

**Explanatory Memorandum to the Landfill Disposals Tax (Tax Rates) (Amendment) and Tax Collection and Management (Wales) Act 2016 (Miscellaneous Amendments) (Wales) Regulations 2024**

This Explanatory Memorandum has been prepared by Welsh Treasury: Tax Strategy and Intergovernmental Relations Division and is laid before Senedd Cymru in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

**Minister'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) (Amendment) and Tax Collection and Management (Wales) Act 2016 (Miscellaneous Amendments) (Wales) Regulations 2024. I am satisfied that the benefits justify the likely costs.

**Rebecca Evans MS**

**Minister for Finance and Local Government**

**20 February 2024**

## **PART 1**

### **1. Description**

- 1.1 The Landfill Disposals Tax (Tax Rates) (Amendment) and Tax Collection and Management (Wales) Act 2016 (Miscellaneous Amendments) (Wales) Regulations 2024 (“the Regulations”) are being made under powers conferred in the Landfill Disposals Tax (Wales) Act 2017 (“LDTA 2017”)<sup>1</sup> and the Tax Collection and Management Act 2016 (“TCMA 2016”)<sup>2</sup>.
- 1.2 The LDTA 2017 establishes and sets out the framework and operational arrangements for landfill disposals tax (“LDT”) which replaced UK landfill tax (“LFT”) in Wales when it was devolved in April 2018. The Regulations will amend the standard rate, lower rate and unauthorised disposals rate for LDT which will apply to taxable disposals made on or after 1 April 2024 in Wales. Taxable disposals made on or after 1 April 2023 but before 1 April 2024 will remain subject to rates set by the Landfill Disposals Tax (Tax Rates) (Wales) (Amendment) Regulations 2022 as a result of the amendment made by regulation 4 of the Regulations.
- 1.3 The Regulations also contain a provision to amend a drafting error in item 10 of Table A1 in section 122 of the TCMA 2016, in relation to the penalties for late payment of tax charged on unauthorised disposals.
- 1.4 Subject to Senedd Cymru approval, the Regulations will come into force on 1 April 2024.

### **2. Matters of special interest to the Legislation, Justice and Constitution Committee**

- 2.1 None.

### **3. Legislative background**

- 3.1 Section 14 of the LDTA 2017 sets out there is to be a standard rate and lower rate for LDT which will apply to qualifying materials and qualifying mixtures of materials. These tax rates are set by regulations made by the Welsh Ministers, pursuant to powers contained in section 14(3) (standard rate) and 14(6) (lower rate). Section 46(4) gives the Welsh Ministers the power to set the unauthorised disposals rate of tax. Senedd Cymru approval of the regulations is necessary for the changes to the rates to remain in force (made affirmative procedure) or before the Welsh Ministers may make the regulations to bring the rates into force (draft affirmative procedure).

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

<sup>2</sup> <https://www.legislation.gov.uk/anaw/2016/6/contents>

- 3.2 Section 95 of the LDTA 2017 states that regulations to change the LDT rates made under either section 14 or section 46 of that Act are subject to the made affirmative procedure. The power to modify Table A1 is in section 122(5) of the TCMA 2016. Section 189(2) of the TCMA 2016 sets out that regulations made under the power in section 122(5) of the TCMA 2016 “*may not be made unless a draft of the instrument has been laid before, and approved by, a resolution of [the Senedd]*”.
- 3.3 This single set of regulations are subject to two different procedures, therefore the ‘higher’ procedure applies, which, in this case, is the draft affirmative procedure – section 40 of the Legislation (Wales) Act 2019 applies.

#### **4. Purpose and intended effect of the legislation**

##### *Summary*

- 4.1 The Regulations will increase the standard rate, lower rate, and the unauthorised disposals rate for LDT which will apply to taxable disposals made on or after 1 April 2024 in Wales. Taxable disposals made on or after 1 April 2023 but before 1 April 2024 will remain subject to rates set by The Landfill Disposals Tax (Tax Rates) (Wales) (Amendment) Regulations 2022<sup>3</sup>.
- 4.2 The Regulations will also correct a drafting error which has been identified in item 10 of Table A1 in section 122 of the TCMA 2016, in relation to the penalties for late payment of tax charged on unauthorised disposals.

##### *Policy aims and tax principles*

- 4.3 In developing LDT for Wales, including when making 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; and
  - contribute directly to the Well-being of Future Generations (Wales) Act 2015 goal of creating a more equal Wales.
- 4.4 Legislation on landfill disposals, including the Regulations, contributes towards wider green objectives and the national well-being goals, in particular through actions to promote a low carbon economy and develop a more resource efficient economy. This builds on Wales’s success in recycling and reducing the environmental impacts of production and consumption.

