

Finance Committee

Meeting Venue:
Committee Room 1 – Senedd

Meeting date:
Thursday, 23 April 2015

Meeting time:
09.00

Cynulliad
Cenedlaethol
Cymru

National
Assembly for
Wales



For further information please contact:

Bethan Davies
Committee Clerk
0300 200 6565
SeneddFinance@Assembly.Wales

Agenda

1 Introductions, apologies and substitutions (09:00)

2 Papers to note (09:00–09:05) (Pages 1 – 99)

3 Renting Homes (Wales) Bill: Evidence Session 1 (09:05–10:00) (Pages 100 – 112)

Lesley Griffiths AM, Minister for Communities and Tackling Poverty

Simon White, Bill Manager

Ceri Breeze, Deputy Director, Housing Policy

4 Collection and Management of Devolved Taxes in Wales: Evidence Session 1 (10:00–11:30) (Pages 113 – 125)

Jon Rae, Director of Resources, Welsh Local Government Association

Gary Watkins, Revenue Services Manager, Cardiff Council

Nick Jones, Service Director for Operational Finance, Rhondda Cynon Taf County Borough Council

5 Collection and Management of Devolved Taxes in Wales: Evidence

Session 2 (11:30–12:30) (Pages 126 – 138)

Iestyn Davies, Senior Head of External Affairs (Devolved Nations), Federation of Small Businesses

Janet Jones, Chair of Welsh Policy Unit, Federation of Small Businesses Wales

6 Motion under Standing Order 17.42 to resolve to exclude the public from the meeting for the following business: (12:30)

Item 7

7 Local Government (Wales) Bill: Consideration of Draft Report (12:30–12:40) (Pages 139 – 183)

Finance Committee

Meeting Venue: **Committee Room 2 – Senedd**

Meeting date: **Thursday, 19 March 2015**

Meeting time: **08.49 – 10.50**

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National
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Wales



This meeting can be viewed on [Senedd TV](http://senedd.tv) at:

<http://senedd.tv/en/2684>

Concise Minutes:

Assembly Members:

Jocelyn Davies AM (Chair)
Christine Chapman AM
Mike Hedges AM
Alun Ffred Jones AM
Ann Jones AM
Julie Morgan AM
Nick Ramsay AM

Witnesses:

Leighton Andrews AM, The Minister for Public Services
Caroline Turner, Welsh Government
Sanjiv Vedi, Welsh Government
Kate Chamberlain, Healthcare Inspectorate Wales
Nicola Williams, Abertawe Bro Morgannwg University Health Board

Committee Staff:

Bethan Davies (Clerk)
Leanne Hatcher (Second Clerk)
Tanwen Summers (Deputy Clerk)
Martin Jennings (Researcher)
Richard Bettley (Researcher)
Joanest Varney-Jackson (Legal Adviser)

1 Introductions, apologies and substitutions

1.1 The Chair welcomed Members to the meeting.

1.2 Apologies were received from Peter Black AM.

2 Papers to note

2.1 The papers were noted.

2.1 The Committee agreed to write to the Minister for Finance and Government Business requesting clarification on the figures around the protection offered to the Local Government Budget.

3 Consideration of powers: Public Services Ombudsman for Wales:

Evidence Session 10

3.1 The Committee took evidence from Kate Chamberlain, Healthcare Inspectorate Wales and Nicola Williams, Abertawe Bro Morgannwg University Local Health Board on its inquiry into Consideration of powers: Public Services Ombudsman for Wales.

3.2 Nicola Williams agreed to provide a copy of the letter to patients outlining the health boards complaints process and the recourse to the Public Services Ombudsman.

3.3 Kate Chamberlain agreed to provide figures on the independent healthcare sector in Wales and the numbers of private units within NHS organisations.

4 Consideration of powers: Public Services Ombudsman for Wales:

Evidence Session 11

4.1 The Committee took evidence from the Minister for Public Service, Caroline Turner and Sanjiv Vedi, Welsh Government on its inquiry into Consideration of powers: Public Services Ombudsman for Wales.

5 Motion under Standing Order 17.42 to resolve to exclude the public from the meeting for the following business:

5.1 The motion was agreed.

6 Consideration of powers: Public Services Ombudsman for Wales:

Discussion of evidence

6.1 The Committee considered the evidence received.

7 Forward Work Programme

7.1 Members agreed the work programme for the summer term. Members also agreed to write to the Minister for Finance and Government Business with regard to Business Rates.

8 Collection of devolved taxes: Approach to scrutiny

8.1 Members considered the approach to scrutiny for the Committee's inquiry into Collection of Devolved Taxes.

Finance Committee

Meeting Venue: **Committee Room 2 – Senedd**

Meeting date: **Wednesday, 25 March 2015**

Meeting time: **09.02 – 12.10**

This meeting can be viewed on [Senedd TV](#) at:

<http://senedd.tv/en/3155>

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Concise Minutes:

Assembly Members:

Jocelyn Davies AM (Chair)
Peter Black AM
Christine Chapman AM
Mike Hedges AM
Alun Ffred Jones AM
Ann Jones AM
Julie Morgan AM
Nick Ramsay AM

Witnesses:

Georgina Haarhoff, Welsh Government
Sarah Tully, Welsh Government
Bethan Davies, Welsh Government
Leighton Andrews AM, The Minister for Public Services
Gareth Thomas, Welsh Government
Clare Smith, Welsh Government
Nick Bennett, Public Services Ombudsman for Wales
Susan Hudson, Policy and Communication Manager
Katrin Shaw, Public Service Ombudsman for Wales Office

Committee Staff:

Bethan Davies (Clerk)
Leanne Hatcher (Second Clerk)
Tanwen Summers (Deputy Clerk)

Martin Jennings (Researcher)
Richard Bettley (Researcher)
Helen Jones (Researcher)
Joanest Varney-Jackson (Legal Adviser)

1 Factual briefing from Welsh Government on Landfill Tax

- 1.1 The Chair welcomed Members to the meeting.
- 1.2 The Committee received a factual briefing from the Welsh Government on Landfill Tax.
- 1.3 Members requested the following additional information:
 - a list of qualifying waste;
 - a list of local authority landfill sites; and
 - a list of the 191 registered Environmental and Distributive Environmental bodies in Wales.

2 Regulation and Inspection of Social Care (Wales) Bill: Initial Consideration

- 2.1 The Committee considered the financial implications of the Regulation and Inspection of Social Care (Wales) Bill and agreed to invite the Minister for Health and Social Services in for further scrutiny.

3 Introductions, apologies and substitutions

- 3.1 There were no apologies.

5 Local Government (Wales) Bill: Evidence session 1

- 5.1 The Committee took evidence from the Minister for Public Services on the Local Government (Wales) Bill.
- 5.2 The Minister agreed to make available to the Committee:
 - any estimates of costs contained in the cases submitted to him by the six local authorities for voluntary mergers;
 - clarification on whether the Welsh Government has the power to merge pension funds and if there are specific rules regarding local government pension funds; and
 - a report of the previous staff commission (possibly published in September 1996) in relation to previous mergers.

6 Consideration of powers: Public Services Ombudsman for Wales: Evidence Session 12

6.1 The Committee took evidence from the Public Service Ombudsman for Wales on its inquiry.

8 Consideration of powers: Public Services Ombudsman for Wales: Key Issues

8.1 The Committee considered the key issues of its inquiry into Consideration of powers: Public Services Ombudsman for Wales.

7 Motion under Standing Order 17.42 to resolve to exclude the public from the meeting for the following business:

7.1 The motion was agreed.

4 Papers to note

4.1 The papers were noted.



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Ms Jocelyn Davies AM
Chair, Finance Committee
National Assembly for Wales
Cardiff Bay
CF99 1NA

Date: 25 March 2015
Our ref: MP/2299/fgb
Page: 1 of 1

Dear Chair

INQUIRY INTO THE CONSIDERATION OF POWERS: PUBLIC SERVICES OMBUDSMAN FOR WALES

Thank you for the opportunity to provide a note to clarify a matter that I mentioned during the Committee's evidence session on 11 March 2015.

In responding to Julie Morgan's question as to whether the Ombudsman's recommendations are sometimes ignored (para 104 of the transcript), I said that I had a recollection that, in most sectors, the Ombudsman's recommendations are not ignored (para 106). On reflection, that is, if anything, an understatement, and I note that the Ombudsman says in his paper for the Committee of 21 January 2015 that, thus far, no public service provider has refused to implement a recommendation (para 2.49(f) of that paper). However, I also suggested that there was a sector that tended to ignore recommendations, but I realised while speaking that I was thinking somewhat at cross-purposes (para 108). What I had in mind was that the Local Government Ombudsman (for England) found it necessary on a couple of occasions in 2014 to issue private social care providers with adverse findings notices because of their failure to comply with recommendations.

Following the Social Services and Well-being (Wales) Act 2014, since November 2014, the Public Services Ombudsman for Wales has similar jurisdiction in relation to private social care providers as the Local Government Ombudsman has in England. Clearly, it is rather early to establish whether that sector is proving problematic in Wales, but I note that the Public Services Ombudsman for Wales has said in his paper for the Committee of 21 January 2015 that compliance may be harder to secure with social care providers than with public bodies (para 2.49(f) of that paper).

I hope that explanation is helpful, and I apologise for not being clear in the session.

Yours sincerely,

MARTIN PETERS
COMPLIANCE MANAGER

Direct line: 0300 062 8379
Email: Kathryn.chamberlain@wales.gsi.gov.uk

By email: Tanwen.Summers@cynulliad.cymru

10 April 2015

Dear Tanwen,

Following my Committee appearance on 19 March 2015, I agreed to provide further information on the number of independent healthcare providers in Wales and on the numbers of private units within NHS organisations.

Independent Healthcare Providers

A table detailing independent healthcare providers registered with Healthcare Inspectorate Wales as at 31 March 2015 is attached at Annex 1.

Private Patient Units

There is currently only one private patient unit in operation in Wales. The Bridgend Clinic (www.bridgendclinic.co.uk) is located within the Princess of Wales Hospital grounds and is operated by Abertawe Bro Morgannwg University Health Board.

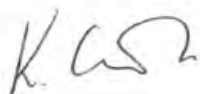
The Bridgend Clinic comprises nine beds and an out-patient suite containing five consultation rooms. It offers consultation and procedures for a range of specialist areas.

The Bridgend Clinic (PPU) does not need to register with HIW since it is owned and operated by the Health Board. We understand that it is also used as an overflow for NHS patients when needed.

For the purposes of complaint processes and the role of HIW, the Bridgend Clinic is treated as an NHS site and it is HIW understanding that if a complainant were not happy with the Health Board's response to their complaint they would have access to Public Service Ombudsman for Wales. If HIW were to receive a complaint relating to care in the Bridgend Clinic we would direct the complainant to the Health Board complaint processes in the first instance and we have previously done so.

Hywel Dda University Health Board confirmed during our research that 6 beds are allocated to private patients in Glangwili General Hospital, Carmarthen. But these do not form a unit and may also be used by NHS patients as required. All other Health Boards and Trusts confirmed that currently, they do not operate PPU's.

Yours sincerely



DR KATE CHAMBERLAIN
Chief Executive

ANNEX 1

Independent Healthcare Providers in Wales (excluding private dentists)

Setting Type	Number
Mental health/ learning disability hospitals	21
Hospitals (non-mental health)	26
Clinics	12
Medical Agencies	1
Laser/ IPL Services	72

Jocelyn Davies AM
Chair of the Finance Committee
National Assembly of Wales

Tŷ Hywel
Cardiff Bay
Cardiff
CF99 1NA

25 March 2015

Dear Jocelyn

Thank you for your letter of 10 March about the Commission's latest Corporate Performance Report for the period April to December 2014. You asked for further information about the Assembly Commission staff survey and the number of schools engaging with the Assembly for the first time.

The last staff survey was done in July 2013 and the results and agreed action plan were published in October 2013. The key themes emerging from the survey centred on recruitment, performance management, accommodation and career progression. As the themes were similar to those in the previous year's survey, we decided to take time to examine and address the issues. We therefore decided not to complete a survey in 2014 and have been planning for the next survey in May 2015. As part of this planning, the survey will be linked to a wider set of staff engagement activities, such as discussion sessions with me.

On the lower number of new schools, you are right to point to the challenge this target presents for us. We are trying to move from a reactive service to a proactive one, with the explicit aim of engaging with all secondary schools in Wales over a period of three years, not just those schools who are already in the habit of engaging with us. We had a peak in engagement activity linked to the initial phase of the Youth Engagement Strategy (between July and November 2013), as we used the resources of this initiative to reach out to more secondary schools; the engagement plan returned to more normal levels the following year.



Although the KPI figures include both primary and secondary schools, our priority under the Youth Engagement Strategy is to focus more of our work on secondary schools. You may be interested to note that, of the 208 secondary schools in Wales, 48 have not engaged with us so far during this Assembly. However, we are determined that we will have engaged with 100% of secondary schools by the end of this Assembly.

In October, a qualified youth worker joined the team to develop our youth engagement activities across Wales to make sure we go beyond our work with schools. Numerous meetings with organisations and groups working with young people outside the 'classroom experience' have taken place. For example, in December two workshops were held with the BA Youth and Community Work students at the University of Wales, Trinity St David's.

If you have any further queries, please do not hesitate to contact me.

Yours sincerely

A handwritten signature in black ink that reads "Claire". The signature is written in a cursive style with a large initial 'C' and a horizontal line underneath the name.

Claire Clancy

**Prif Weithredwr a Chlerc/Chief Executive and Clerk
Cynulliad Cenedlaethol Cymru/National Assembly for Wales**



Y Pwyllgor Iechyd a Gofal Cymdeithasol
Health and Social Care Committee

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Jocelyn Davies AM
Chair of the Finance Committee

2 April 2015

Dear Jocelyn,

Further to my letter of 10 December 2014, I am writing to provide an update on work undertaken by the Health and Social Care Committee in relation to health service reform following the recommendation made by your Committee in its report on the Welsh Government's Draft Budget 2015–16.

I wrote to the Minister for Health and Social Services on 10 December 2014 to seek clarification about whether the additional funding for 2014–15 and 2015–16 would be used to maintain current service levels and address anticipated deficits in health board and trust finances, or to implement new and more innovative models of service delivery.

In his response of 3 February 2015 (copy enclosed), the Minister states that:

“the additional funds announced in the draft budget will be used, alongside the totality of the healthcare budget to continue to deliver the high quality and safe services our patients expect while at the same time ensuring the whole budget is used in a way which contributes to reshaping and reforming the way we deliver our health services to ensure we are on a more sustainable footing.”

The Minister notes that health boards and trusts are expected to outline the reforms and changes that they are intending to make in their three-year

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Croesewir gohebiaeth yn y Gymraeg a'r Saesneg / We welcome correspondence in both English and Welsh

integrated plans. He states that these plans must clearly demonstrate how the reforms will contribute to meeting policy objectives and ensure the delivery of sustainable services in order to receive Welsh Government approval. Refreshed guidance to this effect was issued on 31 October 2014,

In [written evidence](#) provided to inform the Committee's general and financial scrutiny of the Minister and the Deputy Minister for Health on [19 March 2015](#), the Minister indicated that the draft three-year integrated plans for 2015-16 to 2017-18 were submitted on 30 January. The plans are currently undergoing an assessment and challenge process, and the Minister noted that he intends to make an announcement on the approved plans and the next steps by the end of April 2015.

The Committee will be holding a further general and financial scrutiny session with the Minister and Deputy Minister on 17 June 2015, which will focus primarily on financial scrutiny. The Ministers' evidence paper and transcript of that session may provide further details in this area, and you may wish to draw them to your Committee's attention in due course.

Yours sincerely,

A handwritten signature in black ink that reads "David F. Rees." The signature is written in a cursive style with a large initial 'D' and 'R'.

David Rees AM
Chair, Health and Social Care Committee

Enclosures: Correspondence from the Minister for Health and Social Services,
3 February 2015



Ein cyf/Our ref : SF/MD/312/15

David Rees AM
Chair of the Health and Social Care Committee
National Assembly for Wales
Ty Hywel
Cardiff Bay
Cardiff
CF99 1NA

Dear David,

3 February 2015

Health finances and reform

I refer to your letter of 10th December in which you ask for further information to help inform your decision on whether or not to undertake work on health reform before the end of this Assembly. To help inform your Committee's consideration of the Finance Committee's recommendations you have asked for further information as outlined below.

Current funding

Confirmation of whether plans are in place for the additional funding for 2014-15 and 2015-16 to be used to deliver health service reform or to maintain current service levels only

The independent report published by the Nuffield Trust in June 2014 clearly set out the future financial challenges facing the NHS. This report provided the main supporting evidence for the additional funding to be provided to the NHS. One of the main conclusions from the report was that the NHS in Wales is affordable in the future if it receives a share of national income and continues to deliver the productivity and efficiency gains it has in the past. These productivity and efficiency actions will continue, with further potential efficiencies coming from centralising highly-specialised services, providing more care in communities closer to people's homes, preventing people from being admitted to hospital for routine treatment, further increasing the integration with social services and pursuing a prudent healthcare agenda across all services we deliver.

Consequently the additional funds announced in the draft budget will be used, alongside the totality of the healthcare budget to continue to deliver the high quality and safe services our patients expect while at the same time ensuring the whole budget is used in a way which contributes to reshaping and reforming the way we deliver our health services to ensure we are on a more sustainable footing.

The refreshed planning guidance, which was issued on 31 October 2014, clearly outlines our expectations in terms of what changes we expect to see. The extent of the reforms and changes NHS organisations are planning to make will be evident within their three-year integrated plans to be submitted by 30th January 2015. In order to obtain Welsh Government approval they will need to

clearly demonstrate how such reforms will contribute to meeting the policy objectives and enable the continued delivery of sustainable services.

Confirmation of the planned or agreed distribution of the additional £200 million funding available to individual health boards and trusts in 2014-15, as soon as these figures are decided, including how these allocations were calculated

All NHS organisations are required to submit service and workforce plans in line with the new planning guidance and requirements. Whilst some organisations were unable to satisfactorily complete three-year balanced plans in accordance with the requirements, they must ensure they at least submit robust board-approved plans on a one-year basis.

It is important that organisations continue to be held accountable to deliver against the original planning commitments their boards approved. Consequently the additional £200m has been allocated in accordance with the original resource requirements outlined within their plans.

A proportion of the £200m is needed to cover the cost of the pay award, which will be distributed separately. The remaining £175 m has been allocated as follows:

Organisation	Additional Allocation of £m
Abertawe Bro Morgannwg University HB	26.100
Aneurin Bevan HB	26.700
Betsi Cadwaladr University HB	35.000
Cardiff and Vale University HB	15.500
Cwm Taf HB	8.000
Hywel Dda HB	38.700
Powys HB	25.000
Total	175.000

Confirmation of the additional funding available to individual health boards and trust in 2015-16, including how these allocations were calculated once available

I have previously informed the committee that additional allocations in 2015-16 would be based on an updated resource allocation formula. The £200m allocated in 2014-15 will need to be put into the baselines of NHS organisations on this basis.

As part of the 2015-16, health board revenue allocation letter, issued in December 2014 an additional £200 m was allocated as follows:

	Direct Needs Target Share - December 2014	Additional Allocations - 2014
	%	£m
Abertawe Bro Morgannwg University	17.908%	35.815
Aneurin Bevan	19.132%	38.264
Betsi Cadwaladr University	21.257%	42.515
Cardiff and Vale University	14.395%	28.789
Cwm Taf	11.112%	22.225
Hywel Dda	12.128%	24.255
Powys	4.069%	8.137
Total / Average	100.000%	200.000

The receipt of NHS organisations integrated medium term service plans before the beginning of next financial year will provide the further evidence required to inform the distribution of any additional allocations that may be made from the small DHSS contingency fund. This will support the additional financial flexibility which may be requested and provided under the new regime introduced following the NHS Wales (Finance) ACT 2014.

An outline of how the additional £70 million funding announced by the Minister for Finance and Government Business following the UK Government's Autumn Statement, will be targeted to "support the Welsh NHS to undertake the reform and the step change needed to secure the long-term sustainability of the health service in Wales" as set out in her written statement on 3 December

As detailed in the note I sent to you on the 28 January, I issued a written statement to all Assembly members on that day. The statement outlined how the additional funding from the Welsh Government to the NHS would be invested.

A summary of the key dates in the 2015 timetable for agreeing three year plans, to begin with the deadline for the submission of plans in January 2015.

The NHS Planning Framework issued 31 October 2014 included the following Plan Approval timeline.

