

Agenda Supplement – Finance Committee

Meeting Venue:	For further information contact:
Committee Room 3 – Senedd	Bethan Davies
Meeting date: 25 January 2017	Committee Clerk
Meeting time: 09.30	0300 200 6372
	SeneddFinance@assembly.wales

Please note the documents below are in addition to those published in the main Agenda and Reports pack for this Meeting

– Landfill Disposals Tax (Wales) Bill: Consultation

Responses

7 Landfill Disposals Tax (Wales) Bill: Consideration of evidence

(12.00)

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Cynulliad
Cenedlaethol
Cymru

National
Assembly for
Wales

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Finance Committee
Landfill Disposals Tax (Wales) Bill

January 2017



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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Cynnws | Contents

*Ar gael yn Gymraeg /Available in Welsh

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LDT 03	RSPB Cymru	RSPB Cymru
LDT 04	Un Lais Cymru	One Voice Wales
LDT 05	Cymdeithas Cyfraith Amgylcheddol y DU	UK Environmental Law Association
LDT 06	Afonydd Cymru	Afonydd Cymru
LDT 07	Pwyllgor Cyngori ar Ailgylchu yr Awdurdodau Lleol	Local Authority Recycling Advisory Committee
LDT 08	Cyfoeth Naturiol Cymru	Natural Resources Wales
LDT 09	Sefydliad Cyfrifwyr Siartredig Cymru a Lloegr	The Institute of Chartered Accountants in England and Wales
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LDT 19	RWE Generation UK plc	RWE Generation UK plc
LDT 20	Cory Environmental Resource Management	Cory Environmental Resource Management



Landfill Disposals Tax (Wales) Bill consultation

The British Heart Foundation and the re-use sector in Wales

Every month almost 800 people lose their lives to Cardiovascular Disease in Wales, and from that number more than 200 are under 75. The British Heart Foundation is working hard across Wales to raise funds for our [life saving research](#) (eg the Wales Heart Research Institute at Cardiff University), support people living with [heart disease](#), and to reduce the [heart health risks](#) of future generations.

The charity's work is partly funded from sales of re-useable goods in our 29 shops and 8 dedicated furniture and electrical stores in Wales. We estimate that we directly reuse at least 3600 tonnes of furniture, electrical items, textiles, bric-a-brac, toys, books and media (CDs, DVDs etc) per annum through our shops and stores in Wales. In addition to this we send a significant tonnage of goods for reuse or recycling by third parties. We deliver services at little or no cost to local authorities, which include regular kerbside collection of smaller reusable items commonly not included in municipal recycling (eg bric-a-brac, textiles, toys, media), free on request collection of a full range of items including furniture and electrical in most areas.

We are part of a wider re-use sector across Wales, which includes an estimated 587 charity shops (*Analysis & Mapping of the Re-use Sector in Wales, WRAP (2015)*). Collectively we re-use and prevent thousands of tonnes of potential waste, including furniture, electrical items and textiles, which have been identified by the Welsh Government as priority materials. In the process we create thousands of jobs and volunteering opportunities, and provide affordable goods to people in need, eg through referrals from housing associations. All this is in addition to core charitable work which contributes to Wales' Well-being Goals, eg health, global responsibility, cohesive communities.

Landfill Disposals Tax Communities Scheme

The proposals set out on the new Landfill Disposals Tax, including the Communities Scheme, are on the whole fairer and more efficient methods of raising and distributing the tax in comparison to the existing system. The LDT Communities Scheme proposals in particular provide for a transparent grant funding mechanism administered in such a way that grant awards are objective and support a balance of project deliverables. This is a welcome development in contrast to the un-coordinated and overly complex delegated system of environmental bodies reporting to landfill operators.

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The specific inclusion of ‘prevention, re-use, recovery and recycling of waste’ as an objective of the scheme is a logical link to the impact of landfill. It reflects the success of previous Landfill Tax funding in initiating recycling projects across Wales at a time when the industry was in its infancy. While recycling is now mainstream and a statutory duty of local authorities, there remains considerable potential to divert re-useable items from landfill and other disposal routes.

However in relation to re-use and prevention of waste the current proposal has a significant drawback – the geographical restriction to projects within 5 miles of relevant sites. While this may be a reasonable restriction for biodiversity and environmental enhancement projects mitigating local impacts, it is not relevant or practical for waste prevention.

Waste prevention and re-use covers a wide range of activities and communications carried out at local, regional and national levels. It could in theory include product design and other issues, but looking specifically at the diversion of waste through repair and re-use what this generally means is increasing the supply of useable goods to meet the demand of the sector. There is a robust re-use sector with capacity to put more items back into circulation – whether they are deemed waste because they have been presented to a local authority for disposal (re-use) or whether they are deemed second hand goods because they have been presented directly to a charity (prevention).

This sector does not generally require any funding to run its local operations – on the contrary it generates a surplus for the charities involved – and is therefore unlikely to require LDT Communities Scheme funding for specific locations.

Where the re-use sector might be able to make use of development funding would be to support communications and joint working. We have infrastructure, we have markets and we have capacity between us. What we don’t have is coordinated messaging to the public or collaborative mechanisms to standardise what we offer. In Scotland for instance there is the Community Re-use Network Scotland as a forum for all re-use organisations, the National Re-use Line as a single point of contact for residents and the Revolve Standard as a quality assurance mark recognised nationally.

There may well be useful projects developed at a local level, including the large areas highlighted in the consultation document, but there is considerably more potential to use limited funds to deliver national projects. A communications campaign for all South Wales local authorities for instance which excluded those areas more than 5 miles from a landfill site would be impossible to deliver. A North Wales partnership which excluded those few urban areas not highlighted on the map would be impractical.

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All of Wales' residents contribute in some way to the continuing disposal of waste. If the LDT Communities Fund is to encourage the prevention of this waste it needs to be applied at the appropriate level. We would therefore suggest that waste prevention and re-use is exempted from the geographic exclusion if applications for funding can demonstrate that a regional or national project would be appropriate.

A handwritten signature in black ink, appearing to read "DR", followed by a long horizontal line extending to the right.

David Roman
Waste & Recycling Manager

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Pwyllgor Cyilid I Finance Committee

Bil Treth Gwarediadau Tirlenwi (Cymru) | Landfill Disposals Tax (Wales) Bill

LDT 02 Cymdeithas Llywodraeth Leol Cymru | Welsh Local Government Association

Landfill Disposals Tax Bill

11th 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 authorities¹.

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

¹ 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 imprisoned².
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 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.

² See Footnote 1 on page 3.

For further information, please contact:

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Welsh Local Government Association

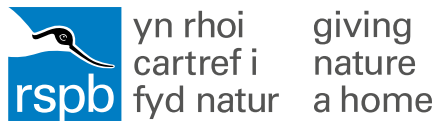
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Evidence submitted by RSPB Cymru to the Inquiry of the Finance Committee into the general principles of the Landfill Disposals Tax (Wales) Bill

January 2017

The RSPB is the country's largest nature conservation charity. The RSPB works together with our partners, to protect threatened birds and wildlife so our towns, coast and countryside will teem with life once again. We play a leading role in BirdLife International, a worldwide partnership of nature conservation organisations. The RSPB has over 1 million members, including more than 51,000 living in Wales.

Specific responses to terms of reference for the inquiry

For the purposes of this call for evidence, we restrict our comments to Annexe 1 questions numbered: 1, 3, 4, 5, 12, 13 and 16.

Section numbering relates to annexe question numbers. Numbers in brackets refer to numbering in the Explanatory Memorandum November 2016 that accompanies the Landfill Disposals Tax (Wales) Bill.

Q1. The general principles of the Bill and the need for legislation;

1.1 Explanatory Memorandum to the Bill paragraphs (3.7) & (7.11). The RSPB welcomes the Landfill Disposals Tax (Wales) Bill and agrees that a replacement Landfill Tax is desirable to continue to drive good behaviour around waste recycling and re-use.

1.2 However, as it stands the Bill needs greater clarity before it can be read with confidence as a legal delivery mechanism for Landfill Disposals Tax especially in relation to how Landfill Disposals Tax revenues (LDT) are apportioned to the Landfill Disposals Tax Communities Scheme (LDT CS). We therefore welcome this opportunity to submit evidence to the Finance Committee stage 1 scrutiny of the legislation. We would welcome the opportunity to elaborate on the issues outlined in this paper in oral evidence sessions.

1.3 Whilst accepting the need for a coherent Bill, we are concerned that whilst there is provision for tax credits to be applied (Page 27 of the Draft Landfill Disposals Tax (Wales) Bill: Part 5, Supplementary Provision, Chapter 1, Tax Credits, Paragraph 53 - Power to make provision for tax credits) there is no specific reference or link between the entitlement to credit and the use of those credits as there is in the existing UK Landfill Tax regulations of 1996 (Part VII Credit: Bodies Concerned with the Environment).

1.4 We believe that if Landfill Disposals Tax is to fund this scheme, that it should be clearly referenced for transparency and to safeguard this funding mechanism. See response to Q.16 below for further points around this topic.

1.5 RSPB Cymru supports the intention behind Wales's Towards Zero Waste Strategy (2010) and the drive towards an environmentally sustainable Wales where waste use is minimised and everyone uses only their fair share of resources.

1.6 Such an approach is consistent with the principle of sustainable development as set out in the Well-being of Future Generations (Wales) Act 2015 (WFGA)¹. This principle includes working in a way which considers the Long Term, Prevention, Integration, Collaboration and Involvement. Goal 1 of the WFGA refers to a society which 'recognises the limits of the global environment and therefore uses resources efficiently and proportionately'. This is consistent with the overarching principles of the UK shared framework, which specifically requires policy to adhere to "living within environmental limits"².

1.7 'A biodiverse natural environment with healthy, functioning ecosystems' is one of the Wellbeing Goals that public bodies, including the Welsh Government, must contribute to achieving in line with their WFGA sustainable development duty. In addition, the Environment (Wales) Act 2016 places a duty on public bodies, including the Welsh Government, to maintain and enhance biodiversity³ and in so doing promote the resilience of ecosystems. This is intended to place biodiversity as a natural and integral part of policy and decision making (Environment (Wales) Bill Explanatory Memorandum).

1.8 Whilst the practice of landfill is in existence and taxation and other policies are securing its phasing out, we strongly support the existence of a Landfill Disposals Tax Communities Scheme, which hypothecates tax raised from an environmentally damaging activity for projects that benefit the environment, including biodiversity. Such a scheme would be in keeping with the purpose of the legislation, and help the Government to deliver on the legal obligations set out above.

1.9 The RSPB welcomes the intention to set tax rates to help deter waste tourism and reduce carbon footprint and emissions generated by unnecessary transportation of waste as noted in Explanatory Memorandum to the Bill paragraph (3.9). If Welsh Landfill Tax rates are not comparable when introduced this would become the cheapest option for waste disposal and would not result in the behavioural change desired in reducing waste to landfill. A lower rate of tax compared to England could result in 'waste tourism' and increased transportation of waste into Wales. This will cause an increase in the disamenity to local communities due to higher levels of noise and pollution and increase of carbon emissions.

¹ <http://www.legislation.gov.uk/anaw/2015/2/contents/enacted>

²

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/323193/Guiding_principles_for_SD.pdf

³ Biodiversity and resilience of ecosystems duty, section 6 of Environment (Wales) Act 2016.

Q3. Whether there are any unintended consequences arising from the Bill

3.1 We note that The Cabinet Secretary for Finance and Local Government has confirmed that for LDT the Landfill Communities (Environmental Bodies) Credit arrangements will not be delivered as a tax credit and therefore will not be required to be made in legislation. We are concerned that this detachment will lead to less transparency regarding the grants scheme and levels of funding within it. See Q16.

Q.5 The appropriateness of the powers in the Bill for Welsh Ministers to make subordinate legislation (as set out in Chapter 5 of the Explanatory Memorandum);

5.1 We note that Table 4: section 14(3) page 51 of the Explanatory Memorandum allows Welsh Government to vary tax rates to determine the amount of revenue to be raised to invest in public services. We are concerned that there is now no link between the Landfill Disposals Tax and the Landfill Disposals Tax Communities fund - how will funding levels for the new fund be determined and protected?

Q12. The inclusion of unauthorised disposals of waste at places other than authorised landfill sites;

12.1 RSPB Cymru welcomes the intention to introduce the charging of landfill tax on unauthorised disposals as outlined in Explanatory Memorandum to the Bill paragraph (3.8). We agree that charging tax on unauthorised disposals is desirable as this should help deter environmental pollution and reduce costs associated with managing waste crime.

Q13.The inspection of premises for the purposes of ascertaining a person's liability to LDT and the sharing of information between the Welsh Revenue Authority, Natural Resources Wales and local authorities;

13.1 We note at (3.92) in the Explanatory Memorandum there is an intention to keep a register of those persons responsible for paying tax on taxable disposals. If there is to be a continued correlation between the landfill site and eligible projects – full postcodes will be needed on any register of authorised sites (or grid references) so that proximity can be determined. We recommend that as well as a list, **eligible** Welsh landfill site locations are clearly identified online within the NRW mapping system. at: <http://naturalresources.wales/our-evidence-and-reports/maps/find-details-of-permitted-waste-sites-in-wales-1/?lang=en>

This will allow potential beneficiaries of the LDT CS to more easily check eligibility especially where distances are borderline.

Q.16 Establishing the Landfill Communities Scheme as a grant scheme rather than a tax credit and developing it outside of the Bill. (see Chapter 4 for more background).

16.1 The RSPB welcomes the confirmation at (3.45) in the Explanatory Memorandum that there will be arrangements for a Landfill Disposals Tax Communities Scheme to replace the current UK Landfill Communities Fund, as this is an important source of funding for community and biodiversity projects.

16.2 However, we are concerned that as the LDT CS will not be delivered as a voluntary tax credit and made into legislation within this Bill, that the link between the two will not be transparent. For example - how will the fund value be determined eg at present UK HMT set % rate at Budget as part of Finance Bill?

16.3 We agree that steps need to be taken to reduce administration costs and maximise the amount of funding reaching projects. We recommend that during the procurement of the single distributive body for the LDT CS levels of administrative costs are in line with similar schemes eg 5% for National Lottery bodies and 7.5% for LCF Distributive Environmental Bodies.

16.4 Distribution of funds must be fair and transparent. Currently applicants can apply to a number of funders at the same time (depending on where their priority projects occur) and we would like to see this principle continued – otherwise it will mean a reduction in funding for biodiversity projects across Wales.

16.5 The RSPB have a great deal of experience in this Fund and we look forward to being involved further in the development of the administrative model. We have been closely involved in the Scottish Government's approach and applaud their decision to increase the proportion of Scottish Landfill tax which can be given community funds to 10% to increase the funding available for environmentally sound projects.

16.6 RSPB Cymru is pleased to note that the new LDT CS will support biodiversity in line with concerns raised during the consultation for the Bill. Object DA of the current UK Landfill Communities Fund (LCF) is one of the few funding streams still currently available for 'pure' biodiversity projects. Reducing or removing the LDT CS would make it even more difficult for the Welsh Government to meet the international target to halt and reverse the loss of biodiversity and deliver against Wales' Nature Recovery Plan.

16.7 The UK LCF has supported practical conservation delivery on the ground through projects such as 'Magical Malltraeth', an RSPB Cymru initiative funded through WREN (Waste Recycling Environmental Ltd) to create the largest reedbed in North Wales, improving habitat for a range of species such as bittern and rare plants. Such funding not only supports nature, but helps to build healthy ecosystems, a central objective of the Environment (Wales) Act and a goal of the WFGA, which recognise the benefits our natural resources and ecosystems provide to people.

16.8 In addition to supporting healthy ecosystems and the benefits they provide, the current LCF has directly enabled the creation of green growth within the Welsh economy through projects such as the creation of the indoor learning and events space at RSPB Conwy nature reserve. In 2005/06 the creation of a new facility at RSPB Conwy not only safeguarded two full time and six part time posts, but in addition created two full time and three part time posts, as well as a wealth of new

volunteer opportunities due to the expansion in activities and events on offer at the reserve. Visitor numbers to the site almost doubled within 2 years, encouraging indirect spend within the Welsh economy too. 69% of visitors in peak season and 63% in off peak visit to enjoy the landscape/countryside/beach⁴. LCF funding for biodiversity helps to maintain and improve this vital part of the Welsh tourism offer for this key Welsh industry.

16.9 As mentioned above, this fund has great potential as a means of the Welsh Government delivering on its sustainable development duty (under the WFGA) and its 'biodiversity and resilience of ecosystems duty' under the Environment (Wales) Act. The need to build the resilience of ecosystems for biodiversity and human benefit is clear within the current consultation to inform the development of Wales' Natural Resources Policy (required under the Environment Act). 'Green growth' is set out within this document as a key priority.

Summary

The RSPB strongly supports the principles of the Welsh Government's Towards Zero Waste Strategy and the continuation of a tax on landfill disposals is a welcome and positive contribution to achieving the aims of this strategy, when the power is devolved in 2018.

The RSPB also welcomes the confirmation of a Landfill Disposals Tax Communities Scheme, to replace the current UK Landfill Communities Fund, which hypothecates tax raised from an environmentally damaging activity for projects that benefit the environment, including biodiversity. Such a scheme would be in keeping with the purpose of the legislation, and help the Government to deliver on the legal obligations within the Wellbeing of Future Generations and Environment Acts.

