



## Research Briefing **Landfill Disposals Tax (Wales) Bill**

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- Bill Summary
- Summary of Stage 2 changes
- Welsh Glossary



**National Assembly for Wales**  
Research Service

The National Assembly for Wales is the democratically elected body that represents the interests of Wales and its people, makes laws for Wales, agrees Welsh taxes and holds the Welsh Government to account.

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Research Briefing  
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# Contents

<b>1. Introduction .....</b>	<b>1</b>
<b>2. Background to the Bill.....</b>	<b>2</b>
Devolution of tax powers.....	2
Tax Collection and Management (Wales) Act 2016 (TCMA).....	2
Land Transaction Tax and Anti-Avoidance of Devolved Taxes (Wales) Bill (LTT).....	2
Landfill Disposals Tax (Wales) Bill (LDT) .....	2
Landfill Communities Fund (LCF) .....	5
Welsh Government consultation and decisions.....	5
<b>3. Bill Summary.....</b>	<b>7</b>
Policy Objectives of the Bill.....	7
Part 1: Overview .....	7
Part 2: The Tax and Taxable disposals.....	7
Part 3: Taxable disposals made at authorised landfill sites.....	8
Part 4: Taxable disposals made at places other than authorised landfill sites .....	9
Part 5: Supplementary provision .....	10
Part 6: Final provisions.....	12
Schedules.....	12
<b>4. Costs and impacts of the Bill .....</b>	<b>13</b>
Costs.....	13
Savings .....	13
<b>5. Response to the bill .....</b>	<b>15</b>
<b>6. Anticipated implementation timetable according to the EM .....</b>	<b>18</b>
<b>7. Summary of Stage 2 changes.....</b>	<b>18</b>
Background .....	18
Scrutiny .....	18
Amendments agreed at Stage 2 .....	19
Qualifying material.....	19
Pet cemeteries.....	19
Taxable weight of material.....	19
Relief from tax.....	19
Disclosure of information.....	19
Penalties .....	19
Landfill Disposals Tax Communities Scheme .....	20
Next steps.....	20

Further information.....	20
<b>8. Welsh glossary.....</b>	<b>21</b>
Termau penodol i'r Bil.....	21
Termau deddfwriaethol cyffredinol.....	23

# 1. Introduction

**Date of introduction:** 28 November 2016

**Member in Charge:** Mark Drakeford AM, Cabinet Secretary for Finance and Local Government

**Assembly Committee undertaking Stage 1 scrutiny of the Bill:** Finance Committee

**Stage 1 reporting deadline:** 10 March 2017

The Landfill Disposals Tax (Wales) Bill ('the Bill') was laid before the Assembly on 28 November 2016. The Bill was introduced in Plenary by the Cabinet Secretary for Finance and Local Government, Mark Drakeford on 29 November 2016. The Bill is the third in a series of bills related to the devolution of the tax powers in the Wales Act 2014. The Bill was preceded by the Tax Collection and Management (Wales) Act 2016 which established the legal framework necessary for the future collection and management of devolved taxes in Wales and the Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Bill, which will replace Stamp Duty Land Tax from April 2018.

## 2. Background to the Bill

### Devolution of tax powers

Following recommendations from the [Silk Commission](#) the [Wales Act 2014](#) devolved control over Stamp Duty Land Tax and Landfill Tax to the Welsh Government. The Act also devolves an [element of income tax](#) to Wales.

The [Wales Bill: Financial Empowerment and Accountability Command Paper](#) states that it is the UK Government's intention to 'switch off' the UK versions of Stamp Duty Tax and Landfill Tax so that they will cease to apply in Wales from April 2018. According to the [Office for Budget Responsibility](#), Stamp Duty Land Tax and Landfill Tax are forecast to raise £267 million in 2018-19, well under 2% of the Welsh Government block grant of £15 billion. The block grant will subsequently be reduced to reflect the scale of the devolved tax revenues. The main purpose of devolving elements of taxation to Wales is therefore not to raise extra income, but rather to improve accountability by linking a notional element of public spending to tax revenues. The Landfill Disposals Tax (Wales) Bill is the third piece of tax legislation to be introduced in Wales.

### Tax Collection and Management (Wales) Act 2016 (TCMA)

The Tax Collection and Management Wales Act 2016 received Royal Assent on 25 April 2016 and established the Welsh Revenue Authority (WRA) as a non-ministerial department providing the legal framework necessary for the future collection and management of devolved taxes in Wales.

### Land Transaction Tax and Anti-Avoidance of Devolved Taxes (Wales) Bill (LTT)

The [Land Transaction Tax and Anti-Avoidance of Devolved taxes \(Wales\) Bill](#) was introduced in the Assembly on 12 September 2016. Prior to this a draft version of the LTT Bill was published on 13 July 2016 allowing stakeholders the opportunity to scrutinise the Bill before it was officially introduced. The LTT Bill sets out the transactions incurring a LTT charge and those liable to pay LTT, procedures for specifying tax rates and bands and the calculation of LTT and reliefs available. The LTT Bill also sets out measures to tackle tax avoidance in Wales.

### Landfill Disposals Tax (Wales) Bill (LDT)

The Landfill Disposals Tax Bill is concerned with establishing the legal, administrative and operational framework for the tax in Wales. Landfill Tax is currently a UK tax on the disposal of material as waste by way of landfill at landfill sites which are permitted under environmental legislation. The current tax was introduced in 1996 as a key environmental behaviour change driver in encouraging the diversion of waste from landfill, greater recycling, reuse and recovery of waste. Since the tax was introduced it has contributed to a significant reduction in the proportion of waste sent to landfill, and an increase in recycling. In Wales the total tonnage of waste landfilled fell by 52% between 2001 and 2013.

In terms of the wider policy context, the Welsh Government's Towards Zero Waste strategy sets a goal for as close to zero (<5%) landfill as possible by 2025, with an ambition of zero waste by 2050. The 2006 Stern Review on climate change pointed to landfill sites as one of the primary causes of climate change-causing emissions from waste.