Action	Timescale	WG	NHS
NHS Boards approve 'Final Draft' version of IMTP	January 2015		✓
NHS organisations submit the 'Final Draft' Board-approved plans to WG	31 st January 2015		✓
WG scrutiny process	February – March 2015	✓	
Boards respond to feedback from scrutiny process and amend Plans accordingly. Boards then approve final versions	Prior to 31 st March 2015		✓

Future funding and long-term sustainability

An outline of additional outcomes, if any, to be achieved with the additional funding in 2014-15 and 2015-16

As referred to above, the additional funding will enable the NHS to continue to deliver the services and positive outcomes our patients expect, whilst at the same time reshaping and reforming our services. The required delivery outcomes and the actions necessary to delivery these are/will be clearly set out in the NHS organisation's three-year integrated medium term plans.

An outline of the arrangements that have been or will be put in place to monitor the outcomes of this investment

We have a number of vehicles through which we monitor and oversee the performance of NHS organisations to ensure they are delivering against expectations and remain on track to deliver against their approved service plans.

These include:

- Monthly chief executive meetings where delivery and financial performance is scrutinised.
- Joint Executive Team meetings (JET) are held every six months with each health board and NHS trust and are attended by members of the executive director team

and the chief executive and the executive team of the individual health board or NHS Trust.

- The integrated delivery board (IDB) is held monthly and chaired by the delivery programme director or deputy chief executive of NHS Wales. This meeting monitors the progress of health boards and NHS trusts' performance against the delivery and outcome framework and their integrated medium term plans.
- The quality and safety assurance group is held monthly and chaired by the deputy CMO. This meeting monitors the progress of health board / NHS trust performance against WG quality and safety delivery requirements.
- Quality and delivery meetings are held monthly, although they can be less frequent when organisations are considered to be delivering on performance and quality.
- Detailed submission of monthly financial monitoring returns. Where the financial performance is reviewed in detail and explanations sought for any adverse variances from plan.

In addition we also have escalation and intervention arrangements developed in agreement with HIW and the WAO, where information on the performance and progress of NHS organisations is shared.

An outline of any plans the Welsh Government has in place to assess whether services are being reformed and also the levels of funding required for the health service beyond 2015-16 to ensure that the delivery of services remains sustainable

One of the main ways in which we will examine whether services are being reformed is through the medium term plans. The assessment of whether services are being reformed will be undertaken through the formal review, scrutiny and approval of the integrated medium term plans, with performance and delivery of those service reforms managed through the main performance management arrangements detailed above.

The levels of funding required for the health service beyond 2015-16 is clearly a matter for Welsh Government to consider in context of the settlement from the UK Government. The Nuffield Trust report "A Decade of Austerity in Wales?" published in June 2014 is a key independent assessment of the funding requirements and challenges.

Best wishes,
Mark

Mark Drakeford AC / AM

Y Gweinidog Iechyd a Gwasanaethau Cymdeithasol
Minister for Health and Social Services

1. A list of Qualifying Waste

This is included in Appendix 1 of the Landfill Disposals Tax consultation document. I have attached the English and Welsh versions.

2. A list of Local Authority Landfill Sites

There are 2 Local Authorities that have and operate a landfill site. These are:

- **Cardiff County Council** – Lamby Way, operated by Cardiff County Council
- **Newport City Council** – Docks Way Disposal Site, operated by Newport City Council

However, there are Local Authorities that have landfill sites that are operated by another body. WLGA and NRW do not have a readily available and up to date list of which local authorities are involved in such arrangements and each individual authority would need to be contacted to confirm the current position.

3. A list of 191 Environmental Bodies

These are all provided on the Landfill Communities Fund regulator's website, Entrust. A link is provided below

<http://www.entrust.org.uk/environmental-bodies/eb-search/>

Number: WG24170



Llywodraeth Cymru
Welsh Government

www.cymru.gov.uk

Welsh Government

Consultation Document

Landfill Disposals Tax

Date of issue: **24 February 2015**

Action required: Responses by **19 May 2015**



Overview

This consultation seeks views on proposals for Landfill Disposals Tax.

How to respond

Responses to this consultation should be submitted to arrive by **19 May 2015** at the latest. Responses can be submitted either: electronically via the online form: <http://wales.gov.uk/consultations/finance/landfill-disposals-tax/?lang=en>

E-mailed to:
FinancialReformMailbox@wales.gsi.gov.uk
(please enter 'Landfill Disposals Tax' in the subject matter box).

Or, posted to:
Tax Policy and Legislation Division
2nd Floor East
Welsh Government
Cathays Park
Cardiff, CF10 3NQ

Further information and related documents

Large print, Braille and alternate language versions of this document are available on request.

The consultation documents can be accessed from the Welsh Government's website at: www.wales.gov.uk/consultations

The consultation on a Land Transaction Tax can be accessed from the Welsh Government's website at: www.wales.gov.uk/consultations

The consultation and analysis of responses on the Collection and Management of Devolved Taxes White Paper can be accessed from the Welsh Government's website at: www.wales.gov.uk/consultations

Details of the Commission on Devolution in Wales (Silk Commission) first report, the UK Government's response to the first report and the Wales Bill can be accessed from the Welsh Government's website at: <http://wales.gov.uk/funding/financereform/?lang=en>

Contact details

For further information:
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E-mail:
FinancialReformMailbox@wales.gsi.gov.uk

Data protection

How the views and information you give us will be used

Any response you send us will be seen in full by Welsh Government staff dealing with the issues which this consultation is about. It may also be seen by other Welsh Government staff to help them plan future consultations.

The Welsh Government intends to publish a summary of the responses to this document. We may also publish responses in full. Normally, the name and address (or part of the address) of the person or organisation who sent the response are published with the response. This helps to show that the consultation was carried out properly. If you do not want your name or address published, please tell us this in writing when you send your response. We will then blank them out.

Names or addresses we blank out might still get published later, though we do not think this would happen very often. The Freedom of Information Act 2000 and the Environmental Information Regulations 2004 allow the public to ask to see information held by many public bodies, including the Welsh Government. This includes information which has not been published. However, the law also allows us to withhold information in some circumstances. If anyone asks to see information we have withheld, we will have to decide whether to release it or not. If someone has asked for their name and address not to be published, that is an important fact we would take into account. However, there might sometimes be important reasons why we would have to reveal someone's name and address, even though they have asked for them not to be published. We would get in touch with the person and ask their views before we finally decided to reveal the information.

Content

Ministerial Foreword

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Appendix 1: Summary of the Landfill Tax (Qualifying Material) Order 2011

Appendix 2: Consultation response form, including summary of consultation questions

Appendix 3: Glossary of terms

Appendix 4: Initial Regulatory Impact Assessment



Ministerial Foreword

The passage of the Wales Act 2014 means that the way Welsh public services are funded will be changing over the next few years. One of the most important developments is that the National Assembly has been given new powers to develop its own devolved taxes, beginning with replacements for the UK Government's Landfill Tax and Stamp Duty Land Tax. This means that for the first time in almost 800 years we are able to design and deliver taxes that suit the particular circumstances of Wales.

The Welsh taxes are due to be introduced from April 2018, and in the meantime there is much to prepare. Underlying all the Welsh Government's initial development work have been my four tax principles: I am seeking to introduce taxes which are fair to the businesses and individuals who pay them; which are simple, with clear rules which minimise compliance and administration costs; which provide stability and certainty for taxpayers; and which support growth and jobs, which will in turn help to tackle poverty.

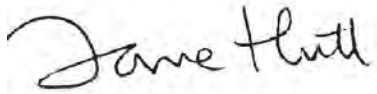
This consultation on a Landfill Disposals Tax is the last of three that I am issuing to gain your views on the new powers. The existing Landfill Tax is a significant driver of environmental behaviour, encouraging greater prevention, re-use, recycling and recovery of waste. Its devolution therefore provides us with a useful additional lever to support Welsh Government policies, including the pursuit of our ambitious goal of zero waste.

Through this consultation, I am keen to identify opportunities to address aspects of the existing tax which may be confusing or cause uncertainties, and I wish to consider whether and how a proportion of the tax revenue might be used to enhance community wellbeing. I am also seeking to modernise the administration of the tax, enabling it to operate more efficiently, minimising the burdens on business. However, I am not looking to introduce changes where they are not warranted. Indeed, I recognise that there may be areas where it will be preferable to maintain consistency with England and Scotland.

An essential aspect of the tax development work covers compliance. This means I want to ensure that all those who have waste to dispose of comply with the tax fully and properly. Tax avoiders and evaders will be treated equitably in Wales and challenged robustly, regardless of circumstances – seeking to avoid payment is simply unacceptable. The consultation therefore asks for your views on how we can encourage compliance, and on the steps we should take in response to non-compliance.

Landfill Disposals Tax

Landfill Disposals Tax will affect a broad range of interests - businesses, regulators, communities and the Third Sector. I am seeking to consider the fullest range of options through this consultation, so I encourage you to share your ideas on how we can design this tax so that it works well for Wales. I look forward to reading your proposals.

A handwritten signature in black ink that reads "Jane Hutt". The signature is written in a cursive style with a large initial 'J'.

Jane Hutt
Minister for Finance and Government Business
February 2015

Chapter 1: Introduction and Policy Background

Devolution of tax powers

- 1.1 In November 2012 the Commission on Devolution in Wales (the Silk Commission), published its first report on the financial and constitutional arrangements in Wales. The Welsh Government welcomed the report and subsequently the UK Government set out a package of tax and borrowing powers for Wales.
- 1.2 The Wales Act 2014 passed recently by Parliament sets out these new fiscal powers for Wales including the devolution of Landfill Tax, Stamp Duty Land Tax and an element of Income Tax subject to a referendum. *The Wales Bill: Financial Empowerment and Accountability Command Paper* sets out the UK Government's intention that Landfill Tax and Stamp Duty Land Tax will cease to apply in Wales from April 2018.
- 1.3 In preparation, last autumn the Welsh Government published a consultation on the collection and management arrangements for devolved taxes¹ and this summer it intends to bring forward an Assembly Bill setting out its proposals. This will provide a clear and strong tax governance framework, starting with the establishment of the Welsh Revenue Authority/Awdurdod Cyllid Cymru. The Authority will have the responsibility for tax collection and management of Welsh devolved taxes.
- 1.4 The operational priorities and processes of a tax collection and management system can only be understood, and indeed be developed, with some clarity about the taxes that they are seeking to collect. This consultation therefore seeks views on the development of a Landfill Disposals Tax. Alongside this, the Welsh Government is also currently consulting on proposals for a Land Transaction Tax to replace Stamp Duty Land Tax in Wales.² The responses to these consultations will inform the development of policy and legislation. This will enable the next Welsh Government to introduce legislation on these taxes soon after the next election (5 May 2016).

Landfill Disposals Tax Consultation

- 1.5 The Wales Act 2014 clearly limits the scope of the National Assembly's powers to legislate for a tax on disposals to landfill made in Wales; the replacement tax must therefore relate to this method of waste management.

¹ The consultation and analysis of responses on the Collection and Management of Devolved Taxes White Paper can be accessed from the Welsh Government's website at: www.wales.gov.uk/consultations

² The consultation on a Land Transaction Tax closes on 6 May 2015 and can be accessed from the Welsh Government's website at: www.wales.gov.uk/consultations

Landfill Disposals Tax

- 1.6 Landfill Tax is complex. The Welsh Government is aware of the interdependencies between differential tax rates across borders, the challenges of compliance and enforcement, and the dis-amenity impact of landfill sites and illegal waste activity on communities.
- 1.7 The interdependencies between these different aspects means that changing one aspect of the tax has the potential to cause disproportionate adverse impacts as well as positive outcomes on another aspect of the tax; the Welsh Government needs to be alert to these.
- 1.8 This consultation and the initial Regulatory Impact Assessment at Appendix 4 begin to consider these issues. Your views are particularly welcome on the practical implications of the proposed options and any supporting evidence you are able to provide in your responses.

Waste Management in Wales

- 1.9 The Welsh Government will be seeking to use the development of Landfill Disposals Tax as an additional lever to support its policies, particularly on waste.
- 1.10 The European Regulatory landscape has changed considerably since the introduction of Landfill Tax in 1996 and is a significant influence on the way that waste is managed in Wales. Notable changes have included the introduction of the EU Landfill Directive in 1999 which particularly focused on the handling of waste landfilled: setting out requirements for pre-treatment of waste and the materials that may be landfilled. The EU Council Decision on Waste Acceptance Criteria in 2002 also set out the standards that wastes must meet to be accepted at different types of landfill.
- 1.11 The Welsh Government's *Towards Zero Waste Strategy* sets out how we will deal with waste in Wales to produce benefits for the environment, economy and social wellbeing. It seeks to achieve the sustainable use of resources by reducing waste and managing any waste that is produced in a way that ensures valuable materials are kept within the Welsh economy and are protected for future generations. It sets goals of significant waste reduction by at least 27% (from a 2007 baseline) and a recycling rate of at least 70% with as close to zero (<5%) landfill as possible by 2025 with an ambition of zero waste (100% recycling) by 2050.
- 1.12 These goals support the delivery of the Welsh Government's *Climate Change Strategy for Wales* which sets out its commitment to reduce the greenhouse gas emissions that Wales produces. The 2006 *Stern Review* on climate change pointed to landfill sites as one of the primary causes of climate change-causing emissions from waste. Food and other biodegradable wastes when landfilled produce methane, a powerful climate change-causing gas.

Landfill Disposals Tax

- 1.13 In autumn 2013 the Welsh Government consulted on the Environment Bill White Paper³ which, amongst other things, set out actions to ensure Wales' natural resources are used to best effect and that waste is recycled. To help drive investment towards sustainable waste management solutions it included specific proposals in relation to waste segregation, collection and bans on certain materials going to energy from waste and landfill. Following the Welsh Government's consideration of responses to the White Paper, a Bill is expected to be introduced in spring 2015.
- 1.14 In 2014 the Welsh Government launched *Green Growth Wales: Investing in the Future*. *Green Growth Wales* aims to increase and accelerate projects to deliver green investment in Wales. It focuses primarily, though not exclusively, on encouraging investment in resource efficiency, renewable energy generation and sustainable waste management projects. £5 million has been allocated from the Welsh Government's Budget in 2015-16 to the development of *Green Growth Wales*. Green growth is a fundamental aspect of the Welsh Government's commitment to sustainable development in Wales.
- 1.15 For the last 15 years Wales has been recognised as leading the way in respect of sustainable development, which has been at the heart of Welsh Government policy from the very start of devolution. Sustainable development is the best way to help us plan better for the future, so that the big problems facing people and communities across Wales such as climate change, poverty, jobs and growth, and making people safer, can be addressed.
- 1.16 The Welsh Government's long-term vision for Wales by 2050 is to be the best place to live, learn, work, and do business, with an environment that is respected and enjoyed. We want a strong economy for businesses, people and communities in Wales. We want to strengthen the conditions that will enable businesses to create jobs and sustainable economic growth. These sentiments are at the heart of The Well-being of Future Generations (Wales) Bill⁴, which is currently progressing through the National Assembly for Wales. This legislation will help us make this a reality by putting into law a set of clear, integrated, wellbeing goals for Wales. They provide a shared vision of the Wales we want to see now and in the future, and ensure that present needs are met without compromising the ability of future generations to meet their own needs.

Landfill Tax

- 1.17 Landfill Tax is currently a UK tax on the disposal of material as waste by way of landfill at landfill sites which are permitted under environmental legislation, unless specifically exempted.

³ <http://wales.gov.uk/consultations/environmentandcountryside/environment-bill-white-paper/?lang=en>

⁴ <http://wales.gov.uk/legislation/programme/assemblybills/future-generations/?lang=en>

Landfill Disposals Tax

1.18 Landfill Tax was introduced in 1996 as a key environmental behavioural driver:

‘...to ensure that landfill costs reflect environmental impact thereby encouraging business and consumers, in a cost effective and non-regulatory manner, to produce less waste; to recover value from more of the waste that is produced; and to dispose of less waste in landfill sites’⁵.

1.19 Since the tax was introduced it has contributed to a significant reduction in the proportion of waste sent to landfill and an increase in recycling. In Wales, the total tonnage of waste landfilled fell by 52% between 2001 and 2013⁶.

1.20 There are currently 28 landfill sites and 23 landfill site operators in Wales. Landfill Tax is currently administered by HM Revenue and Customs (HMRC) and collected from landfill site operators. A lower tax rate applies to materials listed in the Landfill Tax (Qualifying Material) Order 2011. A standard tax rate applies to all other taxable disposals.

1.21 A fund to support local community and environment projects within the vicinity of a landfill site is also provided for through Landfill Tax. The Landfill Communities Fund (LCF) is a tax credit scheme that enables landfill site operators to contribute a proportion of their tax liability to eligible projects.

Recent developments

1.22 In recent years HMRC has sought to provide greater clarity regarding how the tax is applied. This has included updating guidance and introducing revised legislation: the Landfill Tax (Prescribed Landfill Site Activities) Order 2009 and the Landfill Tax (Qualifying Material) Order 2011. HMRC has also announced its intention to introduce a Loss on Ignition (LoI) test from April 2015 to determine the tax rate applicable to *finer* (the small fragments of waste which remain after waste has been processed). The basis for the LoI test is explained in Chapter 2.

1.23 There has been a notable string of litigation related to whether some material sent to landfill is being ‘used’ (rather than discarded⁷) and should not therefore be treated as a taxable disposal. The values of the claims currently before the courts mean that a significant proportion of the Landfill Tax revenue is at risk. The Welsh Government is keen to explore ways of designing a Landfill Disposals Tax that takes account of the issues raised in these cases and which provides as much clarity to both the taxpayer and the Welsh Revenue Authority as possible.

⁵ UK Waste Strategy (DoE and WO 1995:cited in ECOTEC, 2001)

⁶ <http://naturalresourceswales.gov.uk/content/docs/pdfs/our-work/Policy-advice-and-guidance/87161/wales-waste-information-eng?lang=en>

⁷ For there to be a taxable disposal there has to be a disposal of material as waste, which the legislation defines as occurring when “the person making the disposal does so with the intention of discarding the material.”

Landfill Disposals Tax

- 1.24 In other developments, HMRC has increased its focus on the issue of waste crime including addressing Landfill Tax evasion. In 2014, the UK Government gave £5m to the Environment Agency (money that would otherwise have gone into the LCF) to ensure effective compliance and enforcement of waste law in England. HMRC is also currently reviewing the administration of the LCF in light of concerns that a significant proportion of funds remain unspent.
- 1.25 Landfill Tax will be devolved to Scotland from April 2015. Scottish Landfill Tax will remain broadly similar to Landfill Tax but makes some changes with regard to how the tax is administered, including the scope of the tax (to extend the definition of landfill sites to illegal deposits of waste) and the delivery of the LCF. The Welsh Government has looked closely at Scotland's proposals and will continue to watch with interest as they are implemented. This consultation considers the main changes being implemented in Scotland.

Landfill Tax Revenues

- 1.26 The standard tax rate has increased over time to incentivise diversion of waste from landfill towards prevention, re-use, recycling and recovery. The standard tax rate has risen from £7/tonne in 1996-97 to £80/tonne in 2014-15. The lower tax rate has steadily declined in real terms since the introduction of the tax (it has not kept pace with inflation). The lower tax rate was £2/tonne when the tax was introduced and is currently £2.50/tonne.
- 1.27 In the 2014 UK Budget Statement it was announced that future Landfill Tax rates will be maintained in real terms (by the rate of inflation as measured by the Retail Price Index) until at least 2019/20. The Scottish Government has recently announced that it is setting the same tax rates as HMRC for 2015-16⁸.
- 1.28 Landfill Tax revenues in the UK and estimates for Wales over the last ten years are shown in Table 1. Recently, revenues have been around £1.1 billion in the UK and an estimate of around £50 million in Wales. Revenues for both the UK and Wales have followed a similar trend over the last decade, increasing rapidly until 2010-11 and remaining fairly stable since then. Figures for the UK represent actual revenues received by HMRC. However, figures for Wales produced by HMRC are an estimate based on regulatory data on landfill tonnages, rather than Landfill Tax returns.