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<sup>3</sup> <https://www.legislation.gov.uk/wsi/2022/1316/made>

- 4.5 The revenue from LDT will be used to directly fund public services in Wales<sup>4</sup>.

#### *Current position*

- 4.6 There are three rates of LDT; a lower rate for materials specified in the list of qualifying materials (and meeting certain requirements) and a standard rate for all other materials. There is also a separate unauthorised disposals rate which is applied to those materials which have been disposed of illegally.
- 4.7 To date, LDT rates in Wales have matched those of the LfT in England and Northern Ireland. This approach reflects our position that rates should only diverge should Welsh circumstances and priorities require them to do so. The UK Government has, historically, set LfT rates in line with RPI forecast inflation at the Budget a year prior to the commencement date. As such, LfT rates for 2024-25 were set in the 2023 Spring Budget.
- 4.8 Our approach to setting the rates in Wales has minimised the risk of waste tourism (cross-border movement of waste), provided stability and certainty for businesses in Wales, and has enabled LDT to continue to complement existing resource efficiency and circular economy policy initiatives.
- 4.9 This approach has also aligned with the feedback gathered from stakeholder engagement, where there has been a broad consensus to keep the rates consistent with the UK Government for the time-being, to allow for more time to consider what a Welsh approach might look like, and the potential impacts of any future changes.

#### *Purpose and intended effect of the regulations*

##### LDT rates

- 4.10 As part of the draft budget package in December 2023, the Minister for Finance and Local Government announced the LDT rates for 2024-25 will increase as follows:
- The standard rate will increase from **£102.10** per tonne to **£103.70** per tonne;
  - The lower rate will increase from **£3.25** per tonne to **£3.30** per tonne; and
  - The unauthorised disposals rate (150% of the standard rate) will increase from **£153.15** per tonne to **£155.55** per tonne.
- 4.11 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 LDTA 2017. Delivering stability and certainty for

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<sup>4</sup> <http://gov.wales/funding/?lang=en>

taxpayers and the wider waste industry has also been a key factor in setting the rates to date. The approach has been for tax rates to only diverge from those of the predecessor tax rates as much as is necessary to reflect Welsh circumstances and priorities.

- 4.12 On this basis, the proposed standard and lower rates of landfill disposal tax are consistent with UK LFT rates to provide stability and certainty to those stakeholders impacted by the tax. The unauthorised disposals rate is set higher than the standard rate (equivalent to 1.5 times the standard rate), 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”).

#### TCMA 2016 correction

- 4.13 Section 122 of the TCMA 2016 sets out the penalties for late payment of devolved tax. The charge to tax for unauthorised disposals is covered in item 10 in Table A1: “*Amount charged by a charging notice issued under Section 48 or 49 of LDTA.*” Section 48 of the LDTA 2017 contains the power to issue a preliminary notice (which states why WRA think a taxpayer is liable to pay tax at the unauthorised disposals rate). It does not contain the power to issue a charging notice. Taxpayers issued with a preliminary notice may make representations to WRA as to why LDT is not due before the WRA decide whether tax should be charged. Section 49 contains the power to issue a charging notice following the preliminary notice and section 50 allows the WRA to issue a charging notice without a preliminary notice.
- 4.14 These Regulations provide for item 10 in Table A1 to be amended to read “*Amount charged by a charging notice issued under section 49 or 50 of LDTA*”.
- 4.15 This error appears to have occurred when a new section was added into the LDT Bill at Stage 3 (becoming section 25)<sup>5</sup> with all subsequent sections of the Bill being renumbered. The need to update item 10 in Table A1 to reflect the renumbering of the sections was overlooked. If the error is not corrected, the WRA will not be able to charge a late payment penalty for tax charged pursuant to charging notices issued under section 50 of the LDTA 2017.

## **5. Consultation**

- 5.1 There is no statutory duty to consult on the Regulations in relation to the tax rates. The proposed rates were announced by the Minister for Finance

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<sup>5</sup> [Notice of Amendments 9 June 2017.pdf \(senedd.wales\)](#) (amendment 18)

and Local Government as part of the publication of the Welsh Government's draft budget on 19 December 2023. As with other tax administrations, the Welsh Government does not consult formally on tax rate changes as this remains a decision for Ministers.

- 5.2 There is no requirement to consult on the provision to correct the drafting error identified in the TCMA 2016.

