

# Landfill Disposals Tax Bill

11<sup>th</sup> January 2017



WLGA • CLILC

## **INTRODUCTION**

1. The Welsh Local Government Association (WLGA) represents the 22 local authorities in Wales. The three fire and rescue authorities and the three national park authorities are associate members.
2. It seeks to provide representation to local authorities within an emerging policy framework that satisfies the key priorities of our members and delivers a broad range of services that add value to Welsh Local Government and the communities they serve.
3. The WLGA welcomes the opportunity to comment on this consultation by the Finance Committee on the Landfill Tax Disposal (Wales) Bill.
4. Comments on the items for discussion listed in the terms of reference are provided below.

### **General principles of the Bill and the need for legislation**

5. The WLGA supports the principles of the Bill and agrees there is a need for such legislation. Given that current Landfill Tax will be dis-applied in Wales from April 2018, the absence of such a tax could undermine the work undertaken to date to encourage more sustainable forms of waste treatment. Also, whilst there inevitably will be a downward trend in terms of tax yield as landfill tonnages continue to decrease, the tax income will still make a contribution towards the costs of public services. Since the Welsh Government's block grant will be reduced to reflect devolution of the tax, it is important that this potential income is not lost at a time when public services are under severe financial pressure.

### **Potential barriers to implementation of these provisions**

6. The extensive documentation demonstrates that the provisions in the Bill have been considered and planned in-depth. Many of the potential barriers (e.g. relating to non-compliance, avoidance/evasion, public opposition) have been considered and addressed by measures already taken and/or included in the Bill (e.g. extensive consultation on the proposals, use of penalties, identification of cases where exemptions and relief are appropriate). The fact that the tax is in large part a continuation of a previous tax, as opposed to the introduction of a new one, should

also help to achieve a smooth roll out.

### **Unintended consequences**

7. The provisions in Part 4 regarding the imposition of tax on unauthorised disposals are welcome but, as the Explanatory Memorandum make clear, the “provisions complement the existing environmental law and enforcement regime, they are not a substitute for it” (page 28). There is a risk that public expectations will be raised in relation to the impact the tax will have on fly-tipping. To have a deterrent effect there would need to be some high profile instances of offenders being identified and subjected to the tax. However, identification requires a commitment of resources to surveillance and examination of unauthorised disposals. Whilst this may be cost effective where large scale tipping is occurring it is harder to justify for minor instances. This could encourage fly tippers to seek to minimise their risk of being subjected to the tax by depositing in small quantities but in multiple locations, putting additional pressures and clean-up costs on local authorities<sup>1</sup>.

### **Financial implications**

8. The Regulatory Impact Assessment identifies that funding has been allocated to NRW to carry out delegated compliance and enforcement functions. This has been included in the operating cost figures.
9. Whilst the WRA is not formally delegating functions to local authorities in the same way there could be cost implications for them. The new Act could result in pressure from residents for local authorities to investigate the small scale instances of unauthorised disposals for which they, rather than NRW, are responsible. Should there be an increase in small scale tipping to minimise the risk of becoming liable for tax (as suggested in para. 7 above) this would create additional resource pressures on local authorities at a time when environmental services are already struggling to cope with reducing budgets.
10. Whilst this is hard to quantify as the scale of any such impact is impossible to gauge at this stage, it is an issue that should be monitored once the Act is implemented. It could require, in future, that some funding is made available to local authorities to

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<sup>1</sup> Fly tipping is a criminal activity and offenders already risking being fined (up to £50,000 in a magistrates' court or an unlimited fine in Crown Court) or imprisoned (for 1 or 5 years). The additional threat of having to pay tax may not, therefore, have a major impact on behaviour.

support their enforcement activity.

### **Powers to make subordinate legislation**

11. The proposals in relation to powers to make subordinate legislation provide flexibility to respond to experience and to changing circumstances. Individually each of them is understandable. It should be noted, though, that these powers are open-ended and, collectively, they give Welsh Ministers the ability to change the nature of the legislation substantially. Some of the changes could have major implications for local authorities (and other interested parties) – e.g. powers to change discount in relation to water content; relief in relation to dredging. Whilst the affirmative procedure has been prescribed in most cases to approve any such changes, consultation with stakeholders before exercising these powers should also be a requirement.

### **Whether the principles for devolved taxes have been followed**

12. LDT rates will not be announced by the Welsh Government until autumn 2017, in readiness for implementation in April 2018. However, in the Explanatory Memorandum Welsh Government acknowledges the need for consistency. It would be unfair to businesses if there were to be sudden and significant differences between the tax rates between Wales and England. Extending the tax to unauthorised disposals also helps to 'level the playing field' for those who comply with the tax obligation and those who seek to avoid it.
13. There is also evidence of effort being made to simplify arrangements under the new tax, with clarification in areas such as the weighing of materials, the availability of exemptions and reliefs, application of a water discount and the ability to operate non-disposal areas within landfill sites. The Explanatory Memorandum is very helpful in setting out these matters.
14. The Landfill Tax forms an important part of wider efforts to move towards zero waste and to develop a circular economy. The latter has the potential to support sustainable forms of growth and jobs.
15. Therefore, the principles do appear to have informed the development of the tax. On the issue of stability and certainty a key consideration is the extent to which the subordinate powers will be used. As noted in para 12 above, these powers provide the opportunity for Welsh Ministers to revise elements of the legislation in substantial

ways. Clearly, were they to be used to any great extent they could destabilise arrangements and create uncertainty. Whilst some change may well be needed, to deal with issues that arise and with change over time, these should be kept to a minimum.