However, we believe that if Landfill Disposals Tax is to fund this scheme, that it should be clearly referenced within the legislation, both for transparency and in order to safeguard this funding mechanism.

We are concerned that there is now no link between the Landfill Disposals Tax and the Landfill Disposals Tax Communities fund. Welsh Government will be able to vary tax rates to determine the amount of revenue to be raised to invest in public services, but it is not clear how funding levels for the new fund will be determined or protected. If not specifically referenced within this legislation the funding could quickly disappear.

Object DA of the current UK Landfill Communities Fund (LCF) is one of the few funding streams still currently available for 'pure' biodiversity projects. Reducing or removing the LDT CS would make it even more difficult for the Welsh Government to meet the international target to halt and reverse the loss of biodiversity and deliver against Wales' Nature Recovery Plan.

⁴ <http://gov.wales/docs/caecd/research/2014/140523-visit-wales-off-peak-visitor-survey-2013-14-staying-visitors-summary-en.pdf>

RSPB Cymru supports the need for simplification regarding the administration of the LDT CS but is concerned that the disconnection with this legislation could lead to less control over how funding levels for the new fund be determined and protected?

As a general concept, so-called 'green taxes' are welcome. The Welsh Government could make greater use of fiscal measures to achieve environmental policy objectives and this opportunity could be the exemplar to follow.

While landfill still exists, and the tax is 'driving down' quantities, the continued existence of a Landfill Disposals Tax Communities Scheme to give operators credits for dispersing funds to environmental projects is important.

All public finances must be transparent and well-regulated. However, with many recipients of these funds being charities, it should be possible to use existing regulatory/auditing functions, and ensure that the use of the funds is appropriately monitored and reported on.

It is right that the use of taxes on an environmental 'bad' should be used to deliver benefits, in the form of an environmental 'good', "in the vicinity of" the 'bad'. However, given Wales's geography and the distribution of its biodiversity, there is a need to be flexible about how eligibility is determined.

The LDT CS must continue to allow multiyear projects. Reducing the length of projects means increased administration costs for both applicants and the Distributive Environmental Body plus most environmental projects need several seasons to be implemented and to carry on effective monitoring.

Landfill Disposals Tax (Wales) Bill – One Voice Wales Comments

Generally, One Voice Wales is happy to support the introduction of this new legislation and the way in which the Welsh Government has mapped out the implementation of the various aspects involved in establishing the new regime. This development appears to be a clear example of where applying the principle of subsidiarity will bring about additional potential benefits as well as satisfying local and national democratic requirements.

One Voice Wales supports the change that the legislation will bring to include the charging on disposals of waste at unauthorised landfill sites in addition to those at authorised sites. This will encourage fewer instances of unauthorised disposals, whilst keeping the total revenue at a similar level to the present tax take.

One Voice Wales supports the retention of the two tax rates and the retention of the principle of qualifying materials. It is recognised that consistency across the UK, at least in the short to medium term, would be advantageous.

The arrangements for the tax to be collected and managed by the new Welsh Revenue Authority working with Natural Resources Wales on compliance and enforcement issues are seen to be sensible.

One Voice Wales supports the provision for applying reliefs and exemptions in the manner laid out by these proposals.

One Voice Wales is encouraged to learn that, since landfill tax was introduced, it has contributed to a significant reduction in the amount of waste sent to landfill, and that the number of landfill sites in Wales is expected to fall to fewer than 10 by 2020. This is seen as a natural and beneficial advantage of such legislation, and this particular legislation will ensure that Wales will see optimal gains in this respect in future.

One Voice Wales is pleased to note that a new Landfill Disposals Tax Communities Scheme will be established to replace the existing Landfill Communities Fund. One Voice Wales member councils and their communities have benefited significantly from the existing scheme, and the continuation of this degree of investment is important to communities, especially to smaller communities and to those in rural areas.

Dr. Del Morgan
(21/12/16)



The UK Environmental Law Association's Wales Working Party

Evidence Submission on the Landfill Disposals Tax (Wales) Bill

to the

National Assembly for Wales's Finance Committee

Introduction

1. The UK Environmental Law Association (UKELA) is pleased to have the opportunity to submit its views and comments to the National Assembly for Wales's Finance Committee on the contents of the Landfill Disposals Tax (Wales) Bill (hereafter referred to as 'the Bill').
2. The UK Environmental Law Association aims to make the law work for a better environment and to improve understanding and awareness of environmental law. UKELA's members are involved in the practice, study or formulation of Environmental Law in the UK and the European Union. It attracts both lawyers and non-lawyers and has a broad membership from the private and public sectors.

3. UKELA prepares advice to UK Governments with the help of its specialist working parties, covering a range of environmental law topics. This response has been prepared by UKELA's Wales Working Party.

Overview

4. The landfill tax is a key policy lever in the Welsh Government's objective of less than 5 per cent of waste sent to landfill by 2025, with an ultimate ambition of zero waste by 2050. As highlighted in the *Towards Zero Waste 2010-2050 Progress Report July 2015* (<http://gov.wales/docs/desh/publications/150724-towards-zero-waste-progress-report-en.pdf>), Wales has made significant and commendable progress towards these goals and while a causal link is difficult to firmly establish, it is logical to assume that the landfill tax was a contributing factor to the progress already made. The current landfill tax has operated as a successful behavioural change mechanism and UKELA fully supports its continuation in the form of a landfill disposals tax from April 2018.
5. Given the disapplication of the existing landfill tax in Wales in the near future, a 'do-nothing' approach would lead to significant funding implications for Wales resulting from lost tax revenue. More significantly from an environmental perspective, the absence of a landfill tax in Wales where one exists in England is highly likely to lead to so-called 'waste tourism', i.e. would perversely incentivise the transportation of waste from England to Wales, something which could eventually lead to the need for more landfill sites in Wales – a development which would extensively undermine the Welsh Government's waste strategy and commitment to sustainability.

6. In terms of any potential barriers to the implementation of the provisions and any unintended consequences arising from the Bill, one can take confidence from the fact that the Bill does not represent a radical departure from the existing regime under the Finance Act 1996 and associated secondary legislation. Further, where the Bill does introduce new provisions, e.g. the extension of landfill disposal tax to unauthorised disposals of waste at places other than authorised landfill sites, this has already occurred in Scotland (following the enactment of the Landfill Tax (Scotland) Act 2014). If unforeseen problems arise in the future, the Bill contains a number of provisions which enable regulations to be made to amend the landfill disposal tax regime. As such, the Bill pays sufficient regard to the need to future proof.
7. Given the nature of UKELA as an organisation, the comments provided below relate only to the environmental aspects of the Bill, i.e. no opinion is offered on the parts of the Bill relating to the technical and administrative provisions for tax collection and enforcement. However, the extent to which the Bill is able to achieve its environmental and sustainability objectives is dependent to a significant extent on the provision of robust enforcement and inspection mechanisms and sufficiently dissuasive penalties for non-compliance.

Specific Comments

8. Definition of taxable disposal: the definition provided by clause 3 of the Bill is clear and the use of four conditions in order to determine whether a taxable disposal is made should provide a clear checklist for enforcement officers and operators of landfill sites. Clause 3 can only be fully understood by reference to clauses 4, 5 and 6, which provide definitions of the conditions provided in clause 3. The definition of 'disposal of material as waste' (cl.6) utilises the familiar concept of "intention to discard" (utilised in the EU Waste Framework Directive); historically this concept has generated litigation but is now fairly settled as a legal concept. Clause 6(2) creates an inferred intention to discard

from the fact that material is deposited in a landfill disposal area; this represents a common sense approach to the issue which should reduce the scope for protracted legal argument. However, there might be cases where it is argued that the inference has been rebutted by contrary evidence.

9. Definition of qualifying materials: the Bill adopts an identical approach to the current landfill tax regime in that qualifying materials will be listed in regulations. In the interests of certainty and consistency and in order to avoid waste tourism, it is sensible to maintain a broadly similar list to the remainder of the UK.

10. The omission of a specific threshold to define 'small quantity' for the purposes of clause 16 (qualifying mixtures of materials) is also worthy of comment. Natural Resources Wales has argued against the use of a threshold on the basis that it would encourage less efficient methods for segregating waste and might encourage some operators to deliberately mix wastes to achieve the limit set. While there is some force in this argument, it is contended that the issue is finely balanced; the argument advanced by NRW is premised on the assumption that the threshold will be relatively high (the example given is 10 per cent), a considerably lower threshold might not be problematic. Further, requirement 3 of clause 16 provides that a mixture will not qualify for the lower rate of tax where non-qualifying materials have been deliberately mixed with qualifying material. In theory, this provision would alleviate the problem of operators mixing wastes up to the threshold (although issues of evidence and proof would arise). Finally, a threshold approach would be more objective than the current use of the ambiguous test of 'small quantity'. Ultimately, UKELA will support the approach which has the greatest potential to reduce landfill. As such before any future regulations designed to introduce a threshold (as provided for by clause 16(3)) are enacted, we would advocate the development of an evidence base to ascertain how the 'small quantity' test is administered in practice.

11. The inclusion of unauthorised disposals of waste at places other than authorised landfill sites: UKELA welcomes the extension of the landfill disposals tax regime to cover disposals of waste at non-landfill sites. The stated purpose of the extension is to deter those who attempt to evade the landfill disposal tax by altering the balance of financial risks and rewards. The new provisions are only likely to produce an enhanced deterrent effect if backed up by meaningful enforcement activity, thereby increasing the likelihood of apprehension. In terms of the approach taken by clause 46, the use of presumptions in cases of persons who controlled a motor vehicle from which the disposal is made and owners, lessors etc of the land on which the disposal is made is a pragmatic solution to the problems which might otherwise arise in proving that a person has knowingly caused or knowingly permitted a disposal to be made.

12. The establishment of the Landfill Communities Scheme: the Welsh Government has stated that the new grant scheme is intended to maximise the amount of funding reaching projects. However, the extent to which funding levels to community and environmental projects is maintained (and hopefully increased) is dependent on the political will and funding priorities of the Welsh Government. In order to avoid funding levels changing in accordance with political vagaries, we would advocate a statutory duty to allocate a certain percentage of the revenue generated by the landfill disposals tax to the Landfill Communities Scheme. On practical level, the new proposed streamlined distribution process is welcomed as a means of reducing administrative burdens.

Dr Patrick Bishop



5th January 2017

Landfill Disposal Tax (WALES) Bill: comments from Afonydd Cymru Cyfengedig

1.1 **Afonydd Cymru** is the umbrella body for the six Rivers Trusts of Wales¹. These trusts are all registered charities who actively work to restore our rivers and catchments. Their work is essentially hands on restoration, using a variety of funding sources including EU, governmental grants and of relevance here, the Landfill Community Tax. In respect of the latter some of our trusts have successfully bid for and used Landfill project funding both sides of the border. These projects will have gone towards ensuring compliance with the Water Framework and Habitats Directives and restoring rivers and fisheries with wide ranging public benefit.

1.2 The trusts' work brings them into daily contact with waste, litter, fly tipping and simply using our rivers as conduits for plastic sacks and anything that can be thrown down a bank or over a bridge.

1.3 The whole concept of taxing landfill and using the benefit for both common good and via the communities scheme is one that resonates with all the rivers trusts. The issues of having the correct legislation in place and ensuring landfill regulations are workable, ie neither too onerous nor costly are clearly important to us.

1.4 We have read the policy intent and the Terms of Reference of the Inquiry and the various downloadable documents. The area we are competent to comment on is the Landfill Communities Scheme (LDTCS). The other aspects of the scheme seem to our layman's view, eminently satisfactory.

2 Landfill Communities Scheme (LDTCS)

2.1 We think the proposal to deliver funding as a grant scheme with a single distributive body is good, as are the general principles (p6)

2.2 Likewise the project themes seem better aligned with both need and the overall objectives of the tax than hitherto. Our next comments focus on the Biodiversity section (2.12 p7).

¹ The Wye and Usk Foundation, Severn Rivers trust, The Dee trust, Conwy, Clwyd and Gwynedd trust, Southeast Wales Rivers trust, West Wales Rives trust

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2.3 Geographic coverage was always a difficulty with the ten mile radius and a reduction to five might seem to target those most affected by a landfill site. Incidentally, Entrust altered or reinterpreted the regulation in respect of work to restore rivers by allowing work on any river that ran through the 10 mile zone.

2.4 As the ‘whole catchment management’ concept becomes the norm for environmental management, might it be feasible to use the presence of a landfill in any given catchment as the proximal yardstick rather than the rather arbitrary 5 mile circle? Thus the presence of a landfill site in, say for example the Cynon catchment, would enable a project anywhere within that area? The problem for Biodiversity projects is that need is not a function of proximity to landfill sites

2.5 Currently one of our trusts is working on a project to restore the river Arrow which crosses the border near Kington with work taking place both sides while the project is funded from landfill on the welsh side. We recommend that the consideration of cross border issues is considered: the reverse situation holds in the forest of Dean for example.

2.6 There is another funding source akin to landfill in Wales. This is the Aggregate Levy fund http://www.mineralproducts.org/documents/Aggregate_Levy_Fund_Leaflet.pdf. We wonder if this could be combined with the Landfill tax communities scheme working under the same distributive body, simplifying procedures, directing more funding to the “sharp end”?

Dr Stephen Marsh-Smith OBE
CEO Afonydd Cymru
Advisory Director Wye and Usk Foundation

Pwyllgor Cyilid I Finance Committee

Bil Treth Gwarediadau Tirlenwi (Cymru) | Landfill Disposals Tax (Wales) Bill

LDT 07 Pwyllgor Cyngori ar Ailgylchu yr Awdurdodau Lleol | Local Authority
Recycling Advisory Committee



9 January 2017

Dear Committee Members

Landfill Disposals Tax (Wales) Bill Consultation

Thank you for the opportunity to respond to this consultation. The LARAC response is contained below.

The responses below are sent on behalf of the Local Authority Recycling Advisory Committee (LARAC). LARAC is an association of around 75% of local authorities across England, Scotland, Wales and Northern Ireland. Members are waste management and recycling professionals who co-ordinate and operate waste management services. Membership is drawn from all types of authority including statutory Waste Collection (WCA), Waste Disposal (WDA) and Unitary Authorities.

Our response has been peer reviewed by members of LARAC's policy team and executive committee. LARAC members have also been invited to comment on the consultation through the members' discussion forum on our website. All contributions received have been considered in drafting the response below.

LARAC generally supports the proposal within the consultation. LARAC does however believe that the opportunity needs to be taken to reduce the tax burden on local authorities if Welsh local authorities are to have the economic resources to achieve their statutory recycling targets

If you have any queries on this response, then please contact me at lee.marshall@larac.org.uk or on 01982 382 650.

Yours faithfully,

A handwritten signature in black ink, appearing to read "Lee Marshall", is written over a faint, light-colored background.

Lee Marshall
LARAC Policy Team



Responses to Consultation Questions

The general principles of the Bill and the need for legislation

LARAC agrees that there is a need to ensure that Wales has suitable tax instruments in place for April 2018 when the current system of Landfill Tax is 'switched off'.

Any potential barriers to the implementation of these provisions and whether the Bill takes account of them

LARAC does not believe there are any immediate barriers to the implementation of the Bill. As with most policy instruments, the success or otherwise, is often dependant on a suitable amount of resources being available to first implement and then deliver the desired outcomes of any Bill. LARAC believes that both the WRA and NRW will require additional and appropriately targeted resources in order that the desired environmental and financial outcomes of the Bill to be delivered.

Whether there are any unintended consequences arising from the Bill

LARAC does not see any unintended consequences of the Bill as such. A possible consequence that is already known is that of cross border waste movements and this will need to be considered throughout the whole process of planning, implementing and delivering the Bill. LARAC supports the aim of Wales as a resource efficient nation and dealing with waste and resources holistically, but this should not restrict valid and appropriate cross border waste movements where it is efficient and effective to do so.

An ongoing consequence of the Bill is that local authorities will continue to contribute significantly to LDT revenues in Wales. Give that a stated aim of the Bill is to preserve funds for public services in Wales LARAC is disappointed that the opportunity has not been taken within the Bill to address this. LARAC believes there is the potential for a mechanism that reduces the tax level for household waste disposed of by local authorities and their agents and allows the tax saved to be reinvested directly into local authority waste and recycling services.

In 2015 16 there were 288,840 tonnes of household waste landfilled in Wales which at the current LDT rate means over £24 million lost to local authority services. This level of funding would assist local authorities in meeting the aspirations and targets with Towards Zero Waste. LARAC believes that the statutory nature of recycling targets in Wales is now a much bigger policy driver for local authorities than the LDT and as such a reduced rate for household waste will not stifle the excellent progress local authorities have made in increasing recycling rates to European leading levels. Indeed, it is likely to assist them if the savings in tax are hypothecated back to local authority recycling services. This means the value is not lost to public funds overall.

The financial implications of the Bill (as set out in Chapter 6 of the Explanatory Memorandum)

LARAC believes that given the information available the financial implications that are contained within the Explanatory Memorandum are likely to be the best estimates that can be made. However, given that the estimated overall income from LDT revenues has recently

been revised downwards it would suggest that reviewing these estimates at regular intervals, perhaps smaller than would normally be expected, should be considered. At a time when the funds available for public services are decreasing LARAC would not want to see unrealistic estimates in relation to this Bill contribute to that position.