The European regulatory landscape has changed considerably since the introduction of the tax in 1996, and has been a significant influence on the way that waste is managed in Wales. Notable changes have included the introduction of the EU Landfill Directive in 1999 and the EU Council Decision on Waste Acceptance Criteria in 2002, which set out the standards waste must meet to be accepted to landfill.

Landfill tax has been constantly evolving as new technologies and policy developments emerge. The accompanying [Explanatory Memorandum](#) (EM) (PDF, 935KB) states that 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 case law. This provides a complex landscape within which landfill sites currently operate.

HMRC currently administer and collect the tax from landfill operators. There are currently two tiers of tax rate: a standard tax rate (that has risen from £7/tonne in 1996-7 to £80/tonne in 2014-15); and a lower tax rate for certain qualifying materials<sup>1</sup> of £2.50/tonne. HMRC outturn data shows that Landfill Tax has raised between £44million and £49 million per year in Wales over the last five years.

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

	<i>£m</i>					
	2010-11	2011-12	2012-13	2013-14	2014-15	2015-16
Landfill Tax	45	44	47	49	47	44

Source: [Explanatory Memorandum, Landfill Disposals Tax \(Wales\) Bill](#), page 9

The latest Office for Budget Responsibility (OBR) forecasts for Wales' annual revenue for tax on disposals to landfill until 2021-22 were published on 23 November 2016. These forecasts, shown in table 2 estimate that £27 million will be raised in 2018-19, the first year of landfill tax devolution. This is a revised figure from the March 2016 forecasts which estimated £40 million would be raised in 2018-19. OBR explain the decrease in forecast revenue is due to a downward revision to the Welsh share of UK Government landfill tax receipts to 3.8% from 4.8%. This is based on Welsh Government analysis of Natural Resources Wales data that showed a faster reduction of waste taken to landfill in Wales than in the rest of the UK.

**Table 2: Welsh landfill tax forecast**

	£ million						
	2015-16	2016-17	2017-18	2018-19	2019-20	2020-21	2021-22
March 2016	47	44	40	40	41	42	
November 2016	34	35	30	27	25	24	23
Difference	-13	-9	-10	-13	-16	-18	
of which:							
Welsh share	-9	-9	-8	-7	-7	-6	
UK forecast	-4	0	-2	-6	-9	-12	

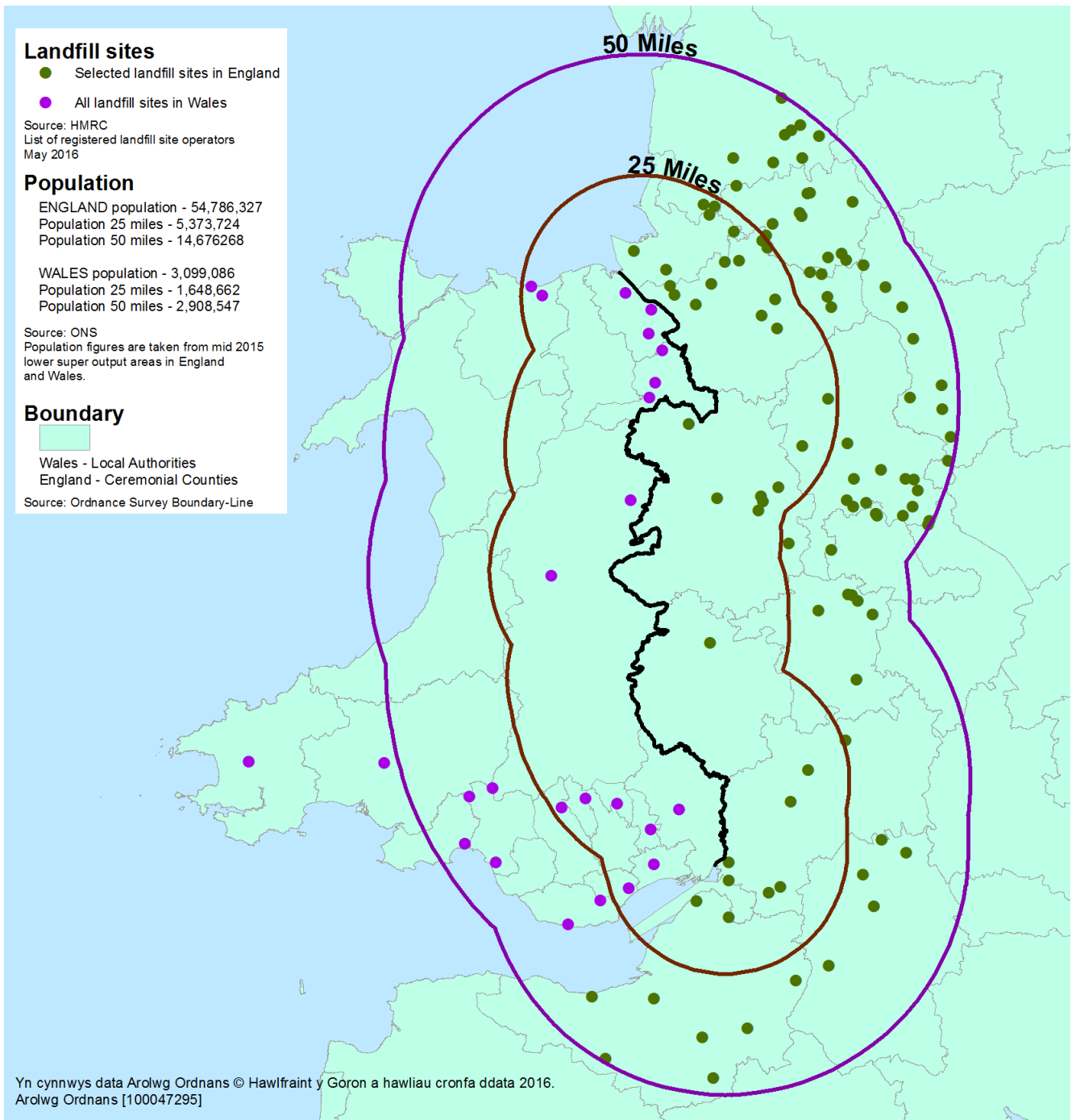
Source: OBR, [Devolved Tax Forecast](#), 23 November 2016, page 36

The Explanatory Memorandum notes that there are currently 25 landfill sites in Wales and 20 landfill site operators. The number of landfill sites in Wales is reducing and expected to be fewer than 10 by 2020. The map in Figure 1 shows that the majority of landfill sites in Wales (and the Welsh population) are within 50 miles of the Wales/England border.

