

Explanatory Memorandum to the Landfill Disposals Tax (Tax Rates) (Wales) (Amendment) Regulations 2018

This Explanatory Memorandum has been prepared by Welsh Treasury: Tax Strategy, Policy and Engagement Division and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Cabinet Secretary's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Landfill Disposals Tax (Tax Rates) (Wales) (Amendment) Regulations 2018 and I am satisfied that the benefits justify the likely costs.

Mark Drakeford AM
Cabinet Secretary for Finance
Ysgrifennydd y Cabinet dros Gyllid

26 November 2018

PART 1 – EXPLANATORY MEMORANDUM

1. Description

- 1.1. The Landfill Disposals Tax (Tax Rates) (Wales) (Amendment) Regulations 2018 (“the regulations”) are being made under the Landfill Disposals Tax (Wales) Act 2017 (“LDT Act”)¹. The LDT Act establishes and sets out the framework and operational arrangements for landfill disposals tax which replaced UK landfill tax in Wales when it was devolved in April 2018.
- 1.2. The regulations will amend the standard rate, lower rate and unauthorised disposals rate for landfill disposals tax which will apply to taxable disposals made on or after 1 April 2019 in Wales. Taxable disposals made before 1 April 2019 will remain subject to the rates set by the Landfill Disposals Tax (Tax Rates) (Wales) Regulations 2018 (“the first Regulations”) as a result of the amendment made by these regulations.
- 1.3. Subject to the will of the Assembly, the regulations will come into force on 1 April 2019.

2. Matters of special interest to the Constitutional and Legislative Affairs Committee

- 2.1. None

3. Legislative background

- 3.1. The regulations are being made pursuant to sections 14 and 46 of the LDT Act:
 - Section 14 gives the Welsh Ministers powers to make regulations to prescribe the standard rate and the lower rate; and
 - Section 46 gives the Welsh Ministers powers to make regulations to prescribe the unauthorised disposals rate.
- 3.2. Section 95 of LDT Act requires the regulations varying the rates of LDT to be (i) laid before the Assembly, and (ii) have effect for no more than 28 sitting days, unless approved by the Assembly within this period. This is often known as the “provisional affirmative” procedure.

¹ <http://www.legislation.gov.uk/anaw/2017/3/contents/enacted>

4. Purpose and intended effect of the regulation

Summary

- 4.1. These regulations will amend the standard rate, lower rate and unauthorised disposals rate for landfill disposals tax, which will apply to taxable disposals made on or after 1 April 2019 in Wales, but they also amend the Landfill Disposals Tax (Tax Rates) (Wales) Regulations 2018 (“the first Regulations”) to disapply the rates contained in the first Regulations to disposals made on or after 1 April 2019.

Policy aims and tax principles

- 4.2. In September 2017, the Welsh Government published its national strategy *Prosperity for All*². One of its four key themes is ‘Prosperous and Secure’; a key objective of which is to drive sustainable growth and combat climate change. The introduction of landfill disposals tax legislation, including these regulations, will contribute towards this objective and the national well-being goals, in particular through actions to promote a low carbon economy and develop a more resource efficient economy, building on Wales’ success in recycling and reducing the environmental impacts of production and consumption.
- 4.3. Section 91 of the LDT Act places a duty on the Welsh Ministers to have regard, amongst other factors, to the objective of reducing landfill disposals in Wales when exercising their powers and duties under the LDT Act. In developing the regulations consideration has been given to how the rates support the objective of reducing waste to landfill and the Welsh Government’s ambitions for a zero waste Wales.
- 4.4. In developing landfill disposals tax for Wales, including the regulations, the Welsh Government has applied its five principles for the development of devolved tax policy and legislation to:
- raise revenue to support public services as fairly as possible;
 - help deliver wider fiscal and policy objectives, including jobs and economic growth;
 - be simple, clear and stable;
 - engage with taxpayers and wider stakeholders;
 - contribute directly to the Well-being of Future Generations (Wales) Act 2015 goal of creating a more equal Wales.
- 4.5. In order to provide stability, the approach taken to setting the rates has been that the devolved tax rates should only diverge from those of the predecessor tax rates as much as is necessary to reflect Welsh circumstances and priorities.

² <http://gov.wales/docs/strategies/170919-prosperity-for-all-en.pdf>

- 4.6 The revenue from landfill disposals tax will be used to directly fund public services in Wales, replacing part of the funding the Welsh Government receives from the UK Government³. The principle that there should be no less revenue available to fund public services has also been applied.

