnership or as an unincorporated body, WRA may register the persons in their own names or in the name of the partnership or body. If the registration is completed in the name of the partnership or body and its membership changes, in order for the registration to remain valid at least one of the members must have been a member of the partnership or body before the change.
154. In accordance with section 35 of the Bill, WRA must be informed of any changes to the membership of a partnership or unincorporated body and the effect of section 81(4) is that a person is treated as continuing to be a member of a partnership or body until WRA is notified otherwise.
155. Section 82 provides that where anything is required or permitted to be done by or in relation to persons in a partnership or unincorporated body under this Act or TCMA, it must be done by or in relation to every person who is a partner in the partnership or managing member of the body at the time when it is done or required to be done. However, anything required or permitted to be done by every partner or managing member may instead be done by any one of them.
156. A liability to pay an amount of tax, penalty or interest as a result of anything done or omitted to be done by persons carrying on business in a partnership or unincorporated body is a joint and several liability of every person who is a partner in the partnership or a member of the body at the time when the thing is done or omitted.
157. Section 83 provides the Welsh Ministers with the power to make regulations which may add to, repeal or amend provisions about cases where persons carry on business in partnership or as an unincorporated body.

## *Change in persons carrying on landfill business*

### **Sections 84 and 85 – Death, incapacity and insolvency**

158. Sections 84 and 85 apply where a landfill site operator dies, becomes incapacitated or becomes subject to an insolvency procedure and another person carries on the landfill business of that operator. The provisions in section 84 require the person carrying on the landfill business to notify WRA before the end of 30 days beginning with the day on which the person began to carry on the landfill business). WRA may, once notice is received or on their own initiative, treat the person carrying on the

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landfill business as if they are the landfill site operator for the purposes of the tax. This section makes further provision in relation to when such treatment must cease.

159. Section 85 provides the Welsh Ministers with the power to make regulations which may add to, repeal or amend provisions where a person who has carried on a landfill business dies, becomes incapacitated or becomes subject to an insolvency procedure.

#### **Section 86 - Power to make provisions about transfers of businesses as going concerns**

160. Section 86 provides the Welsh Ministers with the power to make provision in regulations on the application of the LDT Bill and TCMA where a landfill business is transferred from one person to another as a going concern.

### **Chapter 7 - Miscellaneous**

#### **Section 87 - Adjustment of contracts**

161. Section 87 provides that where a contract is in place for the disposal of waste by way of an authorised landfill site and the tax chargeable on that disposal changes as a result of an enactment relating to LDT, then the payment under the contract for that disposal is to be adjusted, unless the contract provides otherwise.

#### **Section 88 - Power to impose secondary liability on controllers of authorised landfill sites**

162. This section allows for the Welsh Ministers to make regulations in respect of a controller of an authorised landfill site to be liable for tax including, for example in relation to penalties in respect of failure to comply with the regulations and for reviews and appeals. A controller is a person who is in control of decisions as to what can be disposed of on the site but is not making those decisions only as an employee or agent.

#### **Section 89 - Minor and Consequential Amendments to the Tax Collection and Management (Wales) Act 2016**

163. This section introduces Schedule 4 which sets out the amendments that this Bill makes to TCMA.

#### **Section 90 - Landfill Disposals Tax Communities Scheme**

164. Section 90 places a duty on the Welsh Ministers to prepare and publish a Landfill Disposals Tax Communities Scheme, which will provide grant funding for the benefit of communities affected by landfill disposals or activities preparatory to landfill, such as activities at waste transfer stations. The Scheme may provide for grants to be allocated by reference to specified criteria and conditions set out in the Scheme or by the Welsh Ministers. The criteria may include reference, to amongst other things, biodiversity, waste minimisation and other social or environmental community enhancements. Details of how the Scheme will operate will be published separately at or before the time LDT becomes operational in April 2018.
165. Section 90 (4) requires Welsh Ministers to review the Scheme at least once in the period of four years after it is first published and for there to be further reviews at

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intervals of no more than four years after the first review. It also ensures that the Welsh Ministers must consult with appropriate persons when reviewing the Scheme.

166. Section 90 (5) allows the Welsh Ministers to revise or revoke the Scheme, but only following a review and the scheme cannot be revoked within the first four years. Section 90 (6) states that the Welsh Ministers must publish a revised Scheme.
167. Section 90(7) specifies that the Welsh Ministers must lay the Scheme and any later revised versions of it, before the National Assembly for Wales.

## **Part 6 – Final Provisions**

### **Section 91 Power to make consequential and transitional etc. provision**

168. Section 91 provides that the Welsh Ministers may by regulations, make such incidental, consequential, supplemental, transitional, transitory or saving provision as they think appropriate for the purpose of, or in connection with, or for giving full effect to, any provision made by or under this Bill.
169. Regulations made under section 91 are subject to the negative procedure provided Welsh Ministers are satisfied that the regulations do not make provision that may create or increase a charge to tax. If regulations could lead to tax becoming chargeable that would not otherwise have been or could increase the amount of tax chargeable, the regulations will be made subject to the affirmative procedure. This is set out at section 92.
170. Given that regulations can only be made by the negative procedure under section 91 if Welsh Ministers are satisfied that they do not have the potential to affect a person's liability to tax, this procedure will only be appropriate in limited circumstances, such as a technical provision required as a result of a change to the information required on a landfill invoice. Conversely, regulations will be made by the affirmative procedure under section 91 if any aspect of them has the potential to create or increase a person's tax liability, such as a provision that could affect a person's entitlement to one of the reliefs or exemptions.