<sup>1</sup> Qualifying materials: Rocks and soils, ceramic or concrete materials, minerals, furnace slags, ash, low activity inorganic compounds, calcium sulphate, calcium hydroxide and brine.



**Figure 1: Landfill sites and populations – Wales/ England border**



Sources: HMRC, [List of registered Landfill site operators](#), May 2016 and Research Service calculations using ONS, [Lower Super Output Area Mid-Year Population Estimates 2015](#)

## Landfill Communities Fund (LCF)

The Landfill Communities Fund (LCF) is a fund to support local community and environment projects within the vicinity of a landfill site, and is provided by the current UK tax regime. The LCF is a tax credit scheme that enables landfill site operators to contribute a proportion of their tax liability to eligible projects. It is currently administered as private sector fund and regulated through Entrust. In 2013-14, £4.3million was provided by the scheme to 220 projects in Wales. The Explanatory Memorandum states that:

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*(...) the Landfill Communities (Environmental Bodies) Credit arrangements will be achieved through a LDT Communities Scheme (LDT CS) which is being developed with stakeholders including landfill site operators and the third sector. This will not be delivered as a tax credit and as such will not be required to be made in legislation. It is the Welsh Government's intention to create the scheme using existing powers under the Government of Wales Act (GOWA) 2006 enabling it to be established as a grant scheme. This approach is intended to simplify the administration of the scheme and maximize the amount of funding reaching projects.*

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## Welsh Government consultation and decisions

In February 2015 the Welsh Government issued a **consultation** seeking views on the development of a Landfill Disposals Tax (LDT) for Wales. Prior to the consultation the Welsh Government sought preliminary views of stakeholders to inform its proposals set out in the consultation. The Welsh Government will be seeking to use the development of Landfill Disposals Tax as an additional lever to support its policies, particularly on waste.

The consultation received nearly 300 responses from a wide range of stakeholders including the waste industry, environmental bodies, the third sector and tax experts. A **summary of responses** was published on 15 September 2015.

The consultation set out a number of key factors for consideration in developing the LDT, including exploring how the tax might:

- Support and further deliver the Welsh Government's aims with regard to Towards Zero Waste, climate change, the environment and sustainable development, without having a negative or undue impact on businesses;
- Reflect developments in the waste sector over the past 20 years including modern waste management practices and technological advancements, along with changes to the European Regulatory Landscape;
- Maintain consistency with the UK where appropriate, for ease of administration or to prevent waste tourism, and equally make changes where there is good reason.

The consultation explored a number of issues relating to both the financial and policy aspects of the proposed tax. These included:

- Whether the current tax rates are set at an appropriate level for Wales;
- How important is tax consistency between Wales, England and Scotland;
- Whether changes need to be made to materials qualifying for the lower tax rate, and if so on what basis;

- Issues around the current arrangements for credit for landfill material permanently removed from a landfill site, and how these might be addressed;
- Discussion around exempt materials<sup>2</sup> and if new exemptions need to be introduced;
- Practical implications of extending the definition of landfill sites to include illegal deposits of waste (e.g. fly tipping) within the scope of the tax;
- Issues of tax avoidance within the existing scheme;
- Whether there is a need for increased compliance activity on the ground;
- Whether Welsh Government should allocate a proportion of Landfill Disposals Tax revenue to enhance the well-being of communities, and if so, which activities should benefit from funding (e.g. waste minimisation, biodiversity, tackling poverty).
- The EM also notes that, during the consultation process and throughout the policy development, Welsh Government engaged with multiple stakeholders at meetings of the Welsh Government’s Tax Advisory Group for Wales, Tax Forum, LDT Technical Experts Group (TEG) and the landfill site operators’ stakeholder group. Welsh Government officials also visited a representative selection of landfill sites including a commercial landfill site, a private landfill site and a local authority run landfill site. Along with meeting landfill site operators’ finance teams and visiting head offices to see how Landfill Tax is administered.
- On 30 June 2015 the Minister for Finance and Government **announced** that the WRA will collect LDT directly and Natural Resources Wales (NRW) will deal with compliance and enforcement for WRA. The EM states that elements of the proposed legislation have been tested with members of the LDT TEG including NRW, an independent external advisor, tax professionals and landfill site operators.

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<sup>2</sup> Exempt materials: Dredgings, mining and quarrying waste, filling of quarries, pet cemeteries, waste from visiting (NATO) forces

## 3. Bill Summary

### Policy Objectives of the Bill

The Explanatory Memorandum accompanying the Bill identifies the following policy objectives for the legislation:

- Introduce a replacement for Landfill Tax so that public services in Wales can continue to receive the benefit of the revenues raised by the tax
- To ensure that landfill waste disposal is properly priced, so as to reflect its environmental cost
- 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
- Provide an additional lever to the Welsh Government to encourage greater prevention, re-use, recycling and recovery of waste and support waste policies.
- Provide a coherent, logical and up-to-date Bill which better reflects Welsh circumstances and need
- Enable the WRA to charge tax on unauthorised disposals of waste and NRW who will undertake compliance and enforcement work

### Part 1: Overview

Part 1 is an overview of the Bill. It describes the contents of other parts of the Bill that follow, but contains no provision intended to have legal effect.