⁸ <http://www.scotland.gov.uk/Publications/2014/10/2706/4>

Landfill Disposals Tax

Table 1 – Landfill Tax Revenue

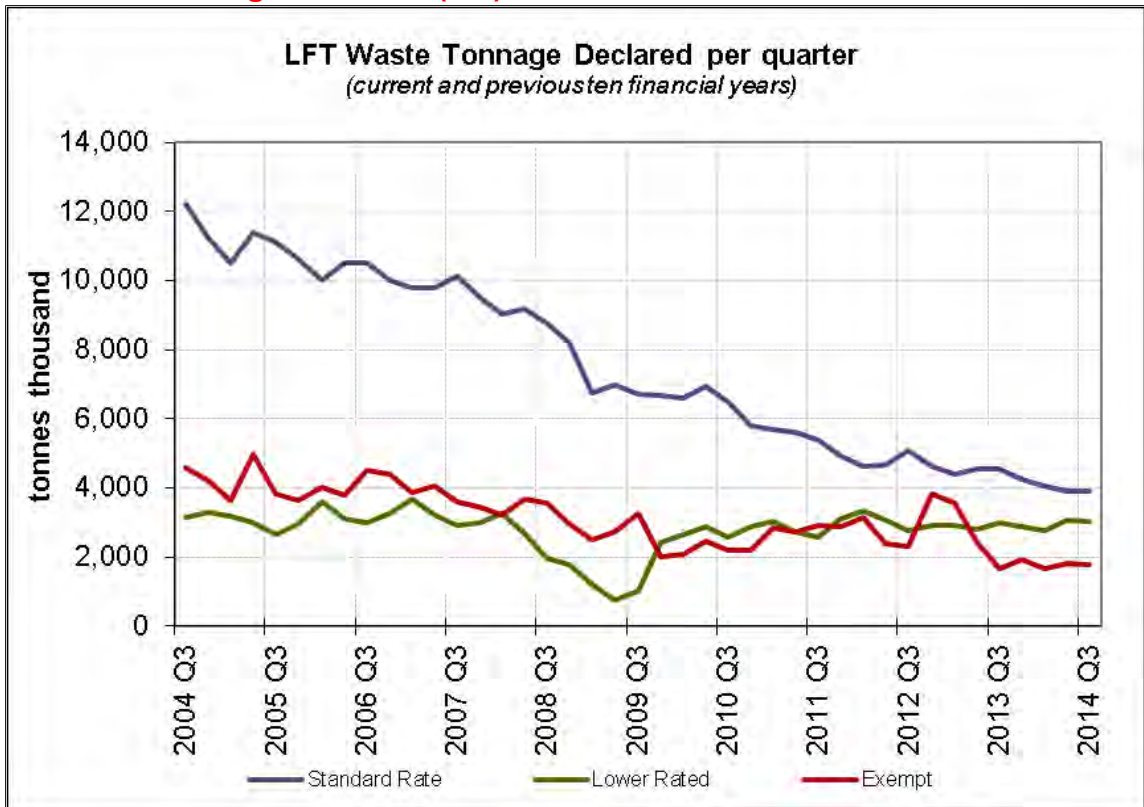
Year	Revenue (£ Million)		
	UK	Wales (estimate)	Wales (% of UK)
2003-04	607	30	4.9
2004-05	672	33	4.9
2005-06	733	36	4.9
2006-07	804	40	4.9
2007-08	877	38	4.4
2008-09	954	43	4.5
2009-10	842	40	4.7
2010-11	1,065	46	4.4
2011-12	1,090	46	4.2
2012-13	1,092	46	4.2
2013-14	1,189	50	4.2

Source: HMRC

- 1.29** Revenues received are the result of the tonnages landfilled and the rate of tax paid. For most of the last decade, a rapidly increasing standard tax rate outweighed the effect of falling tonnages of standard rate material being landfilled, and therefore revenues rose. Falling tonnages of standard rate material are illustrative of the success of Landfill Tax as a policy instrument. This trend can be clearly seen in Chart 1 below, which shows tonnage declared per quarter for the UK by the different tax rates.
- 1.30** Data are not available for Landfill Tax returns specifically relating to Wales, largely because some operators are present across the UK and only submit one return. However, Natural Resources Wales (NRW) does publish data on waste management trends in Wales. These data show a similar trend in the tonnage of material being landfilled, as shown in Chart 2. This shift away from landfill towards other means of waste management represents policy successes. In the Welsh context, Landfill Tax, European waste regulation and Welsh Government policy including statutory recycling targets for local authorities (along with other initiatives) are instruments designed to achieve this outcome.

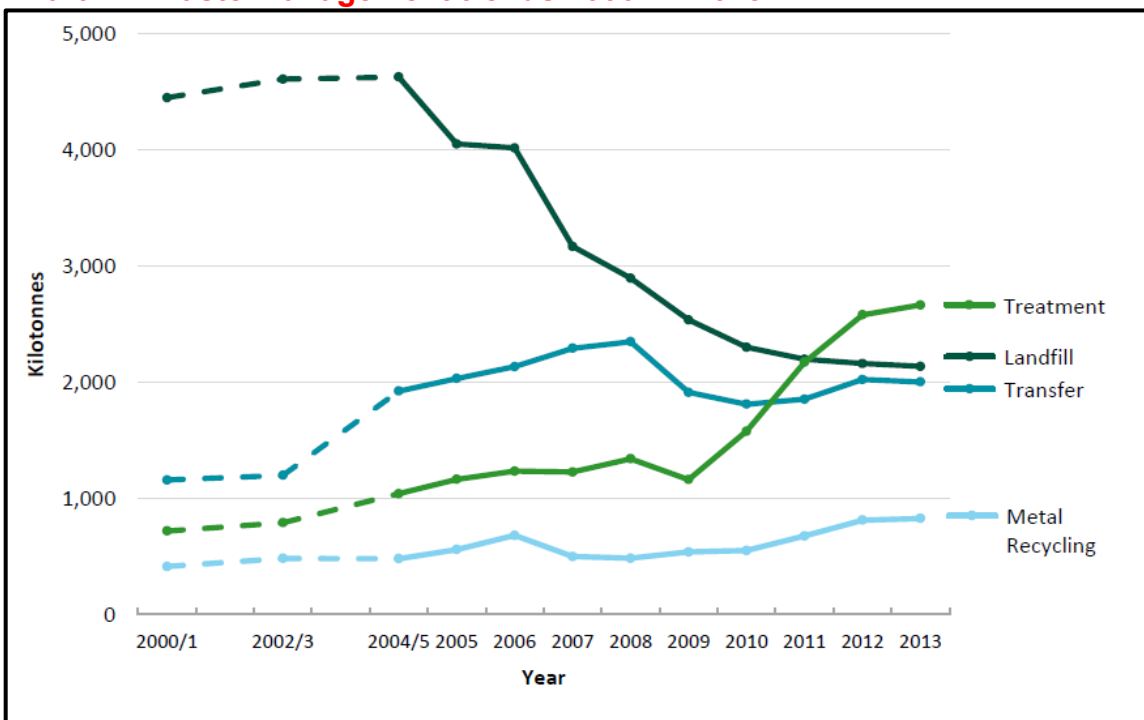
Landfill Disposals Tax

Chart 1 – Tonnage Declared (UK)



Source: HMRC

Chart 2 – Waste management trends 2000/1 - 2013



Source: Natural Resources Wales

<http://naturalresourceswales.gov.uk/content/docs/pdfs/our-work/Policy-advice-and-guidance/87161/wales-waste-information-eng?lang=en>

Landfill Disposals Tax

Landfill Tax Forecasts

- 1.31** The Office for Budget Responsibility (OBR) produces the UK fiscal forecasts, and in its December 2014 Economic and Fiscal Outlook published Welsh forecasts for the first time. The OBR forecasts for annual revenue until 2019/20 are shown in Table 2.
- 1.32** Revenues in the UK and Wales are forecast by the OBR to continue to exhibit similar trends over the next five years (as they have in the past). However, this may be largely driven by the forecast methodology which allocates a stable percentage of UK revenues to Wales.
- 1.33** While in the past revenues at the UK and Wales levels have followed similar trends, there are reasons to believe this may not continue to be the case. In particular, the Welsh Government's waste policy and statutory local authority recycling targets and its goal of as close to zero (<5%) landfill by 2025 are having a significant impact on waste management in Wales.
- 1.34** An example of this is the Energy from Waste facility in Cardiff which will be handling the residual waste from five local authorities in South East Wales by summer 2015, and a similar facility is in planning which would handle residual waste from five local authorities in North Wales. These developments, along with other investments in waste management, and the continued success of Welsh local authorities and households in meeting recycling targets, could see a significant fall in Welsh revenues over the forecast period. The number of operational landfill sites in Wales is falling and could quite possibly be less than 10 by 2020 (down from 28 in 2015). These developments could see a decoupling of the trends in revenues at the UK and Welsh levels.

Table 2 – Landfill Tax Forecasts

	£ Million					
	2014-15	2015-16	2016-17	2017-18	2018-19	2019-20
UK Forecast	1226	1152	1077	1082	1134	1206
Welsh Forecast	54	51	48	48	50	53

Source: OBR

The case for introducing Landfill Disposals Tax

- 1.35** It is the Welsh Government's intention to introduce a replacement Landfill Tax in Wales because the negative financial and policy implications of not doing so would be significant.
- 1.36** The *Wales Bill: Financial Empowerment and Accountability* Command Paper confirmed the UK Government's intention that the process of devolving Landfill Tax will result in the Welsh Government's block grant being reduced. The exact adjustment method is yet to be determined. However, it is assumed that

Landfill Disposals Tax

the amount of Landfill Tax would have been raised in Wales in 2018-19 (the first year of devolved taxes) will form the basis for the amount taken off the block grant.

- 1.37 As Table 2 shows, the OBR calculates that the Landfill Tax raised in Wales in 2018-19 will be £50m. The adjustment in subsequent years will need to take account of expected trends in revenue that would have occurred in the absence of tax devolution. The Welsh Government would not expect the adjustment to penalise Wales for any increased revenue arising from Welsh Government actions, such as investment to improve tax compliance.
- 1.38 If the Welsh Government chose not to implement a replacement Landfill Tax in Wales the Welsh Government would either need to operate with a reduced budget (which would be challenging given the prolonged period of budget austerity) or find alternative ways of raising such revenues to maintain existing resource levels.
- 1.39 Without a replacement Landfill Tax sending waste to landfill would become the cheapest waste management option. This would have impacts for the waste management system in Wales and may undermine efforts in Wales to promote the waste hierarchy (as set out in the EU Waste Framework Directive) which seeks to divert waste from landfill through greater prevention, re-use, recycling and recovery of waste.
- 1.40 This may affect the ability of the Welsh Government to meet its own ambitions and targets for the management of waste set out in its *Towards Zero Waste Strategy*. It would also impact on the Welsh Government's wider aims with regard to sustainable development, climate change and the environment.
- 1.41 As explained in Chapter 2, the Wales/England border is populous and has a range of waste management businesses including landfill sites along both its sides. Not introducing a replacement tax in Wales would likely trigger waste tourism with waste carriers in England and further afield travelling to Wales to dispose of their waste. There would also be wellbeing and environmental impacts for communities, for example, from increased disruption for residents near landfill sites and waste transfer stations and growing pressure on Wales' remaining landfill sites with potential calls for new landfill sites to be developed.

Developing Landfill Disposals Tax

Principles

- 1.42 The Minister for Finance and Government Business has identified key principles which will underlie the Welsh Government's approach to tax policy. These principles will ensure the Welsh Government's approach will be fair to businesses or individuals who pay taxes; be simple with clear rules which seek to minimise compliance and administration costs; support growth and jobs, which will in turn help tackle poverty; and provide stability and certainty to taxpayers.

Key Factors

1.43 There are some additional key factors that will be an important feature of developing Landfill Disposals Tax. These include exploring how the tax might:

- support and further deliver the Welsh Government's aims with regard to Towards Zero Waste, climate change, the environment and sustainable development, without having a negative or undue impact on businesses
- reflect the developments within the waste sector over the past 20 years including modern waste management practices and technological advancements, along with changes to the European Regulatory landscape
- maintain consistency with the UK where appropriate for ease of administration or to prevent waste tourism and equally make changes where there is good reason, this might be to provide greater clarity, simplify administration and improve compliance
- develop an efficient and cost-effective administrative framework particularly given that the number of landfill sites is reducing and tax revenue is expected to decline
- maximise opportunities for the Welsh Revenue Authority, the Welsh Government, industry, regulators, local authorities and wider public services to work together to ensure that the tax is implemented effectively

1.44 Over the past few months, the Welsh Government has sought the preliminary views of stakeholders to inform its proposals set out in this consultation document. This has included establishing a Technical Expert Group with industry representation and hosting stakeholder workshops in North and South Wales.

Landfill Disposals Tax

Chapter 2: Tax Rates and Taxable Disposals

INTRODUCTION

2.1 This Chapter will explore the disposal of material including the tax rates that should be applied. In particular, it seeks views on:

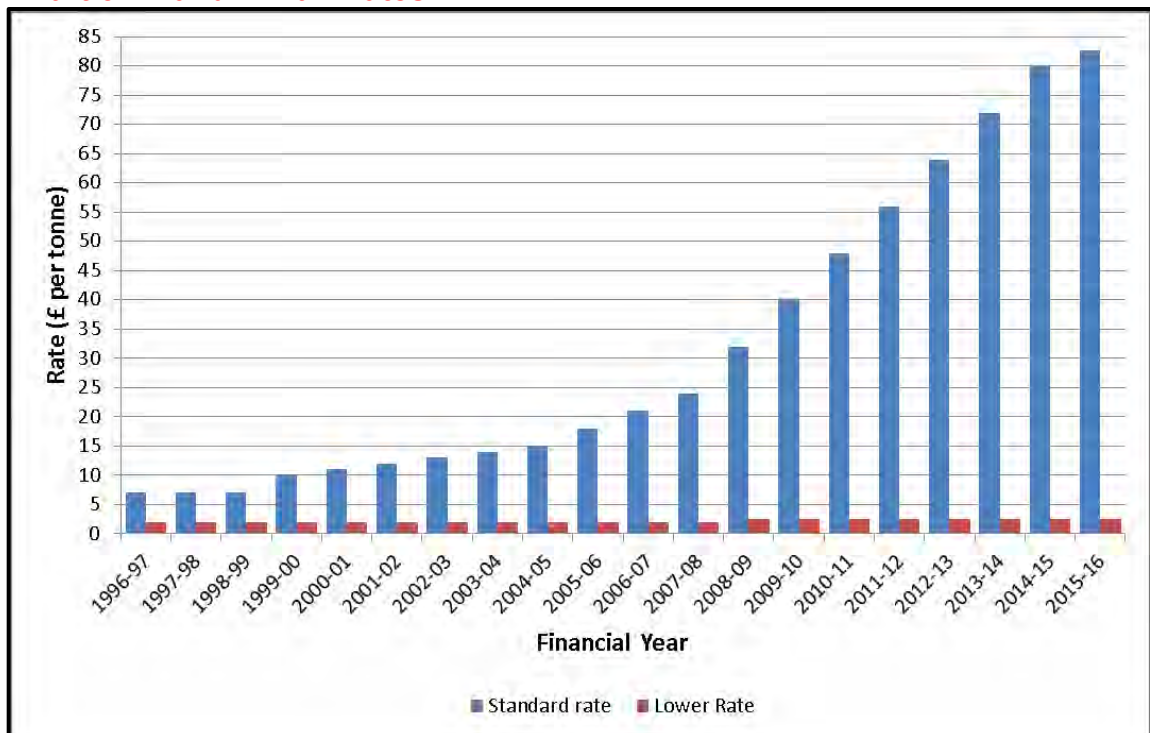
- tax rates
- taxable material
- the area in which a taxable disposal takes place
- credit for landfill waste removed
- landfill site activities to be treated as disposals
- exemptions and reliefs that should apply

PROPOSALS

Tax Rates

2.2 Landfill Tax is charged by weight on waste disposed at landfill. A lower tax rate applies to the materials listed in the Landfill Tax (Qualifying Material) Order 2011 set out in Appendix 1. The lower tax rate has steadily declined in real terms since the introduction of the tax (it has not kept pace with inflation). The lower tax rate was £2/tonne when the tax was introduced and is currently £2.50/tonne. A standard tax rate applies to all other taxable waste disposals. This has risen from £7/tonne in 1996-97 to £80/tonne in 2014-15.

Chart 3 – Landfill Tax Rates



Landfill Disposals Tax

- 2.3 In the 2014 UK Budget Statement it was announced that future Landfill Tax rates will be maintained in real terms (by the rate of inflation as measured by the Retail Price Index) until at least 2019-20. The Scottish Government has announced that they will be setting the same tax rates as HMRC for 2015-16⁹.
- 2.4 In introducing their tax rates, the Scottish Government said that they would ensure that the taxes raised from Scottish Landfill Tax would be revenue neutral in comparison with the UK Government rate; it would address concerns over potential 'waste tourism' were there to be a material differential between the rates of tax charged in Scotland and the rest of the UK; and that this provided appropriate financial incentives to support delivery of their Zero Waste goal, which like the Welsh Government's, is that <5% per cent of total waste should go to landfill by 2025.

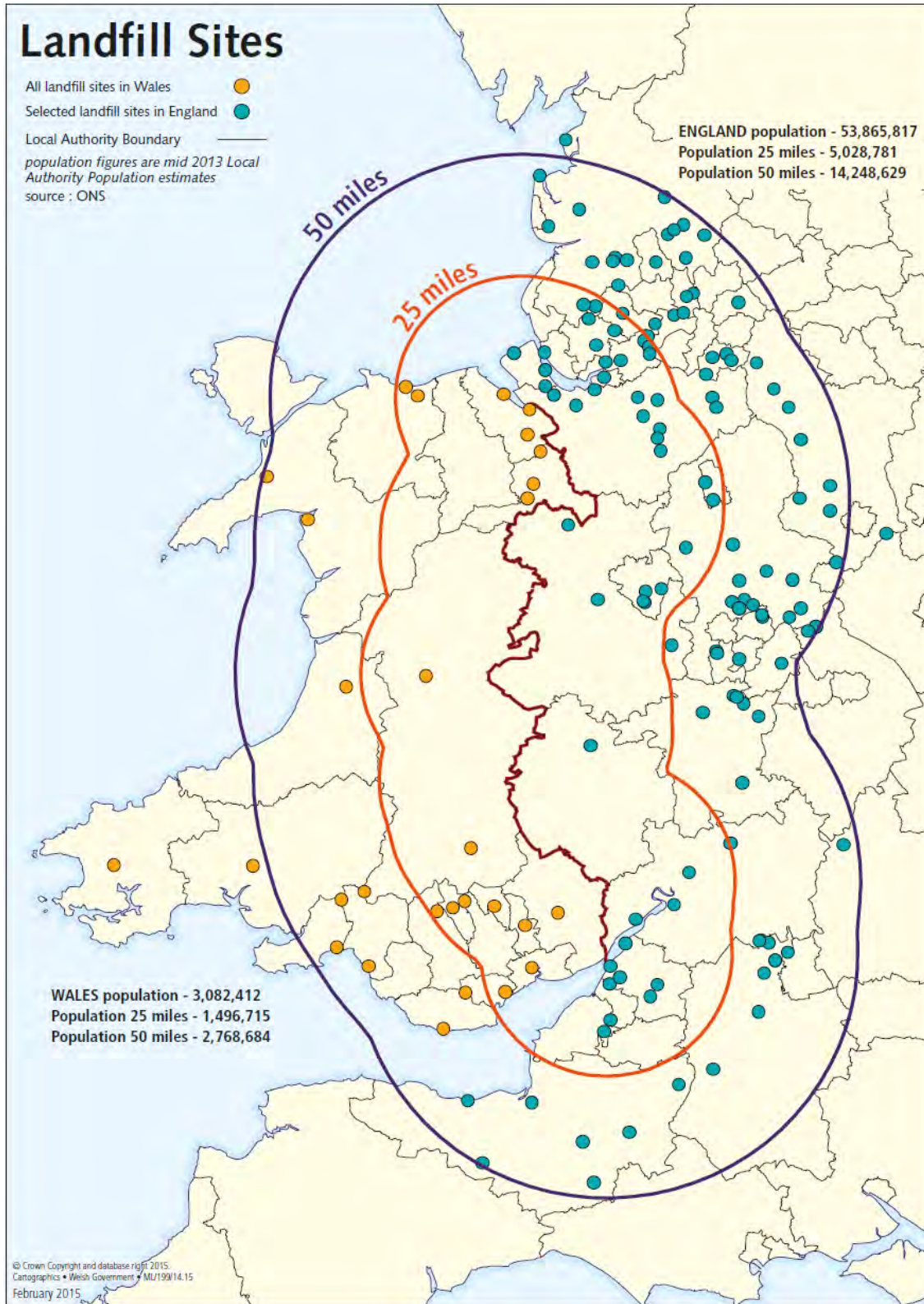
Developing a Welsh approach

- 2.5 One of the key principles guiding the development of devolved taxes in Wales is stability and certainty for taxpayers. The Welsh Government appreciates that businesses require long-term stability and certainty on which to base their business plans and investments.
- 2.6 Whilst the Welsh Government will not be confirming tax rates until nearer the time the tax is introduced (2018), it is seeking views in this consultation which will enable it to reach a considered position on tax rates.
- 2.7 An option would be to increase or decrease the level of the lower and/or standard rate of Landfill Tax relative to that set elsewhere in the UK. A differential tax rate between neighbouring countries could create waste tourism where it is more economical for waste carriers to travel further across country borders to dispose of waste. In a similar vein, there is also 'backhauling' where lorries cross borders to transport a load and take waste back to obtain a more favourable tax rate.
- 2.8 As demonstrated in Map 1, the majority of landfill sites in Wales (and the Welsh population) are within 50 miles of the England/Wales border. There are even more landfill sites within 50 miles of the border on the English side. Many landfill sites in the north-east and south-east of Wales are much closer than this to sites in England. Haulage costs are likely to be an important factor in consideration of this issue.