Current position

- 4.7 There are two rates of UK landfill tax; a lower rate for materials specified in the list of qualifying materials (and meeting certain requirements) and a standard rate for all other materials. The standard rate has increased over time to incentivise diversion of waste from landfill towards prevention, re-use, recycling and recovery. The standard rate has risen from £7 in 1996-97 to £88.95 in 2018-19. The lower rate was £2 when the tax was introduced and is currently £2.80. These are the rates that are currently in force in Wales with effect from 1 April 2018.
- 4.8 Since 2014, the UK Government's approach has been to maintain the standard and lower tax rates in real terms (by the rate of inflation as measured by the Retail Price Index (RPI)). In the Autumn Budget 2017 the UK Government announced that both rates will increase in line with RPI in 2019 to 2020, the Scottish Government has set the same tax rates as the UK Government since landfill tax was devolved to Scotland in 2015.
- 4.9 Remaining consistent with the UK and Scotland, the LDT Act introduced a standard and a lower rate of tax, which applied to disposals at authorised landfill sites from 1 April 2018. The lower rate is applied to materials that meet the conditions set out in the LDT Act and the standard rate is applied to all other materials.
- 4.10 In addition, the LDT Act brought waste disposed of at places other than authorised landfill sites within the scope of the tax and introduced an unauthorised disposals tax rate. A person who makes an unauthorised disposal or who knowingly causes or permits an unauthorised disposal to be made may be charged the unauthorised disposals tax rate on that disposal. Further detail is set out in the EMRIA published alongside the LDT Act⁴.
- 4.11 In September 2017 the UK Government published draft legislation proposing to charge landfill tax (at the standard rate) and a corresponding penalty of up to 100% of the tax on disposals at illegal waste sites. This has now come into force on taxable waste disposed of at unauthorised sites in England and Northern Ireland.

³ <http://gov.wales/funding/?lang=en>

⁴ <http://www.assembly.wales/laid%20documents/pri-ld10839-em/pri-ld10839-em-e.pdf>

Purpose and intended effect of the regulation

- 4.12 Alongside the publication of the draft budget in October 2018, the Cabinet Secretary for Finance announced the landfill disposals tax rates for 2019-20 will increase as follows -
- i. The standard rate will increase from £88.95 per tonne to £91.35 per tonne;
 - ii. The lower rate will increase from £2.80 per tonne to £2.90 per tonne; and
 - iii. The unauthorised rate would increase from £133.45 per tonne to £137 per tonne.
- 4.13 The approach to setting tax rates has been guided by the tax principles and the objective to reduce landfill disposals in Wales, as required by section 91 of the LDT Act. Delivering stability and certainty for taxpayers and the wider waste industry has also been a key factor in setting the rates. The approach for tax rates to only diverge from those of the predecessor tax rates as much as is necessary to reflect Welsh circumstances and priorities and the principle there should be no less revenue available to fund public services has also been applied.
- 4.14 On this basis, the proposed standard and lower rates of landfill disposal tax are consistent with UK landfill tax rates to provide the stability and certainty stakeholders have asked for. The unauthorised disposals rate, for which there is no equivalent in the UK or Scotland, is set higher than the standard rate (standard rate + 50%), creating an additional financial deterrent for people seeking to avoid their environmental obligations and dispose of waste illegally. Setting the rate higher than the standard rate takes account of the increased negative impact on the environment of unauthorised disposals of waste. The rate also recognises that administrative costs incurred by legitimate operators will have been avoided and better reflects the enforcement costs of the Welsh Revenue Authority (WRA).

4.15 Regulation 3 provides the rates for 2019-20:

	2019-20
Standard rate	£91.35 per tonne
Lower rate	£2.90 per tonne
Unauthorised disposals rate	£137.00 per tonne

5. Consultation

- 5.1. There is a no statutory duty to consult on these regulations and the proposed rates were announced by the Cabinet Secretary for Finance alongside the publication of the Welsh Government's draft budget on 2 October 2018, and have been consistently trailed previously. As other tax administrations, the Welsh Government does not consult formally on tax rate changes as this remains a decision for Ministers. However, we listen to feedback and engage with external stakeholders on a regular and consistent basis. No concerns have been raised on these new proposed rates.

PART 2 – REGULATORY IMPACT ASSESSMENT

6. *Impact of the Landfill Disposals Tax (Tax Rates) (Wales) (Amendment) Regulations 2018*

Options

- 6.1. In relation to setting the **lower and standard rates**, two options have been considered; to:
- Option 1a) - be consistent with UK landfill tax rates
 - Option 1b) - set 'Welsh specific' rates which are different from the UK rates
- 6.2. In relation to the **unauthorised disposals rate**, two options have been considered; to:
- Option 2a) - maintain the unauthorised disposals rate at 150% of the new proposed standard rate
 - Option 2b) - change the unauthorised disposals rate as a % of the new proposed standard rate
- 6.3. A brief description of each option and their anticipated impact is outlined below followed by an analysis of the costs and benefits at section 7.