### Part 2: The Tax and Taxable disposals

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

It does this by:

- (s2) Establishing that there will be tax known as landfill disposals tax to be charged on taxable disposals and WRA will be responsible for the collection and management of the tax.
- (s3-5) Defining the concept of a taxable disposal by specifying that a taxable disposal will take place when material is disposed of by way of landfill (on or under the surface of land(s4)), in an authorised landfill site with an environmental permit (s5) in Wales.
- (s6) Defining that a disposal of material will be a disposal of waste if the person responsible for the disposal intends to discard the material.
- (s7) Identifying the person who will be responsible for the disposal of waste. Detailing that where a disposal is made at an authorised landfill site, the site operator is the person responsible for the disposal. If the disposal is not made at a landfill site or is made at a landfill site without the permission of the landfill operator, the responsibility lies with the person who makes the disposal.
- (s8) Defining landfill site activities that are to be treated as taxable disposals. This section explains that when a material is first used for a landfill site activity this is the point it is a taxable disposal. This

includes creating or maintaining temporary roads, temporary hard standings, cell bunds and other activities.

- (s9-s12) Defining disposals that are exempt from tax, including multiple disposals of material at the same site and pet cemeteries.

### **Part 3: Taxable disposals made at authorised landfill sites**

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

- (s13) Defining that for disposals made at authorised landfill sites, the landfill site operator at the time the disposal is made is liable for paying the tax.
- (s14) Defining the amount of tax chargeable on the disposal is to be calculated by multiplying the taxable weight of the material in tonnes by either the standard rate or the lower rate for qualifying materials. The tax rates will be prescribed in regulations.
- (s15) Defines the materials which will qualify for the lower rate of tax which will be prescribed in regulations. Requiring landfill site operators to hold a written description of the material (waste transfer note).
- (s16) Defining the tests that mixtures of materials will need to meet in order to qualify for the lower rate of tax.
- (s17) Defining how fines (particles produced by a waste treatment process that involves mechanical treatment) should be tested to assess if the mixture of material is a qualifying mixture or a non-qualifying mixture.
- (s18-20) Requires the taxable weight of the material to be calculated by the operator of the landfill site or the WRA where it thinks it is appropriate to do so. It also requires landfill site operators to determine the weight of the material in tonnes and apply a discount in respect of the water present in the material. The material can be weighed on a weighbridge or the landfill site operator can make an application to the WRA to use an alternative method to determine the weight of the material.
- (s21) Requiring landfill site operators to apply in writing to the WRA for approval to apply a water discount when calculating the taxable weight of the material. Requiring the landfill site operators to keep a water discount record in relation to each taxable disposal where the discount is applied.
- (s22-23) Detailing how WRA is to calculate the taxable weight of the material where it thinks it is appropriate to do so and allowing WRA to disregard the water discount when calculating the taxable weight of material in cases of non-compliance.
- (s24) Amending 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 the Bill.
- (s25) Setting out reliefs from tax from certain disposals and establishing that; reliefs only apply in relation to disposals at authorised landfill sites, where a relief applies, tax is not chargeable; and a relief will only apply if it is claimed in a tax return.
- (s26) Defining a tax relief that applies to the disposal of material removed from the bed of a river, sea or other water.
- (s27) Defining a tax relief that applies to material resulting from mining or quarrying.

- (s28-30) Defining a tax relief of the disposal of material for purposes of restoring a landfill site (or part of it) to another use. The site operator must apply in writing for the relief before the restoration work begins. Allowing the WRA to make a request to the site operator for further information before giving approval.
- (s31) Defining a tax relief for the disposal of qualifying materials at certain quarries which must be refilled as a result of planning permission or may under their environmental permit accept only qualifying material.
- (s32) Allowing Welsh Ministers by regulations to amend primary legislation to create, modify or remove reliefs.
- (s33-36) Requiring the WRA to keep a register of those persons who operate authorised landfill sites. A person's entry in the register must contain the information specified in Schedule 1. Allowing the WRA to publish information contained in the register. Requiring a person who carries out taxable operations to be registered with the WRA and inform them of any changes on their circumstances that cause the register to be inaccurate. Requiring a registered person who ceases to carry out taxable operations to apply to the WRA to cancel their registration.
- (s37) Amending section 172(2) of TCMA so that the review and appeals procedures in Part 8 of that Act apply to the decisions relating to the registration of a person with the WRA for the purposes of LDT.
- (s38-40) Requiring a person who carries out taxable operations to make a tax return to the WRA in respect of each accounting period. The return must contain an assessment of the amount of tax chargeable on the operator and a declaration that, to the best of their knowledge the information they have provided is correct and complete. Requiring the tax return and payments to be submitted on or before the last working day of the month following that in which the accounting period ends. For registered landfill site operators the first accounting period begins on the day they begin to carry out taxable operations. From then on their accounting period will be each subsequent period of 3 months. Allowing WRA to amend the duration of the accounting period by issuing a notice to the landfill site operator.
- (s41) Setting out that the amount of tax assessed as being chargeable needs to be paid by the filing date for the tax return.
- (s42) Requiring landfill site operators to keep a LDT summary in respect of each accounting period, recording the amount of tax chargeable and the tax paid. Allowing WRA to specify the form in which the LDT summary must be kept and the information contained within it.
- (s43-44) Amending section 181B of TCMA so that when considering an LDT postponement request pending a review or first appeal, 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. This is in addition to considering whether a person has reasonable ground for stating that the amount of tax is excessive. 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**

Part 4 provides the arrangements for taxable disposals made at places other than authorised landfill sites.

- (s45) Allowing WRA to tax disposals made at a place other than at an authorised landfill.