⁹ <http://www.scotland.gov.uk/Publications/2014/10/2706/4> and see also the draft Scottish Landfill Tax (Standard and Lower Rate) Order 2015.

Landfill Disposals Tax

Map 1 - Landfill Sites and Populations – Wales/England Border¹⁰



¹⁰ Location of landfill sites based on HMRC data 2012
http://customs.hmrc.gov.uk/channelsPortalWebApp/channelsPortalWebApp.portal?_nfpb=true&_pageLabel=pageExcise_ShowContent&id=HMCE_PROD_009941&propertyType=document

Landfill Disposals Tax

- 2.9 The Welsh Government's early engagement with stakeholders suggests that there is little support for changing the standard tax rate but that there is potential for exploring an increase to the lower tax rate to encourage waste producers to prevent, re-use, recycle and recover qualifying materials rather than disposing of them at landfill.
- 2.10 The Landfill Tax (Scotland) Act 2014¹¹ gives the Scottish Government power (by way of secondary legislation) to set different lower rates of tax for different categories of qualifying material, although they are not proposing to exercise this power when Scottish Landfill Tax is initially introduced.
- 2.11 Stakeholders have suggested that this opportunity should be retained for the Welsh Government also, to provide flexibility for the future if needed in order to be able to respond to economic changes, social circumstances and/or environmental developments. The Welsh Government is also mindful that were the UK or Scottish Government to make significant and/or sudden changes to their tax rates then it would be desirable to have the ability to make changes itself to deter any negative impacts.

Question 1: How important is it that the Welsh Government maintains consistency with the UK Government and Scottish Government on Landfill Tax rates and why?

Question 2: Are the current standard and lower tax rates (explained in paragraph 2.2) set at an appropriate level for Wales? Please explain your response.

Question 3: Is there value in the Welsh Government having the ability to set different lower rates of tax (explained in paragraph 2.10 - 2.11) and why?

Defining the taxable material

Wastes that should be classified as qualifying material and charged at the lower tax rate

- 2.12 Currently, the Landfill Tax (Qualifying Material) Order 2011 specifies the materials which qualify for the lower tax rate (Appendix 1). In drawing up the material to be listed in its lower rate Order, HM Treasury must have regard to

¹¹ S. 13(6) Landfill Tax (Scotland) Act 2014

Landfill Disposals Tax

whether the material meets the following criteria (as well as any other factors they consider relevant)¹²:

- Non-hazardous
- Low potential for greenhouse gas emissions
- Low polluting potential in the landfill environment

2.13 Assuming that a lower tax rate was to be retained for Landfill Disposals Tax, the Welsh Government is interested in your views on whether there should be any changes to the list of qualifying materials charged at the lower tax rate (Appendix 1), for example, whether there are any further refinements that could be made to the list to provide greater clarity for the waste sector and for the Welsh Revenue Authority.

2.14 In determining the tax rates applied to different materials consideration might also be given to how Landfill Disposals Tax can assist the Welsh Government to deliver its waste policy objectives and how the tax might be brought up-to-date to better reflect modern waste management practices and technological advancements along with changes to the European regulatory landscape.

Question 4: Are there any changes to the list of materials qualifying for the lower tax rate (Appendix 1) that should be considered, and on what basis?

Compliance with the lower tax rate

2.15 Currently under Landfill Tax legislation “*where material is disposed of it must be treated as qualifying material if it would in fact be such material but for a small quantity of non-qualifying material*”¹³ (described as ‘incidental’ in Excise Note LfT1: A general guide to Landfill Tax). HMRC’s approach acknowledges that a load of qualifying waste will nearly always have some level of residual non-qualifying waste in it.

2.16 The concept of a ‘small quantity’ of non-qualifying material is ambiguous and open to interpretation. This uncertainty gives rise to the potential for significantly less tax to be paid than if the higher rate material mixed with a low rate load was taxed at the higher rate. This is demonstrated in an industry report¹⁴ which highlighted that if 30% was considered a ‘small quantity’, then a 20 tonne load would incur a Landfill Tax bill of £50 at the lower tax rate but if it was charged at the higher rate it would have incurred a considerably higher Landfill Tax bill of £1,600 (2014/15 rates).

¹² S. 42 Finance Act 1996 and Excise Note LfT1: A general guide to Landfill Tax

¹³ S. 63(1) Finance Act 1996

¹⁴ *Waste Crime: Tackling Britain’s Dirty Secret (2014)* - Eunomia Research and Consulting commissioned on behalf of Environmental Services Association Education Trust.

- 2.17 Some stakeholders have expressed concerns that quantifying what is meant by a 'small/incidental' amount would encourage perverse behaviours, for example deliberate mixing of waste up to a specified threshold and other stakeholders agree that there should be a degree of discretion and flexibility. Meanwhile, some stakeholders feel that a threshold should be specified with several suggesting that 10% would be more than adequate.
- 2.18 Others argue that fully enforcing EU Council Decision 2003/33/EC on waste acceptance criteria would help steer waste companies towards better separate collection (in order to achieve high quality recycling) and away from a mixed waste collection approach. Applying the waste acceptance criteria would most likely significantly reduce the amount of non-qualifying waste in a qualifying load.

Question 5: What would be the practical implications of introducing a threshold to define 'a small quantity' of non-qualifying waste in a load of qualifying material?

Introduction of a Loss on Ignition (Lol) test

- 2.19 HMRC is introducing a Lol test from April 2015 as part of their efforts to prevent waste misclassification of fines from mechanical treatment plants produced through the process of segregation, sorting and screening (i.e. the small fragments of waste which remain after waste has been processed). Fines are not separately identified within Landfill Tax legislation but they can be lower-rated if they comprise solely of materials listed in the Landfill Tax (Qualifying Material) Order 2011 or comprise mainly of such materials, save for a small amount of non-qualifying material.
- 2.20 The Lol test will involve taking a sample of the fines and testing it under laboratory conditions. The Lol test determines the biodegradable and/or combustible element of the waste, which is indicative of the likely pollution potential of the material¹⁵. The Lol test will assist operators of landfill sites to determine the correct tax liability of fines and so ensure that the appropriate rate of tax is paid.
- 2.21 The lower rate of Landfill Tax will apply where fines meet a Lol threshold (the biodegradable and or/combustible element of the waste) of 15% or less (reducing to 10% after one year). This testing regime effectively gives a more precise and measurable definition to a 'small quantity' of non-qualifying material, although only in the context of fines.

¹⁵ The combustible material will include organic material that, when landfilled, will produce methane (a powerful greenhouse gas) and leachate. This organic material is typically contained in standard rate wastes (i.e. non-qualifying material). Waste policy aims to reduce the landfilling of this material, to help reduce greenhouse gas emissions from landfill.

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2.22 Stakeholders appear broadly in favour of the Lol test and initial views are that Wales should continue to implement the Lol test once Landfill Tax is devolved. However, stakeholders have raised some issues regarding the practical implementation of the test and the Welsh Government will keep a watching brief on the HMRC and the Scottish Lol testing arrangements¹⁶.

Question 6: Would you support the introduction of a Welsh Loss on Ignition (Lol) test when Landfill Tax is devolved? Please explain your reasons.

Defining the area in which a taxable disposal takes place

2.23 For there to be a taxable disposal, the disposal needs to be made at a landfill site. The site may include areas for storage or for sorting waste for recycling. Non-taxable uses of waste such as these must take place in a designated 'information area'. These activities are subject to additional administrative requirements including separate record keeping and weighing/characterisation of the waste.

2.24 There is the opportunity to provide greater clarity regarding the area in which a taxable disposal takes place. Current approaches to environmental protection regulation across the UK mean that the tipping area is now more readily identified in site permits. One option could be to legislate to provide that the taxable area on a site is that which is identified in the environmental permit as a tipping area. This would allow greater consistency between the tax and environmental permit requirements.

2.25 However, this could raise practical issues regarding the application of the tax point (currently at the site entrance where a weighbridge is normally sited) and whether the tax point should be moved to when waste enters the tipping area. This would be a significant change and could be complex to operate in terms of weighing and characterising loads and may increase the likelihood for disputes and evasion.

Question 7: Are there any problems with the existing arrangements for defining the area in which a taxable disposal takes place, and if so, how might these be resolved?

¹⁶ Scotland is also expected to introduce a Lol testing regime as part of its Scottish Landfill Tax. HMRC and Scotland have however developed different approaches independently of each other as a result of the Scottish Landfill Tax devolution timetable.

Landfill Disposals Tax

Credit for landfill waste removed

2.26 Under the existing Landfill Tax arrangements¹⁷, taxpayers may claim credit for landfill material permanently removed from a landfill site either:

- to another landfill site
- for re-use, recycling, or incineration

2.27 Certain conditions must be met in order to be able to claim the credit including having appropriate records as evidence for the claim. The credit is calculated on the basis of the tax rate that applied at the time of the original disposal.

2.28 The Welsh Government wants to ensure that any arrangements for credit for landfill waste removed are fair, simple and appropriate.

Question 8: In your view, are there any issues with the current arrangements for credit for landfill material permanently removed from a landfill site and if so, how might these be addressed?

Landfill site activities to be treated as disposals (and therefore subject to tax)

2.29 For there to be a taxable disposal there has to be a disposal of material as waste, which the legislation defines as occurring when “*the person making the disposal does so with the intention of discarding the material.*”¹⁸ The meaning of these words has given rise to a string of litigation, essentially with landfill site operators’ arguing that material is being used after it has entered the landfill site and has therefore not been discarded and is not liable to tax. The values of the claims currently before the courts mean that a significant proportion of the Landfill Tax revenue is at risk.

2.30 HMRC introduced the Landfill Tax (Prescribed Landfill Site Activities) Order 2009 along with additional guidance to clarify landfill site activities to be treated as disposals. The Order lists the activities that are considered taxable disposals - including material received on a landfill site which is put to a use on the site. However, this is an area that continues to be subject to challenge for example, whether methane gas produced from landfilled material is a use of that material that should therefore not be taxable.

2.31 The Welsh Government is keen to explore ways of designing a replacement Landfill Tax that takes account of the issues raised in these cases and which provides clarity to both the taxpayer and the Welsh Revenue Authority.

¹⁷ Part V of the Landfill Tax Regulations SI 1996/1527

¹⁸ S. 64(1) Finance Act 1996

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One option that has been put forward is to consider legislating on the basis that all material entering a landfill site (other than that which is specifically exempt) is subject to tax.

2.32 We are looking to adopt a common sense approach to items that would be exempt; this might include for example, plant and machinery undertaking the tipping and material stored in a non-disposal area. We also wish to ensure any new arrangements support efforts towards re-use, recycling and recovery of waste and minimise administrative burdens.

Question 9: What would be the practical implications of legislating on the basis that all material entering a landfill site (other than that which is specifically exempt) is subject to tax?

Question 10: What activities would you expect to be exempt (not subject to tax) and why?

Question 11: Do you have any other suggestions for how we might clarify the taxable and non-taxable activities on a landfill site and what would be the practical implications of these?

Exemptions and Reliefs

2.33 Under the current Landfill Tax arrangements¹⁹ there are a range of exemptions where Landfill Tax is not payable subject to certain conditions being met. These are:

- Dredgings - material removed from water
- Mining and quarrying waste
- Filling of quarries
- Pet cemeteries
- Waste from visiting (NATO) forces

2.34 During the Welsh Government's preliminary discussions with stakeholders, some have queried whether a Landfill Disposals Tax should include exemptions suggesting that they can be open to abuse, inconsistently applied and a source

¹⁹ s. 43-45 of the Finance Act 1996 and Excise Note LfT1: A general guide to Landfill Tax

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of dispute. In addition, the number of exemptions and reliefs can also add to the complexity of the tax and add administration costs.

Question 12: Do you think that any of the current exemptions should be removed or modified? Please explain your response.

2.35 There is also a water discount relief²⁰ where, subject to certain conditions being met, the water content of waste can be discounted where it is not present naturally when calculating the taxable weight of the waste. There are several reasons why water may have been added to waste, these include for transportation for disposal and as a result of an industrial process.

2.36 The water discount is generally acknowledged as being quite complex, which can increase the scope for abuse, inconsistency and disputes. In addition, from an environmental and public health perspective there are also concerns regarding pollution caused by water being landfilled. Liquid waste going to landfill is also banned under the EU Landfill Directive (1999). There may therefore be less need to discount water than there was in 1996 when Landfill Tax was first introduced.

Question 13: Is there a case for removing or modifying the water discount relief? Please explain your response.

2.37 Other stakeholders have expressed an interest in introducing new exemptions and reliefs, suggesting that this may be a way to tailor the tax to reflect different circumstances and apply the tax with greater fairness.

Question 14: Do you think there is a case for introducing any new exemptions or reliefs, and if so, what should they be and why?

²⁰ Regulation 44 of the Landfill Tax Regulations 1996 (SI 1996/1527) and Excise Note LfT1: A general guide to Landfill Tax

Chapter 3: Compliance and Enforcement

INTRODUCTION

3.1 This Chapter explores proposals to ensure that an effective compliance and enforcement framework is implemented and that the negative impacts of illegal waste activity, particularly caused by those seeking to evade paying Landfill Disposals Tax are minimised. Specifically, it seeks views on:

- Improving regulation:
 - Use of weighbridges
 - Extending the definition of landfill sites to include illegal deposits of waste within the scope of the tax
 - Criminal and civil penalties
 - Compliance activity
- Minimising the impact of Landfill Disposals Tax evasion
- Tackling tax avoidance

BACKGROUND

3.2 Most people voluntarily pay any taxes that are due and recognise that our public services are dependent upon such funding. The Welsh Government aims to make the payment of devolved taxes as easy as possible. There is however a minority who attempt to evade paying tax. Tax evasion can give people an unfair advantage over those who pay tax, and reduces the amount of money available to fund public services. This is unacceptable and the Welsh Government will establish robust arrangements to prevent this from happening.

3.3 There have been cases of Landfill Tax evasion. In many circumstances this has been to avoid paying the higher rate of tax. The standard tax rate has escalated rapidly in recent years (to £80/tonne in 2014-15) and some people consider that the profit that can be made from illegal waste activities far outweighs the risk of being caught.

3.4 Landfill Tax payment can be evaded through a number of routes, including waste misclassification, undeclared waste, and abuse of exemptions and reliefs. Other forms include illegal waste sites, fly-tipping, waste fires, and illegal exports of waste, which have direct impacts on communities.

3.5 A recent industry report²¹ found that the cost of waste crime to the UK economy is around £568 million per annum²². The pro-rata figure for the Welsh economy would be in the region of £28 million per annum.

²¹ *Waste Crime: Tackling Britain's Dirty Secret (2014)* - Eunomia Research and Consulting commissioned on behalf of Environmental Services Association Education Trust.

²² This figure consists of tax evaded (thought to be around £157m), illegal exports and the remediation of illegal waste sites, illegal burning and fly-tipping.

- 3.6 Modelling presented in this same report found that for every £1 spent on waste crime enforcement there is an expected return to Government of between £3.60 and £5.60.
- 3.7 The UK Government has begun to focus more on the issue of waste crime in the last year and £5m has been provided to the Environment Agency to ensure effective compliance and enforcement of waste law in England.

Current efforts to ensure effective compliance and enforcement of waste law within Wales

- 3.8 Natural Resources Wales (NRW) and local authorities have a regulatory role to ensure effective compliance and enforcement of waste law, and that waste management is undertaken without harm to the environment or human health.
- 3.9 The Welsh Government has been liaising closely with the Department for Environment, Food and Rural Affairs (Defra) on the initiatives proposed in their Waste Crime Action Plan and talking to NRW about what action can be taken in Wales to tackle illegal waste activity and improve site performance and compliance in the waste sector. In the short term, the Welsh Government will be consulting with Defra on changes to the Environmental Permitting Regulations to extend some of the enforcement powers available to the regulator. In addition, the consultation²³ also includes a Call for Evidence inviting views on further measures that the Government wishes to explore to tackle waste crime.
- 3.10 Waste policy is devolved and a variety of initiatives are being taken forward by the Welsh Government's Natural Resources Department to tackle waste crime. These include actions set out in the Welsh Government's strategy to tackle fly-tipping – *A Fly-tipping Free Wales*²⁴ and a recently completed consultation with Defra on commencing powers in the Clean Neighbourhoods Act to strengthen the powers of local authorities in seizing vehicles in relation to offences concerning waste.
- 3.11 In other developments, the Welsh Government has worked with the UK Government and other devolved administrations to develop an electronic duty of care system (e-doc) which facilitates a consistent, accurate transfer of waste records throughout the chain of collection and management. The widespread adoption of the e-doc system would have benefits for simplifying tax administration and supporting tax compliance.

PROPOSALS

- 3.12 As stated in the Minister's tax principles, the Welsh Government is seeking to establish Welsh tax arrangements that are simple and easy to understand. This

²³ <http://wales.gov.uk/consultations>

²⁴ <http://wales.gov.uk/topics/environmentcountryside/epq/cleanneighbour/flytipping/?lang=en>

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will help to support compliance particularly amongst those that become genuinely confused or in some cases careless with regard to paying their tax.

- 3.13 However there are a small minority that deliberately seek to evade or avoid paying tax and in discussions with stakeholders the Welsh Government is considering a number of options to reduce the opportunities for non-compliance.

Improving regulation

i) Introduce an obligation on landfill site operators to use a weighbridge where one is functional and available on the landfill site or within close proximity of the site, with a corresponding penalty for failure to do so.

- 3.14 The amount of tax due is calculated on the basis of the weight of material being disposed; therefore sufficiently accurate weighing methodologies are required to ensure consistency, openness and fairness. Currently HMRC's Landfill Tax Guidance (Excise Note LfT1) states that landfill site operators are *expected* to use a weighbridge if one is present.
- 3.15 In order to provide greater clarity to taxpayers and the Welsh Revenue Authority an obligation on a weighbridge's use where one is functional and available on the landfill site or within close proximity of the site could be introduced with a corresponding penalty for failure to do so.
- 3.16 Other arrangements would be required for weighbridge breakdowns or when an alternative weighbridge is not available within a close proximity. These arrangements would need to be agreed with the Welsh Revenue Authority.
- 3.17 This may help to create a level playing field between operators and act as a financial deterrent that outweighs the profit to be made from under-declaring waste.
- 3.18 It is intended that Scottish Landfill Tax will introduce a weighbridge obligation and corresponding penalty in Scotland.