The appropriateness of the powers in the Bill for Welsh Ministers to make subordinate legislation (as set out in Chapter 5 of the Explanatory Memorandum)

LARAC would want to see suitable consultation undertaken before subordinate legislation is made. Where Welsh Government believe that a matter does not warrant wide consultation this should be notified to relevant stakeholders to enable them to make suitable representations. This is suggested with the intention of ensuring unintended consequences are minimised and not to make the introduction of subordinate legislation a more drawn out process.

The powers as outlined in the documents appear appropriate.

Whether the Welsh Government's principles for the development of devolved tax policy and legislation have been followed

- **be fair to businesses and individuals who pay them;**
- **be simple, with clear rules which seek to minimise compliance and**
- **administration costs;**
- **support growth and jobs that in turn help tackle poverty; and**
- **provide stability and certainty for taxpayers.**

LARAC would agree that the principles outlined above have been applied to this Bill within the constraints that the complexity of the subject allows. LARAC would reiterate the earlier point regarding the cost of landfill tax to local authorities and the opportunity to use the LDT as a means of directing public funds away from supporting landfills to supporting recycling collection and treatment infrastructure instead.

The definition of a 'taxable disposal' and 'qualifying materials'

LARAC supports the devolution of powers to the Welsh Government but would want to see these applied with consideration to other parts of the UK where appropriate. Therefore, any definitions applied in the Bill should consider the consequences to those impacted where it is different from definitions used in other parts of the UK. Where a change supports progress in Welsh Government waste policy without undue burdens to business, local authorities and other organisations then LARAC would support this.

The provisions on how the tax will be calculated including the taxable weight of material and the discount in respect of water content

LARAC agrees with the method of calculations outlined.

The implementation of tax rates and whether these retain the flexibility to deal with subsequent changes at a Wales and UK level;

As highlighted above LARAC supports the use of devolved powers to assist in a more resource efficient Wales. Where rates different to other parts of the UK are proposed, these should



be clear, simple to understand and apply and sufficient notice given to ensure that organisations can comply within reasonable timescales.

The proposed exemptions;

LARAC support the proposed exemptions. However, LARAC believes there is merit in considering extended the exemption in relation to 'multi disposal of waste' linked to the proposal to instigate LDT on waste disposed of at illegal sites. This waste is likely to still end up at a landfill site once cleared away. There is danger of applying the tax twice if its applied at the authorised landfill site as well as the charge on the obligated person who initially disposed of the waste.

Given that local authorities have a large roll in removing waste from unauthorised sites LARAC would like to see local authorities given exemptions on this form of waste.

The proposed reliefs;

LARAC would question the relief that is given to mining and quarry wastes. In the UK household waste makes up approximately 8% of the total whereas mining and quarry waste is approximately 20% of the total. With the household waste stream now heavily regulated and subject to statutory targets and fines if these targets are missed, LDT is no longer a real policy driver in that area of waste. LDT could be a real policy driver for mining and quarry waste and so LARAC does not believe that the exemption in that instance is helping to deliver environmental benefits.

The inclusion of unauthorised disposals of waste at places other than authorised landfill sites

LARA supports the reduction in the use of illegal disposal and unauthorised sites. However, this proposal may deal with the effect of such activities rather than the cause. LARAC believes the bigger deterrent to such activities is getting caught, rather than the expense if caught. LARAC would therefore like to see more proposals on how resources are going to be made available to increase the capture and prosecution of illegal waste activities alongside the recovery of such costs and using that as one deterrent.

The inspection of premises for the purposes of ascertaining a person's liability to LDT and the sharing of information between the Welsh Revenue Authority, Natural Resources Wales and local authorities;

LARAC supports the intention to work across public bodies in efforts against waste crime. The issue of resources available to local authorities needs to be raised in relation to this. Local authorities will have limited resources to respond to information requests as they focus on achieving targets within Towards Zero waste. There needs to be a recognition of this within the Bill and the arrangements that are put in place subsequently.

The duties on taxpayers to make payments and pay penalties and interest in certain circumstances

LARAC supports this concept.



How companies, partnerships and unincorporated bodies are treated in terms of the provisions and responsibility for compliance; and

LARAC has no view on this aspect of the Bill

Establishing the Landfill Communities Scheme as a grant scheme rather than a tax credit and developing it outside of the Bill

LARAC supports the concept of a grant scheme instead of a credit scheme if that does mean that more funds will be made available to the projects bidding for them. Grant schemes require a certain amount of administration and this needs to be demonstrated as more costs effective than if a tax credit scheme were in place.

As part of this change LARAC would want to see a review of current criteria for eligible projects. Whilst it is obvious that those people closest to landfill sites will be most affected by them there is a point where limiting the geographical area around a site limits the amount, usefulness and relevance of projects that can come forward for funding.

In the past projects, have covered a wide range of environmental areas and issues but LARAC feels given this is funding derived from waste activities that more could be channelled back into the resource and recycling arena to help divert more waste away from landfill sites. LARAC would therefore welcome the ability to establish elements of the funds that groups and local authorities could bid for specially to introduce new and innovative recycling schemes.



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Natural Resources Wales response to: National Assembly Wales' call for Evidence on the Landfill Disposals Tax (Wales) Bill

Introduction

1. Natural Resources Wales works to make sure that the environment and natural resources of Wales are sustainably maintained, sustainably enhanced and sustainably used, now and in the future.
2. We are responsible for ensuring that the waste industry complies with the regulatory regime that has been put in place so that waste does not pollute the environment or harm human health. As well as determining applications for the environmental permits that specified waste activities need, we also inspect those sites to ensure compliance and take enforcement action when needed. We take a strategic overview of waste management including monitoring the wastes that Local Authorities produce and recycle. We use a range of investigatory tools and enforcement powers in the fight against waste crime.
3. Natural Resources Wales (NRW) welcomes the opportunity to provide evidence to the Finance Committee on the Landfill Disposals Tax (Wales) Bill (the Bill).
4. Mark Drakeford the Cabinet Secretary for Finance and Local Government has confirmed that we will have a role in compliance and enforcement on LDT and are actively working with Welsh Government (WG) and the soon to be formed Welsh Revenue Authority (WRA) on

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what that role will be. NRW has also assessed the Bill in terms of its impact on us as an independent environmental public body.

5. We support the introduction of the Bill and are committed to using our experience to fulfil our planned role in delivering a workable system. We welcome the recognition that NRW has skills and expertise to deliver compliance and enforcement for the tax. Our existing role in environmental regulation gives us an understanding of the waste sector and how avoidance of the tax has increasingly been a driver for criminality over the last decade.
6. NRW are looking forward to working with the WRA to provide a bespoke compliance and enforcement service on Landfill Disposals Tax (LDT) in Wales. We are committed to continuing to work constructively to deliver an effective operational framework. We recognise that this must be based on operators paying the right tax at the right time but also that powers are needed to deal with those who do not.
7. We agree with the waste industry that a well-informed 'on the ground' presence is required for effective delivery of the tax's requirements. In future by working in partnership with the WRA our LDT team will have delegated access to tax related information about activities at permitted sites which we do not currently have. This pooling of information between NRW and the WRA will provide a picture that is currently not available to NRW or Her Majesty's Revenue Collection (HMRC) who currently collect Landfill Tax in England and Wales. We understand that when this sharing was done in Scotland, the information on the environmental and tax aspects of the landfill sites provided significant scope for further investigation.
8. We welcome the application of the tax to Unauthorised Disposals (UD) as a deterrent to those operating without the right controls being in place. We are sharing our experience of the difficulty of identifying and prosecuting offenders under environmental legislation with the WRA. We are also working with Welsh Government's Waste Regulation Branch to strengthen our existing powers.

The general principles of the Bill and the need for legislation

9. Landfill tax is a behavioural tax which over the last twenty years has successfully diverted waste from landfill and into being reused, recycled or recovered. Its success ultimately leads to decreasing input into landfill sites, so its aim is not to raise revenue. The consequences of this Bill not being approved are not confined to a loss of revenue for Wales – if the collection of the tax was switched off by HMRC and not collected in Wales, it would also remove a tool to continue on the trajectory to reach Zero waste in Wales in 2050 and deliver the objectives of Sustainable Management of Natural Resources. Wales

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could also see an influx of waste to be landfilled without tax from elsewhere, which would quickly fill available landfill space in Wales.

Any potential barriers to the implementation of these provisions and whether the Bill takes account of them;

10. The operators of permitted landfills are used to the principle of landfill tax payments, and as the regulatory impact assessment states, the transitional costs to LDT will be relatively small. However if HMRC apply the changes to Landfill Tax they have planned in April 2017 to sites in Wales, there will be two sets of changes that would need to be made and there could be resistance or confusion. The RIA could usefully take account of this.
11. Over the last twenty years the Landfill Tax escalator has increased the tax for standard rated wastes from £7 per tonne to its current level of £82.60. As well as diverting the right wastes away from landfill, this has driven a related increase in illegal activity where wastes are mis-described to attract the lower rate (£2.60) or tipped illegally to avoid tax and landfill disposal charges altogether. We welcome the introduction of LDT to UD as this will be another tool in the fight against Waste Crime, but recognise that changing the behaviour of the criminal section of the waste industry is difficult.
12. The reduction in tax revenue from Authorised Disposals (AD) will continue but the level of revenue from UD is unknown. The effect of the change in regulatory intervention may be to drive more waste to AD or to increase income by reducing mis-description.
13. We are expecting that there will be a further consultation this year on whether WRA should be provided with criminal powers in addition to their civil powers. We will respond to this further consultation, but want to flag here that we fully support the application of criminal powers. There will be occasions when NRW's criminal powers cannot be applied, and there may be a risk that the WRA will not have the powers they need to effectively investigate. There will frequently be cases where LDT avoidance or evasion will happen at the same sites where there are also environmental offences – though there will also be cases where no environmental offences are taking place e.g. avoidance of tax at a permitted site by driving past the weighbridge. We will continue to advise on what powers are needed to ensure we have the right LDT regulatory interventions in those cases.

Whether there are any unintended consequences arising from the Bill

14. Having seen the reporting around the Bill's launch, it is clear that expectations about how the LDT will be applied to smaller unauthorised disposals (known as fly-tipping) need to be carefully

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handled. We and the Welsh Local Government Association are clear¹ about who deals with which type of UD and that we both have a role to play. The Cabinet Secretary Mark Drakeford has stated that NRW and Local Authorities should receive a share of the additional revenue brought in from UD to fund resource on that work area. This is welcome, but again may raise expectations so we look forward to discussing how that incentivisation will work in practice.

The financial implications of the Bill (as set out in Chapter 6 of the Explanatory Memorandum);

15. There are fiscal pressures on all public services, and not having the right resources available would be a barrier to this being an effective regime.

The appropriateness of the powers in the Bill for Welsh Ministers to make subordinate legislation (as set out in Chapter 5 of the Explanatory Memorandum);

16. There are numerous references to subordinate legislation within the Bill, both where additional provision or detail is to be provided at a future date, and the ability of Regulations to be made to amend the current provisions of the Bill. The ones that are of most relevance to NRW are around the provision of criminal tax powers, what qualifying material is, and the Loss on Ignition test criteria. We welcome the opportunity to work with WRA to deliver this within the constraints of resources provided.
17. It is important that the legislation can be amended to reflect changes in objectives or taxpayer behaviour and the Bill as drafted also provides for this. The cumulative effect of the potential for change on both taxpayers and regulators needs to be recognised. Looking forward it will be important that there is a commitment to maintain a consolidated version of the Act and Regulations so that the aim of achieving clarity is delivered.

**Whether the Welsh Government's principles for the development of devolved tax policy and legislation have been followed
Be fair to businesses and individuals who pay them;
Be simple, with clear rules which seek to minimise compliance and administration costs;
Support growth and jobs that in turn help tackle poverty; and
Provide stability and certainty for taxpayers.**

18. These principles appear to have been followed, and we are confident that they will be revisited throughout the development of the subordinate legislation, the related guidance and the transitional provisions.

The definition of a 'taxable disposal' and 'qualifying materials';

¹ <http://gov.wales/topics/environmentcountryside/epq/cleanneighbour/flytipping/protocol/?lang=en>

[Type here]

19. Environmental controls are needed for wastes that are not required for products. This is because wastes may have become contaminated, or no longer suitable for their original use so their value to the holder is reduced or removed. Deciding whether a substance or object is a waste or not, is often obvious (e.g. the contents of the bin a householder puts out for collection), but sometimes it is not (e.g. soil from an excavation being used for landscaping).
20. This assessment of domestic and European case law and guidance to reach a decision is known as 'definition of waste'. It is relevant to LDT as our experience over the last decades tells us that a definition of waste challenge is likely to be one of the responses of the operator of an unauthorised site receiving a charging notice. In the same way, the operator of an authorised site may decide that a material being used to create a screening bund is not waste, and therefore want to avoid an LDT charge.
21. The Bill could be tested in law, which will inevitably be resource intensive. If there is an argument that a material is not waste, then that will probably need to be addressed through the judicial system before an LDT charging notice can be pursued. The prioritisation of LDT cases will need to be strategically reviewed and resourced. We will continue to work to ensure that expectation is managed about the delivery of revenue from UD.
22. The list of specified landfill activities in Section 8 of the Bill has been decoupled from the definition of a 'taxable disposal' in Section 3, but could reduce or remove the number of challenges at authorised sites when compared to those currently received by HMRC. We will need to monitor the effect of this to ensure that authorised sites are not disincentivised to reuse or recover waste in the operation of the site.
23. The list of qualifying materials is to be provided in subordinate legislation and so we will respond at that point.

The provisions on how the tax will be calculated including the taxable weight of material and the discount in respect of water content;

24. We currently have no information about what exemptions have been claimed or approved by HMRC, but see this being an early area of discussion with those currently claiming them.

The implementation of tax rates and whether these retain the flexibility to deal with subsequent changes at a Wales and UK level;

25. We agree that rates should initially be set in Regulations. To ensure that any changes are appropriately considered it would be useful to

[Type here]

know in advance, the criteria that any proposed changes will be assessed against or subject to.

The proposed exemptions;

26. There is one new exemption 'multiple disposals of materials at the same site' which is required to address the changes made in section 8 on what landfill site activities are to be treated as taxable disposals. The other exemption on pet cemeteries is consistent with the existing exemption.

The proposed reliefs;

27. The majority of the existing exemptions have been recategorised as reliefs and this does not change the regulatory impact. We welcome the scrutiny being applied to the approval of the type and quantity of waste to be used in restoration.

The inclusion of unauthorised disposals of waste at places other than authorised landfill sites;

28. NRW welcome this inclusion. However our experience as a regulator is that we anticipate challenge here on whether the material disposed of is a waste.

The inspection of premises for the purposes of ascertaining a person's liability to Land Disposals Tax and the sharing of information between the Welsh Revenue Authority, Natural Resources Wales and local authorities;

29. We are working with WG on the powers that we believe are necessary for the successful delivery of the compliance and enforcement of LDT. We will be responding to the future consultation on the provision of criminal powers.
30. The provision for sharing information is contained in Section 59 and appears to be an option ('may disclose') rather than an obligation to do so. That said, NRW will have an information sharing agreement as part of its working arrangements with the WRA.

The duties on taxpayers to make payments and pay penalties and interest in certain circumstances;

31. These are civil powers which will be delivered by the WRA, who will monitor their effectiveness in practice.

How companies, partnerships and unincorporated bodies are treated in terms of the provisions and responsibility for compliance; and

32. NRW will need to monitor the effectiveness of these provisions in practice, as we review the detail of the information submitted.

Establishing the Landfill Communities Scheme as a grant scheme rather than a tax credit and developing it outside of the Bill.

[Type here]

33. The proposed scheme appears to deliver cost effectiveness. As the funding for the scheme will be top sliced from total LDT revenue (including tax from UD) then it seems to us to be appropriate for communities that meet the same criteria around UD sites to be eligible to bid. This may also encourage communities to report such activities to us. The inclusion of transfer stations is welcomed.
34. NRW's role will be limited to validating the data on the sites i.e. that transfer stations are sending more than 2,000TPA to landfill and we will do this using existing records.

NRW's role

35. NRW have a unique role in delivery of LDT in Wales as it is the only organisation to whom the WRA is proposing to delegate its powers under the TCMA. We are members of the Operational Policy Project Board and the Technical Experts Group, and there is a plan to have a senior representative on the Programme Board.
36. We will agree with WRA in an annual Memorandum of Understanding (MOU) how the LDT team's resources are targeted, which will be set out and monitored formally. The MOU will also set out how we will resolve issues. We are working closely with the Treasury Team and the WRA Programme to check that based on our experience, the operational outcomes can match their policy objectives.
37. NRW has an existing enforcement policy that targets resource based on environmental risk. To ensure that this role is not compromised, our intention is to confine our LDT duties, powers and resources to an entirely separate team within NRW.
38. We foresee the need for a strategic overview of how LDT investigations or Enquiries (within the meaning of sections 43 – 49 of the TCMA) are managed to ensure that our ability to deliver our roles is not compromised. The three roles are (i) NRW as an environmental regulator; (ii) WRA as the revenue authority and (iii) NRW as delivering LDT compliance and enforcement. We welcome the commitment to setting up a 'Governance' group.