- (s46) Defining a person meets the charging condition where they made the disposal or knowingly caused or knowingly permitted the taxable disposal to be made. Detailing that unless a person can satisfy the WRA otherwise they will be treated as having knowingly caused or permitted the disposal to have been made if they controlled a motor vehicle or trailer from which the disposal was made or was the owner, lessee or occupier of land where the disposal was made.
- (s47) Allowing the WRA to issue a preliminary notice to a person where it appears that a taxable disposal has been made outside of an authorised landfill site and the person meets the charging conditions.
- (s48-49) Requiring WRA to issue a charging notice or a notice to the person stating it does not intend to issue a charging notice after at least 45 days from the issuing of the preliminary notice. A charging notice must give details of the taxable disposal, explain why WRA is satisfied that the person meets the charging condition, state the amount of tax, explain how the amount has been calculated and inform the person of the rights to request a review and to appeal against the notice. Allowing WRA to issue a charging notice without having to issue a preliminary notice where it thinks that there is likely to be a loss of tax if WRA issues a preliminary notice, giving their reasons as to why.
- (S50-53) Requiring the recipient of a charging notice to pay the tax within 30 days. Regulations may make further or different provisions about the procedures for issuing preliminary notices and charging notices. Amending 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

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

- (s53) Allowing Welsh Ministers to make regulations setting out the circumstances in which a person will be entitled to tax credits in relation to LDT. Regulations set out the circumstances in which the WRA may refuse a claim for a tax credit and the way in which a person can challenge a decision taken by the WRA about a tax credit.
- (s54) Allowing 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. As well as allowing landfill site operators to make an application for a non-disposal area to be created. Requiring WRA to state on the notice what material can and cannot go in an area. Allowing the WRA to vary or cancel a designation notice. Requires that applications to the WRA to vary or cancel a non-disposal area must be made in writing.
- (s55) Requiring the landfill site operator to comply with the terms of a non-disposal area designation notice.
- (s56) Requiring the landfill site operator to keep appropriate records of material in a non-disposal area. Allowing the WRA to specify the form and contents of the records. Requiring records to be kept for 6 years from the date the material is removed from the non-disposal area.
- (s57) Inserting a decision relating to the designation of a non-disposal area into the list of decisions that can be reviewed or appealed in accordance with Part 8 of TCMA.
- (s58) Inserting section 103A to TCMA to allow WRA to enter and inspect business premises of a third party to check a landfill site operator's liability to LDT. 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 person has been involved in any capacity with a taxable disposal and the inspection is required in order to help WRA check the position of another person's liability to LDT.

Inserting section 103B to TCMA to allow the WRA to investigate an unauthorised disposal, WRA can enter property, including non-business premises and carry out an inspection where WRA has reason to believe that a disposal has occurred at the premises or the occupier meets the charging condition in relation to the disposal being investigated.

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. Failure to permit WRA to inspect in both cases can lead to a penalty under section 146 of TCMA.

- (s59) Allowing information acquired by local authorities in Wales or NRW to be disclosed to WRA to help them collect and manage LDT and to investigate tax avoidance or tax evasion where necessary.
- (s60-62) Setting out that a landfill site operator who fails to comply with a requirement relating to the determination of the weight of material is liable to a penalty of a maximum of £500 of each taxable disposal to which the failure relates. The same penalty applies to landfill site operators who incorrectly apply a water discount.
- (s63-66) Setting out that a person who carries out taxable operations without being registered is liable to a penalty of £300. If after 10 days the person continues to carry out taxable operations without being registered they will be liable to penalties of up to £60 per day they continue to do so. If a person can satisfy the WRA that there is a reasonable excuse for the breach they will not be liable to a penalty. Where a person is liable to a penalty the WRA must assess the penalty and issue a notice to the person within 12 months.
- (s67) Setting out that a landfill site operator who fails to comply with the terms of a non-disposal area designation or corresponding record keeping then they will be liable to a maximum penalty of £5,000. Only one penalty may be imposed in relation to each act or omission. If the landfill site operator provides other evidence that the WRA are satisfied with in respect of a failure to keep or preserve records then no penalty will be incurred.
- (s68) Allowing an assessment of a penalty to be combined with an assessment to tax.
- (s71) Establishing that if 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.
- (s72) Allowing Welsh Ministers to make regulation powers about the procedure for assessing penalties and the amount of penalties.
- (s73-75) Amending sections of the TCMA to provide for additional higher penalty amounts if a person who has failed to make a LDT return or pay LDT then fails to make other LDT returns or pay further amounts of LDT on time within a specified period. The penalty amount in respect of a failure to pay LDT on time is 1% of the amount of unpaid tax.
- (s76-77) Allowing WRA to designate two or more bodies corporate as a group for the purposes of tax. Detailing further provisions in terms of the joint and several liability of the group members. An application needs to be made to the WRA by group members for them to be designated as a group.



- (s78) Allowing WRA to vary the designation of groups by adding or removing a member of the group or by changing the representative member. Allowing WRA to cancel a group designation if it is satisfied that the conditions for the designation are no longer met.
- (s79-80) Amending section 172(2) of TCMA so that the review and appeals procedures apply to decisions relating to the designation of a group for the purposes of LDT.
- (s81-83) Allowing WRA to register the persons in their own names or in the name of the partnership or body where two or more persons carry on a landfill business in partnership or as an unincorporated body. Detailing that 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.
- (s84-85) Requiring the person carrying out the landfill business where a landfill site operator dies, become incapacitated or becomes subject to an insolvency procedure to notify WRA within 30 days of when they began carrying out the landfill business. Providing Welsh Ministers with the power to make regulations which may add to, repeal or amend these provisions.
- (s86) Providing Welsh Ministers with the power to make provision in regulations on the application of LDT and TCMA where a landfill business is transferred from one person to another as a going concern.
- (s87-89) Allowing adjustment of contract where the amount of payment provided under the contract is to be adjusted to reflect the change in the tax chargeable on the taxable disposal. Allowing Welsh Ministers to make regulations in respect of a controller of an authorised landfill to be liable for tax. 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.

## Part 6: Final provisions

This part makes various provisions relating to amending the Act, issuing regulations under the Act and the definition of certain terms in the Act.

- (s90) Allowing Welsh Ministers by way of regulations to make incidental, consequential, supplemental, transitional, transitory or saving provision as they think appropriate for any provision made by or under this Bill.
- (s91-95) Setting out the subordinate legislation procedure that is to be used in relation to the various secondary legislation making powers conferred throughout the Bill. Detailing the meaning of terms used in the Bill, the commencement of the Bill's provisions and establishing the Bill's short title as 'Landfill Disposals Tax (Wales) Act 2017'.