Question 15: What would be the practical implications of placing an obligation on landfill site operators to use a weighbridge where one is functional and available on the landfill site or within close proximity of the site, with a corresponding penalty for failure to do so?

ii) Extend the definition of a landfill site

- 3.19** The structure of Landfill Tax means that it cannot be imposed on illegal deposits of waste as they are not landfill sites within the definition of the legislation. If Landfill Tax had been chargeable on illegal deposits of waste, NRW estimates that a recently uncovered illegal waste site in Bridgend would have been liable to over £2 million of tax.
- 3.20** In addition, there were over 32,000 fly-tipping incidents recorded on public land in Wales during 2013/14 costing nearly £2 million to clear up²⁵. These incidents varied in size from a bin bag of rubbish to large-scale dumping of lorry loads of waste.
- 3.21** Illegal deposits of waste present a range of environmental, public health and social concerns for communities. It also places legitimate waste businesses at a disadvantage as illegal operators avoid waste disposal costs and undercut those who abide by the law. It also reduces the amount of money available to fund public services.
- 3.22** Scottish Landfill Tax²⁶ will define a landfill site more widely than the UK legislation, so as to extend the scope of the tax beyond disposals made at an authorised site (i.e. a site holding the requisite permits or authorisations) to also include disposals made on any land where an authorisation should have been obtained but has not been. This means that anyone caught illegally disposing of waste (and/or anyone who knowingly permits the disposal to be made) will have to pay the tax at the point where they disposed of it illegally and again when it is remediated to a licensed landfill site. The Scottish Government has extended the definition of a landfill site with the intention that it will act as an additional financial deterrent to such environmental crime and re-align the balance of risk so that the consequences of being caught outweigh the profit to be made.
- 3.23** The Welsh Government is considering introducing a similar extension to the definition of landfill sites to include illegal waste deposits within the scope of Landfill Disposals Tax. This could be a further lever with which to support the Welsh Government's Fly-tipping Strategy²⁷. However, any adoption of a similar extension of the definition of landfill sites will need to be carefully considered in terms of i) minimising the negative impacts of illegal waste disposal and ii) the cost-effectiveness of enforcement, including simplicity of administering and operational costs.

²⁵ Flycapture data – This is management information reported by local authorities to the Environment Agency.

²⁶ ss.12(3) and 16(3) of the Landfill Tax (Scotland) Act 2014.

²⁷ The Welsh Government's Fly-tipping Strategy is available to read at:

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

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Question 16: What would be the practical implications of extending the definition of landfill sites to include illegal deposits of waste within the scope of the tax?

iii) Criminal and Civil Penalties

3.24 The White Paper on the Collection and Management of Devolved Taxes explained that in developing a penalty framework, the Welsh Government will consider the extent to which a consistent approach is taken across the devolved taxes and where it might be appropriate to take a specific approach to individual taxes i.e. Landfill Disposals Tax.

3.25 The Welsh Government will give careful consideration to the introduction of civil penalties and the creation of criminal offences relating to the administration of Landfill Disposals Tax. It will be important to consider how the balance of risk might be aligned so that the likelihood and consequences of being caught outweigh the potential profit to be made, for this to be achieved it will be important that the punishment is proportionate to the crime.

3.26 The existing Landfill Tax arrangements include a variety of criminal offences (with corresponding penalties) and civil penalties. Civil penalties include failure to:

- register or deregister
- notify that you are no longer liable to be registered
- notify HMRC about a controller of a landfill site
- preserve records
- produce information and records
- comply with the regulations made under Part III of the Finance Act 1996
- notify an under-assessment by HMRC or errors in taxpayer documents in some circumstances

3.27 Criminal offences include knowingly being involved in the fraudulent evasion of tax, the provision of false information and entering into a landfill contract with reason to believe that tax in respect of the disposal concerned will be evaded. When found guilty of a criminal offence set out in Part IV of Schedule 5 to the Finance Act 1996, the potential penalties flowing from that conviction are also set out there and comprise a financial penalty and/or imprisonment.

3.28 In 2014, the Sentencing Council issued new guidelines for magistrates on sentencing for environmental offences. Importantly, this guidance states that it should not be cheaper to offend than to take the appropriate precautions. Magistrates should ensure that the combination of financial orders imposed (compensation, confiscation if appropriate and fine) remove any economic benefit derived from offending.

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3.29 Environmental offences often involve an element of Landfill Tax evasion. It will therefore be important for the Welsh Government, Welsh Revenue Authority, Regulators, Police and other enforcement bodies, to work effectively together to tackle illegal waste activity. The Welsh Government will seek to work with the Sentencing Council to ensure appropriate sentencing takes into account any Landfill Disposals Tax evaded.

Question 17: Are there any issues with the current penalty regime and if so, how might they be addressed?

iv) Compliance Activity

3.30 The Eunomia Report on waste crime states “*Whatever the level of penalties...they will not act as a deterrent unless offenders believe it is likely that they will be caught and prosecuted.*”²⁸

3.31 Stakeholders indicate that over the past 5-10 years the number of on-site inspections carried out by HMRC has reduced with greater emphasis on desk-based assurance to identify and prevent Landfill Tax evasion. It is understood that this has been due, at least in part, to budget pressures and operational priorities (given that Landfill Tax is a small UK tax).

3.32 Stakeholders have told us that they would like to see a greater ‘boots on the ground’ approach in Wales to support effective enforcement. There is growing momentum around this view and the UK Government recently provided £5m extra funding to the Environment Agency (money which would otherwise have gone into the Landfill Communities Fund) to ensure effective compliance and enforcement of waste law, in particular waste misclassification, illegal waste sites and illegal exports.

Question 18: Is there a need for increased compliance activity on the ground, rather than desk-based? If yes, please explain your view and provide evidence/explain the benefits where possible.

²⁸ *Waste Crime: Tackling Britain’s Dirty Secret (2014)*- Eunomia Research and Consulting commissioned on behalf of Environmental Services Association Education Trust.

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Minimising the impact of Landfill Disposals Tax evasion

3.33 It will be important to raise awareness of Landfill Disposals Tax to increase understanding and compliance. There is also a need for effective information and intelligence sharing between Welsh Government, Welsh Revenue Authority, Regulators, Police and other enforcement bodies; this includes pursuing and prosecuting individuals who commit waste crime in order to deter other incidents. As part of this the Welsh Government will look to put in place robust whistle-blowing mechanisms.

Question 19: Are there any further actions the Welsh Government might take to use its new tax powers to improve compliance and enforcement and minimise the impact of Landfill Disposals Tax evasion? If yes, please describe what those actions could be?

Tackling Tax Avoidance

3.34 Whilst it is generally recognised that evasion is a key issue for Landfill Tax (and the proposals set out earlier in this Chapter seek to minimise the opportunities for this) the Welsh Government is also interested in gaining a practical understanding of the type and extent of any avoidance in the context of Landfill Disposals Tax.

3.35 HMRC explains avoidance in the following terms: '*Tax avoidance...unlike evasion is not in itself illegal, but it involves using the tax law to get a tax advantage that Parliament never intended. It frequently involves contrived, artificial transactions that serve little or no purpose other than to reduce tax liability.*'²⁹

3.36 Those who engage in tax avoidance gain an unfair advantage over those who pay the fair amount of tax. It also reduces the amount of money available to fund public services and can also undermine confidence in the wider tax system.

3.37 The Welsh Government will expect the Welsh Revenue Authority to support taxpayers who pay the appropriate amount of tax in a timely way, but take firm action against those who avoid, or seek to avoid, paying tax. The Welsh Government will not limit the options available to the Welsh Revenue Authority to deal with aggressive or intentional tax avoidance, and will consider the full range of operational, policy and legislative tools to deliver this aim.

3.38 The Welsh Government recognises the need to be clear in its expectations, and will provide comprehensive support and guidance on the meaning and

²⁹ <https://www.gov.uk/government/publications/tackling-tax-avoidance--2>

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application of its legislation to ensure that taxpayers can operate confidently within the new tax system.

- 3.39** The Welsh Government's White Paper on the Collection and Management of Devolved Taxes included a number of questions around the benefit or need for a General Anti-Avoidance or Anti-Abuse Rule (GAAR), and the possible need and proportionality of safeguards and other measures to support and enable its application.
- 3.40** On the basis of the responses received, the Welsh Government intends to introduce its own Welsh tax avoidance rule to enable the Welsh Revenue Authority to counteract the tax advantage of avoidance arrangements and activities. This will draw on both the UK General Anti-Abuse Rule and Scottish General Anti-Avoidance Rule. The Welsh Government will also look to wider experience and knowledge in considering how widely to apply this rule to Welsh devolved taxes. The nature and scope of the Welsh tax avoidance rule will be determined in light of responses to this consultation, as well as responses to the Land Transaction Tax consultation.
- 3.41** The Welsh Government is aware that the UK GAAR does not currently apply to Landfill Tax, although the Scottish GAAR does apply to the Scottish Landfill Tax. To inform the Welsh Government's consideration of this issue it would welcome views on whether there is evidence of tax avoidance within the existing Landfill Tax, keeping in mind that avoidance is action taken within the context of the legislation, but not in keeping with the spirit or intention behind this legislation.

Question 20: In your view, is there evidence of tax avoidance within the existing Landfill Tax, and what is the nature of this?

Chapter 4: Administration

INTRODUCTION

- 4.1 This Chapter explores proposals to simplify and modernise administrative processes and make compliance simple. In particular, it seeks views on:
- aligning the invoice period with the financial year
 - the practical implications of making it a requirement that European Waste Catalogue codes are used in completion of the tax return
 - opportunities to simplify and modernise the filing of tax returns including improving electronic and online support
 - the circumstances in which bad debt relief is appropriate
 - resolving tax disputes

BACKGROUND

- 4.2 Landfill Tax is paid by landfill site operators. There are currently 28 landfill sites and 23 landfill site operators in Wales. A small number of operators currently within Wales also operate in others parts of Great Britain. Once Landfill Tax is devolved to Wales there may be three different tax administrations in Great Britain with which these waste operators will need to comply.
- 4.3 Furthermore, the Welsh Government's waste policy is likely to significantly reduce the amount of waste going to landfill in the coming years. This will impact on the revenue generated by Landfill Disposals Tax and the number of landfill sites in Wales is likely to be fewer than 10 by 2020.
- 4.4 The Welsh Government is therefore keen to develop a simple and efficient administrative system for Landfill Disposals Tax which is cost effective, proportionate to the tax raised and a low burden on landfill site operators.

PROPOSALS

The invoice period

- 4.5 Currently landfill site operators pay Landfill Tax on a quarterly basis. The quarterly date at which payment falls is set by HMRC to enable them to manage work flow. It does not necessarily align with the financial year, or with the quarterly waste returns that landfill site operators complete for Natural Resources Wales (NRW) as part of their environmental permitting requirements.
- 4.6 One option the Welsh Government is considering is to align the quarterly invoice period with the financial year, also making this consistent with the landfill site operators' waste returns to NRW. Aligning these could support compliance activity by enabling them to be cross checked against each other.

Question 21: Would you support aligning the tax return period with the financial year? Please explain your reasons.

European Waste Catalogue codes

- 4.7 A further step could be to require European Waste Catalogue (EWC) codes to be used to complete the tax return. The EWC allocates a 6 digit code to identify each waste and whilst there are over 600 EWC codes there is well-established guidance available on their use. EWC codes are already used to complete waste transfer notes and the quarterly NRW waste returns.
- 4.8 This would provide greater consistency with environmental permitting regulations thereby further supporting compliance by simplifying the process of cross-checking tax and waste returns. It might also further help to provide greater clarity for taxpayers and the Welsh Revenue Authority as the EWC codes provide tightly defined waste descriptions.
- 4.9 The EWC codes also require waste producers to clearly identify the source of the waste and its constituent parts reinforcing principles of good waste management. If EWC codes were applied to tax, then some landfill site operators might incur one-off costs such as amending software/invoices.

Question 22: What would be the practical implications of making it a requirement that European Waste Catalogue codes are used in completion of the tax return?

Filing tax returns

- 4.10 The current filing system for Landfill Tax is entirely paper-based. HMRC send out the self assessment tax forms every quarter and they are returned by post by the site operators. The form is available online, but only as a sample form that operators are not able to print. Payment is usually by cheque or bank transfer.
- 4.11 It has been noted that the number of landfill site operators in Wales is likely to reduce to fewer than 10 by 2020, and continue to reduce as waste is diverted from landfill to re-use, recycling, and recovery. As a result, a complete move to an online platform for Landfill Tax may be difficult to justify for cost and proportionality reasons at this stage. Online filing and payment for Landfill Tax is not a priority for HMRC at this stage as it is one of their smaller taxes. In Scotland, where there are approximately 58 landfill sites run by around 52 operators, taxpayers will be able to use an online system or keep using a paper based approach.

- 4.12 It would be helpful to understand the appetite for online support so that this option may be kept under review over the medium-term. However, there are small changes that could be made to simplify the tax filing process and which would better reflect the Welsh Government's Digital Wales ambitions³⁰.
- 4.13 This could include changing the format of the tax return to enable electronic returns to be submitted (that is, by email rather than the current postage requirements), and encouraging more electronic payment. This would release efficiency savings for landfill site operators and the Welsh Revenue Authority as time and money would not be spent on printing and postage every quarter. The use of electronic returns may also help to prevent errors and improve compliance.

Question 23: How might the Welsh Government simplify and modernise the filing of tax returns including improving electronic and online support?

Bad Debt Relief

- 4.14 Whilst landfill site operators pay Landfill Tax, they 'pass on' these costs to the waste carriers disposing of waste at their sites via the gate fee, and the carriers in turn pass on the cost to the waste producers. There is currently a bad debt relief process in place which allows (subject to certain conditions³¹) landfill site operators to claim back the portion of tax they have paid to HMRC if their customer becomes insolvent or has not paid their invoice within 12 months. The process to claim back the tax can take several months; in the meantime landfill site operators are carrying this as a business risk.
- 4.15 For businesses to remain viable it is important that good business practice is adopted with proper contract and insurance arrangements in place. The availability of bad debt relief can be seen as a dis-incentive to putting these arrangements in place and further puts at risk the tax revenue which is used to fund public services. There is also a question of fairness and consistency as other business sectors do not have access to bad debt relief and have to absorb bad debt.
- 4.16 Scotland has decided to narrow the circumstances in which landfill site operators can claim bad debt relief to only those cases where the waste carrier has become insolvent in ways set out in their legislation³².
- 4.17 Your views are welcome on whether bad debt relief should be offered and if so, in what circumstances it is appropriate.

³⁰ <http://wales.gov.uk/topics/businessandconomy/digitalwales/?lang=en>

³¹ Part VI of the Landfill Tax Regulations 1996 (S 1996/1527) and Excise Note LfT1: A general guide to Landfill Tax

³² Scottish Landfill (Administration) Regulations 2015 – paragraph 25.

Question 24: Should bad debt relief be offered and if so, in what circumstances is it appropriate?

Resolving Tax Disputes

- 4.18** The White Paper on the Collection and Management of Devolved Taxes³³ sets out proposals for managing and resolving any disputes that may arise between the taxpayer and the Welsh Revenue Authority during the administration of taxes. Disputes might arise as a result of different opinions on matters such as the amount of tax due or the timing of when tax should be paid. In these circumstances it is important that there are arrangements in place that can help resolve matters fairly and swiftly.
- 4.19** The Welsh Government's tax principles will shape the approach to appeals arrangements in Wales. In particular, these will be established to be fair, simple, transparent, efficient and affordable.
- 4.20** One of the Welsh Government's key policy objectives will be to try and avoid disputes arising in the first place. The Welsh Revenue Authority will be expected to work on the basis of 'getting it right first time' and fostering a culture of collaboration with taxpayers, communicating clearly and effectively and providing appropriate explanations of decisions. Where disputes do arise, every effort will be made to resolve matters informally, cost-effectively and swiftly.
- 4.21** As part of this, the Welsh Revenue Authority will be expected to engage in informal discussions and, similarly to HMRC, to use alternative dispute resolution mechanisms, such as mediation, when appropriate. In relation to many decisions of the Welsh Revenue Authority there will be a right to request an internal review of that decision and if a dispute is not resolved, there will be a right of appeal to the existing Ministry of Justice's First Tier and Upper Tribunal system.

Question 25: Have you any comments on the operation of the current internal reviews and appeals provisions in a Landfill Tax context, including in particular the people eligible to seek a review or appeal?

³³ The consultation and analysis of responses on the Collection and Management of Devolved Taxes White Paper can be accessed from the Welsh Government's website at: www.wales.gov.uk/consultations

The timing of the payment when a dispute arises

- 4.22** Currently HMRC will not seek payment of the tax due from a taxpayer whilst the dispute is in the early stage process of dispute resolution. If, however, the dispute remains unresolved then payment of the tax due is required before an appeal can be made to the tribunal.
- 4.23** Under current UK arrangements taxpayers appealing a decision that requires an upfront payment can in certain circumstances apply to postpone the payment of the tax until the conclusion of the appeal. In the case of Landfill Tax, an application would need to be made (to HMRC or failing that to the appeal tribunal) demonstrating that the requirement to pay the amount determined would cause the appellant to suffer hardship. Where an appeal has been heard without an upfront payment and the amount is found to be due on appeal, it will need to be paid with interest.
- 4.24** The Scottish Government has introduced a more stringent approach to payment. The Revenue Scotland and Tax Powers Act 2014 contains a general pay-first principle to the effect that, pending a review or appeal, tax remains due and payable.³⁴ The Scottish Government has the power to provide (by way of secondary legislation) for circumstances in which payment could be postponed pending a review or appeal but is not currently proposing to exercise this power in relation to Scottish Landfill Tax. The Scottish Government is of the view that in general a landfill site operator who is due to pay Scottish Landfill Tax will already have collected tax due from persons depositing waste at the site in question.
- 4.25** The Welsh Government's White Paper on devolved tax collection and management explored the conditions under which payment could or should be postponed pending an appeal. There were sixteen responses to this question. Of these, fourteen emphasised the need to ensure that provisions should be made for particular challenging circumstances. Only two respondents considered that the rules should be more stringent than those that HMRC currently operate.
- 4.26** On the basis of these responses, the Welsh Government is clear that the pay-first principle should remain as a key pillar of its approach to tax collection and management. However, we are interested to explore opportunities to streamline and clarify the existing process and to consider the circumstances in which we might allow postponement of payment, in particular to ensure fairness, access to justice, and in cases of hardship. The nature and scope of the pay-first principle will be determined in light of responses to this consultation.

³⁴ s. 245 Revenue Scotland and Tax Powers Act 2014.

Landfill Disposals Tax

Question 26: In your view, are there any exceptional circumstances in which taxpayers might be able to postpone payment of Landfill Disposals Tax until the conclusion of their appeal?

Chapter 5: Community Wellbeing

INTRODUCTION

- 5.1 In developing Landfill Disposals Tax, it is important to consider how landfill sites and Landfill Tax evasion affects communities. This Chapter explores:
- whether to allocate a proportion of Landfill Disposals Tax revenue to enhance community wellbeing
 - the proposed activities that could receive funding
 - the administrative options to ensure the maximum amount of funding reaches initiatives

BACKGROUND

- 5.2 The EU Waste Framework Directive establishes the principle that waste is handled in a way that does not have a negative impact on the environment or human health. It also seeks to ensure that waste is handled in accordance with the waste hierarchy which seeks to divert waste from landfill towards more environmentally sustainable methods of waste management. Communities living close to landfill sites can experience dis-amenity due to their proximity to the landfill site, this can include the impact of increased traffic and noise.
- 5.3 The Landfill Communities Fund (LCF) is a tax credit scheme which 'offsets' some of the dis-amenity of living near a landfill site. The purpose of this fund is to incentivise landfill site operators to support local projects benefiting the general public, biodiversity or the environment. In doing so the LCF provides an opportunity for landfill site operators to demonstrate their Corporate Social Responsibility.
- 5.4 Landfill site operators may make a voluntary contribution of a proportion of their tax liability (up to 5.1%³⁵) to approved projects, and claim a 90% credit of their contribution. The landfill site operator can choose to absorb the remaining 10% or, so that contributions are cost neutral to them, can ask an independent party to make up the remaining amount.
- 5.5 It is important to note that the contributions made to the LCF by landfill site operators results in a corresponding reduction in Landfill Tax receipts; so less tax revenue is available to support public services.

Administration

- 5.6 HMRC govern the LCF and it is regulated on their behalf by Entrust³⁶. As a private fund, approved projects are eligible to apply for match funding from a variety of public and European sources.

³⁵This figure is set by Treasury and may be liable to change each year.

³⁶<http://www.entrust.org.uk>

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5.7 Projects looking for support through the LCF must be within 10 miles of a landfill site and comply with one of the following six objectives:

- **Object A:** The remediation or restoration of land which cannot now be used because of a ceased activity that used to take place there.
- **Object B:** The reduction, prevention or mitigation of effects of pollution that has resulted, or may result, from an activity which has now ceased.
- **Object D:** The provision, maintenance or improvement of a public park or another public amenity.
- **Object DA:** The conservation of a specific species or a specific habitat where it naturally occurs.
- **Object E:** The repair, maintenance or restoration of a place of worship or a place of architectural importance.
- **Object F:** The provision of financial, administrative or other similar services by one organisation enrolled with Entrust to another.