## **PART 2 – REGULATORY IMPACT ASSESSMENT**

### **6. Impact of the Landfill Disposals Tax (Tax Rates) (Amendment) and Tax Collection and Management (Wales) Act 2016 (Miscellaneous Amendments) (Wales) Regulations 2024**

#### Options

- 6.1 In relation to setting the lower and standard rates, two options have been considered:
- 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:
- Option 2a - maintain the unauthorised disposals rate at 150% of the new proposed standard rate
  - Option 2b - change the unauthorised disposals rate to a different percentage of the new proposed standard rate
- 6.3 A brief description of each option and its 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 LfT rates, with the standard and lower rate of LDT increasing in line with forecast inflation, as forecast by the Office for Budget Responsibility ("OBR").
- 6.5 This approach would maintain the stable approach to rate-setting which has been seen in previous years and allow for the longer-term goals for LDT to be developed. It also aligns with the feedback gathered from initial engagement with stakeholders, where there was a broad consensus to keep the rates consistent with the UK Government for the time-being, to

allow for more time to consider what a Welsh approach might look like, and the potential impacts of any future changes.

- 6.6 Maintaining the current approach would also mean that the risk of waste tourism (cross-border movement of waste) would not change, enabling LDT to continue to deliver against our commitment to incentivise diverting waste from landfill. In addition, maintaining our approach to LDT rates for 2024-25 will continue to complement existing resource efficiency and circular economy policy initiatives and allow them to work alongside each other to continue to incentivise behaviour change and drive forward the Welsh Government's environmental goals.

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

- 6.7 This option would introduce regulations that set the standard and/or lower rates specific to Wales at different rates from the UK rates. This option could see LDT being used as an additional lever to further support Welsh Government priorities and policies focussed on encouraging greater levels of recycling, recovery and re-use of waste and efforts to reduce carbon emissions and tackle climate change. This alternative approach could increase or decrease the revenue to invest in public services in Wales.
- 6.8 There are a range of options that could be considered, although any changes to tax rates could be expected to have behavioural and revenue effects (see section 7) which would need careful consideration.

Unauthorised disposals rate

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

- 6.9 The unauthorised disposals rate is intended to create an additional deterrent for those seeking to avoid LDT and their environmental obligations by disposing of waste illegally. 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 compared to the amount they would have paid if they had taken it to an authorised landfill site.
- 6.10 As there is a proposal to increase the standard rate in line with inflation, this will increase the unauthorised disposals rate from £153.15 to £155.55.

*Option 2b: change the unauthorised disposals rate as a different percentage of the new proposed standard rate*

- 6.11 This option would either increase or decrease the unauthorised rate as a percentage of proposed standard rate. Currently, the efficacy of the unauthorised rate as a deterrent to those seeking the dispose of waste illegally has yet to be tested fully. Over the last two years, the WRA has

begun to test its powers on unauthorised disposals, and has charged and collected tax on a small number of cases of unauthorised disposals.

- 6.12 Given the WRA is still at an early stage of testing its powers, there is no clear evidence at this stage to determine whether varying the unauthorised disposals rate in either direction would lead to further behavioural change.

## **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 LfT 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).

### Lower and standard rate

#### *Option 1a: consistency with UK landfill rates*

- 7.3 Any changes to current tax rates can be expected to have behavioural effects. For example, 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 well-being and environmental impacts for communities, such as:
- Increased waste, including potentially hazardous waste, travelling further distances on major roads and through residential areas;
  - Increased disruption for residents near landfill sites (including noise and odour) and waste transfer stations;
  - Increased carbon footprint of waste disposal;
  - Increased pressure on existing landfill capacity, with potential calls for new landfill sites to be developed.
- 7.4 Conversely, an increase in LDT rates may encourage less waste to be disposed of to landfill in Wales, but may also encourage a greater level of unauthorised waste disposals in Wales.
- 7.5 Adjusting the rates in line with inflation each year has created a big gap between where the lower and standard rates sit. If the rates are consistently raised in line with inflation, this could continue to grow the gap between the standard rate and lower rate, creating a higher tax gap, driving potentially more misdescriptions of certain waste materials (where the composition of waste is deliberately misdescribed to avoid the higher rate of tax).



- 7.6 Some stakeholders have made the case for increasing the lower rate to close the gap between the standard and lower rate, to reduce the risk of mis-description and encourage greater recycling, re-use, and recovery of materials. However, most stakeholders remain in favour of retaining consistency with UK rates to minimise the risk of waste tourism, including, at least initially, for the lower rate.
- 7.7 An independent review of LDT was completed in July 2023<sup>6</sup> which considered the impact LDT rates have had on behaviours in the waste sector (including unauthorised disposals) as well as the extent to which the LDT legislation has influenced behaviours. The review findings and conclusions have been helpful in terms of supporting our understanding of the impact of LDT rates on behaviours to date and has been useful in highlighting several key areas for further consideration to support the further development of LDT.
- 7.8 By setting rates for 2024-25 that are consistent with UK LfT, public services in Wales will continue to benefit from tax revenue, while ensuring the risk of the movement of waste across borders is reduced. This will ensure a degree of consistency and stability across the waste sector while further consideration is given to the findings of the review and the future direction of LDT is considered in more detail.