Lower and standard rates

Option 1a): be consistent with UK landfill tax rates

- 6.4. This option would introduce regulations which are consistent with UK landfill tax rates, with the standard and lower rate of LDT increasing in line with inflation (as measured by the Retail Price Index) in April 2019.
- 6.5. A clear message from stakeholders was the need for consistency, certainty and stability for businesses. Replicating the UK landfill tax rates could achieve this. Industry experts have also consistently highlighted concerns about waste tourism across the England-Wales border and a consistent rate with the UK landfill tax would address this possible risk.

Option 1b): set 'Welsh specific' rates which are different from the UK rates

- 6.6 This option would introduce regulations that set the standard and/or lower rates specific to Wales at different rates from the UK rates. In one direction, this could help to support Welsh Government priorities and policies, including the ambitious goal of zero waste by encouraging

greater recycling, recovery and re-use of waste and efforts to reduce carbon emissions and tackle climate change. An alternative approach could increase revenue to invest in public services in Wales.

Unauthorised disposals rate

Option 2a): maintain the unauthorised disposals rate at 150% of the new proposed standard rate

6.8 This option would maintain the unauthorised disposals rate at 150% of the new proposed standard rate of tax. This would ensure that those disposing of waste illegally pay a greater amount of tax where they dispose of it illegally compared to the amount they would have paid if they had taken it to an authorised landfill site.

6.9 As there is a proposal to increase the standard rate in line with inflation, this will therefore increase the unauthorised disposals rate from £133.45 to £137.00.

Option 2b): change the unauthorised disposals rate as a % of the new proposed standard rate

6.10 The smooth implementation of LDT has been the priority for WRA since 1 April 2019. The registration of landfill site operators (LSOs), the approval of alternative weighing methods, and reliefs such as water discounts and site restoration reliefs have been the focus for WRA to enable them to successfully collect the tax in the first six months of operation. The unauthorised rate is a further tool to assist public authorities in Wales, such as NRW and local authorities in tackling illegal waste and they have been working to develop how they will work in partnership with these other bodies before they start issuing charging notices for unauthorised disposals tax. In its first six months of operation, the WRA has not been required to collect any unauthorised disposals tax. There is therefore no evidence to suggest a change from the current approach, which is 150% of the standard rate.

7. Costs and Benefits

7.1. The costs and benefits associated with each option have been produced using the best available information at the time.

7.2. The preferred option is for the Welsh Government to be consistent with UK landfill tax for the standard and lower rate (option 1a) and to maintain the unauthorised disposals rate at 150% of the new proposed standard rate (option 2a).

- 7.3. The WRA has delegated compliance and enforcement functions (including tackling unauthorised disposals) to Natural Resources Wales (NRW), who have existing relationships with the landfill site operators and extensive knowledge of the waste industry. Compliance will be undertaken on a risk basis as is currently the case with UK landfill tax. The funding allocated to NRW to carry out these functions (including the compliance and enforcement costs related to these regulations) is included in the operating costs of the WRA. The total budget for the WRA operational running costs for 2019-20 will be £6m.

Lower and standard rate

Option 1a): be consistent with UK landfill rates

- 7.4. A key priority for the Welsh Government was a smooth transition to LDT in 2018-19. Any changes to tax rates can be expected to have behavioural effects.
- 7.5. A reduction in LDT rates may encourage greater landfill disposals in Wales, which is not consistent with the Welsh Government's wider waste policy agenda. An increase in waste being disposed of in Wales would also have wellbeing and environmental impacts for communities. For example, it would:
- Increase waste, including potentially hazardous waste, travelling further distances on major roads and through residential areas;
 - Increase disruption for residents near landfill sites and waste transfer stations;
 - Increase the carbon footprint of waste disposal;
 - Increase pressure on existing landfill capacity, with potential calls for new landfill sites to be developed.
- 7.6. Conversely, an increase in LDT rates may encourage less waste to be disposed of to landfill in Wales than if landfill tax were to continue to apply, reducing the amount of revenue collected. This is inconsistent with our principle that there should be no less revenue available to fund public services. Further, an increase in LDT rates may encourage unauthorised waste disposals in Wales.
- 7.7. Stakeholders have suggested that the standard rate has reached its optimum level where landfilling these materials is the most expensive, and therefore least attractive, means of waste disposal. Increasing tax rates may incentivise unauthorised disposals of waste. Some stakeholders have made the case for increasing the lower rate to encourage greater recycling, re-use and recovery of these materials but the majority wanted consistency with UK rates to minimise the risk of waste tourism, including, at least initially, for the lower rate.
- 7.8. By setting rates that are consistent with UK landfill tax, public services in Wales will continue to benefit from tax revenue, while ensuring the risk of the movement of waste across borders is reduced.