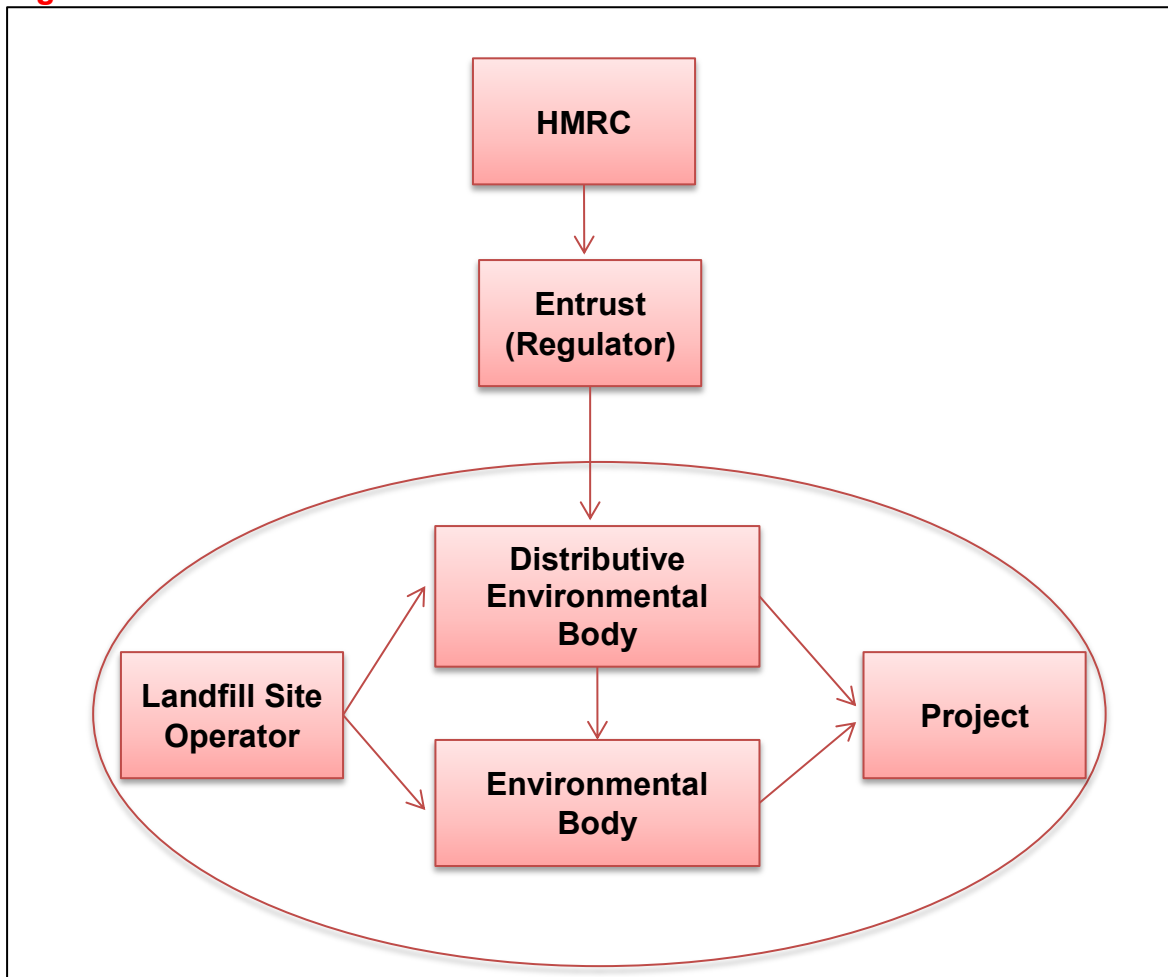
5.8 Projects receive funding in two ways:

- a. directly from a landfill site operator - by doing this the project must register itself as an Environmental Body through the fund's regulator Entrust; or
- b. through a Distributive Environmental Body - an organisation that distributes funds to projects on behalf of a landfill site operator.

In total there are around 191 Environmental and Distributive Environmental Bodies registered in Wales with approximately 50 currently active.

Landfill Disposals Tax

Figure 1: Current LCF Distribution Process



5.9 Entrust does not hold any of the funding as this is directly distributed to projects via Environmental and Distributive Environmental Bodies. However they do receive a fee plus a proportion of the fund to cover administration costs:

- a. an application fee of £100 made by Environmental Bodies when they register; and
- b. a 2.17% levy³⁷ applied to each contribution an Environmental and Distributive Environmental Body receives from a landfill site operator.

Administrative challenges

5.10 The LCF is currently being reviewed by HMRC with the aim of improving the flow of funding to projects³⁸. This is in light of figures showing that Environmental and Distributive Environmental Bodies have accumulated large

³⁷ This levy is set by HMRC each year, and has been set at 2.17% for 2014/2015

³⁸ <https://www.gov.uk/government/news/government-considers-options-to-improve-the-landfill-communities-fund>

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amounts of unspent funds (£140 million) raising concerns that money is not reaching communities as quickly as it should.

- 5.11** There are also concerns regarding the costs of administering the LCF. Entrust³⁹ advises that Environmental and Distributive Environmental Bodies' administration costs should not be higher than 10%. However, recent figures show that in reality these costs are closer to 11.4%. As stated above, Entrust are also funded through a 2.17% levy taken from the fund.
- 5.12** In effect, over 13% of the fund is used for its administration so for every £100 contributed to the LCF, a project will receive around £86.

The LCF in Wales

- 5.13** At UK level, over 52,000 projects have been approved since the LCF was established in 1996. Of these, almost 33,000 have completed and nearly 5,500 are ongoing.
- 5.14** In Wales, 1,532 projects have been approved since the LCF was established, 3% of the UK total. 206 projects are currently underway. In both England and Wales, the majority of projects that are approved fall into Object D, DA and E. (see paragraph 5.7 for definitions)
- 5.15** Wales is well supported through the LCF and received close to £4m in 2013-14. Some of the projects that have received funding in Wales since the LCF was established are set out in Table 3.

Table 3: Examples of Projects that have received LCF funding in Wales

Project Name	Project Description ⁴⁰	Location	Obj	LCF Funding (£)
Community Regeneration through waste	Reclamation of contaminated land adjacent to community building. Following reclamation, the land was used to extend an existing building to provide a community owned asset that delivered re-use and recycling services, anti-poverty services, volunteering and work based learning, as well as paid employment and community regeneration.	Rhondda Cynon Taf	A	43,522

³⁹ <http://www.entrust.org.uk/>

⁴⁰ A full list of Projects and their descriptions can be found on the Entrust website: <http://www.entrust.org.uk/projects>

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Hailey Park Outdoor Activity Centre	Refurbished Hailey Park Outdoor Activity Centre to include new playground and fitness equipment which is environmentally friendly and improves the social and built environment. The improved amenity is aimed to help discourage antisocial behavior	Llandaff North	D	40,867
Aberman Boxing Club	Complete refurbishment both internally and externally to an old building, adding new porch entry, electricity supply, showers, heating system, windows, toilets and boxing ring to restore back to use for the community.	Rhondda Cynon Taf	D	90,099
Alun & Chwiler Living Landscapes	The project will create, restore and improve Priority Habitats associated with the upper Alun/Alyn and Chwiler/Wheeler river corridors, engaging with local communities.	Denbighshire	DA	277,807
Dolforwyn Woods Appeal (ongoing)	To purchase Dolforwyn Woods and continue to enhance the biodiversity on site whilst keeping it open and accessible for local people.	Powys	DA	150,000
Boderwyn Parish Church (ongoing)	Enable the continued running of the Church by repairing its roof. The roof timbers were renewed and the slates refitted.	Isle of Anglesey	E	10,000
Goleulong Lightship	Refitted the galley area of the Lightship in order to provide an enhanced visitor experience.	Cardiff Bay	E	27,093

PROPOSALS

5.16 As explained in Chapter 1, the progress of the Welsh Government's waste policy will significantly reduce the amount of waste going to landfill in the coming years, resulting in a reduction in the number of landfill sites. Essentially,

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this is expected to reduce the revenue generated through Landfill Disposals Tax and as such, the amount of funding available to support initiatives.

- 5.17 Considering the above, your views are welcome on whether a proportion of Landfill Disposals Tax receipts should be allocated to enhance the wellbeing of communities or whether the full Landfill Disposals Tax revenue should be taken into the Welsh Government budget to be allocated across Welsh Government priorities and public services.

Question 27: Should Welsh Government allocate a proportion of Landfill Disposals Tax revenue to enhance the wellbeing of communities?

Activities that could receive funding

- 5.18 There are a number of potential areas that would benefit from this type of funding if it is agreed that a proportion of the tax should be used to enhance community wellbeing. Your views are welcome on the following options:

Supporting compliance and enforcement and minimising the impact of waste crime

- 5.19 Since the LCF was established alongside the tax in 1996, it has played a key role in funding projects in Wales to offset some of the dis-amenity of living near a landfill site. However, the reducing amount of waste going to landfill and the reducing number of landfill sites (less than 10 by 2020) is likely to minimise the dis-amenity impact on communities near landfill sites.
- 5.20 This option recognises that there are wider dis-amenity impacts on communities as a result of Landfill Tax. There are a small minority who will seek to evade paying Landfill Tax and will engage in illegal waste activities. Illegal deposits of waste present a range of environmental, public health and social concerns for communities. Research also shows that it is deprived areas that are most affected by this issue⁴¹.
- 5.21 Chapter 3 sets out the Welsh Government's approach to putting in place an effective compliance and enforcement framework for Landfill Disposals Tax. As noted in Chapter 3, £5m was re-directed from the LCF to the Environment Agency last year to ensure effective compliance and enforcement of waste law in England.
- 5.22 Additional investment in this area in Wales could provide the opportunity to further protect communities from deposits of illegal waste. This would help to improve quality of place and bring land back into community use. It also has the potential to increase tax revenue and enable additional money to be re-directed

⁴¹ *Fly-tipping: causes, incentives and solutions*. (2006) - <http://www.ucl.ac.uk/jdi>

to other areas that would benefit from funding. Industry research⁴² states that for every £1 spent on enforcement a return of between £3.60 and £5.50 will be generated.

Biodiversity initiatives and wider environmental improvements

- 5.23** The current LCF provides for the conservation of a specific species or a specific habitat where it naturally occurs. These projects may bring wider community benefit through improving quality of place and bringing land back into community use.
- 5.24** It has been suggested that the LCF is currently the main source of funding for projects focusing on these objectives and that without it these projects would find it difficult to receive the level of funding needed through other sources.
- 5.25** Funding therefore could be given specifically to projects that focus on biodiversity initiatives and environmental improvement which could allow these projects that may otherwise go unfunded to continue benefitting the environment and communities.

Waste minimisation and the diversion of waste from landfill

- 5.26** The Welsh Government has a number of plans and interventions in place to deliver waste minimisation and greater levels of recycling in order to achieve a Zero Waste Wales, for example additional financial support has been provided to local authorities to help them increase recycling rates.
- 5.27** To date the greatest focus has been on reducing and recycling local authority waste. Areas that do not receive as much support for waste minimisation and recycling are the industrial, commercial and construction sectors. Funding could be used to support greater waste minimisation and recycling rates within these sectors and release further environmental benefits of diverting waste from landfill.
- 5.28** There is scope to encourage and educate industry and the public sector to see waste as a resource and promote the re-use sector. There are additional benefits to deprived communities through the ability to make use of some products that would otherwise have been landfilled, and valuable local jobs and training opportunities in re-use would also be created.
- 5.29** To stimulate jobs growth, small re-use and recycling businesses could be encouraged to carry out this role and provide these services generating a greater drive for re-use and recycling.

⁴² *Waste Crime: Tackling Britain's Dirty Secret (2014)*- Eunomia Research and Consulting commissioned on behalf of Environmental Services Association Education Trust.

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Tackling Poverty and Deprivation in communities

- 5.30** Poverty imposes enormous costs on society from lower economic productivity, reduced social cohesion and increased demands on public services. The lower level of skills, poor health and poverty of ambition that deprivation brings with it are a brake on the potential of the Welsh economy.
- 5.31** The Welsh Government has a number of existing initiatives that support tackling poverty and promoting community resilience through helping people train in new skills to gain employment, providing families with young children the support they need and access to good education, providing housing and welfare support and ensuring that the communities in which they live are safe and prosper. These goals reflect many of the objectives of the LCF.
- 5.32** Landfill sites are often situated in deprived areas and likewise, it is deprived areas that are affected most by illegal deposits of waste. The dis-amenity this results in for deprived areas could be partly offset by targeting funding to these areas. This might allow these communities to build up social and working skills through volunteering as well improving their community.

Question 28: If the Welsh Government allocates a proportion of Landfill Disposals Tax revenue to enhance community wellbeing, which of the following activities should benefit from funding, and why?

- Supporting compliance and enforcement and minimising the impact of waste crime
- Supporting waste minimisation and the diversion of waste from landfill
- Biodiversity initiatives and wider environmental improvements
- Tackling poverty and deprivation in communities
- Other (please specify)

Administration

- 5.33** The current administrative arrangements are explained in paragraphs 5.6 to 5.12. As stated, if this tax combined with other initiatives continues to be successful in diverting waste from landfill, essentially this will affect the revenue generated through Landfill Disposals Tax and as such, the amount of funding available to support initiatives.
- 5.34** If it is agreed that a proportion of Landfill Disposals Tax revenue should be allocated to enhance community wellbeing the Welsh Government will seek to establish a simple, cost-effective administrative model and maximise the amount of money that reaches initiatives.

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5.35 Possible administrative models that stakeholders have so far suggested for further exploration include: retaining some form of LCF, distributing funding through an existing body or distributing funding directly through the Welsh Government. In exploring these, careful consideration will need to be given to the options of retaining existing features of the LCF including a tax credit element, opportunities for landfill site operators to demonstrate their social corporate responsibility and match funding.

Question 29: Do you have any thoughts on the possible administrative model?

Further Development of the Administrative Model

5.36 This Chapter focuses on the principles of whether and how a proportion of Landfill Disposals Tax revenue should be used to enhance community wellbeing. Your thoughts will enable the Welsh Government to form a view on the approach to be taken.

5.37 There will be future engagement with stakeholders to develop the favoured approach and its practical implementation. This may include consideration of factors such as the geographical focus of the funding (currently within 10 miles of a landfill site) and the percentage of funding contributed (currently 5.1% of landfill site operators' tax liability).

5.38 In addition, it may be useful to consider the Scottish Government's approach as they have made some administrative changes in developing their Scottish LCF.

5.39 In the meantime, the Welsh Government will continue to monitor developments, particularly HMRC's review of the existing LCF.

Landfill Disposals Tax

APPENDIX 1: SUMMARY OF THE LANDFILL TAX (QUALIFYING MATERIAL) ORDER 2011

Group	Description of material	Conditions	Notes
1	Rocks and soils	Naturally occurring	<p>Group 1 comprises only</p> <ul style="list-style-type: none"> i. rock ii. Clay iii. Sand iv. Gravel v. sandstone vi. Limestone vii. crushed stone viii. china clay ix. construction stone x. stone from the demolition of buildings or structures xi. Slate xii. sub-soil xiii. Silt xiv. Dredgings.
2	Ceramic or concrete materials		<p>Group 2 comprises only</p> <ul style="list-style-type: none"> i. glass, including fritted enamel ii. ceramics, including bricks, bricks and mortar, tiles, clay ware, pottery, china and refractories iii. concrete, including reinforced concrete, concrete blocks, breeze blocks and aircrete blocks <p>Group 2 does not include</p> <ul style="list-style-type: none"> i. glass fibre and glass-reinforced plastic, and ii. concrete plant washings.
3	Minerals	Processed or prepared	<p>Group comprises only</p> <ul style="list-style-type: none"> i. moulding sands, including used foundry sand. ii. clays, including moulding clays and clay absorbents (including Fuller's earth and bentonite) iii. mineral absorbents iv. man-made mineral fibres, including glass fibres v. silica vi. Mica vii. mineral abrasives. <p>Group 3 does not include</p> <ul style="list-style-type: none"> i. moulding sands containing organic binders ii. man-made mineral fibres made from glass-reinforced plastic and asbestos.

Landfill Disposals Tax

4	Furnace slags		<p>Group 4 comprises only</p> <ul style="list-style-type: none"> i. vitrified wastes and residues from thermal processing of minerals where, in either case, the residue is both fused and insoluble, and ii. slag from waste incineration.
5	Ash		<p>Group 5 comprises only</p> <ul style="list-style-type: none"> i. bottom ash and fly ash produced only from the combustion of wood, of waste or of both ii. bottom ash and fly ash from the combustion of coal, of petroleum coke or of both, deposited in a cell containing the product of that combustion alone, and iii. bottom ash and fly ash from the combustion of coal, of petroleum coke or of both, burnt together with biomass and deposited in a cell containing the product of that combustion and burning alone. <p>Group 5 does not include fly ash from sewage sludge, municipal, clinical and hazardous waste incinerators.</p>
6	Low activity inorganic compounds		<p>Group 6 comprises only</p> <ul style="list-style-type: none"> i. calcium based reaction wastes from titanium dioxide production ii. calcium carbonate iii. magnesium carbonate iv. magnesium oxide v. magnesium hydroxide vi. iron oxide vii. ferric hydroxide viii. aluminium oxide ix. aluminium hydroxide x. zirconium dioxide.
7	Calcium sulphate	Disposed of in landfills for non-hazardous waste in a cell where no biodegradable waste is accepted	<p>Group 7 includes</p> <ul style="list-style-type: none"> i. calcium sulphate ii. Gypsum iii. calcium sulphate based plasters. <p>Group 7 does not include plasterboard.</p>
8	Calcium hydroxide and brine	Deposited in brine cavity.	

Landfill Disposals Tax

APPENDIX 2: CONSULTATION RESPONSE FORM, INCLUDING SUMMARY OF CONSULTATION QUESTIONS

Welsh Government

Consultation on: Landfill Disposals Tax (Number: WG24170)

Consultation Response Form

Name:

E-mail:

Telephone number:

Address:

Town:

Postcode:

Organisation (if responding on behalf of that organisation):

Chapter 2: Tax Rates and Taxable Disposals

Question 1: How important is it that the Welsh Government maintains consistency with the UK Government and Scottish Government on Landfill Tax rates and why?

Question 2: Are the current standard and lower tax rates (explained in paragraph 2.2) set at an appropriate level for Wales? Please explain your response.

Question 3: Is there value in the Welsh Government having the ability to set different lower rates of tax (explained in paragraph 2.10 - 2.11) and why?

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Question 4: Are there any changes to the list of materials qualifying for the lower tax rate (Appendix 1) that should be considered, and on what basis?

Question 5: What would be the practical implications of introducing a threshold to define 'a small quantity' of non-qualifying waste in a load of qualifying material?

Question 6: Would you support the introduction of a Welsh Loss on Ignition (LoI) test when Landfill Tax is devolved? Please explain your reasons.

Landfill Disposals Tax

Question 7: Are there any problems with the existing arrangements for defining the area in which a taxable disposal takes place, and if so, how might these be resolved?

Question 8: In your view, are there any issues with the current arrangements for credit for landfill material permanently removed from a landfill site and if so, how might these be addressed?

Question 9: What would be the practical implications of legislating on the basis that all material entering a landfill site (other than that which is specifically exempt) is subject to tax?

Landfill Disposals Tax

Question 10: What activities would you expect to be exempt (not subject to tax) and why?

Question 11: Do you have any other suggestions for how we might clarify the taxable and non-taxable activities on a landfill site and what would be the practical implications of these?

Question 12: Do you think that any of the current exemptions should be removed or modified? Please explain your response.

Landfill Disposals Tax

Question 13: Is there a case for removing or modifying the water discount relief? Please explain your response.

Question 14: Do you think there is a case for introducing any new exemptions or reliefs, and if so, what should they be and why?

Chapter 3: Compliance and Enforcement

Question 15: What would be the practical implications of placing an obligation on landfill site operators to use a weighbridge where one is functional and available on the landfill site or within close proximity of the site, with a corresponding penalty for failure to do so?

Landfill Disposals Tax

Question 16: What would be the practical implications of extending the definition of landfill sites to include illegal deposits of waste within the scope of the tax?

Question 17: Are there any issues with the current penalty regime and if so, how might they be addressed?

Question 18: Is there a need for increased compliance activity on the ground, rather than desk-based? If yes, please explain your view and provide evidence/explain the benefits where possible.

Landfill Disposals Tax

Question 19: Are there any further actions the Welsh Government might take to use its new tax powers to improve compliance and enforcement and minimise the impact of Landfill Disposals Tax evasion? If yes, please describe what those actions could be?