### **Definition of a 'taxable disposal' and 'qualifying materials'**

16. The four conditions that have to be met in order for a disposal to be taxable are clear. There are also specified landfill site activities that are to be treated as taxable disposals whether or not the conditions are met.
17. The materials involved in some, at least, of these landfill activities should continue to be subject to the lower rate of tax. They provide important on-site benefits (e.g. bund formation; temporary road) representing a form of reuse. As the qualifying materials are to be listed in regulations, though, it is not possible to say at this stage what they will be. It is therefore difficult to comment on the definition of qualifying materials as they are, in effect, still to be defined.

### **How the tax will be calculated?**

18. As above, until the regulations are produced it is difficult to comment on how the tax will be calculated. 14(7) of the Bill (page 7) states that the regulations "may prescribe different rates for different descriptions of material". Whilst the presumption is that there will be one higher rate and one lower rate the potential is there to specify multiple rates, which would be more complex.
19. 14(5) (on page 7 of the Bill) refers to: "The amount of tax chargeable on a disposal *of that description*" (emphasis added). 'That description' appears to relate to 14(4) (i.e. qualifying materials or a qualifying mixture of materials) but this could perhaps be clarified.
20. The provisions regarding calculation of the taxable weight (via weighbridges wherever possible) and water discount (encouraging landfill operators, where relevant, to have appropriate contract terms and processes in place with customers) are sensible.

### **Implementation of tax rates and flexibility to deal with change**

21. The Explanatory Memorandum explains that tax rates for LDT will be set in secondary legislation and that a separate impact assessment will need to be completed. With

regards to the flexibility to change, the powers to make subordinate /secondary legislation provide scope to make a wide range of changes to rates. Clearly, it will be important for Welsh Ministers to be able to vary rates should these be changed elsewhere in the UK, not least to avoid potential 'waste tourism'.

22. Paragraph 3.54 of the Explanatory memorandum states: "*In exercising their powers to set LDT rates, the Welsh Ministers will be able to set different standard or lower rates for different descriptions of materials. This further flexibility will allow the Welsh Ministers to accommodate future circumstances and policy changes*" (p.20). Again, any use of this flexibility to introduce multiple rates would be likely to complicate arrangements and could encourage cross border movements of waste.

### **Proposed exemptions and reliefs**

23. The proposed exemptions and reliefs – and their general consistency with the rest of the UK – are all sensible. The fact that they would not apply to unauthorised disposals makes is supported.

### **Inclusion of unauthorised disposals**

24. WLGA welcomes the inclusion of unauthorised disposals at places other than authorised landfill sites. Whether the threat of being taxed will change behaviour is debatable, especially as there is already the possibility of being fined or imprisoned<sup>2</sup>.
25. Their inclusion does, though, raise issues of enforcement. Whereas resources are being made available to NRW to assist them with compliance and enforcement activity no such provision is being made for local authorities, who deal with the smaller scale instances of fly tipping. This is an area that will need to be kept under review.

### **Inspection of premises to ascertain liability and sharing of information between, WRA, NRW and local authorities**

26. Section 59 of the Bill will allow local authorities and NRW to pass information to the WRA for use in a tax investigation or enforcement action. This is likely to be primarily related to unauthorised disposals. In cases where it proves possible to identify persons responsible for the disposals inspection of premises could be a contentious issue

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<sup>2</sup> See Footnote 1 on page 3.

requiring a multi-agency approach. The requirement to obtain prior consent “from the relevant person or authorisation from the Tax Tribunal” (page 95 of the Explanatory Memorandum) is likely to build in delays which would reduce the likelihood of being able to access relevant material that would assist in any enquiry.

### **Duties and penalties**

27. The UK approach to the payment of tax has been broadly replicated so should be familiar to the relatively small number of those who will be required to make payments (principally the landfill operators).
28. The actual amounts of the various penalties proposed are stated in the Bill. These will obviously be subject to inflation, reducing their impact over time. However, the Bill does include powers for these to be changed using secondary/subordinate legislation.

### **Treatment of companies, partnerships and unincorporated bodies**

29. No comment.

### **Landfill Communities Scheme**

30. Given that revenue generated by the LDT is expected to reduce gradually over time as landfill tonnages continue to decline, the administration costs of a scheme based on tax credits would become increasingly disproportionate. In WLGA’s submission during the consultation in May 2015 we suggested that any funding should be used to support waste awareness activity, helping in the wider effort to encourage households to take part in efforts to reduce waste and recycle as much as possible of the waste they do create.
31. As a decision has been taken to operate a scheme, developing it outside of the Bill is a sensible way forward and will hopefully enable it to be kept as simple and flexible as possible. Consideration could be given to making the scheme available to communities that have suffered from repeated instances of unauthorised tipping if tax is successfully charged.

**For further information, please contact:**

Tim Peppin, Director of Regeneration and Sustainable Development

[Tim.peppin@wlga.gov.uk](mailto:Tim.peppin@wlga.gov.uk)

Welsh Local Government Association  
Local Government House  
Drake Walk  
Cardiff  
CF10 4LG

Tel: 029 2046 8669