### Costs

- 7.9 Under this option, the lower and standard LDT rates would increase in line with forecast inflation, as forecast by the OBR. This means the standard rate of LDT would be £103.70 per tonne and the lower rate would be £3.30 per tonne in 2024-25.
- 7.10 LDT revenue forecasts were published in the Welsh Taxes Outlook alongside the draft budget on 19 December 2023. The forecasts, produced by the OBR, are presented below, and show that increasing rates in line with forecast RPI would result in £29m revenue in 2024-25.

Table 1: LDT revenues forecast (£ million)

<b>LDT forecast (£m)</b>	<b>2022-23</b>	<b>2023-24</b>	<b>2024-25</b>	<b>2025-26</b>	<b>2026-27</b>	<b>2027-28</b>	<b>2028-29</b>
WTO Draft Budget Dec 2023	42	31	29	28	27	26	26

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

<sup>6</sup> [Independent review: Land Disposals Tax \(Wales\) Act 2017 | GOV.WALES](#)

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

- 7.12 Wales is at the forefront of waste policy and LDT 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 has the potential to 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, any variation from the UK rates raises the risk of waste tourism. Understanding the potential changes to cross-border waste flows which might transpire following a change in landfill disposal costs would be critical should a variation in rates occur, or a new rate be introduced. It should also be noted that one of the purposes of the Welsh and UK Governments applying the same rates to LDT and LfT is to minimise the risk of waste tourism. Although we are aware of examples of English waste being transported to Wales, and vice versa, despite there being no differences in the rates at present, we recognise that, currently, there is a limited evidence base to support our understanding of the factors which drive this behaviour. More detailed research is needed to establish the scale of the impact setting different rates to the UK would have on waste tourism, unauthorised disposals, the rate of recycling and reuse and tax revenues.

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

- 7.15 Maintaining the unauthorised disposal rate at 150% of the new proposed standard rate ensures a level of fairness, proportionality, and transparency. Setting the rate at this level acts as an additional deterrent for those seeking to avoid LDT and their environmental obligations by disposing of waste illegally. It also 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 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

- 7.17 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 is 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, Natural Resources Wales (“NRW”) and local authorities to ensure that those disposing of waste illegally bear the cost of their actions.
- 7.18 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.
- 7.19 As explained in para 6.11, the WRA has, only recently, begun to charge and collect a small amount of tax in relation to unauthorised disposal. At this stage, it is difficult to predict how much revenue will be generated during 2024-25.

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

- 7.20 As set out at paragraph 6.12, there is no clear evidence to determine whether the unauthorised disposals rate is set at the optimum level. Further learning from the WRA’s test cases should help to build an evidence base on which to assess the effectiveness of the rate going forward.

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

- 7.21 The preferred option is for the Welsh Government to be consistent with the UK LfT 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).
- 7.22 The key benefit of this approach is to provide certainty and stability to the waste industry, while the future direction of LDT is considered. This option also reduces the risk of waste tourism, through enabling consistency with how landfilled waste is charged in England and Wales. It also ensures that the benefit of the tax revenue can continue to be secured for investment in public services in Wales.

- 7.23 The standard rate is widely considered by stakeholders to be set at a level which reflects the environmental cost of the waste streams it applies to and promotes a more sustainable approach to waste management. This will help deliver wider benefits including supporting the delivery of the Welsh Government's wider waste and environment policies.
- 7.24 The unauthorised disposals rate seeks to support our policy ambition to deter the unauthorised disposals which blight our communities and have a detrimental impact on our environment. It ensures the increased negative impact of unauthorised disposals is recognised and supports the creation of a level playing field for legitimate operators. Maintaining the rate at 150% of the standard rate will continue to 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. Competition Assessment**

- 8.1 See Appendix A.
- 8.2 At present there are 17 landfill site operators<sup>7</sup> covering 20 sites in the market.
- 8.3 The Regulations are not expected to adversely affect levels of competition in Wales or the competitiveness of Welsh firms, as a percentage uplift in rates will affect every operator similarly in percentage terms.

## **9. Post implementation review**

- 9.1 The effect of the LDTA 2017 and the Regulations will be assessed through the data collected as part of LDT tax returns. 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 and the amount of tax raised at the unauthorised disposals tax rate.

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<sup>7</sup> <https://beta.gov.wales/welsh-revenue-authority-list-landfill-site-operators>

## 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?	Yes
Q3: In the market(s) affected by the new regulation, do the largest three firms together have at least 50% market share?	Yes
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 location of their products?	No