Question 20: In your view, is there evidence of tax avoidance within the existing Landfill Tax, and what is the nature of this?

Chapter 4: Administration

Question 21: Would you support aligning the tax return period with the financial year? Please explain your reasons.

Landfill Disposals Tax

Question 22: What would be the practical implications of making it a requirement that European Waste Catalogue codes are used in completion of the tax return?

Question 23: How might the Welsh Government simplify and modernise the filing of tax returns including improving electronic and online support?

Question 24: Should bad debt relief be offered and if so, in what circumstances is it appropriate?

Landfill Disposals Tax

Question 25: Have you any comments on the operation of the current internal reviews and appeals provisions in a Landfill Tax context, including in particular the people eligible to seek a review or appeal?

Question 26: In your view, are there any exceptional circumstances in which taxpayers might be able to postpone payment of Landfill Disposals Tax until the conclusion of their appeal?

Chapter 5: Community Wellbeing

Question 27: Should Welsh Government allocate a proportion of Landfill Disposals Tax revenue to enhance the wellbeing of communities?

Landfill Disposals Tax

Question 28: If the Welsh Government allocates a proportion of Landfill Disposals Tax revenue to enhance community wellbeing, which of the following activities should benefit from funding, and why?

- Supporting compliance and enforcement and minimising the impact of waste crime
- Supporting waste minimisation and the diversion of waste from landfill
- Biodiversity initiatives and wider environmental improvements
- Tackling poverty and deprivation in communities
- Other (please specify)

Question 29: Do you have any thoughts on the possible administrative model?

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Additional Questions

Question 30: Do you have any related issues which we have not specifically addressed or other comments that you would like to make?

Question 31: Do you have any comments on the initial Regulatory Impact Assessment?

Publication of responses

Responses to consultations may be made public - on the internet or in a report. Normally the name and address (or part of the address) of its author are published along with the response, as this helps to show the consultation exercise was carried out properly.

If you would prefer your name and address not to be published, please tick here:

Returning this form

The closing date for replies is **19 May 2015**.

Landfill Disposals Tax

Please send this completed form to us by post to:

Tax Policy and Legislation Division
2nd Floor East
Welsh Government
Cathays Park
Cardiff, CF10 3NQ

or e-mail to: FinancialReformMailbox@wales.gsi.gov.uk

If you are sending your response by e-mail, please mark the subject matter:
Consultation on Landfill Disposals Tax

APPENDIX 3: GLOSSARY OF TERMS

Defra	Department for Environment, Food and Rural Affairs
ECHR	European Convention on Human Rights
e-doc	Electronic Duty of Care
EU	European Union
EWG	European Waste Codes
GAAR	General Anti-Avoidance Rule/General Anti-Abuse Rule
GOWA	Government Act Wales
HMRC	Her Majesty's Revenue and Customs
Lol	Loss on Ignition
LCF	Landfill Communities Fund
NRW	Natural Resources Wales
OBR	Office of Budget Responsibility
RIA	Regulatory Impact Assessment

APPENDIX 4: INITIAL REGULATORY IMPACT ASSESSMENT

BACKGROUND

1. The Wales Act 2014 provided for the disapplication of the UK Government's Landfill Tax in Wales and conferred powers on the National Assembly for Wales to introduce a replacement tax on disposals to landfill.
2. The Welsh Government has decided to introduce Landfill Disposals Tax to replace Landfill Tax in Wales from April 2018. Its development will allow Wales to design and deliver arrangements that are better suited to Welsh circumstances and priorities. The Minister for Finance and Government Business has already set out the principles which will underlie Landfill Disposals Tax, these will ensure that it:
 - is fair to the businesses and individuals who pay them;
 - is simple, with clear rules, aiming to minimise compliance and administration costs;
 - supports growth and jobs, and in turn will help tackle poverty; and
 - provides stability and certainty for taxpayers.
3. The Welsh Government is in the very early stages of developing Landfill Disposals Tax. This consultation is open and wide-reaching, and considers the fullest range of options. It seeks views on a number of aspects of the tax including:
 - Tax Rates and Taxable Disposals, particularly addressing aspects of the existing tax which may be confusing or cause uncertainties
 - Compliance and Enforcement, tackling tax evasion and avoidance
 - Simplifying and modernising the administration of the tax, enabling it to operate more efficiently, minimising the burdens on business
 - Whether and how a proportion of the Landfill Disposals Tax revenue may be used to enhance community wellbeing
4. The existing Landfill Tax is complex and the Welsh Government is aware of the interdependencies between the different aspects of the tax. There are a number of variables that will affect costs, benefits (and dis-benefits) and these will emerge more clearly as a result of this consultation.
5. The Welsh Government recognises that there may well be trade-offs between the objectives of securing tax revenue for public funding, supporting jobs and growth, enhancing community wellbeing and protecting the environment. The Welsh Government is seeking to maximise the benefits delivered and to avoid any disproportionately adverse impacts.
6. Landfill Disposals Tax will affect a broad range of interests; key stakeholders include: businesses, regulators, communities and the Third Sector. The Welsh Government has already undertaken preliminary discussions with a wide range of interested organisations and individuals in order to help shape its proposals.

Landfill Disposals Tax

This approach will continue throughout the consultation period with a variety of stakeholder engagement events planned.

CONTEXT

7. The purpose of a Regulatory Impact Assessment (RIA) is to show the costs and benefits of each proposal, and to use it as an evidence base to demonstrate why the chosen policy option was selected.
8. The Wales Act 2014 confers competence on the National Assembly in relation to taxation on disposals to landfill made in Wales. This means that the Welsh Government may decide whether to introduce a replacement tax, one option could be to do nothing.
9. Chapter 1 of this consultation sets out the case for introducing a replacement tax. The Welsh Government intends to introduce Landfill Disposals Tax to replace Landfill Tax in Wales because the negative financial and policy implications of not doing so would be significant.
10. At this early stage in the development of Landfill Disposals Tax, the Welsh Government is seeking views on a number of different proposals that will be used to inform its policy decisions at a later date.
11. The scale of costs and/or benefits that may be generated by implementing Landfill Disposals Tax depends on the policy option taken. As such for the purposes of this consultation the Welsh Government has set out an initial summary of the implications they may have on stakeholders at Table 4.
12. Your thoughts are welcome on whether all the costs, benefits and dis-benefits have been captured. The Welsh Government would welcome any supporting evidence you are able to provide to support or challenge the proposals in this consultation and their implications on stakeholders.
13. A full Regulatory Impact Assessment for Landfill Disposals Tax will be completed prior to the introduction of legislation expected to be after the Assembly elections in May 2016. The responses received from this consultation will be used to inform this. It will consider the likely impact of the tax on the Welsh public, key stakeholders and the Welsh economy.

Landfill Disposals Tax

Table 4: Summary Initial RIA

<i>Tax Rates and Taxable Disposals</i>	
Key stakeholders (bearers of costs and benefits)	<ul style="list-style-type: none"> ➤ Waste producers ➤ Waste and resource management companies ➤ Local authorities ➤ Landfill site operators ➤ UK Government/HMRC
Options with (major) costs	<ul style="list-style-type: none"> ➤ Increase or reduce tax rates ➤ Changes to the list of Qualifying Materials ➤ Changes to definition of what is taxable (area and activity) ➤ Introduction of Loss on Ignition test ➤ Changes to exemptions and reliefs
Options with (major) benefits	<ul style="list-style-type: none"> ➤ Increase or reduce tax rates ➤ Changes to the list of Qualifying Materials ➤ Changes to definition of what is taxable (area and activity) ➤ Introduction of Loss on Ignition test ➤ Changes to exemptions and reliefs
Sources of information on costs and benefits	<ul style="list-style-type: none"> ➤ Landfill site operators ➤ Representative bodies for: <ul style="list-style-type: none"> ○ The waste and resources industry ○ Business ○ Major landowners ➤ Natural Resources Wales ➤ National and Local Governments
<i>Compliance and Enforcement</i>	
Key stakeholders (bearers of costs and benefits)	<ul style="list-style-type: none"> ➤ Landfill site operators ➤ Local authorities ➤ Natural Resources Wales ➤ Fire and Rescue services ➤ Landowners and communities ➤ Waste and resource management companies ➤ Public Health Wales
Options with (major) costs	<ul style="list-style-type: none"> ➤ Changes to criminal and civil penalties ➤ Increased compliance activity (boots on the ground) ➤ Extension of the definition of landfill sites to include illegal

Landfill Disposals Tax

	deposits of waste within the scope of the tax
Options with (major) benefits	<ul style="list-style-type: none"> ➤ Changes to criminal and civil penalties ➤ Increased compliance activity (boots on the ground) ➤ Extension of the definition of landfill sites to include illegal deposits of waste within the scope of the tax
Sources of information on costs and benefits	<ul style="list-style-type: none"> ➤ Landfill site operators ➤ Representative bodies for: <ul style="list-style-type: none"> ○ The waste and resources industry ○ Business ○ Major landowners ➤ Natural Resources Wales ➤ National and Local Governments
Administration	
Key stakeholders (bearers of costs and benefits)	<ul style="list-style-type: none"> ➤ Landfill site operators ➤ Welsh Revenue Authority ➤ Natural Resources Wales
Options with (major) costs	<ul style="list-style-type: none"> ➤ Aligning the invoice period ➤ Adopting the use of the European Waste Catalogue codes ➤ Online filing ➤ Maintaining, ceasing or reducing bad debt relief ➤ Resolution of tax disputes
Options with (major) benefits	<ul style="list-style-type: none"> ➤ Aligning the invoice period ➤ Adopting the use of the European Waste Catalogue codes ➤ Electronic filing ➤ Resolution of tax disputes
Sources of information on costs and benefits	<ul style="list-style-type: none"> ➤ Landfill site operators ➤ Environmental and commercial consultants ➤ Natural Resources Wales ➤ National and Local Governments
Community Wellbeing	
Key stakeholders (bearers of costs and benefits)	<ul style="list-style-type: none"> ➤ Key beneficiaries such as Environmental and Distributive Environmental Bodies, Third Sector, and community organisations ➤ Entrust ➤ Landfill site operators ➤ Local authorities

Landfill Disposals Tax

Options with (major) costs	<ul style="list-style-type: none"> ➤ Stopping or changing the focus and/or administration of the fund <p>Note: Costs unlikely to be major in cash terms given the likely size of a scheme. However, the removal of a tax credit scheme could remove funding entirely from some types of projects.</p>
Options with (major) benefits	<ul style="list-style-type: none"> ➤ Stopping or changing the focus and/or the administration of the fund <p>Note: Benefits unlikely to be major in cash terms given the likely size of a scheme. However, the continuation of a scheme may have relatively large benefits to organisations with little other funding.</p>
Sources of information on costs and benefits	<ul style="list-style-type: none"> ➤ Entrust ➤ Key beneficiaries/ Environmental and Distributive Environmental Bodies ➤ Natural Resources Wales ➤ National and Local Governments ➤ Landfill site operators

OTHER IMPACT ASSESSMENTS

14. A series of specific impact tests on the policy proposals to develop Landfill Disposals Tax will be considered as part of the full Regulatory Impact Assessment. In your responses, the Welsh Government would particularly welcome your views on the potential beneficial and negative impacts (including costs) of the proposals set out in this consultation on the following:

Small Business

15. The current Landfill Tax is a tax that is levied on businesses; it has positively influenced businesses to review their waste management and move towards greater prevention, re-use, recycling and recovery of waste.
16. Whilst landfill site operators pay Landfill Tax, they 'pass on' these costs to the waste carriers disposing of waste at their sites, and the carriers in turn pass on the cost to the waste producers.
17. Therefore a range of businesses may be affected by the introduction of Landfill Disposals Tax. Wherever possible the Welsh Government will be seeking to minimise burdens on businesses and minimise compliance and administration costs. The Welsh Government also appreciates that businesses require long-term stability and certainty on which to base their business plans and investments.

Voluntary sector

18. A fund to support local community and environment projects within the vicinity of a landfill site is also provided for through the current UK Government's Landfill Tax. The Landfill Communities Fund (LCF) is a tax credit scheme that enables landfill site operators to contribute a proportion of their tax liability to eligible projects.

Landfill Disposals Tax

Projects in Wales, the majority of which were managed by the voluntary sector, received close to £4m from the UK LCF fund in 2013-14.

19. Chapter Five of this consultation refers to the options being considered on whether and how Landfill Disposals Tax should be used to enhance community wellbeing. The continuation of a scheme may have relatively large benefits to organisations with little other funding, likewise, the removal of a scheme could remove funding entirely from some types of projects.

Equality

20. The Government of Wales Act (section 108(6) (c) GOWA 2006) states that a Bill will not be within legislative competence of the National Assembly for Wales if it is incompatible with the European Convention on Human Rights (ECHR).
21. The areas in the ECHR relevant to tax consist of a number of Articles setting out basic principles of human rights. The principal Articles which are being considered as part of the Tax Collection and Management (Wales) Bill for devolved taxes are:
 - Article 1 of the First Protocol which protects the right to property.
 - Article 6 which guarantees the right to a fair trial in the determination of civil obligations and affords further rights where a person is charged with a criminal offence.
 - Article 8 which requires respect for private and family life.
 - Article 14 which prohibits discrimination.
22. The Welsh Government will consider ECHR with regard to its specific policy proposals for Landfill Disposals Tax; this may have particular relevance for the proposed arrangements for exemptions and reliefs, penalties and appeals.
23. In considering if there is any differential impact for Gender and Gender Reassignment, Religion and Belief and Non-Belief, Sexual Orientation, Pregnancy and Maternity, Civil Partnerships and Race, the Welsh Government has determined that there is no evidence to indicate a differential impact to any of these protected groups.

Privacy

24. The Welsh Government has considered a Privacy Impact Assessment and the Information Rights Unit has confirmed that a full Privacy Impact Assessment is not required at this stage.

Rights of the child

25. Having explored the Articles, the Welsh Government considers that, at this stage in the policy development, there are no identified issues in this legislation but further consideration will be given as the policy develops.

Rural

26. The Welsh Government has considered an early Rural Proofing Checklist and been informed that an assessment is not required at this stage. Further assessment, taking into account consultation responses and policy development will be carried out at a later date

Welsh language

27. There is no evidence to suggest that the existing Landfill Tax has a negative impact on the Welsh language and therefore introducing a comparable replacement Welsh tax should not have a negative impact either. The Welsh Government would expect the Welsh Revenue Authority, as a non-Ministerial Government Department, to fully meet the Welsh Language Standards⁴³.
28. Chapter Five of this consultation refers to the options being considered on whether and how Landfill Disposals Tax could be used for community wellbeing. In developing proposals, consideration will be given to the impact on the Welsh language and Welsh speaking communities.

Competition assessment

29. There are two stages to the Competition Assessment. The first is a short filter that assesses whether there is a risk of a significant detrimental effect on competition. The table below summarises the competition filter results at this stage. This will be revisited as the policy develops.
30. At this stage the second stage of the competition assessment is not required.

The competition filter test	
Question	Answer yes or no
Q1: In the market(s) affected by the new regulation, does any firm have more than 10% market share?	No
Q2: In the market(s) affected by the new regulation, does any firm have more than 20% market share?	No
Q3: In the market(s) affected by the new regulation, do the largest three firms together have at least 50% market share?	No
Q4: Would the costs of the regulation affect some firms substantially more than others?	No
Q5: Is the regulation likely to affect the market structure, changing the number or size of businesses/organisation?	No

⁴³<http://www.comisiynyddygymraeg.org/English/Law/welshlanguagemasure2011/standards/Pages/homestandards.aspx>

Landfill Disposals Tax

The competition filter test	
Question	Answer yes or no
Q6: Would the regulation lead to higher set-up costs for new or potential suppliers that existing suppliers do not have to meet?	No
Q7: Would the regulation lead to higher ongoing costs for new or potential suppliers that existing suppliers do not have to meet?	No
Q8: Is the sector characterised by rapid technological change?	No
Q9: Would the regulation restrict the ability of suppliers to choose the price, quality, range or location of their products?	No

POST IMPLEMENTATION REVIEW

31. It is anticipated that the legislation will be reviewed two years after it comes into force or sooner, if the need arises.

Question 31: Do you have any comments on the initial Regulatory Impact Assessment?

Agenda Item 3

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Finance Committee Inquiry into the Collection and Management of Devolved Taxes in Wales

Introduction

1. The WLGA welcomes the opportunity to give evidence to the Finance Committee. We will respond to the detailed questions below but, as we did when we responded to the recent White Paper, it is important that we set out our general position in respect to the new tax environment, and the importance of controlling resources close to communities, where this is best to do so. Much of our response to the Finance Committee's questions underline the expertise which Local Government brings as a local tax administrator.

WLGA's general position in the new tax environment

2. An essential part of our vision is that local government should have maximum freedom and flexibility to control the resources needed to deliver services locally to communities. The tax raising powers which local government already possesses are a key feature of the resource landscape at the local level and are a key element in our vision for greater local control of resources.
3. The WLGA would argue that in the new tax management environment, local democratic responsibility for taxation remains a key feature. Just as there is recognition in the Welsh Government's (WG) consultation proposals that the new devolved taxes should be brought together, there must equally be recognition of the link between nationally devolved taxes and their administration with the management and control of local taxation. Gerry Holtham's paper to the Institute of Welsh Affairs¹ recognised the strategic links between locally collected property taxes, newly devolved taxes and taxes that have the potential to be devolved.
4. The WLGA has welcomed invitations already made to participate in the Tax Advisory Group and our officers are contributing constructively in other fora. We believe that there is a need for Local Government to have a close relationship with the WRA and a means for high level and meaningful interaction with the new body. We will address each of the Committee's questions in turn.

¹ IWA Senedd Paper 2: Taxation in Wales, Spring 2014 (<http://www.iwa.org.uk/en/publications/view/233>)

Who do you think should be responsible for the collection of Welsh taxes?

5. In our response to the White Paper we set out a series of principles for any tax system:
 - a. Minimise leakage and avoidance
 - b. Maximise collection
 - c. Minimise burdens on businesses / taxpayers
 - d. Minimise complexity
 - e. Minimise administration costs
6. One of the main features of a new system for these taxes is that the administrative costs should be kept as low as possible so that as much of the tax receipts as possible are used to fund services. This is also linked to an ability to keep collection rates high (and improving) over time. A track record in both these areas should be a precondition of any organisation that takes up this role in the future. Processes should be automated wherever possible and there should be a single registration process for taxpayers or their agents.
7. In the initial years there should be no significant differences in cost to taxpayer between England and Wales given the porous nature of a relatively long border (this is particularly relevant to Landfill Tax). There should be minimal change from existing practice from taxpayers' experience (except where improvements can be made) to ensure smooth transition.
8. Our default position is simple: Local authorities in Wales are best placed to collect and manage devolved taxes. They already have systems in place to undertake the management and collection of taxes and/or sundry debtor accounts
9. There is no up-to-date contemporaneous cost benchmarking data. However the last time that an exercise was carried out by CIPFA in 2011, the costs of collecting CT and NNDR were significantly lower in Wales than England.
10. The track record of local authorities in Wales in collecting taxes and income due is good. Collection rates for council tax are at historic highs. Compared to unitary authorities in England and Scotland collection rates here are higher. Outstanding debt is falling and revenues practitioners are constantly striving to improve their service.

11. Unfortunately, there are a number of factors that mitigate against local authorities putting forward a proposal to undertake the management and collection of Welsh devolved taxes at the current time:
- The future shape of local government is not yet determined, but the transition process will encompass April 2018 when the Welsh devolved taxes become operational. The degree of uncertainty means that it is extremely difficult for individual authorities to commit to new responsibilities from 2018;
 - Timescales have not allowed for the development of a sufficiently robust proposal with all of the consultation that this would require. Councils are focused on achieving balanced budgets for 2015-16 and implementing savings plans. The level and scale of cuts that need to be addressed means that there is not the capacity at the senior level required to give this proposition the serious consideration needed within the timescales available;
 - A detailed process map would need to be developed which sets out all the steps involved, what can be provided within current systems and what needs to be developed separately;
 - Discussions would need to take place at an all-Wales level at both political and officer fora to agree whether one or more authorities should seek to provide these services, and which authority(ies) this should be;
 - Further work would be required with the authority(ies) to discuss the details of how this might work and to provide robust estimates of the potential costs involved.

Should Welsh taxes be collected by one organisation or different taxes collected by different organisations?