## Schedules

There are three schedules in the Bill:

- Schedule 1 – Contents of Register
- Schedule 2 – Contents of Landfill Invoice
- Schedule 3 – Minor and Consequential Amendments to the Tax Collection and Management (Wales) Act 2016

## 4. Costs and impacts of the Bill

The Regulatory Impact Assessment (RIA) considers three options in relation to LDT:

- Option 1 – Do nothing
- Option 2 – Replicate existing Landfill Tax (LFT)
- Option 3 – Develop a 'Welsh specific' tax

Option 3 is the preferred option and the RIA details the costs and benefits associated with this option. However, **the administrative costs identified relate to the collection and management of devolved taxes more broadly and not LDT specifically.**

### Costs

In terms of costs the Explanatory Memorandum states that the estimated cost to set up the WRA is between £4.8 million and £6.3 million for the three-year period 2016-17 to 2018-19. These costs fall to the Welsh Government and include the production and issuing of guidance, development and delivery of training and the implementation of transitional arrangements to enable the effective collection and management of all devolved taxes. The RIA highlights that it has not been possible to separate the administrative costs relating specifically to LDT.

WRA operating costs have been estimated at between £2.8 million and £4 million annually commencing in 2018-19 and include NRW's delegated operational costs for compliance and enforcement activity.

There will be an additional one-off cost to the Welsh Government, estimated to be £1 million, from HMRC switching off the collection of Landfill Tax (LFT) and Stamp Duty (SDLT) in Wales.

The RIA also notes one-off costs (in 2017-18) to landfill site operators (£6,600) and tax experts (£13,000) of the time taken to familiarise themselves with the legislation. Operators with landfill sites in England and Wales are required to submit separate quarterly tax returns in each country. The total cost of this is estimated to be £150 per annum from 2018-19.

### Savings

In terms of savings HMRC will no longer incur the costs associated with collecting SDLT and LFT in Wales and it is expected that they will reimburse the Welsh Government. Based on Revenue Scotland data, it is estimated the reimbursement will be £275,000 per annum from 2018-19.

The RIA notes that LDT will include charges on unauthorised disposals and a number of new penalties to deal with non-compliance. The RIA states that at this stage levels of non-compliance are not known so these costs cannot be quantified. Under option 3 the RIA states that in September 2016, NRW reported that there are 60 illegal waste sites in Wales with approximately 55,000 tonnes of waste across these sites. If charged at the standard tax rate this would represent an estimated £2.1 million in evaded tax.

Other benefits that are mentioned but not monetised include; supporting the Welsh Government's waste and environment policies, updating and consolidating existing legislation and providing certainty and stability for the waste industry in Wales.

**Table 3: Option 3 – Costs table (£)**

	2016-17	2017-18	2018-19	2019-20	2020-21
<b>Welsh Government<sup>1</sup></b>					
WRA set-up <sup>2</sup>	4,800,000 – 6,300,000				
Switch-off costs		1,000,000			
<b>WRA</b>					
Operating costs			2,800,000 - 4,000,000	2,800,000 - 4,000,000	2,800,000 - 4,000,000
<b>Landfill Site Operators</b>					
Familiarisation		6,600			
Returns			150	150	150
<b>Tax experts</b>					
Familiarisation		13,000			

**Notes**

1. HMRC is expected to reimburse the costs associated with collecting LFT and SDLT from 2018/19; this is estimated to amount to £275,000 per annum. This is a transfer from HMRC to Welsh Government.
2. The WRA set-up costs are expected to be spread over the period 2016-17 to 2018-19.

Explanatory Memorandum, Landfill Disposals Tax (Wales) Bill, page 86

## 5. Response to the bill

The Bill was introduced in **Plenary** by the Cabinet Secretary for Finance and Local Government, Mark Drakeford AM on 29 November 2016. Some of the issues raised by Members are detailed below.

**Adam Price (AM)** welcomed the Bill and asked whether it gave an opportunity to reassess the target date for a waste free Wales. He also enquired about the relationship between WRA and NRA and asked what expectation there will be on NRW to oversee unauthorised waste disposals and whether NRW have sufficient resources to do this.

The Cabinet Secretary responded:

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*The decision to ask Natural Resources Wales to undertake the enforcement aspect of this tax is because of its presence already in the waste field—the fact that it is possessed of information about how it operates on the ground and to put that to best use. We are already providing some additional funding to NRW in order to allow it to prepare for these new duties. We will see whether it is necessary to go on doing that in future in that way. I am certainly open to discussions as the Bill proceeds as to some revenue-sharing arrangements. If Natural Resources Wales is able, by bearing down on illegal waste sites, to increase the flow of revenue into the WRA, it does not seem unreasonable to me that they should not be allowed to keep a share of that additional revenue in order to promote it to do more work in this area. I look forward to discussing that possibility as the Bill moves through the process of scrutiny.*

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**David Melding (AM)** noted the intention to make the legislation simpler and clearer to understand and also welcomed the landfill disposals communities grant. He questioned the approach to compliance and enforcement of unauthorised disposals of waste and how NRW will work with local authorities to tackle fly tipping.

The Cabinet Secretary said:

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*Compliance and enforcement is a particular issue in relation to this tax. The tax gap in landfill tax—the gap between what the tax should raise and what it does raise—is 12 per cent. In stamp duty land tax—the other tax that we will inherit—it's 1 per cent. So, there is a genuine enforcement issue to be tackled in relation to this tax, and our decisions to include unauthorised disposals within the scope of the Bill follows the experience already in Scotland and elsewhere. The parts of the Bill that deal with this matter are serious parts of the Bill. It will rest on two rebuttable propositions: that a person controlling or in a position to control a motor vehicle or trailer, or an owner, lessee or occupier of land where unauthorised disposal of waste is made, will be treated as having knowingly caused or permitted a disposal. (...)*

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*As far as fly-tipping is concerned, there is no legal definition of fly-tipping, but the sort of small-scale fly-tipping that causes such a nuisance in urban areas, for example, is not the focus of this Bill primarily. We are focused on those 60 illegal sites that exist in Wales where it is organised, intentional and deliberate behaviour, rather than small-scale attempts to evade small amounts of taxes.*

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**Mike Hedges (AM)** highlighted the behavioural nature of this tax and the potential impact of varying the tax rate to England with many landfill sites located close to the Wales/England border. He also asked whether consideration could be given to people living closest to landfill sites in terms of the community grants scheme.