I trust you will find these comments useful. If you have further queries relating to them, please contact Clare McCallan Landfill Disposals Tax Project Manager clare.mccallan@cyfoethnaturiolcymru.gov.uk

Yours faithfully

Ceri Davies
Executive Director for Evidence, Policy and Permitting



ICAEW REPRESENTATION 03/17

TAX REPRESENTATION

LANDFILL DISPOSALS TAX (WALES) BILL

ICAEW welcomes the opportunity to comment on the [Landfill Disposals Tax \(Wales\) Bill](#). The Bill was published by the Welsh Government on 28 November 2016 and these comments are in response to an [enquiry by the Finance Committee](#) for the National Assembly into the general principles of The Bill.

This response of 6 January 2017 has been prepared on behalf of ICAEW by the Tax Faculty in partnership with the ICAEW's Regional Director for Wales. Internationally recognised as a source of expertise, the faculty is a leading authority on taxation. It is responsible for making submissions to tax authorities on behalf of ICAEW and does this with support from over 130 volunteers, many of whom are well-known names in the tax world.

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LANDFILL DISPOSALS TAX (WALES) BILL

INTRODUCTION

1. ICAEW welcomes the opportunity to comment on the [Landfill Disposals Tax \(Wales\) Bill](#) (The Bill) published on 28 November 2016. These comments are in response to an [enquiry by the Finance Committee](#) for the National Assembly into the general principles of The Bill.

MAJOR POINTS

2. We support the approach the Welsh Government has adopted to the proposed introduction of Landfill Disposals Tax (LDT) for Wales. Like the approach that the Welsh Government has adopted for Land Transaction Tax, we believe that the consultation process has been well designed, transparent and has encouraged participation.
3. Generally we support the approach of modelling the tax on the existing UK Landfill Tax but where necessary ensuring that the existing rules are clarified and improved. We believe that the Bill is well set out and drafted within the constraints of the need to mirror the existing Landfill Tax provisions.
4. We also support the publication of the Explanatory Memorandum that accompanies the Bill and in particular the inclusion of a schedule setting out the various powers that have been delegated under the Bill.
5. To help taxpayers and provide certainty, the WRA should publish a statement that reconciles these Bill provisions to those of the Landfill Tax provisions (as set out in the Finance Act 1996 as amended). It should identify the material differences between the two taxes, in particular the new provisions found in Part 4 on taxable disposals at unauthorised landfill sites. Some of this information is already included in the Explanatory Memorandum but it would be helpful to have a full summary available on the public record.
6. The statement should also highlight provisions that have not been carried forward from the Landfill Tax provisions. For example, para 25 of Sch 5 to the Finance Act 1996 provides powers for what is now HMRC and on appeal a Tribunal to mitigate penalties, including down to nil, as they think proper. This power does not appear to have been carried forward into the Bill provisions, although we note there is a general power in clause 72 to make regulations in respect of penalties. We believe that the Landfill Tax provision provides an important protection for taxpayers and we would have expected to see it included within the Bill itself.
7. We note that the actual rates of tax will be set out later this year by way of statutory instrument. Again, we think this is a sensible approach given that LDT will not come into force until 2018. More generally, we understand that the rates of LDT will follow the existing UK rates of Landfill Tax. The setting of rates is clearly a policy question for the Welsh Government to decide and is not one for us to comment on in detail. However, while we understand the reasons for adopting this approach, namely to ensure that existing revenues are not reduced and to discourage 'waste tourism', we question whether adopting the same rates as those for Landfill Tax will actually work best for Wales.
8. We understand that in addition to replicating the existing two rates of Landfill Tax, there will be a further rate under LDT that will apply to disposals at unauthorised waste disposal sites (as set out in Part 4). The leaflet that has been published to accompany the publication of the Bill states that in order to encourage waste disposal in authorised sites this rate will be set at a higher rate than the standard rate. In order to provide certainty it would be helpful for the Welsh Government to set out its proposals in respect of this new higher rate as soon as practicable.

RESPONSES TO SPECIFIC QUESTIONS

9. Responses to the specific questions posed in the Terms of Reference are set out below.

The general principles of the Bill and the need for legislation

10. The general principles appear to be clear and well set out given the need for consistency with the existing landfill tax regime.

Any potential barriers to the implementation of these provisions and whether the Bill takes account of them

11. We are not aware of any.

Whether there are any unintended consequences arising from the Bill

12. We have some concerns about the new provisions in Part 4 of the Bill relating to taxable disposals at unauthorised sites – in short illegal landfill and fly tipping. It is possible that, under clause 46(2), a person could become a taxable person if they operated the lorry from which the waste was tipped or if they are the person who owns the land on which the waste was tipped. In order not to become subject to LDT, the person concerned would have to prove that they did not knowingly cause or permit the waste to be tipped.

13. While it is easy to understand the policy concern with unauthorised tipping sites, it would appear that prima facie someone who owned land upon which fly tipping took place will face a tax charge unless they can prove they didn't know about it. It is always difficult to prove a negative.

14. We are concerned that the wide ranging nature of this provision could result in innocent parties being held liable for tipping over which they had no control. While para 46(3) gives powers for the WRA to make regulations about the circumstances when this might apply and what should be taken into account, greater clarity is needed about what these regulations will include so as to address these concerns. There needs to be an overriding test of reasonableness.

The financial implications of the Bill (as set out in Chapter 6 of the Explanatory Memorandum)

15. We have no comments.

The appropriateness of the powers in the Bill for Welsh Ministers to make subordinate legislation (as set out in Chapter 5 of the Explanatory Memorandum);

16. In principle we believe that all substantive tax provisions should be set out in primary legislation rather than by way of regulations. However, this is not the case with LDT. We welcome the clear statement in the Explanatory Memorandum that summarises the various powers granted in the Bill to make regulations, but it does highlight just how many of the provisions in the Bill provide for further regulations to be made.

17. We appreciate that this approach largely mirrors that used in Landfill Tax, but do think an opportunity has been missed to put the vast majority of the LDT provisions into primary legislation. It is therefore all the more important to enable proper scrutiny of the Bill that, when the Bill is to be debated, the main regulations to be introduced are made available in draft at that time. This will allow for proper consideration of the Bill provisions in the light of the proposed regulations.

Whether the Welsh Government's principles for the development of devolved tax policy and legislation have been followed:

- *Be fair to businesses and individuals who pay them;*
- *Be simple, with clear rules which seek to minimise compliance and administration costs;*
- *Support growth and jobs that in turn help tackle poverty; and*
- *Provide stability and certainty for taxpayers.*

18. We support these principles and the draft legislation appears to have been framed in accordance with them. The principles established by the Welsh Government mirror our own ten principles of good tax policy formulation. These were first formulated in 1999 in relation to UK tax policy and, although they predate the devolution of taxes, we believe that they are equally relevant in the devolved tax context. They are attached as an Appendix.

The definition of a 'taxable disposal' and 'qualifying materials'

19. The definitions appears reasonable.

The provisions on how the tax will be calculated including the taxable weight of material and the discount in respect of water content;

20. In para 21 4(a), we think the word 'or' should be added at the end of the words in (i) and (ii).

The implementation of tax rates and whether these retain the flexibility to deal with subsequent changes at a Wales and UK level

21. See our comments in para 5 above. The ability to amend the rates by way of regulation should provide sufficient flexibility.

The proposed exemptions

22. No comment.

The proposed reliefs

23. The proposed reliefs in LDT appear reasonable and largely mirror landfill tax although we note in the latter tax dredging, mining and quarrying activities are given by way of exemption rather than a relief. This difference in treatment will increase the admin burdens as compared to Landfill Tax although we can understand the policy rationale for this decision.

The inclusion of unauthorised disposals of waste at places other than authorised landfill sites;

24. See our comments above.

The inspection of premises for the purposes of ascertaining a person's liability to Land Disposals Tax and the sharing of information between the Welsh Revenue Authority, Natural Resources Wales and local authorities;

25. The proposed extension of the existing powers in s 103 of the Tax Collection and Management (Wales) Act 2016 appear to be reasonable.

The duties on taxpayers to make payments and pay penalties and interest in certain circumstances

26. See our comments above in respect of the potential application of penalties in certain circumstances.

How companies, partnerships and unincorporated bodies are treated in terms of the provisions and responsibility for compliance

27. The proposed approach appears reasonable.

Establishing the Landfill Communities Scheme as a grant scheme rather than a tax credit and developing it outside of the Bill.

28. We can understand why this decision was taken and it should help to simplify the operation of the tax. It would be helpful to clarify exactly why it is considered that this approach will 'maximise the amount of funding reaching projects (per para 3.45 of the Explanatory Memorandum) as we would have thought it might lead to a reduction in expenditure on local community projects.

ICAEW TAX FACULTY'S TEN PRINCIPLES FOR GOOD TAX POLICY FORMULATION

The tax system should be:

1. **Statutory:** tax legislation should be enacted by statute and subject to proper democratic scrutiny by Parliament.
2. **Certain:** in virtually all circumstances the application of the tax rules should be certain. It should not normally be necessary for anyone to resort to the courts in order to resolve how the rules operate in relation to his or her tax affairs.
3. **Simple:** the tax rules should aim to be simple, understandable and clear in their objectives.
4. **Easy to collect and to calculate:** a person's tax liability should be easy to calculate and straightforward and cheap to collect.
5. **Properly targeted:** when anti-avoidance legislation is passed, due regard should be had to maintaining the simplicity and certainty of the tax system by targeting it to close specific loopholes.
6. **Constant:** Changes to the underlying rules should be kept to a minimum. There should be a justifiable economic and/or social basis for any change to the tax rules and this justification should be made public and the underlying policy made clear.
7. **Subject to proper consultation:** other than in exceptional circumstances, the Government should allow adequate time for both the drafting of tax legislation and full consultation on it.
8. **Regularly reviewed:** the tax rules should be subject to a regular public review to determine their continuing relevance and whether their original justification has been realised. If a tax rule is no longer relevant, then it should be repealed.
9. **Fair and reasonable:** the revenue authorities have a duty to exercise their powers reasonably. There should be a right of appeal to an independent tribunal against all their decisions.
10. **Competitive:** tax rules and rates should be framed so as to encourage investment, capital and trade in and with the UK.



Woodland Trust response to the Inquiry of the Finance Committee into the general principles of the Landfill Disposals Tax (Wales) Bill

About the Woodland Trust (Coed Cadw)

Further to the recent publication of the general principles of the Landfill Disposals Tax (Wales) Bill the Woodland Trust appreciates the opportunity to respond to the inquiry. The Trust is the UK's leading woodland conservation charity. We have three aims: to protect native woods, trees and their wildlife for the future; to enable the creation of more native woods and places rich in trees; and to inspire everyone to enjoy and value woods and trees. We have over 500,000 members and supporters across the United Kingdom. We manage over 1,000 sites, over 100 of them in Wales covering 1,580 hectares (3,900 acres). Wales is one of the least wooded countries in Europe, with woodland making up just 14% of the landscape and less than half of this is native.

For the purposes of this call for evidence, we are only commenting on the annexe questions that are of direct or associated relevance to our organisation.

Q1. The general principles of the Bill and the need for legislation

- a) The Woodland Trust welcomes the Landfill Disposals Tax (Wales) Bill. We support the drive through Wales's Towards Zero Waste Strategy (2010) towards an environmentally sustainable Wales where waste use is minimised.
- b) We welcome the confirmation of a Landfill Disposals Tax Communities Scheme as we feel that this will help the Government to deliver on the legal obligations within the Well-being of Future Generations (Wales) Act 2015 (WFGA)¹ and Environment Acts². 'A bio diverse natural environment with healthy, functioning ecosystems' is one of the Wellbeing Goals that public bodies, including the Welsh Government, must contribute to achieving in line with their WFGA sustainable development duty. In addition, the Environment (Wales) Act 2016 places a duty on public bodies, including the Welsh Government, to maintain and enhance biodiversity and in so doing promote the resilience of ecosystems. This is intended to place biodiversity as a natural and integral part of policy and decision making.

¹ <http://www.legislation.gov.uk/anaw/2015/2/contents/enacted>

² Biodiversity and resilience of ecosystems duty, section 6 of Environment (Wales) Act 2016.



- c) Within the Bill, we would like to see greater clarity, particularly in relation to how Landfill Disposals Tax revenues are apportioned to the Landfill Disposals Tax Communities Scheme. We believe that if Landfill Disposals Tax is to fund this scheme, that it should be clearly referenced for transparency and to safeguard this funding mechanism.
- d) Whilst accepting the need for a coherent Bill, we are concerned that, whilst there is provision for tax credits to be applied, there is currently no specific reference or link between the entitlement to credit and their use. This is in contrast to the existing UK Landfill Tax regulations of 1996 (Part VII Credit: Bodies Concerned with the Environment).
- e) The Woodland Trust welcomes the intention to set tax rates to help deter waste tourism and reduce carbon footprint and emissions generated by the unnecessary transportation of waste.

Q3. Whether there are any unintended consequences arising from the Bill

We note that The Cabinet Secretary for Finance and Local Government has confirmed that for Landfill Disposals Tax the Landfill Communities (Environmental Bodies) Credit arrangements will not be delivered as a tax credit and therefore will not be required to be made in legislation. We raise concerns that this detachment could lead to less transparency regarding the grant scheme and levels of funding within it.

Q5. The appropriateness of the powers in the Bill for Welsh Ministers to make subordinate legislation (as set out in Chapter 5 of the Explanatory Memorandum)

We note that there is now no link between the Landfill Disposals Tax and the Landfill Disposals Tax Communities Scheme. As Welsh Government will be able to vary tax rates to determine the amount of revenue to be raised to invest in public services, we would ask how will funding levels for the new fund be determined and protected.

Q12. The inclusion of unauthorised disposals of waste at places other than authorised landfill sites

Woodland Trust welcomes the proposed introduction of charging of landfill tax on unauthorised disposals. We agree that charging tax on unauthorised disposals is desirable and would help deter environmental pollution and reduce the significant costs associated with managing waste crime.

Q13. The inspection of premises for the purposes of ascertaining a person's liability to LDT and the sharing of information between the Welsh Revenue Authority, Natural Resources Wales and local authorities



With reference to the intention to keep a register of those persons responsible for paying tax on taxable disposals; we would like to ensure postcodes are also included and, in addition to this, eligible sites are clearly defined within the NRW mapping system: <http://naturalresources.wales/our-evidence-and-reports/maps/find-details-of-permitted-waste-sites-in-wales-1/?lang=en> to ensure easy checking of eligibility.

Q.16 Establishing the Landfill Communities Scheme as a grant scheme rather than a tax credit and developing it outside of the Bill

- a) The Woodland Trust supports and welcomes the confirmation that there will be arrangements for a Landfill Disposals Tax Communities Scheme to replace the current UK Landfill Communities Fund. In the last 10 years this valuable source of funding has supported over 25 Woodland Trust community and biodiversity projects providing funding in excess of £1m. This also enabled us to leverage an additional £1m from other funding sources following the confidence shown by the support of the landfill funders.
- b) However, we are concerned that as the Landfill Disposals Tax Communities Scheme will not be delivered as a voluntary tax credit and made into legislation within this Bill, that the link between the two will not be transparent. For example - how will the fund value be determined e.g. at present UK HMT set % rate at Budget as part of Finance Bill?
- c) The Woodland Trust feels this is an important fund that has played a vital role in funding a wide range of community and biodiversity projects. Given our long term experience, we would welcome the opportunity to continue to be part of the stakeholder discussions and look forward to receiving appropriate development updates.
- d) While landfill still exists, and the tax is 'driving down' quantities, the continued existence of a Landfill Disposals Tax Communities Scheme, to give operators credits for dispersing funds to environmental projects, is important.
- e) We feel that the Landfill Disposals Tax Communities Scheme must continue to allow multiyear projects. Reducing the length of projects means increased administration costs for both applicants and the Distributive Environmental Body. In addition, the majority of environmental projects need several seasons to be implemented and to carry out effective monitoring.

Consultation on the Landfill Disposals Tax (Wales) Bill

The Chartered Institution of Wastes Management (CIWM) is the professional body which represents over 6,000 waste and resources management professionals, predominantly in the UK but also overseas. The CIWM sets the professional standards for individuals working in the waste and resources management industry and has various grades of membership determined by education, qualification and experience.

CIWM is recognised as the foremost professional body representing the complete spectrum of the waste and resources management industry. This gives the Institution the widest possible view and, perhaps more pertinently, an objective rather than partial view, given that our goal is for improvement in the management of all wastes and resources.

The Cymru Wales Centre Council of the Chartered Institution of Wastes Management welcomes the opportunity of contributing to the above Consultation and is supportive of the National Assembly devolving landfill tax to the country.

Any potential barriers to the implementation of these provisions and whether the Bill takes account of them;

The bill appears to be comprehensive and takes account of the majority of any barriers to implementation with the following exceptions;

- The bill does not contain any detail in respect of the potential for double payment in respect of materials that have been deposited at a place that is not, and does not form part of, an authorised landfill site where the tax is paid by the relevant person and is subsequently removed for disposal at an authorised landfill site. The Explanatory Memorandum sets out that this is a deliberate effect

Whether there are any unintended consequences arising from the Bill

Unintended consequences are not immediately apparent but there does remain potential for this in respect of regulation under this bill.

The financial implications of the Bill (as set out in Chapter 6 of the Explanatory Memorandum);

The financial implications appear to have been fully accounted for within the RIA.

The appropriateness of the powers in the Bill for Welsh Ministers to make subordinate legislation (as set out in Chapter 5 of the Explanatory Memorandum);

The powers set out appear appropriate.