Costs

- 7.9. Under this option, the lower and standard LDT rates would increase in line with inflation as measured by RPI. This means the standard rate of LDT would be £91.35 per tonne and the lower rate would be £2.90 per tonne in 2019-20.
- 7.10. As the proposed tax rates are consistent with landfill tax, there is not expected to be any significant change in the amount of waste disposed of at authorised landfill sites in Wales. Overall revenue generated from landfill disposals tax in 2018-19 and 2019-20 is forecast to be £44m and £40m respectively. Despite the increase in tax rates, revenue is expected to fall as an increasing amount of waste is diverted away from landfill. This trend is expected to continue in future years. The forecasts in Table 1 do not include the tax revenue from unauthorised disposals. Further information on the LDT revenue forecast, published alongside the draft budget for 2019-20, is available in Bangor Business School's scrutiny and assessment update report⁵. A revised LDT forecast will be published alongside the final budget on 18 December 2018.

Table 1: Landfill disposals tax revenues forecast (£ million)⁶

	2018-19	2019-20	2020-21	2021-22	2022-23
Landfill disposals tax (£m)	44	40	36	34	32

- 7.11. Further, as this option is to be consistent with UK landfill tax, there will not be any changes that incur an additional cost to landfill site operators, waste businesses or WRA.

Option 1b): set 'Welsh specific' rates which are different from the UK rates

- 7.12. Wales is at the forefront of waste policy and landfill disposals tax is a useful additional lever to support Welsh Government waste policies and achieve our ambitious goal of a zero waste Wales.
- 7.13. This option would increase the incentive to separate and sort waste for disposal in order to secure the lower rate of tax which can have added benefits of enabling more waste to be recovered, re-used and recycled and reduce the amount of waste going to landfill.
- 7.14. However, analysis provided under option 1a (paragraphs 7.8 to 7.10) demonstrates the disbenefits associated with increasing and decreasing the tax rates as well as stakeholder's preference for consistency with UK landfill tax rates.

⁵<https://beta.gov.wales/sites/default/files/publications/2018-10/bangor-report-2018.pdf>

⁶ As at the draft budget for 2019-20, <https://beta.gov.wales/draft-budget-2019-2020>

Option 2a): maintain the unauthorised disposals rate at 150% of the new proposed standard rate

- 7.15. Maintaining the unauthorised disposal rate at the 150% of the new proposed standard rate ensures a level of fairness, proportionality, and transparency. It offers an effective deterrent and recognises the increased negative impact on the environment of unauthorised disposals of waste and that in normal circumstances registered landfill site operators incur administrative costs relating to registration, filing, paying and record-keeping and these would have been avoided along with penalties and interest, which would have been applied to a registered landfill site operator for failure to do these. Setting the rate at 150% of the new proposed standard rate keeps it in line with the standard rate increase which is in line with the retail price index and therefore helps to create a level playing field for legitimate waste businesses.
- 7.16. The LDT Act enables tax to be charged on taxable disposals made at places other than authorised landfill sites (unauthorised disposals). This is intended to provide a financial deterrent and make unauthorised disposals of waste more financially risky, and a less attractive option for those tempted to ignore their environmental obligations and evade tax. It seeks to realign the balance of risk, so that the consequences of making unauthorised disposals outweigh the perceived benefit of evading tax.
- 7.17. Consistent with the purpose of the tax as a lever to influence positive environmental behaviours this approach seeks to encourage individuals to make efforts to take up sustainable methods of waste disposal or, as a minimum, to take waste to a registered landfill site and pay a fair share of tax and thus protect revenue for investment in public services in Wales. Our approach further aims to bring benefit to the communities who are affected by unauthorised disposals by seeking to deter this activity in future.