The Cabinet Secretary responded:

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*... I recognise the point he makes about the border and sensitivity to different rates on either side of it. I will not be declaring my hand in relation to tax rates in this Bill until the autumn of next year. (...) as far as illegal waste is concerned, the Bill provides the power to set a separate rate of tax on illegal waste deposits, and I will be thinking hard about what that rate might be and how it might need to reflect the costs of pursuing those people who, in the end, will be obliged to pay it.*

*In relation to the community grant scheme, this issue of the mileage around the site and who should benefit from it has been one of the more lively debates in the consultation that we've carried out with stakeholders about our idea here. I said in my statement that I will be publishing a paper on the communities fund in advance of my appearance before the Finance Committee on 15 December, and I will certainly be reflecting on that issue in that paper.*

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**Mark Reckless (AM)** asked about the concept of 'waste tourism', the policy drivers behind the Bill and how unauthorised disposals will be enforced.

The Cabinet Secretary responded:

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*... 'waste tourism' is an inelegant phrase. (...) The research shows that people taking waste to landfill are relatively sensitive to relatively small changes in the rate of tax to be paid. What I'm keen to avoid is waste being taken on long journeys to more distant places than it otherwise would have been by creating disincentives in the tax system, or incentives in the tax system.*

*(...) Although this is a diminishing tax as far as the Bill is concerned, it still was intended to raise £40 million in a year, and, as finance Minister, I haven't got £40 million to fill the hole that would be left if we didn't take action to raise that money here in Wales. So, there is an important purpose behind the Bill in securing revenue for public services in Wales, but there is at the same time that very important alignment with environmental policy, where our policy is, as quickly as we are able to do it, to reduce and then eliminate the use of landfill for waste disposal.*

*Finally, the question that the Member asked about unauthorised disposals, and the balance of proof that will be used in this area. The WRA already will have civil powers of investigation as part of any tax inquiry, but I signalled in my statement my intention to consult in the spring on the criminal powers of investigation that the Tax Collection and Management (Wales) Act 2016 enables Welsh Ministers to confer on the Welsh Revenue Authority. This is to be done through secondary legislation. I think we need to take a proportionate approach in that, but it will be my intention to bring proposals in front of the National Assembly for scrutiny.*

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**Simon Thomas (AM)**, asked the cabinet Secretary to confirm that the Bill is not being used to change environmental policy and questioned why the communities grant scheme has been developed outside the Bill.

The Cabinet Secretary responded that there is no intention to change environmental policy and stated that the community scheme has been developed outside of legislation to make it simpler and more cost effective.

**Nick Ramsay (AM)**, asked the Cabinet Secretary about the transition arrangements to the new tax and the role of the WRA.

The Cabinet Secretary replied that he is aware of the importance of building up the capacity of the WRA and making sure the organisation has the necessary skills and experience

## 6. Anticipated implementation timetable according to the EM

Subject to the approval of the Bill by the National Assembly for Wales and subsequent Royal Assent, the anticipated implementation milestones are as follows:

- Royal Assent – anticipated Autumn 2017
- Announcement on tax rates – Autumn 2017
- Implementation period – Autumn 2017 – April 2018
- LDT go-live date – on or before April 2018
- Post implementation review

## 7. Summary of Stage 2 changes

### Background

The Bill was formally **introduced on 29 November 2016** by Mark Drakeford AM, Cabinet Secretary for Finance and Local Government (“the Cabinet Secretary”).

The Bill is the third bill to establish devolved tax arrangements in Wales and is preceded by the **Tax Collection and Management (Wales) Act 2016** and the **Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017**.

The purpose of this Bill is to make provisions for the introduction of Landfill Disposals Tax (LDT), which will replace UK Landfill Tax (LFT) in Wales in April 2018.

### Scrutiny

- The Business Committee remitted the Bill to the Finance Committee (“the Committee”) for scrutiny.
- On 15 November 2016, the Business Committee agreed the deadline for the Stage 1 Committee report as 10 March 2017.
- The Committee held a **consultation on the general principles of the Bill**, and visited Lamby Way landfill site in Cardiff on 2 February 2017. The Committee took oral evidence between 15 December 2016 and 2 February 2017.
- The Committee **published its Stage 1 report** on 10 March 2017. The Constitutional and Legislative Affairs Committee also **published its report on the Bill** on the same day.
- Finance Committee made 24 recommendations in their report and Constitutional and Legislative Affairs Committee made 12 recommendations.
- On 21 March 2017, the Assembly, following a debate in Plenary, agreed that the **Bill should proceed to stage 2**.
- Stage 2 commenced on 22 March 2017 and the Committee met to **consider and dispose of amendments** on 11 May 2017.

## Amendments agreed at Stage 2

**47 amendments** were tabled; five were withdrawn during the meeting and seven amendments were not moved. All 23 amendments tabled by the Cabinet Secretary were agreed.

Set out below are some of the key changes made during Stage 2 proceedings (this is not an exhaustive list).

### Qualifying material

**Amendments 21 to 25** arise from recommendation 11 in Finance Committee's report and Constitutional and Legislative Affairs Committee's recommendations 6 and 7. These amendments list qualifying materials on the face of the Bill in a Schedule. This is to assist landfill operators by making it clear which types of material qualify for the lower rate of the tax.

### Pet cemeteries

**Amendments 1 and 2** address recommendation 7 in Finance Committee's report to ensure there is consistency in relation to bilingual legislation. The amendments insert a reference to any container or material in which the remains are contained, 'the remains of dead pets (and any container or material in which the remains are contained)'.

### Taxable weight of material

**Amendments 3, 4 and 6** are in response to recommendation 13 of Finance Committee's report and change section 20 to make clear that an operator of an authorised landfill site must determine the weight of the material in a taxable disposal by using a weighbridge.