Whether the Welsh Government's principles for the development of devolved tax policy and legislation have been followed:

Be fair to businesses and individuals who pay them;

Be simple, with clear rules which seek to minimise compliance and administration costs;

Support growth and jobs that in turn help tackle poverty; and

Provide stability and certainty for taxpayers.

In so far as the details within the bill provide these principles appear to have been complied with the exception of the impact of these proposals on landowners who have been subject to waste materials fly tipped on their land where they might be liable for landfill disposals tax even if they did not cause or knowingly permit the deposit. However, there will be further need for assessment of compliance with these principles in relation to the regulations under this bill.

The definition of a 'taxable disposal' and 'qualifying materials';

We previously stated in our consultation submission that 'If thresholds are to be specified then they need to be quantifiable and measurable. If this can't be achieved then there is little point in considering setting a threshold to define any level for small quantity' of non-qualifying waste in a load of qualifying material.

Non-homogeneous waste will be very difficult to sample and define whether the threshold has been exceeded or not. Introducing such a definition as 'a small quantity' will add costs to landfill operators and a further regulatory burden on both the operator and regulator. Therefore, any non-qualifying material in a load of material accepted for the lower rate should not be allowed and the higher rate applies, this would increase the incentive to properly sort wastes prior to disposal.'

There are situations where the requirement in section 16, requirement 3 which states that non-qualifying materials must not have been mixed deliberately for the purposes of disposal or in preparing the disposal may be difficult to achieve as a result of the processes within a waste transfer station. This is where fines result from the processes utilised which could be of an inert nature or could be of a biodegradable nature, but only chemical or biological analysis would determine the actual composition. These fines cause difficulties to regulators due to their ambiguous appearance and the desire of waste management facility operators for these materials to be regarded as lower tax rate and inert to enable a greater range of disposal opportunities and to reduce costs. This may be an issue with compliance with section 17 dependant on the content of the regulations provided for within this

section, CIWM Cymru Wales is pleased that this issue will be resolved in forthcoming regulations. We also note that the definitions of qualifying materials and different rates of tax will be established through regulations with the need for Welsh Government to bear in mind the need for consistency across the Wales England boundary to avoid waste tourism and the community detriment that this would cause.

The provisions on how the tax will be calculated including the taxable weight of material and the discount in respect of water content;

These provisions appear comprehensive.

The implementation of tax rates and whether these retain the flexibility to deal with subsequent changes at a Wales and UK level;

The fact that the details in respect of these matters will be covered by regulations will provide the flexibility required.

The proposed exemptions;

The proposed exemptions are comprehensive in so far as they have been established; however, there may be scope to extend these in respect potential for double payment matter raised above.

The proposed reliefs;

The proposed reliefs are comprehensive; however, it is possible that the relief proposed for refilling former quarries might exclude many of the authorised landfill sites from payment of landfill disposal tax due to the fact that many of such sites were quarries and have conditions within the planning permission requiring the resultant void to be wholly or partially refilled. This matter should be examined to establish the impact of this issue.

The inclusion of unauthorised disposals of waste at places other than authorised landfill sites;

The inclusion of unauthorised deposits is supported; this will however require the Welsh Revenue Authority to work closely with Natural Resources Wales, it is noted that WRA will delegate compliance and enforcement functions to Natural Resources Wales. But the question remains on how this will work in practice and whether there will be any internal separation between the normal enforcement role of NRW with respect to unauthorised deposits and the WRA delegated role.

There is however an issue with respect of situations where the landowner did not knowingly cause or knowingly permit the deposit is to be treated as is to be treated as having knowingly permitted the disposal to be made for the purpose of the landfill disposals tax. This appears unfair and contrary to the Welsh Government's principles for the development of devolved tax policy.

The inspection of premises for the purposes of ascertaining a person's liability to Land Disposals Tax and the sharing of information between the Welsh Revenue Authority, Natural Resources Wales and local authorities;

There are significant powers proposed within this bill and the information sharing set out appears to be wholly to the benefit of the Welsh Revenue Authority there is no apparent sharing of information in respect of benefit to local authorities or Natural Resources Wales.

The duties on taxpayers to make payments and pay penalties and interest in certain circumstances;

These are clear in the bill.

How companies, partnerships and unincorporated bodies are treated in terms of the provisions and responsibility for compliance; and This section appears comprehensive.

Establishing the Landfill Communities Scheme as a grant scheme rather than a tax credit and developing it outside of the Bill.

We note that there is a paper published on Landfill Disposals Tax Communities Scheme and will respond on this in due course before the deadline of 7 February



National
Trust

National Trust Response on the Consultation on the Landfill Disposals Tax (Wales) Bill

January 2017

The National Trust is a charity founded in 1895 by three people who saw the importance of our nation's heritage and open spaces and wanted to preserve them for everyone to enjoy. More than 120 years later, these values are still at the heart of everything we do. Throughout England, Wales and Northern Ireland we look after coastline, forests, farmland, moorland, islands, nature reserves, villages, historic houses, gardens, mills and pubs. We restore them, protect them and open them up for people to enjoy. For the National Trust, conservation goes hand-in-hand with public access and today we have well over 4 million members.

Our response to terms of reference for the inquiry

We have limited our comments to the questions that we feel are most relevant to the National Trust, and that we are in good position to answer. These are questions 1, 3, 5, 12, 13 and 16 of Annex 1, set out below with numbers in brackets referring to the Explanatory Memorandum for the Bill.

Q1. The general principles of the Bill and the need for legislation;

A1.1 The National Trust welcomes the Landfill Disposals Tax (Wales) Bill. However, we feel the Bill needs more clarity in relation to how Landfill Disposals Tax revenues (LDT) are apportioned to the Landfill Disposals Tax Communities Scheme (LDT CS).

A1.2 We recognise the need for a coherent Bill, but are worried that there is no clear link between the entitlement to credits and the use of those credits as there is in the UK Landfill Tax regulations of 1996. A clear link would provide both transparency and a safeguard for the Landfill Disposals Tax as a mechanism to fund this scheme.

A1.3 The plan to set tax rates to help deter "waste tourism" and reduce emissions generated by unnecessary transportation of waste as noted in Explanatory Memorandum to the Bill paragraph (3.9) are also welcomed by the National Trust. A lower rate of tax than that in England could lead to an increased transportation of waste into Wales, and as a result disadvantage local communities due to increased noise and pollution levels.

A1.4 The National Trust backs the principle behind the Towards Zero Waste Strategy (2010) and the ambition for a sustainable Wales. This is consistent with the notion of sustainable development as set out in the Well-being of Future Generations (Wales) Act

2015 (WFGA)¹. Public bodies such as the Welsh Government should be part of achieving the goals set out under this act, including that of “A biodiverse natural environment with healthy, functioning ecosystems”. The Environment (Wales) Act 2016 also places a duty on public bodies to maintain and enhance biodiversity; this is aimed to place biodiversity as a fundamental and natural part of policy and decision making (Environment (Wales) Bill Explanatory Memorandum).

A1.5 We strongly support the continuation of a Landfill Disposals Tax Communities Scheme. The allocation of tax raised from landfill, an environmentally damaging activity, to projects that deliver benefits for the environment and biodiversity, would not only be in line with the objectives of the legislation but would help the Government to deliver the legal requirements set out in A1.4.

Q3. Whether there are any unintended consequences arising from the Bill

A3.1 We are aware that the LDT Landfill Communities (Environmental Bodies) Credit arrangements will not be delivered as a tax credit and as a result will not be required to be made in legislation. We are concerned that this will lead to less transparency regarding the grants scheme and levels of funding within it.

Q.5 The appropriateness of the powers in the Bill for Welsh Ministers to make subordinate legislation (as set out in Chapter 5 of the Explanatory Memorandum);

A5.1 The Explanatory Memorandum (Table 4: section 14(3) page 51) states that the Welsh Government is allowed to change the tax rates to decide the amount of revenue needed to be raised to invest in public services. As expressed earlier we are concerned about how funding levels for the new fund will be determined and protected when there is no link between the Landfill Disposals Tax and the Landfill Disposals Tax Communities fund.

Q12. The inclusion of unauthorised disposals of waste at places other than authorised landfill sites;

A12.1 The National Trust agree that charging tax on unauthorised disposals, as outlined in the Explanatory Memorandum to the Bill paragraph (3.8), is helpful as this should help prevent environmental pollution and reduce waste crime.

Q13.The inspection of premises for the purposes of ascertaining a person’s liability to LDT and the sharing of information between the Welsh Revenue Authority, Natural Resources Wales and local authorities;

A13.1 If the connection between landfill sites and eligible projects is to continue as under the current Landfill Communities Fund (LCF), postcodes and/or grid references will be required for all registered landfill sites so that geographical eligibility can be determined. This is in addition to the intention to keep a register of individuals responsible for paying

¹ <http://www.legislation.gov.uk/anaw/2015/2/contents/enacted>

the tax as per note (3.92) in the Explanatory Memorandum. An online mapping system, for example, would allow potential applicants to the LDT CS to check eligibility easily.

Q.16 Establishing the Landfill Communities Scheme as a grant scheme rather than a tax credit and developing it outside of the Bill. (see Chapter 4 for more background).

A16.1 As a crucial source of funding for biodiversity and community projects we support the announcement that there will be provisions for a LDT CS to replace the current LCF.

A16.2 As previously stated, we are concerned that the LDT CS will not be made into legislation within this Bill, potentially resulting in reduced transparency and uncertainty about how the value of the fund will be decided. Distribution of funds must also be fair and transparent.

A16.3 We are very pleased that the new LDT CS will support biodiversity in line with concerns raised during the consultation for the Bill. Object DA of the current LCF is one of the few funding streams still available for projects focused solely on biodiversity. Reducing or removing this would make it harder for the Welsh Government to deliver against Wales' Nature Recovery Plan and to meet the international target to halt and reverse the loss of biodiversity. As already outlined it can also help the Welsh Government deliver against the sustainable development goals.

A16.4 The National Trust has extensive experience of the LCF and we look forward to being involved further in the development of the administrative model. We are very interested in the Scottish Government's approach, and support the decision to increase the proportion of Scottish Landfill tax which can be given community funds.

Jan 8 2017

A.J.Rees

Landfill Disposal Tax {Wales} Act
Public Consultation

Dear Sir,

Thank you for the opportunity to express my personal view on how the introduction of the new Landfill Disposal Tax {Wales} in April 2018 will be received by the general public.

At present I would suggest that only a small percentage of the population are aware of the current waste tax arrangements and what it represents as a financial aspect within their local authority annual community tax demand.

As with any change associated with taxation, the general response is to balk at what will be a perceived as an **extra financial cost** affecting their household budget and no amount of explanatory publicity will persuade them otherwise.

The predominant reason to apply it, is driven by the urgent requirement to drastically reduce and eventually curtail this historical method of irresponsible waste disposal. In reality, this consideration means as much to the man in the street as the prescribed consequences of melting icebergs, deforestation, carbon emissions and all the other unproven global warming issues.

The laudable guidance within the 133 page Explanatory Memorandum publication does not make bedtime reading for the average householder and is not intended to convey in simple terms the fundamental intentions of the Finance Minister.

The lack of resolute **supervision** of the segregation of materials at the initial doorstep disposal chain, encourages further disdain towards ensuring, that desired practises are strictly followed.

However the statistic everyone seems fully aware of is the dismal record for apprehending and convicting the increasing number of fly tipping culprits. This has created a mind set amongst decent people that the bad guy does not have too much to worry about when blighting the surrounding areas with hideous mounds of decomposing rubbish.

In conclusion, without proper monitoring and rigourous application of penalties and legal deterrents, the increasing drift towards wayward behaviour and multiple wrongdoing will eventually negate any community and environmental benefits the new Bill is designed to encourage.

I would choose to conclude my observation by suggesting that National Resource Wales, reinstate the effective practical monitoring of vulnerable unauthorised sites by **mobile wardens**.

Thanking you for your kind consideration

Alan Rees



Pack Page 60



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The Committee Clerk

Finance Committee
National Assembly for Wales
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11 January 2017

Emailed to: seneddfinance@assembly.wales

Dear Sir/Madam

Consultation on the Landfill Disposals Tax (Wales) Bill (“The Bill”)

We welcome the opportunity to respond to the Finance Committee of the National Assembly’s call for evidence on the Bill. We attach at an appendix our specific comments on the Bill but the general points we would also like to make are set out below.

1. Since its introduction in the UK on 1 October 1996 landfill tax has been relatively successful in achieving its stated aims of changing behaviour in the waste treatment sector from environmentally damaging practices of landfilling waste material to more positive practices of developing and adopting less polluting treatment processes. The escalator applied to the standard rate has led to prohibitively expensive waste treatment technologies becoming viable and more widely implemented. This, along with other regulatory measures introduced to encourage diversion of waste from landfill has contributed significantly to substantial falls in the volume of waste material going to landfill sites. The tax has had a dual role – firstly to encourage behaviour change and secondly (arguably) to raise revenue. These two roles are not necessarily compatible and devolving the tax to Wales will give the Welsh Government the challenge of successfully managing both objectives.
2. The inevitable consequence of increasing the cost of landfill has been to increase motivation to deposit waste in unauthorised sites and to fly-tip. The Bill introduces a novel approach to this problem by bringing unauthorised disposals into the scope of the tax, providing the Welsh Revenue Authority (and the NRW) with an additional tool to combat illegal disposals. Given that landfill tax has proven successful in changing behaviour in the legitimate waste treatment sector there are good grounds for using landfill disposals tax to encourage further behaviour change in Wales.
3. As the tax is geographical – revenue arising according to the location of the landfill site – differences between the structure of Landfill Disposals Tax in Wales and Landfill Tax in England and differences in the approaches adopted by the different revenue agencies, can affect the level of waste being brought to landfill sites in Wales (on the border with England) and the revenue arising from the tax. Landfill tax is continuing to be revised in England in an attempt to address operational concerns and legal disputes, so a further challenge for Wales is to what extent revisions in England should be mirrored in Wales.

If you have any specific queries then please do not hesitate to get in touch.

Yours sincerely

Gareth Pritchard
Deloitte LLP

Appendix

1. Section 3(4) sets out that for a disposal to be a 'taxable disposal' the material must be 'waste'. Section 6 then goes on to better define what is meant by 'waste' in this context, stating that whether or not material is waste depends upon the intention of the person responsible for its disposal. Current legislation for landfill tax in England and Wales (Finance Act 1996, s64) contains a similar definition for the purpose of determining taxable material, specifying that if the person making the disposal does so with the intention of discarding the material then the material is 'waste' for the purposes of landfill tax. This definition has previously been the subject of high profile litigation including *HMRC v Waste Recycling Group Limited* (2008) EWCA Civ 849, which found that putting material to use within a landfill site meant that there could not have been an intention to discard it as waste and therefore the material was not part of a taxable disposal. HMRC subsequently sought to address this apparent gap in the definition by introducing legislation (Finance Act 1996, s65A) that specifically prescribed uses of material that would always be treated as taxable even if the material had a useful function on the site. In light of this litigation and the perception that defining taxable material by reference to what is in the mind of the person discarding it is difficult to establish empirically, HMRC consulted stakeholders during 2016 and on 5 December 2016 published plans to remove the waste criteria from the definition of a taxable disposal. These changes will come into effect from a future date (once the Finance Act 2017 receives Royal Assent). Thereafter, unless similar changes are introduced in Wales, there will be a fundamental difference between definitions of taxable disposals in Wales and those in England. As with any difference between the application of the tax in Wales and England, it will be important to consider the potential impact it may have on behaviour in the waste sector and whether the difference has the potential to draw waste into Wales or drive it out of Wales and into landfill sites across the border. Given the fundamental nature of this particular difference in definition, we recommend that due consideration is given to adopting a similar definition in Wales.
2. Sections 6 ('Disposal of material as waste') and 7 ('Disposal of material as waste: person responsible for disposal') specify that the person whose intention is relevant to determining whether or not the material is 'waste', is the operator of the site at the time of disposal, and a third party's intention is only relevant if that party makes a disposal without the knowledge of the site operator. We note that this also varies from the extant legislation in England where the intention criterion is not limited to the site operator but can also extend to a third party on whose behalf the site operator makes a disposal. This criterion has been examined at tribunal (including *Parkwood Landfill Ltd v Commissioners of Customs and Excise* (2002) EWCA Civ 1707) concluding that the intention of the person actually making the disposal to landfill is the relevant one rather than the intention of entities further back in the supply chain. In light of this it seems sensible that the more restrictive condition adopted in the draft Bill is the better, more appropriate one (notwithstanding our comments at 1 above).
3. Section 6(2) states that whether or not a person has the intention to discard material may be 'inferred from the circumstances of its disposal' – i.e. if the

material is deposited in a landfill then it is likely to be discarded as waste. In general, establishing tax liability by inference is challenging and we wonder whether this section provides any practical assistance.