Costs

- 7.18. The introduction of a separate tax rate for unauthorised disposals came into force in Wales on 1 April 2018 and was aimed primarily at deterring unauthorised disposals rather than raising tax revenue. The WRA are responsible for determining the level of compliance and enforcement activity it undertakes in relation to unauthorised disposals. It is expected that its approach will be proportionate and cost-effective and be considered in the context of the wider initiatives being taking forward by the Welsh Government, NRW and local authorities to tackle other bodies to ensure that those dumping waste bear the cost of their actions tackle unauthorised disposals. It is anticipated the WRA will develop an approach in partnership with NRW and local authorities, focussing on where the additional tax lever can have most impact on

unauthorised waste disposals to support the wider environmental aims of NRW and local authorities in dealing with waste crime. WRA are currently working with NRW to develop a joined-up strategic approach to unauthorised disposals tax and are in early discussions with local authorities on how they can work together in the future.

7.19. An industry report in 2015⁷ highlighted that every £1 spent on waste crime enforcement is expected to return between £3.60 and £5.60 to government. This clearly makes the enforcement of these powers a valuable tool and one which could be a worthwhile investment in the long term.

7.20. **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 compliance and enforcement costs and the level of potential revenue cannot be quantified. Potential revenue from the unauthorised disposals rate is therefore not included in the LDT revenue forecast.

7.21. Tax collected from unauthorised disposals will support the delivery of public services in Wales, with some revenue allocated to NRW and local authorities where they have been instrumental in assisting the investigation and pursuit of tax and to incentivise future action.

Option 2b): change the unauthorised disposals rate as a % of the new proposed standard rate

7.22. As mentioned above in 6.10, there is no evidence available to suggest whether the rate should increase or decrease.

Summary of the preferred option

7.23. The preferred option is for the Welsh Government to be consistent with the options used to set the rates in 2017-18, being the same as the UK landfill tax for the lower and standard rate (option 1a) and to maintain the unauthorised disposals rate at 150% of the new proposed standard rate (option 2a).

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

⁷http://www.esauk.org/esa_reports/ESAET_Waste_Crime_Tackling_Britains_Dirty_Secret_LIVE.pdf

- 7.25. The standard rate in particular is widely considered by stakeholders to be set at a level which reflects its environmental cost and promotes a more sustainable approach to waste management. This will help deliver wider benefits including supporting the delivery of the Welsh Government's National Strategy Prosperity for All 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 the *Climate Change Strategy for Wales*.
- 7.26. The unauthorised disposals rate seeks to support our policy ambition to deter unauthorised disposals which blight our communities. It will ensure that the increased negative impact of unauthorised disposals is recognised, it will support the creation of a level playing field for legitimate operators and it better reflects the enforcement costs of WRA. It is hoped the proposed rates will encourage illegal operators to manage their waste more sustainably and as a minimum take it to an authorised landfill site and pay a fair share of tax which supports public services in Wales.

8. Consultation

- 8.1. There is a no statutory duty to consult on these regulations and the proposed rates were announced by the Cabinet Secretary for Finance alongside the publication of the Welsh Government's draft budget on 2 October 2018, and have been consistently trailed previously. As other tax administrations, the Welsh Government does not consult formally on tax rate changes as this remains a decision for Ministers. However, we listen to feedback and engage with external stakeholders on a regular and consistent basis. No concerns have been raised on these new proposed rates.

9. Competition assessment

- 9.1. See **Appendix A**
- 9.2. At present there are 17 landfill site operators⁸ in the market with three firms having more than 10% market share. There are no firms having a market share greater than 20% or the largest three firms together having at least 50% market share.
- 9.3. The competition filter test has been applied, only question one was answered Yes with the other eight questions being No.

⁸ <https://beta.gov.wales/welsh-revenue-authority-list-landfill-site-operators>

- 9.4. With only one question being answered Yes, these Regulations are not expected to adversely affect levels of competition in Wales or the competitiveness of Welsh firms.

10. Post implementation review

10.1. The effect of the LDT Act and these regulations will be assessed in a number of ways, including:

- A review of the LDT Act and regulations will be completed within 6 years of the tax being devolved to Wales;
- 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 disposals tax rate.
- A programme of monitoring activity will be developed to correspond with key activities including enforcement activity on unauthorised disposals.

10.2. Any post implementation assessment of more qualitative aspects of landfill disposals tax's introduction will require the collection of further data. For example, direct engagement with landfill site operators (meetings/surveys etc.). Assessing the impact of operational matters is the responsibility of WRA although there is potential for collaborative evaluation with the Welsh Government.

10.3. The Welsh Government and WRA will also work closely with the UK and Scotland to learn from their experiences and to establish best practice.

10.4. 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.

APPENDIX A

The Competition Assessment

There are two stages to the Competition Assessment. The first is a quick filter that assesses whether there is a risk of a significant detrimental effect on competition. The results of the competition filter are presented in the table below:

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