**Amendments 14 to 18 and 20** clarify the scope of the water discount penalty, and further seek to ensure that an operator has the discretion to apply a water discount where they have been given approval by the Welsh Revenue Authority.

### Relief from tax

**Amendment 11** responds to recommendation 9 of Finance Committee's report that material removed in the course of flood prevention should also be subject to relief alongside materials removed in the interest of navigation. Section 26(2) is amended to include any dredged material.

**Amendment 19** seeks to ensure that the relief from tax (section 31) applies where qualifying material is used for refilling opencast mines and quarries.

### Disclosure of information

**Amendment 5** is a response to a recent Supreme Court ruling in relation to the drafting of information sharing provisions and the application of the Data Protection Act 1998 and makes this more explicit in section 59 of the Bill.

**Amendment 13** responds to recommendation 9 of the Constitutional and Legislative Affairs Committee to ensure that any regulations amending the list of persons who can share information with the WRA would need to be subject to the affirmative procedure.

### Penalties

**Amendment 8** responds to concerns raised by the Constitutional and Legislative Affairs Committee. The amendment provides that a person is not liable to a penalty for failing to keep records if the WRA is satisfied by other documentary evidence.



**Amendment 7** reduces the maximum penalty for failing to comply with a non-disposal area requirement from £5,000 to £3,000.

### **Landfill Disposals Tax Communities Scheme**

Amendment 12 places a duty on Welsh Ministers to establish a grant scheme to be known as the 'Landfill Disposals Tax Communities Scheme'.

### **Next steps**

Stage 3 began on 12 May 2017. Amendments tabled at Stage 3 to the Bill (as amended at Stage 2) will be disposed of in Plenary on 20 June 2017. The deadline for tabling amendments was Tuesday 13 June 2017.

### **Further information**

For further information on the Bill please contact the lead responsible Clerk, Bethan Davies.

## 8. Welsh glossary

### Termau penodol i'r Bil

- Accounting period (cyfnod cyfrifyddu) – s93 of Bill
- Arrangement – trefniant
- Authorised landfill site – safle tirlenwi awdurdodedig
- Calendar quarter – chwarter calendr
- Cell bund (bwnd cell) means a structure within a landfill disposal area which separates quantities of material deposited in that area
- Charging notice – ddyroddi hysbysiad
- Companies Act 2006 – Ddeddf Cwmnïau 2006
- Controller – rheolwr
- Enactment relating to tax – deddfiad sy'n ymwmeud â'r dreth
- Environmental permit – trwydded amgylcheddol
- Filing date – dyddiad ffeilio
- Fines (gronynnau mân) means particles produced by a waste treatment process that involves mechanical treatment
- Hard standing (arwyneb solet) means a base on which landfill site activity is carried out
- Holding company – cwmni daliannol
- Land – tir
- Landfill business – busnes tirlenwi
- Landfill disposal –gwarediad tirlenwi
- Landfill disposal area – man gwarediadai tirlenwi
- Landfill disposals tax summary – crynodeb treth gwarediadau tirlenwi
- Landfill disposals tax – treth gwarediadau tirlenwi
- Landfill Disposals Tax (Wales) Act 2017 – LDTA (DTGT)
- Landfill invoice – anfoneb dirlenwi
- Landfill site – safle tirlenwi
- Landfill site activity – gweith garwch safle tirlenwi
- Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017 – LTTA (DTTT)
- Lower rate of tax – cyfradd dreth is
- Material – deunydd
- Non-disposal area – man mad yw at ddibenion gwaredu

- Non-qualifying material (deunydd anghymwys) means a material that is not a qualifying material
- Notice – hysbysiad
- Operator – gweithredwr
- Partnership – partneriaeth
- Pet cemeteries – Mynwentydd anifeiliaid anwes
- Prescribed (rhagnodedig) means prescribed in regulations
- Qualifying material – deunydd cymwys
- Qualifying mixture of materials – cymysgedd cymwys o ddeunyddiau
- Quarry – chwarel
- Registered – cofrestredig
- Relevant amount – swm perthnasol
- Relevant business documents – dogfennau busnes perthnasol
- Restoration work (gwaith adfer) means work carried out to restore an authorised landfill site (or any part of the site) to a use other than making landfill disposals; but work carried out to restore a landfill disposal area is restoration work only if it is carried out after the area has been capped
- Screening bund (bwnd sgrinio) means a structure, whether above or below ground, for protecting or concealing a landfill site activity or reducing noise
- Standard rate of tax – cyfradd dreth safonol
- Tax –treth
- Taxable disposal – gwarediad trethadwy
- Tax return – ffurflen dreth
- Tax Collection and Management (Wales) Act 2016 – TCMA (DCRht)
- The register – Y gofrestr
- The tribunal – y tribiwnlys
- Unauthorised disposals rate of tax – cyfradd dreth gwarediadau sydd heb eu hawdurdodi
- Unincorporated body – corff anghorfforedig
- Water discount record – cofnod disgownt dŵr
- Weighbridge – bont bwyso
- Weights and Measures Act 1985 – Deddf Pwysau a Mesurau 1985
- Weights and measures legislation – deddfwriaeth pwysau a mesurau
- Welsh Revenue Authority (WRA) – (ACC)

## Termau deddfwriaethol cyffredinol

- Act – Deddf
- Amend – diwygio
- Amendment(a) – gwelliant/gwelliannau
- As introduced – fel y’l cyflwynwyd
- Enacted, enactment – deddfu. Deddfiad
- Explanatory Memorandum – Memorandwm Esboniadol
- Explanatory Notes – Nodiadau Esboniadol
- Order in Council – Gorchymyn yn y Cyfrin Gyngor
- Provision(s) – darpariaeth(au)
- Regulation(s) – rheoliad(au)
- Repeal – diddymu
- Resolution – penderfyniad
- Revoke – dirymu
- Royal Assent – Cydsyniad Brenhinol
- Short title – teitl byr
- Statutory Instrument – Offeryn statudol
- Subordinate Legislation – is-ddeddfwriaeth
- Welsh tax legislation – deddfwriaeth drethi cymru