4. Section 7 identifies that the person responsible for disposal is the operator of the site or, if a disposal is made by a third party without the knowledge of the operator, the person responsible is that other party. There are occasions where someone other than the recognised site operator controls material being deposited on a site with full permission of the site operator. It seems that the current drafting of the Bill does not recognise this 'controller' as having any responsibility for landfill tax for material deposited in a landfill site under their direction. Rather, under the Bill as drafted, the site operator holds all responsibility for this material even though the site operator may have little detailed knowledge of the quantum and weight of material being deposited by a site controller. We wonder whether a 'controller' of waste entering a landfill site should also be recognised by the Bill so as to ensure that such a person is held to account for the tax (perhaps jointly and severally with the site operator as is the case in extant legislation in England) and also to remove from the site operator a risk of exposure to tax on operations for which he has little detailed knowledge.
5. Section 8 (Landfill site activities to be treated as taxable disposals) sets out particular on-site uses of material that will be taxable. Similar activities are prescribed as taxable in England (Finance Act 1996 s65A - as noted in 1 above) but the need to do so will end once the Finance Act 2017 receives Royal Assent and the waste criteria is removed from the definition of a taxable disposal is removed. As commented above, if, after due consideration, the waste criteria is removed from the definition of a taxable disposal in Wales to reflect the changes in England, section 8 would also become redundant.
6. Sections 9, 10 and 11 (Exempt Disposals) provide exemption from the tax for material deposited at the same site for a second time (section 10) and for specified material deposited in pet cemeteries (section 11). Currently there are also exemptions for material removed from water courses, material arising from certain mining operations and qualifying material being deposited into quarries. We note that the Bill similarly allows for these materials to be tax free but does so by granting them 'relief' (in sections 26 and 27) rather than exemption. It is not entirely clear to us why some tax free material is classified as relieved from the tax in the Bill rather than exempt from the tax as in the extant legislation in England. Material falling into both categories will need to be reported in tax returns. We note that a relief is only available for relevant disposals made at authorised landfill sites so we query whether the underlying reason here is to restrict tax free status for unauthorised sites. In the absence of any strategic aims we consider that tax free treatment might be applied through exemptions only.
7. Section 16 sets out the tax treatment of qualifying (i.e. lower rate) mixtures of materials, stating that a 'small amount' of non-qualifying (i.e. standard rated) material which appears incidentally in a mixed load would not prevent the lower rate of tax being applied to the entire load. Taking a view on what is 'small' and

'incidental' will be difficult for taxpayers and for the WRA but given the inevitability that many loads will contain a mix of materials a subjective test of this type is unavoidable. We therefore endorse the inclusion in the Bill (s16 (3)) of a provision that regulations can prescribe what percentage constitutes a 'small' amount. Determining a percentage by weight or volume will also be challenging for taxpayers but this measure will provide greater clarity than that provided by the subjective terms 'small' and 'incidental' – particularly where there are disputes.

8. Section 21 provides for the weight of taxable material to be discounted for added water content. We are aware that the appropriateness of water discounts has become more contentious given that landfill regulations (we understand) seek to reduce or wholly prevent water being sent to landfill. Nevertheless, water discounting is available for material deposited in sites elsewhere in the UK including Scotland currently, so we endorse its inclusion in the Bill. In any case water discounting will only be available on approval by the WRA so the risk of abuse is minimal. Current legislation restricts water discounting to material where added water constitutes 25% or more of the waste material. In prescribing the conditions where discounting is available, section 21 of the Bill does not include such a requirement and, given that setting a minimum would appear to be quite arbitrary, we endorse this. It seems to us that the WRA, perhaps assisted by NRW will be better placed to determine whether the discount applies in the context of the specific material being deposited.
9. Part 4 of the Bill concerns disposals made at locations other than authorised landfill sites and seeks to tax unauthorised disposals. The deterrent effect of this measure may depend upon how readily and effectively it can be applied, and this would be hindered if the provisions are too complicated or difficult to apply. Areas of complication and contention may include:
 - a. Applying the tax to a person who owns land upon which unauthorised disposals are made (by someone else) and where it may be necessary to establish at tribunal that the landowner knowingly caused or knowingly permitted that such a disposal was made (s46(2)).
 - b. Timescales – the WRA will have 20 years after an unauthorised disposal is believed to have taken place to issue a Preliminary Notice advising the relevant person that the tax may be applied. A Charging Notice applying the tax must be issued by the WRA within the subsequent 45 days, and the tax assessed must be paid within the following 30 days. Given the extent of history that the person may have to review, a timescale of 75 days from the Preliminary Notice to payment of tax (and possible penalties) does seem disproportionately short (s47, 48, 49, 50).
 - c. There does not appear to be any provision in the Bill for the person to seek time to pay the assessed tax where, for instance, the matter is disputed and the person is in financial hardship.

10. Section 59 - where an unauthorised disposal has taken place this section provides for information to be shared with the WRA by a county council, borough council or the NRW. The nature of the tax is such that these bodies are intrinsic to its application and so each of them is likely to hold information relevant to waste disposal activities in Wales. In practice it seems likely that this information will relate mostly to authorised disposal activities and that the data relating to wholly unauthorised disposals will be very limited or – given the nature of the activity – negligible. In this context, it is important that the legitimate right to confidentiality of businesses in their dealings with each of the bodies concerned, is not compromised in the pursuit of information that may be of limited use to the WRA.

Response of the Welsh Environmental Services Association

1. The Welsh Environmental Services Association (“WESA”) is an arm of Environmental Services Association (ESA): the trade association representing the UK’s waste and secondary resource industry, a sector with an annual UK turnover of around £11 billion. Driven by EU environmental law, WESA is a leading partner in Wales’s transformation from a disposal to a zero waste society. Our Members recover both value and energy from the Wales’s waste whilst protecting the environment and human health.

The general principles of the Bill and the need for legislation

2. The landfill tax has proved one of the principal policy drivers for effecting change in the waste and recycling sector. By increasing the costs of landfill in a uniform and predictable way, the landfill tax has made alternative treatment infrastructure more economically viable, thereby encouraging the industry to invest in a range of facilities designed to recycle and recover the value embedded in waste.
3. The waste and resources management industry requires as much certainty as possible to invest in waste management and recycling infrastructure, and to this extent the uniform and relatively predictable increases to landfill tax via the escalator have been helpful.

The definition of a ‘taxable disposal’ and ‘qualifying materials’

4. Modern landfill facilities are significant civil engineering projects and require a range of materials for construction and ongoing operation. Essential engineering materials should all be exempt from the tax. We are pleased that the legislation recognises that tax will only be applicable where the ‘intention is to discard’. The reuse of appropriate waste materials which are essential to the running of the facility and not waste being disposed should not therefore be taxable.
5. The list of materials under the existing Qualifying Materials Order remains fit for purpose and, we do not advocate change to the materials that are subject to the lower tax rate. Instead, the new Wales Landfill Disposals Tax regime should focus on the application and enforcement of the lower rate of tax to prevent deliberate misclassification of waste for the purposes of benefitting from the lower tax rate.
6. The ESAET Report ‘Waste Crime – Britain’s Dirty Secret’¹ calculated that at least £168m was being lost to the public purse in the UK, due to waste materials arising out of waste transfer stations and delivered to landfill sites being, deliberately or otherwise, misdescribed as ‘low rated’ in terms of landfill tax.
7. Landfill operators in Wales are put in an unenviable position, whereby the onus is on them to determine whether material is low rated, based solely on visual inspection and information

¹ http://www.esauk.org/esa_reports/ESAET_Waste_Crime_Tackling_Britains_Dirty_Secret_LIVE.pdf

provided to them by the waste producer/carrier. Yet, it is the landfill operator, not the waste producer, who is accountable if the Welsh revenue Authority disagrees with the decision. Of particular concern are 'fines' from trommelled wastes arising out of waste transfer stations and delivered to landfill sites. Due to the nature of this material it is impossible for landfill operators to detect from a visual inspection alone whether the material has been misdescribed by the producer or waste carrier.

8. The differential between low rate and standard rate landfill tax is now so significant that it is really no surprise that problems have arisen. ESA therefore urged the Government in England for many years to develop a more objective approach and we were pleased when the Loss on Ignition testing regime was implemented in England in April 2015. We think that it is providing an objective testing regime for waste fines arising from mechanical treatment facilities which we believe goes a long way to prevent the misclassification of waste which has been so costly to responsible operators and to the UK's economy. We would therefore advocate a similar LOI regime in Wales to help provide a level playing field for all operators – both those producing and those disposing of waste fines – and to prevent misclassification of waste fines either deliberately or otherwise.
9. It is also worth noting that the main purpose of landfill tax is to divert material away from landfill. Implementing an LOI regime would help to differentiate between wastes and therefore facilitate the beneficial reuse of essentially inert materials in, for example, construction projects and quarry restoration, rather than them ending up in landfill.

The proposed exemptions

10. WESA supports the proposed exemptions.

The implementation of tax rates and whether these retain the flexibility to deal with subsequent changes at a Wales and UK level;

11. It is important that Welsh Government maintains consistency with the UK Government and Scottish Government on Landfill Tax rates. We welcome the assurances received thus far from the Welsh Government that the new Wales Disposal Tax rates will be aligned with that operating across the rest of the UK. Price disparity might otherwise be exploited, leading to uncertainty on the market place and "waste tourism", where waste is transported to or from Wales to take advantage of the cheapest waste disposal option. Such an outcome would be contrary to the proximity principle.

The inclusion of unauthorised disposals of waste at places other than authorised landfill sites

12. WESA supports the proposal to allow recovery of avoided tax from illegal dump sites. Illegal waste management activity is a national problem requiring strong leadership and resources sufficient to create a climate where the fear of being caught is high. With the introduction of new, higher environmental standards and the increase in the landfill tax this has never been so important.
13. It is important that sufficient resources are provided and dedicated to robustly regulate and enforce this additional tax raising power. Tackling illegal waste management activity helps to

provide a high level of protection for communities and a level playing field for responsible waste management companies across the country.

Establishing the Landfill Communities Scheme as a grant scheme rather than a tax credit and developing it outside of the Bill.

14. The landfill communities fund has delivered significant benefit to the communities around the landfill sites operated in Wales, despite dwindling funds due to decreased inputs to landfill, so we are pleased that the fund is continuing via the proposed Landfill Communities Scheme. WESA considers that funding from new Landfill Communities Scheme should also be allocated to supporting compliance and minimising the impacts of waste crime. Waste crime blights communities and undercuts legitimate operators and supporting compliance ensures a level playing field for all operators.



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Committee Clerk
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11 January 2017

Welsh Landfill Disposals Tax Consultation Response

Dear Sir,

Thank you for the opportunity to contribute to your consultation. FCC Environment (and its subsidiaries) is one of the major landfill operators in the United Kingdom and have a number of both open and closed sites in Wales.

The general principles of the draft Landfill Disposals Tax (Wales) Bill are reasonably framed but the introduction of separate legislation in Wales on top of existing legislation for both England and Scotland adds further complexity to what is already a complex area. FCC's view is that one combined set of legislation, potentially with separate payments based on the location of the landfill site would have been a less onerous solution, i.e Option 2.

Continuing developments in both England and Scotland need to be considered further, particularly the draft legislation issued by HMRC as part of the Finance Act 2017, whereby HMRC are looking to put the definition of a taxable disposal for Landfill Tax purposes beyond doubt.

In the following appendices, we have included high level comments against the terms of reference and also specific comments where elements of the draft Bill require further clarification or challenge.

If you have any follow up questions or require any further information, please let contact Barry.

Yours sincerely

A handwritten signature in blue ink that reads 'Barry Plane'.

Barry Plane
Assistant Financial Controller

A handwritten signature in blue ink that reads 'Patrick Mainprize'.

Patrick Mainprize
Group Financial Controller

Appendix 1 - Terms of reference

WRA comment	FCC comment
1. The general principles of the Bill and the need for legislation	Reasonably framed, subject to overall comments above and specific comments below
2. Any potential barriers to the implementation of these provisions and whether the Bill takes account of them	See comments
3. Whether there are any unintended consequences arising from the Bill	See comments
4. The financial implications of the Bill (as set out in Chapter 6 of the Explanatory Memorandum)	No further comment
5. The appropriateness of the powers in the Bill for Welsh Ministers to make subordinate legislation (as set out in Chapter 5 of the Explanatory Memorandum)	No further comment
6. Whether the Welsh Government's principles for the development of devolved tax policy and legislation have been followed: <ul style="list-style-type: none"> • be fair to businesses and individuals who pay them • be simple, with clear rules which seek to minimise compliance and administration costs • support growth and jobs that in turn help tackle poverty; and • provide stability and certainty for taxpayers 	No further comment
7. The definition of a 'taxable disposal' and 'qualifying materials'	See comments
8. The provisions on how the tax will be calculated including the taxable weight of material and the discount in respect of water content	See comments
9. The implementation of tax rates and whether these retain the flexibility to deal with subsequent changes at a Wales and UK level	Rates need to be consistent to avoid waste tourism
10. The proposed exemptions	See comments
11. The proposed reliefs	See comments
12. The inclusion of unauthorised disposals of waste at places other than authorised landfill sites	See comments
13. The inspection of premises for the purposes of ascertaining a person's liability to LDT and the sharing of information between the Welsh Revenue Authority, Natural Resources Wales and local authorities	No further comment
14. The duties on taxpayers to make payments and pay penalties and interest in certain circumstances	See comments
15. How companies, partnerships and unincorporated bodies are treated in terms of the provisions and responsibility for compliance	No further comment
16. Establishing the Landfill Communities Scheme as a grant scheme rather than a tax credit and developing it outside of the Bill	No further comment

Appendix 2 – Specific comments on the draft Bill

Page /Para	Detail	FCC comment
1 1 (4)	Part 4 makes provision about how the tax is to be charged on taxable disposals made at places other than authorised landfill sites	The challenge to fly tippers and others who flout the law is welcomed
4 8 (4) work carried out to restore a landfill disposal area is restoration work only if it is carried out after the area has been capped	This definition is not totally clear and may be misleading. There could be examples in practice where restoration is undertaken prior to an area being capped
8 16 (4) is treated as a small amount if it constitutes more than a prescribed percentage	Needs further definition. Percentages need to be in line with England and Scotland. 3.62 and 3.63 of the explanatory memorandum refer
9 17	Qualifying mixture of materials:fines	More detail is required in due course. Extensive time and effort has been deployed together with HMRC to develop Lol rules which are due to change on 1 April 2017
10 20 (1)	The operator of an authorised landfill must determine the weight of the material in a taxable disposal before the disposal is made	This needs rewording, the current proposal is not possible, the net weight of the material is only known after the empty vehicle has weighed off
11 21	Discount in respect of water content of material	The proposal as drafted puts the onus on the landfill operator to apply to WRA for approval for a water discount. This is inconsistent with England and Scotland. It is the waste producer who has the technical knowledge regarding the waste stream and they should apply to WRA. If WRA give approval then this should be sent to both the producer and the landfill operator
13 25	Reliefs general (4) relief from tax must be claimed in a return	We would be interested to see how this would work in practice, if no tax is charged, how can a relief be claimed. The wording would appear to suggest that for example standard LFT is charged and then a deduction made?
14 26 (4)	Material is within this subsection if it is qualifying material	This section proposes that all dredgings must be qualifying material. Is this the intention, in practice some dredgings may not be qualifying material, the exemption should be based on the environmental benefit of clearing waterways rather than the nature of the material removed
26 49 (5)	Nor may WRA issue a charging notice under this section more than 20 years after the time when it appears to WRA that any taxable disposal to which the notice relates was made	This reference to 20 years needs clarification

Page /Para	Detail	FCC comment
28 54 (3)	(d) The notice may specify a maximum amount of material that may be carried out in an area (f) The notice must specify the maximum period for which material may be kept in the area	Limiting tonnages and time limits places an administrative burden on the operator for no good reason. The proposed HMRC approach of eliminating information areas is more welcome
33 60 etc	An operator... who fails to comply with a requirement to determine weight properly is liable to a penalty not exceeding £500 in respect of each failure	This and the penalty proposed in para 61 re water discounts would appear to be disproportionate to some of the other penalties in section 4. For example a genuine oversight on weighing incurs £500, yet a blatant disregard by not registering as in para 63 would carry a penalty of £300
44 88	Power to impose secondary liabilities on controllers of authorised landfill sites (2) A controlleris a person other than the operator who determines what disposals may be made	This requires clarification, it is the operator that determines what disposals may be made
46 91 (5)	...The Welsh Ministers are satisfied that the regulations do not cause the amount of tax chargeable on a taxable disposal to be greater than the amount that would otherwise be chargeable on the disposal	Both 5 (a) and 5 (b) are difficult to understand what is being proposed

TATA STEEL



Committee Clerk
Finance Committee
National Assembly for Wales
Cardiff Bay
CF99 1NA

11 January 2017

Dear Sir

Consultation on the Landfill Disposals Tax (Wales) Bill

Tata Steel UK Limited (TSUK) is a steel manufacturer and operates two landfill sites in Wales at Port Talbot and Shotton.

We would like to respond on the following points from Annexe 1 in the consultation document:

7. The definition of 'taxable disposal' and 'qualifying materials'

Under section 6 of the Bill regarding disposal of material as waste, the Bill states "(2) an intention to discard material may be inferred from the circumstances of its disposal, and in particular from the fact (where it is the case) that the material is deposited in a landfill disposal area."

It is clear that the Bill is seeking to minimise unpaid taxes due on incorrectly or wrongly disposed of material and inhibit rogue operations. We have the following queries relating to the above quoted legislation:

- (a) How will the Welsh Government (WG) define 'inferring that the intention is to discard'?
- (b) How will the WG relate this back to current relevant UK & EU legislation around waste management and disposal?
- (c) What will NRW's role be in terms of regulating and/or being involved with the implementation and/or enforcement of this in practice?
- (d) What will the WG/Welsh Revenue Authority's (WRA) role be in terms of regulating and/or being involved with the implementation and/or enforcement of this in practice?
- (e) What is the intended process for the implementation and/or enforcement of this in practice?