### **Sections 92 to 96 – Regulations under this Act: general; Regulations changing tax rates; Interpretation; Coming into force and; Short title**

171. Sections 92 and 93 set out the subordinate legislation procedure that is to be used in relation to the various secondary legislation making powers conferred throughout the Bill. Section 94 provides for the meaning of terms used in the Bill. The position in relation to the commencement of the Bill's provisions is provided for at section 95 and section 96 establishes the Bill's short title as the 'Landfill Disposals Tax (Wales) Act 2017'.

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## **RECORD OF PROCEEDINGS IN NATIONAL ASSEMBLY FOR WALES**

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

<b>Stage</b>	<b>Date</b>
Introduced	28 November 2016
Stage 1      Debate	21 March 2017
Stage 2      Scrutiny Committee - consideration of amendments	11 May 2017
Stage 3      Plenary - consideration of amendments	20 June 2017
Stage 4      Approved by the Assembly	
Royal Assent	

## Annex 2: Index of Standing Order Requirements

Table 6

Standing order		Section	Pages/ paragraphs
26.6(i)	Statement that the provisions of the Bill would be within the legislative competence of the Assembly	Member's declaration	Pg 2
26.6(ii)	Set out the policy objectives of the Bill	Chapter 3 - Purpose and intended effect of the legislation	The policy objectives are set out at Pg 10-44 para 3.1-3.175
26.6(iii)	Set out whether alternative ways of achieving the policy objectives were considered and, if so, why the approach taken in the Bill was adopted	Part 2 – impact assessment	Alternative options are set out at Pg 76-80 para 7.1-7.38
26.6(iv)	Set out the consultation, if any, which was undertaken on: <ul style="list-style-type: none"> <li>(a) the policy objectives of the Bill and the ways of meeting them;</li> <li>(b) the detail of the Bill, and</li> <li>(c) a draft Bill, either in full or in part (and if in part, which parts)</li> </ul>	Chapter 4 – Consultation	A summary of the LDT consultation is set out at Pg 44-48 para 4.1-4.21

<b>Standing order</b>		<b>Section</b>	<b>Pages/ paragraphs</b>
26.6(v)	Set out a summary of the outcome of that consultation, including how and why any draft Bill has been amended	Chapter 4 – Consultation	A summary of the outcome of the LDT consultation is set out at Pg 44-47 para 4.3-4.11
26.6(vi)	If the Bill, or part of the Bill, was not previously published as a draft, state the reasons for that decision	Chapter 4 – Consultation	Pg 48 para 4.20 sets out why a draft Bill was not been published.
26.6(vii)	Summarise objectively what each of the provisions of the Bill is intended to do (to the extent that it requires explanation or comment) and give other information necessary to explain the effect of the Bill	Annex 1 – Explanatory Notes	A summary of provision of the Bill is set out in the Explanatory Notes Pg 118-145

Standing order		Section	Pages/ paragraphs
26.6(viii)	<p>Set out the best estimates of:</p> <ul style="list-style-type: none"> <li>(a) the gross administrative, compliance and other costs to which the provisions of the Bill would give rise;</li> <li>(b) the administrative savings arising from the Bill;</li> <li>(c) net administrative costs of the Bill's provisions;</li> <li>(d) the timescales over which such costs and savings would be expected to arise; and</li> <li>(e) on whom the costs would fall</li> </ul>	Part 2 – Impact Assessment	A summary table of costs is included at Pg 72-74 and the details of how these costs were calculated is set out at Pg 81-105 paras 8.1 - 8.112 in Chapter 8
26.6(ix)	Any environmental and social benefits and dis-benefits arising from the Bill that cannot be quantified financially	Part 2 – Impact Assessment	A summary of the benefits is set out at Pg 81-105 paras 8.1-8.112 in Chapter 8

Standing order		Section	Pages/ paragraphs
26.6(x)	<p>Where the Bill contains any provision conferring power to make subordinate legislation, set out, in relation to each such provision:</p> <p>(a) the person upon whom, or the body upon which, the power is conferred and the form in which the power is to be exercised;</p> <p>(b) why it is considered appropriate to delegate the power; and</p> <p>(c) the Assembly procedure (if any) to which the subordinate legislation made or to be made in the exercise of the power is to be subject, and why it was considered appropriate to make it subject to that procedure (and not to make it subject to any other procedure);</p>	Chapter 5 - Power to make subordinate legislation	A summary table of powers to make subordinate legislation is set out at Pg 48-70 Table 4
26.6(xi)	Where the Bill contains any provision charging expenditure on the Welsh Consolidated Fund, incorporate a report of the Auditor General setting out his or her views on whether the charge is appropriate	Chapter 6 – Regulatory Impact Assessment	Pg 71, para 6.2 sets out that the Bill does not charge expenditure on the Welsh Consolidated Fund.

Standing order		Section	Pages/ paragraphs
26.6B	Where provisions of the Bill are derived from existing primary legislation, whether for the purposes of amendment or consolidation, the Explanatory Memorandum must be accompanied by a table of derivations that explain clearly how the Bill relates to the existing legal framework.	The requirement in Standing Order 26.6B for a Table of Derivations is not applicable to this Bill as the Bill is a stand-alone piece of legislation and does not derive from existing primary legislation for the purposes of amendment or consolidation.	
26.6C	Where the Bill proposes to significantly amend existing primary legislation, the Explanatory Memorandum must be accompanied by a schedule setting out the wording of existing legislation amended by the Bill, and setting out clearly how that wording is amended by the Bill.	The requirement is Standing Order 26.6C for a Schedule of Amendments is not applicable to this Bill as the Bill does not propose to significantly amend existing primary legislation.	