Group Taxation

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Under section 8, landfill site activities to be treated as taxable disposals describes many of the activities mentioned under the current UK legislation - 2009 Landfill Tax (Prescribed Landfill Site Activities) Order. Does this mean permanent construction (i.e. roads/engineering) will continue to be non-taxable?

Regarding qualifying materials, under section 15 of the Bill for a material to qualify for the lower rate of tax it must be listed as qualifying in regulations. When will the regulations be available and will they follow the Qualifying Materials Order 2011 currently being used under UK legislation?

Under section 17 of the Bill regarding qualifying fines, when will the regulations surrounding this be released and will the tests mentioned be the same as the loss on ignition testing under the UK legislation?

12. The inclusion of unauthorised disposals of waste at places other than authorised landfill sites

We believe there should be clarification in the Bill or an exemption included for waste streams that are stored to be diverted from landfill and moved up the waste hierarchy (as outlined in Article 4 of the Waste Framework Directive). This is to ensure the most sustainable solution is found for waste, which is better aligned with the objectives of the Welsh Government's overarching waste strategy document for Wales: Towards Zero Waste (June 2010).

Without an exemption, some of the opportunity waste streams might fall under the definition of an unauthorised disposal, which we don't believe is the intended impact of the Bill.

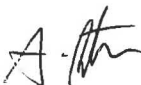
There is also another potential inadvertent consequence where scientific innovations to move waste streams up the waste hierarchy by private companies might become redundant. This could lead to job and revenue losses to the Welsh economy and missed opportunities to lessen the impact of waste streams on the environment.

16. Establishing the Landfill Communities Scheme as a grant scheme rather than a tax credit and developing it outside of the Bill

Both Shotton and Port Talbot have participated in the current Landfill Communities Fund scheme under the UK rules. Will the environmental bodies they have provided funds to via this scheme be able to apply for the new grant scheme that has been proposed?

Please contact me if you require any further information.

Yours faithfully



Abigail Porter, Miss
Tax Adviser, Group Taxation

Finance Committee

Consultation: Landfill Disposals Tax (Wales) Bill

Email: seneddfinance@assembly.wales

Evidence Session: Thursday 19 January



Establishing the Landfill Communities Scheme as a grant scheme rather than a tax credit and developing it outside of the Bill.

SUMMARY

- Wildlife Trusts Wales support the development of a **Landfill Disposals Tax Communities Scheme** as a continuation of, replacement for, the Landfill Community Fund.
- We **strongly support** a scheme that hypothecates tax raised from an environmentally damaging activity for projects that benefit the environment, including biodiversity.
- As is widely reported, we are in a state of major and continuing decline in wildlife and ecosystem resilience.
- The current Landfill Community Fund is **excellent value for money** as wildlife projects deliver multiple benefits and thus the LCF **punches far above its weight**.
- **Landfill Disposals Tax Communities Scheme** like its predecessor is one of the only pure biodiversity funds as such it is an important mechanism for Wales to meet the its moral and legal obligations to halt the loss of biodiversity (i.e. Section 6 and 7 of the Environment (Wales) Act 2016).
- It is vital for the success of conservation projects to have funders who can commit to funding long term projects (3-5 years).
- The Bill requires greater clarity and transparency in relation to how LDT revenues are apportioned to the LDT CS in order to safeguard this important funding mechanism e.g. how will funding levels for the new fund be determined and protected?
- We recommend the Bill highlights that there should be an even spread of resources targeted at the three key areas to avoid being monopolized by one theme.
- There also should be expert advice given by the EDB to maximize the multiple benefits e.g. environmental enhancements must use volunteers and creation of biodiverse green spaces.
- Given the multiple benefits that the **Landfill Disposals Tax Communities Scheme** will achieve, and the current progressive agenda in Wales, **we would welcome a higher percentage of tax returns be diverted towards this scheme. We believe that at least 15-20% would be suitable.** This figure would help Wales achieve the vision set out in the Well-being of Future Generations (Wales) Act 2016 and lead the rest of the UK e.g. as England's current rate is 4.2% and Scotland's is 10%.
- We support the aim to simplify the administration of the scheme and maximise the amount of funding reaching community projects.
- Given our extensive experience, Wildlife Trusts Wales will put ourselves forward as the Environmental Distributive Body.

1 - INTRODUCTION

1. Wildlife Trusts Wales (WTW) represents the six Wildlife Trusts in Wales – Brecknock, Gwent, Montgomeryshire, North Wales, Radnorshire and South and West Wales (hereafter referred to as the 'Wildlife Trusts') working together in partnership to achieve common aims. The Wildlife Trusts collectively speak on behalf of more than 24,000 members and manage over 200 nature reserves, covering more than 8,000 hectares of prime wildlife habitat, from rugged coastline to urban wildlife havens.
2. Nature is fundamental to everyday life; it provides the air we breathe, the food we eat, the fuel we use for warmth, and the resources we consume for shelter and modern life. Nature and people are not separate; nor

is nature separate from our economy. Without a healthy environment, society cannot be resilient – but for nature to look after us, we need to look after nature.

3. The Wildlife Trusts in Wales strive for **Living Landscapes** and **Living Seas**, recognising these as inspirational ends point where our environment, society, and economy coexist for the benefit of wildlife and people.
4. Wildlife Trusts Wales took an active part of the consultation on the Landfill Disposal Tax (LDT) consultation. Specifically, we were supported the development of a **Landfill Disposals Tax Communities Scheme** (LDT CS) as a continuation of, replacement for, the Landfill Community Fund (LCF).
5. We strongly support a scheme that hypothecates tax raised from an environmentally damaging activity for projects that benefit the environment, including biodiversity.
6. Many of our members took an active part of the consultation as well as our ambassador, Iolo Williams. **More than half the 279 respondents provided views about LCF, including 138 letters from Wildlife Trusts Wales members calling for the continuation of the LCF to support biodiversity projects.**
7. However, **the Bill requires greater clarity and transparency in relation to how LDT revenues are apportioned to the LDT CS** in order to safeguard this important funding mechanism.
8. We support the aim to simplify the administration of the scheme and maximise the amount of funding reaching community projects. We are currently working with Welsh Government and other stakeholders including landfill site operators and the third sector to develop the scheme.
9. We will also put ourselves forward as the streamlined and cost effective Environmental Distributive Body (EDB), given our extensive experience as
 1. an EDB for the LCF (i.e. BIFFA and the Ulster Landfill Community Scheme) and similar funds (i.e. Co-operative carrier bag levy, Peoples Postcode Lottery).
 2. advisor to other Environmental Distributive Bodies (i.e. WREN, SITA)
 3. Local sector knowledge including communities, environment, volunteering).

2 - LANDFILL COMMUNITIES SCHEME

10. As is widely reported¹², we are in a state of major and continuing decline in wildlife and ecosystem resilience, such as
 - 60% of the species in the UK having declined over recent decades.
 - **More than one in ten of all the species in the UK are under threat of disappearing from our shores altogether.**
 - The diversity is declining in Wales, which is shown by loss of habitats and species.
 - The 'extent' of some habitats in Wales has also declined significantly.
 - 'Condition' shows mixed results, while 'connectivity' has greatly reduced in Wales
 - All ecosystems in Wales have problems with one or more attributes of resilience. This means that their capacity to provide ecosystem services and benefits may be at risk.
 - No ecosystem in Wales can be said to have all the features needed for resilience
11. The LCF is one of the few funding streams for 'pure' biodiversity projects. **Biodiversity funding as a whole is significantly underfunded³**: a key factor in Wales failing to hit the 2010 target to halt the loss of biodiversity).

¹ The State of Natural Resources Report (SoNaRR) 2016 <https://naturalresources.wales/our-evidence-and-reports/the-state-of-natural-resources-report-assessment-of-the-sustainable-management-of-natural-resources/?lang=en>

² The State of Nature Report <http://www.wildlifetrusts.org/news/2013/05/22/state-nature-60-uk-species-decline-groundbreaking-study-finds>

12. LDT CS, like the current the Landfill Communities Fund (LCF), will be an important mechanism for Wales to meet the challenges above and moral, legal and policy obligations, for example;
- **Wildlife and Countryside Act 1981** (as amended) - Section 28G states that Welsh Government has a: *“duty ... to take reasonable steps, consistent with the proper exercise of the authority’s functions, to further the conservation and enhancement of the flora, fauna or geological or physiographical features by reason of which the site is of special scientific interest ”*
 - **EU Habitats Directive** - Article 6(1) makes provision for the establishment of necessary conservation measures, and is focused on positive and proactive interventions (including designating and managing SACs). Article 6(2) makes provision for avoidance of habitat deterioration and significant species disturbance.
 - **Environment (Wales) Act 2016**
 - i. **Section 6 - Biodiversity and resilience of ecosystems duty** places a duty on public authorities to *‘seek to maintain and enhance biodiversity’ so far as it is consistent with the proper exercise of those functions. In so doing, public authorities must also seek to ‘promote the resilience of ecosystems’.*
 - ii. **Section 7 - Biodiversity lists and duty to take steps to maintain and enhance biodiversity** *“The Welsh Ministers will publish, review and revise lists of living organisms and types of habitat in Wales, which they consider are of key significance to sustain and improve biodiversity in relation to Wales...The Welsh Ministers must also take all reasonable steps to maintain and enhance the living organisms and types of habitat included in any list published under this section, and encourage others to take such steps”.*
 - **Well-being of Future Generations (Wales) Act 2015** goal, a Resilient Wales, which states *“A nation which maintains and enhances a biodiverse natural environment with healthy, functioning ecosystems that support social, economic and ecological resilience and the capacity to adapt to change (for example climate change)”.*
 - **Environment Strategy for Wales** – states that we should have all statutory designated sites (such as Sites of Special Scientific Interest (SSSIs) and Special Areas for Conservation (SACs)) in **favourable condition** by 2026⁴.
 - **EU Biodiversity Strategy** aims to **halt the loss of biodiversity and ecosystem services** in the EU and help stop global biodiversity loss by 2020. It reflects the commitments taken by the EU in 2010, within the international Convention on Biological Diversity.
13. Much of LCF is currently used to fund the restoration of nationally and internationally important sites and species (see **section 5**) (and with it the multiple benefits that brings⁵⁶ as highlighted below⁷). Thus, helping the Welsh Government meet its legal and moral duties to conserve and enhance biodiversity.
14. As such, WTW responded to the consultation and advocated that
- Welsh Government should continue using the Landfill Disposals Tax to maintain the LCF
 - The specific focus of the fund should be dedicated to biodiversity delivery,

³ Environmental causes receive just 3% of public charity donations compared to Medical research (20%) and Children (15%) - CAF/NCVO 2009.

⁴ Welsh Government (2006) Environment Strategy for Wales www.wlga.gov.uk/download.php?id=3972&l=1

⁵ Living Landscapes Cymru 2020 http://www.wtwales.org/sites/default/files/living_landscapes_cymru_2020.pdf

⁶ Green Infrastructure: A Catalyst for the Well-being of Future Generations in Wales - http://www.wtwales.org/sites/default/files/green_infrastructure.pdf

⁷ The Economics Benefits of Natura 2000

<http://ec.europa.eu/environment/nature/natura2000/financing/docs/Economic%20Benefits%20Factsheet.pdf>

- Given the multiple benefits that the LCF achieves, and the current progressive agenda in Wales, we would welcome a higher percentage of tax returns be diverted towards this scheme. We believe that at least 15-20% would be suitable. This figure would help Wales achieve the vision set out in the Well-being of Future Generations (Wales) Act 2016 and lead the rest of the UK e.g. as England's current rate is 4.2% and Scotland's is 10%.

3 - ADMINISTRATIVE MODEL

Distributive Environmental Body

15. Considering the number of landfill sites in Wales is reducing to 10, and thus contributions to the LDT CF will significantly reduce, the Wildlife Trusts Wales agree that there should be one **Distributive Environmental Body (DEB)** in Wales. This will help cut down administration and therefore more money should be directed at good causes.
16. We recommend that the one DEB is Wildlife Trusts Wales. The Wildlife Trusts have a lot of expertise in delivering such grants including LCF, for example,
 - BiffaAward is managed by the Royal Society of Wildlife Trusts (RSWT);
 - Ulster Wildlife Trust is the DEB for several local councils and independent landfill operators.
 - WTW is a member of, and advisor to, the SITA and WREN Wales LCF funding panels.
 - WTW currently distributes the Co-operative single use carrier bag levy, and the Peoples Postcode Lottery contributions to the 6 regional Wildlife Trusts in Wales.
17. We also have local sector knowledge including communities, environment, volunteering i.e. we have over 2000 active volunteers in Wales working on community environmental well-being projects.
18. We believe this model will provide Welsh Government and stakeholders with
 - clear assurance
 - a proper governance framework (as we are subject to both company and charity law),
 - reduced and streamlined administrative costs.
19. We recommend that administrative costs are the same for the current EDBs which is 7.5%. It will also ensure there is an easier application process, providing applicants with a single point of contact.

Definition from landfill sites

20. We agree with the widening of the definition from landfill sites to '*landfill sites and related activities (such as depots and transfer stations)*'.

Grant timescales

21. It is vital for the success of conservation projects to have funders who can commit to funding long term projects (3-5 years). This is to allow
 - time for habitats to mature,
 - species to breed
 - allow project officers and volunteers the flexibility to work with appropriate seasons.

4 - THE BILL

22. **Transparency** - The Bill requires greater clarity and transparency in relation to how LDT revenues are apportioned to the LDT CS in order to safeguard this important funding mechanism.

23. As there is now no link between the LDT and the LDT CS – we would like to know how will funding levels for the new fund be determined and protected?
24. **Equity** – We recommend the Bill highlights that there should be an even spread of resources targeted at the three key areas
- Biodiversity
 - Waste Minimization
 - Environmental Enhancements
25. This is so that the fund is not monopolised by one theme or totally taken up by expensive activities such
- maintaining or improving community facilities, for example community halls roofs which can be very expensive
 - recycling of waste
26. **Maximized Benefits** - There should be also be expert advice given by the EDB to maximize the multiple benefits e.g. environmental enhancements must use volunteers and create biodiverse green spaces.

5 - MULTIPLE BENEFITS

27. The LCF is **excellent value for money** as wildlife projects deliver multiple benefits as such it **punches far above its weight**.
28. By targeting biodiversity and create wildlife friendly community green spaces and supporting green infrastructure, it delivers against all the goals of the **Well-being of Future Generations Act**.

A Prosperous Wales

29. **Match Funding** - Wildlife Trusts and other conservation organisations are able to use the current LCF to **unlock significant match funding** from other sources (e.g. WREN funding for North Wales Wildlife Trust's Anglesey Grazing Animals Partnership unlocked over £100,000 pounds from other sources).
30. **Poverty alleviation** - The LCF also helps to relieve poverty. Poverty is not simply the result of low income, but also reflects a deprivation of basic human requirements for well-being including access to high-quality greenspace⁸. The poorest populations are the most dependent on the 'ecosystem services' we get from nature (e.g. flood alleviation, mental and physical health benefits) and therefore suffer first and most severely from its degradation⁹.
31. LCF wildlife projects also **address additional root causes of poverty** through **training and job creation**. For example, many of the biodiversity projects funded by the LCF are delivered through a combination of
- a) newly employed conservation staff,
 - b) local contractors
 - c) locally recruited volunteers - thousands of hours of volunteer time, helping people gain valuable skills, confidence, and health and well-being benefits
32. For example, the Biffa Funded Pentwyn Meadows Project spent approximately £20,000 on local contractors over 2 years (roughly about half the project costs). Many of the contractors are also small farmers who rely on contract work to supplement their income.

⁸ United Nations, Convention of Biological Diversity – report on Biodiversity for Development and Eradication of Poverty <https://www.cbd.int/undb/media/factsheets/undb-factsheet-development-en.pdf>

⁹ **Ecosystem Services for Poverty Alleviation (ESPA)** Human dependence on ecosystem services - can quantifying it help fight poverty? <http://www.espa.ac.uk/news-events/espa-blog/human-dependence-ecosystem-services-can-quantifying-it-help-fight-poverty>

33. Many of the volunteers are not in **education or employment (NEETS)** but have receive training through the biodiversity projects, thus making them more employable. Volunteering on nature reserves also instils confidence and a sense of pride.
34. **Address the symptoms of poverty** – The LCF wildlife projects use volunteers to help restore and enhance nature reserves and greenspace close to where people live such as Silent Valley Nature Reserve near Ebbw Vale. **Volunteering on nature reserves brings proven health and wellbeing benefits which can help to arrest or reverse ailments that are shown to be more common in deprived communities**^{10,11}. The long-term conditions of obesity, diabetes, heart disease and dementia are much more prevalent in deprived communities which often have the least access to green space¹².
35. **House prices** - It has been proven that, due to the effect of the “dis-amenities” of living near to landfill sites (noise and air pollution, litter, smell), local house prices experience a reduction in value of up to 2.6% against average market value. This is partly due to the “*stigma*” of having a landfill site nearby. This stigma “*appears to endure over periods in excess of 20 years*”. By contrast, high-quality green space has been shown to uplift **property values** by up to 34%¹³.
36. **Economic catalyst** - Improvements in biodiversity and green space have been proven to be a **catalyst for economic activity**¹⁴. It has been proven¹⁵ that **high quality parks, green spaces and nature reserves contribute to the economic vitality of, and confidence in, a locality**. The LCF helps to maintain, restore and enhance these greenspaces.
37. **Tourism** - The Wales Visitor Survey 2013 (GB Staying Visitors) showed that the natural environment is the major attraction for visitors to Wales, with 69% stating that their main reason for visiting was to enjoy the landscape, countryside and/or beach. The **LCF helps protects Wales’s £6.2billion tourist industry**¹⁶ by protecting, restoring and enhancing our most precious and protected landscapes and wildlife.

A Resilient Wales

38. The Wildlife Trusts have been able to protect, restore and enhance some of Wales’s most precious and statutory protected landscapes and wildlife, such as:
 - a) **North Wales Wildlife Trust** used funding from
 - Tir-a-Môr Cyf to restore and enhance Eithinog SSSI and funding. Eithinog became a nature reserve only following 16 hard years of work by local residents, who valued both its specific wildlife attractions and role as community green space.

¹⁰ Environmental inequalities and their impact on the health outcomes of children and young people

<https://www.ncb.org.uk/sites/default/files/field/attachment/Environmental%20Inequalities.pdf>

¹¹ GreenLINK (2011) Understanding the Contribution Parks and Green Spaces can make to Improving People’s Lives. Health and Wellbeing downloadable from <https://www.rudi.net/...file/Blue+Sky+Green+Space+-+Full+Report.pdf>

¹² Greenlinks Scotland - the links between greenspace and health: a critical literature review

<http://greenspacescotland.org.uk/links-between-greenspace-and-health.aspx>

¹³ CABE SPACE (2006) Does Money Grow on Trees

<http://webarchive.nationalarchives.gov.uk/20110118095356/http://www.cabe.org.uk/files/does-money-grow-on-trees-summary.pdf>

¹⁴ Green Infrastructure’s contribution to economic growth: a review A research paper, commissioned by DEFRA and Natural England undertaken by Sheffield Hallam University Centre For Regional Economic And Social Research

<http://www4.shu.ac.uk/research/cresr/sites/shu.ac.uk/files/green-infrastructures-contribution-growth.pdf>

¹⁵ *ibid*

¹⁶ Visit Wales (2010) The Economic Contribution of the Visitor Economy: UK and the Nations. Deloitte and Oxford Economics, June 2010

- SITA to contribute to the favourable conservation status of the Meirionnydd Oakwoods and Bat Sites SAC. Based on the site of the former Cooke’s explosives works (latterly ICI), Gwaith Powdwr forms a vital part of the cultural heritage of the 2,000-strong community of Penrhyndeudraeth. Countless village residents either worked at the site or had family members who did, and the transformation both of its buildings into habitat for lesser horseshoe bats and the wider site into accessible wild play space has been publicly welcomed.
 - b) **Radnorshire Wildlife Trust** secured funding from BIFFA to employ a project officer to oversee restoration of Beacon Hill Common SSSI, home to many rare species including the iconic red grouse.
 - c) **Wildlife Trust of South and West Wales** used WREN funding to restore and enhance the Carmel National Nature Reserve (NNR), SAC and SSSI as part of the WREN funded Gwendraeth Grasslands Project.
 - d) **Gwent Wildlife Trust** used funding from the Silent Valley Environmental Trust to care for the habitats and species of the Silent Valley Woodland SSSI and funding from the Veolia Environmental Trust to improve the Great Traston Meadows SSSI for the nationally rare Shril Carder Bee.
39. Such work could not go ahead without this fund. **Without the LCF, Welsh Government will lose one of the few funding sources it has to help Wales achieve its legal biodiversity duties.**
40. **Waste** - The way that society deals with waste, and our behaviours related to resource consumption, can have a direct and indirect impact upon wildlife. The waste that goes to landfill sites is a mixture of discarded materials/products usually constructed out of natural resources such as wood, oil or other organic material. The production and disposal of these products and materials has a significant negative impact on the environment and increases Wales’s carbon footprint. Landfill sites, waste depots and transfer stations themselves have a significant environmental impact (e.g. land-take from the site as well as noise, air, odour pollution and windblown litter).
41. However, the LCF is a ‘**green tax**’ similar to the carrier bag charge under the Environment (Wales) Act 2016 . The LCF and carrier bag charge are both aligned with the Welsh Government ethos that the **polluter pays**¹⁷ and **biodiversity offsetting**¹⁸ **principles**. For example, the ecological footprint of waste/landfill sites is currently compensated by funding of environmental improvements within a 10-mile radius of landfill sites. This local compensation is a form of **environment justice**.

A Healthy, more equal Wales and Cohesive Communities

42. The LCF is fundamental to **social justice** of local communities that live within 10 miles of a landfill site. As a result of LCF-funded projects, local communities benefit from enhanced green space – this can make up for the dis-amenities of living near a landfill site.
43. The biodiversity improvements undertaken by LCF projects to enhance or create high quality parks, green spaces and nature reserves contributes to the attractiveness of the area and the confidence and sense of place of communities¹⁹²⁰²¹²²²³²⁴²⁵²⁶.

¹⁷ Polluter Pays Principle

<http://gov.wales/topics/environmentcountryside/epq/airqualitypollution/preventpollution/fees/?lang=en>

¹⁸ See page 15 of the Nature Recovery Plan – Achieving No Net Loss - <http://gov.wales/docs/desh/consultation/140910-nature-recovery-plan-consultation-en.pdf>

¹⁹ Wildlife Trusts Wales (2016) Green Infrastructure: A Catalyst for Well-being of Future Generations In Wales - <http://www.wtwales.org/greeninfrastructure>

²⁰ GreenLINK (2011) Understanding the Contribution Parks and Green Spaces can make to Improving People’s Lives. Health and Wellbeing downloadable from <https://www.rudi.net/...file/Blue+Sky+Green+Space+--+Full+Report.pdf>

44. The Department of Health²⁷ recognises that a **poor physical environment is detrimental to the public's physical and mental health**. Research²⁸ has found that **spending time in nature provides protection against a range of diseases, including depression, diabetes, obesity, ADHD, cardiovascular disease, cancer and many more**. This research shows that this is due to **nature's ability to enhance the functioning of the body's immune system**²⁹. It states that nature doesn't just have one or two active ingredients but it is more like a multivitamin that provides us with all of the nutrients we need.
45. Evidence strongly suggests that high quality green spaces can help reduce **health and social inequalities**. It is worth noting that those with close access to green space lived longer than those with no green space, even when adjusted for social class, employment, smoking etc and the impact was significantly greater amongst the least affluent³⁰.
46. The Wildlife Trusts LCF projects have also been able to **inspire and engage communities** to care about nature on their doorstep (for example, North Wales Wildlife Trust's SITA-funded Community Orchard³¹).
47. Time spent in nature has a hugely positive impact on key social indicators. For example, work undertaken by the LCF projects such as creating accessible high quality greenspace make neighbourhoods more attractive, relaxing, comfortable and welcoming places and thus help to^{32,33};
- increase levels of social contact and social integration³⁴
 - create community cohesion and enhance social ties especially within disadvantaged communities³⁵
 - provide a sense of community³⁶
 - engage individuals from different social groupings

²¹ The research from Birmingham University- <http://www.birminghammail.co.uk/incoming/blight-fears-for-homes-near-landfill-390538>

²³ <http://www.espa.ac.uk/news-events/espa-blog/human-dependence-ecosystem-services-can-quantifying-it-help-fight-poverty>

²⁴ Environmental inequalities and their impact on the health outcomes of children and young people <https://www.ncb.org.uk/sites/default/files/field/attachment/Environmental%20Inequalities.pdf>

²⁵ Greenspace Scotland, 2007. *The links between greenspace and health: A critical literature review*. Greenspace Scotland <http://greenspacescotland.org.uk/links-between-greenspace-and-health.aspx>

²⁶ Natural England's – Health Information Pack <https://iucn.oscar.ncsu.edu/mediawiki/images/4/4c/NaturalEngland%282012%29.pdf>

²⁷ Department of Health (2010) - Healthy Lives, Healthy People: our strategy for public health in England

²⁸ Kuo (2015) - How might contact with nature promote human health? Promising mechanisms and a possible central pathway. *Frontiers in Psychology*, 2015; 6 DOI: 10.3389/fpsyg.2015.0109

²⁹ *ibid*

³⁰ Mitchell and Popham (2008) - Effect of exposure to natural environment on health inequalities: an observational population study - *The Lancet* 372 (9650): pp 1655-1660

³¹ Celebrating the Landfill Communities Fund <http://www.wildlifetrusts.org/LCFreport>

³² Sullivan, Kuo and Depooter (2004) - The fruit of urban nature: Vital neighbourhood space. *Environment and Behaviour* 36(5): 678-700;

³³ Pretty, Peacock, Hine, Sellens, South and Griffin (2007) - Green exercise in the UK countryside: Effects on health and psychological well-being, and implications for policy and planning - *Journal of Environmental Planning and Management* 50(2): 211-231

³⁴ Fredrickson and Anderson (1999) - A qualitative exploration of the wilderness experience as a source of spiritual inspiration - *Journal of Environmental Psychology*. 19. 21-40.

³⁵ Dines, Catell, Gesler and Curtis (2006) - Public spaces and social relations in East London - Joseph Rowntree Foundation

³⁶ Pikora, Giles-Corti, Knuiiman, Bull, Jamrozik and Donovan (2005) - Neighbourhood environmental factors correlated with walking near home: using SPACES - *Medicine and Science in Sports and Exercise* 2005;38(4):708-714

- create opportunities for community participation and volunteering Improvements in greenspace are a cost effective way for people to transform their neighbourhoods and improve their quality of life.

A Wales of vibrant culture and thriving Welsh language

48. Biodiversity and linguistic and cultural diversity are linked³⁷ with indigenous languages having elaborate and complex words and phrases for the natural world. This reflects a deep understanding of the local environment. This environmental knowledge can be lost when a community shifts to another language or when the environment is degraded³⁸.
49. The Welsh language is intimately connected with both the history and the natural history of Wales, with many wonderful descriptive names in Welsh such as
 - ‘Eryri’ (Welsh for Snowdonia), means land of Eagles and harks back to the 16th century when eagles nested there
 - A farm near Cerrigydrudion called ‘Clust y Blaidd’ (Wolf’s Ear) which is said to date back 500 years to when wolves roamed the area rocky outcrops in the Welsh uplands.
50. Therefore the LCF, by helping to maintain and enhance biodiversity, is helping to maintain the Welsh language.

Globally Responsible Wales

51. Nature is a crucial part of our efforts to combat, mitigate and adapt to climate change and its effects. By conserving nature and restoring ecosystems we reduce our vulnerability and increase our resilience to climate change in a cost-effective manner – many of the LCF biodiversity projects can be seen as climate change mitigation and adaption projects.
52. Restoring and enhancing important habitats such as peatlands, wetlands, woodlands and unimproved grasslands help mitigate and adapt to climate change by storing and sequestering carbon dioxide from the atmosphere. They also and help to alleviate the effects of flooding (e.g. Montgomeryshire Wildlife Trusts Pumlumon Living Landscape³⁹ and Coed Cymru Pontbren Project⁴⁰).

³⁷ Gorenflo Romaine Mittermeier and Walker-Painemilla (2012) - Co-occurrence of linguistic and biological diversity in biodiversity hotspots and high biodiversity wilderness areas- Proceedings of the National Academy of Sciences of the United States of America

³⁸ UNESCO 2015 - <http://www.unesco.org/new/en/culture/themes/endangered-languages/biodiversity-and-linguistic-diversity/>

³⁹ Pumlumon Project <http://www.montwt.co.uk/what-we-do/living-landscapes/pumlumon-project>

⁴⁰ The Pontbren Report - <http://www.coedcymru.org.uk/images/user/5472%20Pontbren%20CS%20v12.pdf>

Pwyllgor Cyilid I Finance Committee

Bil Treth Gwarediadau Tirlenwi (Cymru) | Landfill Disposals Tax (Wales)

LDT 19 RWE Generation UK PLC



Committee Clerk
Finance Committee
National Assembly for Wales
Cardiff Bay, CF99 1NA

Our ref.
Contact: Zoe Harrison
Phone 01793 894112
Email: zoe.harrison@rwe.com

Dear Sirs,

11th January 2017

Landfill Disposals Tax (Wales) Bill Call for Evidence

RWE Generation (RWE) is one of the UK's largest electricity generators, with a generation portfolio comprising coal, gas and biomass fired power stations across Wales and England. Aberthaw Power Station a coal fired power station, near Barry, produces pulverised fuel ash which is currently being used to fill/restore a local quarry.

RWE welcome the opportunity to comment on the proposed Bill and understand the requirement and general principles of the Bill. There is one area where we have a concern we would like to raise and this is in regards to the exemptions/reliefs. Currently under HMRC tax arrangements the use of ash to refill the quarry is exempt from landfill tax. Under the proposed arrangements this activity would again not be required to pay landfill tax, which we welcome, but instead of using an exemption it would be way of relief. This change from exemption to relief and the different process required will add an administrative burden to the company and it is not clear the benefits of this. It is therefore requested that the change from exemption to relief for re-filling former quarries is re-considered.

Please do not hesitate to contact us if you require any further information.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Zoe Harrison'. The signature is fluid and cursive.

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Dear Mr Thomas

Consultation on the Landfill Disposals Tax (Wales) Bill -Invitation to contribute to the inquiry

Further to an invitation by your colleague, Georgina Owen, I include below a statement for consideration by your Finance Committee members at their meeting on 25th January 2017. I should be happy to attend if you consider my presence would be helpful.

My role in Cory as Senior Project Manager involves managing business development projects, environmental systems and trusts.

I, on behalf of Cory ,welcome the opportunity to present to the Committee and to offer support in the development of the Landfill Disposals Tax (Wales) Bill. During the process we have very much appreciated the openness shown by your representatives , their willingness to learn from operators and to improve upon the established systems used elsewhere in the UK. The approach shown by your Government and your representatives give us great confidence that the Landfill Disposals Tax (Wales) Bill , LTD, will be introduced in a smooth and orderly manner and that given sufficient resources will be operated in an efficient fair and professional manner.

In developing the LDT for Wales the Welsh Government stated its commitments to

- be fair to landfill operators and to businesses who pay the taxes
- apply simple clearly sated rules which seek to minimise compliance and administration costs
- support growth and jobs and in turn help tackle poverty
- provide stability and certainty for tax payers

We consider that given the content and current status of the Bill the Government's objectives should indeed be fulfilled.

The government has achieved its aims by

- recognising the need for maintaining continuity with current practices in order to retain on landfill diversion and sustainability objectives and provide financial stability for local authority and commercial waste producers ,
- streamlining administrative systems including changing the Communities Scheme funding to a grant rather than a relief,
- taking the opportunity to introduce important new enforcement measures to deter illegal deposits of waste and punish the perpetrators

We note that the income from landfill tax in Wales is currently estimated at c £44M and that by the time the tax is introduced in April 2018 it is set to reduce to c £27M. Even with the Welsh Government's

efficient mode of operation, it is projecting that the annual cost of administration of the tax will be between £14m and £19M leaving a surplus of between £8M and £13M in the first year. There will therefore be a relatively small sum of money to distribute to community, sustainability and biodiversity projects and for use in supporting additional enforcement measures and campaigns. Furthermore the sum is set to decrease each subsequent year as the need for landfill reduces. We therefore suggest that the Government exercises caution in any commitments it makes regarding expenditure of the new income and does not raise expectations too high.

We appreciate the greater clarity in the descriptions of materials for which tax will be charged which in turn should reduce challenges, costly and time consuming litigation. To further assist in this simplification process we ask that consideration be given to the use of a small proportion of the tax income to assist NRW in the assessment of materials qualifying for "End of Waste". This will assist in recognising the treatment of waste materials to a sufficient extent and measurable standard to enable them to be considered no longer waste and potentially suitable for use as engineering materials in Wales.

We particularly applaud the Government for its commitment to use the LDT Bill as a deterrent to illegal deposits of waste through the application of significant financial penalties on those engaged in causing environmental damage, nuisance and tax avoidance. We welcome the support that the measures will give to legitimate business, as such as ours, and are willing to help publicise the Government's new powers at the appropriate time.

We note that the Bill is drafted in a way that allows for subordinate legislation thus enabling sufficient flexibility for the legislation to be changed according to evolving and advancing technology and policy. We should be happy to assist in the development of the regulations and codes of practice both prior to their introduction and in their future modification post 2018.

We recognise the need for the administration of the legislation to be simplified in order to improve understanding, compliance and to control costs. In particular, we support the changes to the Landfill Disposals Tax Communities Scheme to become funded by a simple grant. This should reduce administrative costs and enable a greater proportion of the diminishing income from landfill tax to be used in supporting communities and improving habitats in the proximity landfill sites. As it is intended there will no longer be an operator contribution we anticipate operator involvement in the scheme will also cease.

In conclusion we thank the Committee and your representatives for inviting us to be involved in the development of the Landfill Tax Disposals (Wales) Bill. We look forward to continuing exchanges and a close and helpful working relationship in the development of the subordinate legislation and in its subsequent introduction.

Should the committee wish to ask any questions I should be happy to assist.

Yours sincerely



Jennifer Doyle

Senior Project Manager