12. There is a case for taxes being collected by different organisations so long as they are the most effective at doing so. We mentioned above that Welsh local authorities perform well in a UK context but there is inevitably a degree of variation across the 22 authorities, it may shape the type of model that is adopted, for example given the low level of transactions it could be done by one authority nationally, or by one authority in each region. What is clear is that one or more local authorities could play a significant role in the management and collection of newly devolved taxes given that they already collect £1,300m in Council Tax, £895m in NNDR and similar levels in sundry debtors.

13. Further work would be required with local authorities to discuss the details of how this might work.

How can the experience and expertise of organisations which already collect some taxes in Wales, such as Local Authorities and HMRC, be utilised?

14. Local authorities have experienced staff with relevant qualifications from the Institute of Revenues Rating and Valuation (IRRV) who have practical experience in all aspects of collection, minimisation of tax avoidance, revenue leakage and managing outstanding debt. Experienced staff would ensure a smooth transition and utilising existing systems would keep costs to a minimum. Obviously HMRC similarly have a vast amount of experience in these areas also.
15. There are a number of ways of harnessing this expertise as the new systems for the collection and management of devolved taxes are developed including involving these organisations and their staff in early discussions or inviting them to join project groups through to arranging secondments for key roles.

How can the collection of Welsh taxes be future-proofed – should solutions be such that they can be adapted to accommodate future taxation changes?

16. It is difficult to envisage in detail what future changes there may be to the tax system beyond the current proposals. The organisations, systems and processes put in place to manage and collect the taxes that are to be devolved currently need to be flexible enough to allow them to be adapted to encompass any further devolution of taxes.
17. Radical changes to the system of local property taxation have been well managed by local authorities and authorities are willing to work with Welsh Government in order to share this expertise.
18. The Council Tax revaluation in Wales in 2005 was managed extremely well by Welsh Local Authorities and the billing systems were flexible enough to cope with the significant number of dwellings that changed band.
19. Over recent years there have been numerous initiatives affecting Business Rates that have been introduced by Central Government that have required software changes as a wider variety of reliefs have become available. Recent examples in

the Retail Relief Scheme, the Open for Business Scheme, the New Development Scheme and the Small Business Rate Relief Scheme.

20. In the instances above Welsh Government and Welsh Local Authorities have worked together to ensure that these Policy decisions have been successfully implemented in a timely and cost effectiveness manner.

How do you think Welsh taxes can be collected in such a way that service standards remain at a consistent level?

21. As mentioned above, the minimisation of complexity, utilisation of existing expertise and automated processes will all contribute towards maintaining service standards in terms of tax collection.
22. From the taxpayer perspective, the system should be simple as possible in terms of registration, calculation and payment of tax to encourage compliance. All taxpayers should have a consistent, high quality experience that is transparent and predictable.
23. A phased approach to significant change will minimise any reduction in collection rates, as will working closely with existing providers and avoiding significant differences from the English regime, given the porous nature of the border, particularly in relation to Landfill Tax.

Do you have any other comments relating to this inquiry which are not specifically addressed above?

24. We agree that a Welsh Revenue Authority (WRA) will need to be established as these taxes are devolved. Our view is that the WRA will become a key player in our financial landscape and will have substantial powers available to it. We believe that the new body should be independent of the Welsh Government and that there is strong accountability to National Assembly. In our response to the consultation on the White Paper, we pointed out that a decision to go with the preferred approach should be fully tested against the benefit of alternative models. We note, for example, that in some responses to a similar consultation by the Scottish Government that a Revenues Commissioner was proposed by some.

25. The devolution of these taxes does provide an opportunity for a more coherent approach to all taxation in Wales, as put forward by Gerry Holtham's paper cited above. There may be a role for the WRA, perhaps advisory in nature, to keep overview of all property taxes in Wales and in examining and developing different approaches to National Non-Domestic Rates (NDR) and Council Tax, while recognising and retaining the local decision-making in terms of Council Tax rates is the cornerstone of local democratic accountability.
26. It is important that the size of the authority and its costs are proportionate to the scale of the taxes that are devolved to Wales, although we recognise that there is a minimum size and cost to establishing the authority. We also recognise that whatever is established needs to be suitable for the potential for devolution of further taxes.

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Cleared by: Councillor Aaron Shotton, Spokesperson for Finance & Resources

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Agenda Item 5

FSB Wales

Collection and management of devolved taxes in Wales

14 April 2015





Finance Committee Inquiry into Collection and Management of Devolved Taxes in Wales FSB Wales

FSB Wales welcomes the opportunity to present its views to the Finance Committee on the Collection and Management of Devolved Taxes in Wales. FSB Wales is the authoritative voice of businesses in Wales. With 10,000 members, a Welsh Policy Unit, two regional committees and twelve branch committees; FSB Wales is in constant contact with business at a grassroots level. It undertakes regular online surveys of its members as well as a biennial membership survey on a wide range of issues and concerns facing small business.

The Collection and Management of Devolved Taxes in Wales

1.0 Introduction

1.1 In developing our response to this consultation we have drawn upon evidence from our regular surveys of members, the workshops we undertook to inform our response to Part One of the Silk Commission, and a survey we undertook specifically on tax collection and management in September 2013.

1.2 Our September 2013 survey of FSB members in Wales showed that on average our members spend between £1,001 and £3,000 per year on professional fees, software costs and staff time managing the payment of taxes. This is a significant cost to small businesses. It is crucial that the Finance Committee fully consider the implications of arrangements for the collection and management of devolved taxation for small businesses as part of its review.

1.3 We believe that the mechanisms adopted in Wales, as a result of the devolution of taxation set out in the Wales Act 2014, should not place additional reporting burdens on small businesses in Wales.

1.4 It should be recognised that many small business owners might, as an objection, highlight the need to pay taxes to two (HMRC and Welsh Revenue Authority) bodies. In shaping this response FSB Wales has been mindful of the benefits of localised taxation on the one hand and the need to address these concerns over increased administration on the other. We are also keen to ensure that the wider principles of better regulation and good governance are observed in this and in all policy areas.



2.0 Who do you think should be responsible for the collection of Welsh taxes?

- 2.1 FSB Wales supports the establishment of a Welsh Revenue Authority as a Non-Ministerial Department, as proposed by Welsh Government in its White Paper in 2014. This follows the Scottish Government’s decision to set up Revenue Scotland in response to the devolution of taxes, which our colleagues in FSB Scotland have also supported. As we have previously indicated however, a Welsh Revenue Authority should only be created following a full evaluation of the likely cost and of any alternative mechanisms.
- 2.2 FSB Wales believes that the Welsh Revenue Authority should be directly accountable to the National Assembly for Wales, and that the Finance Committee is the appropriate committee to scrutinise the Authority. The Finance Committee should, if necessary, be given additional expert advice to undertake this function.
- 2.3 The Board of the Welsh Revenue Authority should include someone who has an SME perspective, as a large number of SMEs would likely come into contact with it. This appointment would help ensure that the new Authority takes strategic decisions in such a way that considers their impact on this sector.

3.0 Should Welsh taxes be collected by one organisation or different taxes collected by different organisations?

- 3.1 FSB Wales argues that the collection and payment of taxes in Wales should be as streamlined as possible. Our September 2013 survey of members indicated that the process of the payment of taxes by small businesses, which typically do not have dedicated finance teams, is a significant time commitment.

Table 1: Amount of Time Spent by FSB Members on Complying with Obligations	
No time at all	12%
Around 1 hour each month	18%
2 to 3 hours	26%
4 to 5 hours	13%
6 to 8 hours	11%
2 days	6%
3 to 5 days	3%
6 days or more	2%
Unsure	9%

Source: September 2013 FSB Member Survey (Base 2,190)

- 3.2 The establishment of a single Welsh Revenue Authority would have noticeable benefits in limiting the administrative burden on small businesses. This relates to



both of the Welsh taxes that will replace Stamp Duty Land Tax and Landfill Tax, as well as any taxes that may subsequently be devolved.

3.3 Our 2013 survey of members on the collection and management of taxation also showed that after cash flow problems, the most significant reasons for the late payment of taxes arise from communication difficulties, such as understanding what is required and confusion of payment dates.

3.4 The collection and management of taxes in Wales, beginning with the two new Welsh taxes, by a single authority is an opportunity to limit confusion. The new Authority however, must ensure it effectively communicates with taxpayers.

4.0 How can the experience and expertise of organisations which already collect some taxes in Wales, such as Local Authorities and HMRC, be utilised?

4.1 It is important that Welsh Local Authorities and HMRC are fully engaged in managing the transition period for transferring responsibility for the collection of Stamp Duty Land Tax and Landfill Tax to a Welsh Revenue Authority. There is an identifiable administrative risk in the transfer from one responsible authority to another, and the impact of this can be best mitigated if existing authorities fully engage with the transition arrangements.

4.2 The FSB believes that the Welsh Revenue Authority should exist as a 'shadow authority' for a period of time prior to its taking responsibility for the two new Welsh taxes from April 2018, to enable its management and staff to work closely with existing authorities in handling the transition, to ensure any ICT problems are eliminated, and to avoid any issues that might lead to a short term confusion amongst small businesses in Wales around the payment of taxes.

5.0 *How can the collection of Welsh taxes be future-proofed – should solutions be such that they can be adapted to accommodate future taxation changes?*

5.1 The Welsh Revenue Authority should be established in full recognition that further taxes are likely to be devolved to Wales over the next five to ten years. The Authority should also be prepared to take responsibility for other Welsh taxes that Welsh Government may subsequently bestow upon it, such as business rates, as this could lead to a more streamlined process for the collection and management of taxes in Wales.

5.2 FSB Wales believes that the Welsh Revenue Authority should have enshrined in it at its outset a duty to conduct Tax Impact Assessments ahead of any future taxation changes. These Tax Impact Assessments can be used to inform the debate around



any future tax decisions taken by Welsh Government, particularly around the impact on the SME sector.

6.0 How do you think Welsh taxes can be collected in such a way that service standards remain at a consistent level?

6.1 Our most recent survey of members specifically relating to the collection and management of taxes undertaken in September 2013 highlighted a series of concerns relating to small business taxation, and related specifically to HMRC. Our survey also asked FSB Wales members to rank their priorities for new services or service improvements. The following table highlights the findings.

Table 2: FSB Members' Priorities for New or Improved Tax Collection or Management Services	
Reduce the amount of time it takes to contact an HMRC advisor on the telephone	37%
Allow queries to be asked and resolved via email	33%
Provide one tax reference number for all of a business's taxes	22%
Improve the appearance and ease of navigation of the HMRC website	21%
Improve the clarity of information available on the HMRC website	19%
Allow ALL forms to be completed and submitted online	17%
Allow queries to be asked and resolved via online chat	16%
Provide a dedicated HMRC business phone line to assist in tax calculations	13%
Provide an HMRC operated payroll bureau service for small businesses	13%
Provide an online tool that allows tax liability to be calculated under different scenarios	12%
Increase awareness of the provision to pay taxes by monthly standing order	12%
Provide real time notification when payments are received by HMRC	10%
Provide a standard payment date for all annual taxes	9%
Other	7%
Unsure	12%

Source: September 2013 FSB Member Survey (Base 2,164)

6.2 FSB Wales believes that the Welsh Revenue Authority needs to improve on the record of HMRC in providing information, guidance and support, and in responding to individual concerns and complains. A duty to provide high levels of responsiveness should be required of the Welsh Revenue Authority from the outset.

6.3 In its 2014 White Paper the Welsh Government stated that the Welsh Revenue Authority might choose to delegate responsibilities for the collection of tax. We believe that the Welsh Revenue Authority should maintain control of the collection of taxes that it has responsibility for, as any delegation may complicate the process of payment for small businesses in Wales.

6.4 Should delegation of tax collection take place, the Authority must ensure a consistency of approach across Wales. Our research on regulatory issues has



highlighted consistence in approach from regulatory agencies as a key factor that impacts on the day-to-day operation of small businesses in Wales¹.

7.0 Do you have any other comments relating to this inquiry which are not specifically addressed above?

- 7.1 The majority of our members have sought external help from an accountant, tax advisor or book keeper in the payment of their taxes. Our September 2013 survey of members showed that 77% (of 2,185 respondents) had used external professional support in the payment of their taxes.
- 7.2 In developing its proposals for a Welsh Revenue Authority, we believe the Welsh Government should seek to work with the external professional advice industry to gather expert opinion on the establishment of the Authority.

¹ FSB Wales. 2014. *Better Regulation for Wales* [Online]. Available at:
<http://www.fsb.org.uk/policy/rpu/wales/images/better%20regulation%20wales.pdf>



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The Federation of Small Businesses Wales

The FSB Wales is non-profit making and non-party political. The Federation of Small Businesses is the UK's largest campaigning pressure group promoting and protecting the interests of the self-employed and owners of small firms. Formed in 1974, it now has 200,000 members across 33 regions and 194 branches. FSB Wales currently has around 10,000 members, a Welsh Policy Unit, two regional committees and twelve branch committees meaning FSB Wales is in constant contact with small businesses at a grassroots level in Wales.

Lobbying

From the Press and Parliamentary Affairs Office in Cardiff, FSB Wales campaigns with AMs, MPs and MEPs in Cardiff Bay, Westminster and Brussels in order to promote our members' interests. FSB Wales also works closely with local, regional and national media outlets to highlight our members' concerns. Development Managers work alongside members in our regions to further FSB Wales influence at a regional level. More widely, the FSB has Press and Parliamentary Offices in Westminster, Glasgow, Belfast and Brussels to lobby the respective Governments.

Member Benefits

In addition, Member Services is committed to delivering a wide range of high quality, good value business services to members of the FSB. These services will be subject to continuing review and will represent a positive enhancement to the benefit of membership of the Leading Business organisation in the UK.

Vision

A community that recognises, values and adequately rewards the endeavours of those who are self employed and small business owners within the UK.

The Federation of Small Businesses is the trading name of the National Federation of Self Employed and Small Businesses Limited. Our registered office is Sir Frank Whittle Way, Blackpool Business Park, Blackpool, Lancashire, FY4 2FE. Our company number is 1263540 and our Data Protection Act registration number is Z7356876. We are a non-profit making organisation and we have registered with the Information Commissioner on a voluntary basis.

Associate Companies

We have three active subsidiary companies, FSB (Member Services) Limited (company number 02875304 and Data Protection Act registration number Z7356601), FSB Publications Limited (company number 01222258 and Data Protection Act registration number Z7315310) and FSB Recruitment Limited. (company number 07836252 and Data Protection Act registration number Z3131666).

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Leighton Andrews AC / AM
Y Gweinidog Gwasanaethau Cyhoeddus
Minister for Public Services



Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref: LF/LA/0387/15

Jocelyn Davies AM
Chair, Finance Committee
National Assembly for Wales

16 April 2015

During my attendance at Committee on 25 March to give evidence on the Local Government (Wales) Bill, I agreed to write to you with further information.

The Committee asked whether the Expressions of Interest in voluntary merger submitted by Local Authorities contained information on the cost of preparing the submissions themselves and the actual costs (and by implication savings) of voluntary merger.

The Expressions of Interest describe matters which the Authorities believe would have cost implications in working up a merger proposal, but these are not costed. Only the submission by Conwy and Denbighshire sets out specific costs and savings of voluntary merger. I enclose a copy of my Written Ministerial Statement on 27 January, which includes links to the Expressions of Interest published on the Local Authorities' own websites.

The Committee also asked whether the Welsh Ministers have powers to merge Local Government Pension Funds and for confirmation of the rules governing these funds. Section 7 of the Superannuation Act 1972 provides for the superannuation of persons employed in Local Government service. It confers on the Secretary of State a regulation-making power in respect of pensions, allowances or gratuities. The Local Government Pension Scheme Regulations 2013, which apply in relation to England and Wales, have been made in exercise of these powers. Functions under the Act have not been transferred to the Welsh Ministers and, therefore, remain functions of the Secretary of State.

Finally, I enclose a copy of the 'Staff Commission for Wales - Report to the Secretary of State for Wales: September 1996', which I believe will be of interest to the Committee. In particular, the Report records the concerns relayed to the Staff Commission (and the predecessor Advisory Committee) about the appointment and re-grading of staff by the existing local authorities during 1993 and 1994, prior to reorganisation (for example, see paragraph 24 on page 8 of the Report).

Leighton Andrews AC / AM
Y Gweinidog Gwasanaethau Cyhoeddus
Minister for Public Services



Llywodraeth Cymru
Welsh Government

WRITTEN STATEMENT BY THE WELSH GOVERNMENT

TITLE Voluntary Mergers: Update on Expressions of Interest Received
DATE 27 January 2015
BY Leighton Andrews AM, Minister for Public Services

My written statement on 11 December 2014 explained that I would delay announcing my decision on each of the Expressions of Interest submitted by Local Authorities wishing to develop a proposal for Voluntary Merger. I am announcing those decisions today.

I welcome the leadership shown by the political Leaders of each of the authorities concerned and their willingness to help shape their futures. I understand that securing agreement from their prospective partner councils took a good deal of work and personal commitment.

I received three formal Expressions of Interest submitted in accordance with the timetable set out in a Prospectus which I issued in September 2014¹. These were from the following authorities:

- Torfaen County Borough Council & Blaenau Gwent County Borough Council;
- Bridgend County Borough Council & Vale of Glamorgan Council; and
- Conwy County Borough Council & Denbighshire County Council.

¹ *Invitation to Principal Local Authorities in Wales to submit proposals for voluntary merger, Welsh Government, 18 September 2014*

I have considered each Expression of Interest carefully against the criteria set out in the Prospectus. I am disappointed to report that on the basis of this assessment I am not persuaded that any one of these Expressions of Interest sufficiently meets the criteria for moving ahead to prepare a full Voluntary Merger Proposal.

While there were some positive aspects to each Expression of Interest, the Prospectus was clear on what would be required. This included the need for both applicant authorities to set out a compelling vision for the new authority and to provide assurance that post merger arrangements would reduce complexity and increase coherence and coterminosity of public services. Where proposals diverged from our full preferred map (Williams Option 1), authorities were expected to provide evidence of exceptional circumstances as to why they should be approved. We also needed to have confidence that authorities would be able to develop comprehensive merger proposals by 30 June 2015.

Earlier, I spoke with the Leaders of all the authorities involved to advise them of my decision and will be writing to each one of them shortly setting out my reasons for each decision in more detail.

As Members will be aware the Local Government (Wales) Bill was published yesterday. It includes provisions to enable Voluntary Mergers to take place which would need to be agreed by 30 November 2015. I will give further consideration to these provisions as the Bill proceeds.

Note

The Expressions of Interest have been published by the councils involved and can be found at:

Bridgend County Borough Council and the Vale of Glamorgan :
http://www.google.co.uk/url?url=http://www.bridgend.gov.uk/web/groups/public/documents/agenda_moderngov/115948.pdf&rct=j&frm=1&q=&esrc=s&sa=U&ei=EnjGVJLRNLNCv7Ab40oHABQ&ved=OCBQQFjAA&usq=AFQjCNHq6MXAIHZ8DITshyG92L4dKUBkbw

Conwy County Borough Council and Denbighshire County Council:

<https://moderngov.denbighshire.gov.uk/ieListDocuments.aspx?CId=134&MId=5052&LLL=0>

Torfaen County Borough Council and Blaenau Gwent County Borough Council (*draft version*):

<http://moderngov.torfaen.gov.uk/ieListDocuments.aspx?CId=137&MId=1165&Ver=4&LLL=0>

JS 3173(429)

The Staff Commission for Wales



Report to the Secretary
of State for Wales:
September 1996

STAFF COMMISSION FOR WALES

Chairman	Sir Richard Lloyd Jones KCB
Members	Mr Peter Bennett Mr Kevin Crowley Mrs Eleri Jones Mr Elwyn Morgan Mr Michael Towers
Secretary	Mr Roger Bollington (<i>to July 1995</i>) Ms Marie Knox (<i>from July 1995</i>)
Secretariat	Mr Robert Holt Mrs Julie Perry

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To: The Rt Hon William Hague MP
Secretary of State for Wales

I have the honour to present this report on the work of the Staff Commission and its predecessor Advisory Committee in the three years from September 1993. At this stage, six months after the establishment of the new unitary authorities on 1 April 1996, I expect that there will be little, if any, call on the Commissioners for advice. This may accordingly represent our final report. However we recognise that under the legislation the Commission will remain in existence until July 1997. It may be necessary to present a supplementary report to you at that point.

Richard Lloyd Jones
Chairman

30 September 1996

THE ROLE OF THE STAFF COMMISSION FOR WALES

INTRODUCTION

1. The Staff Commission was established on 5 July 1994, after the Local Government (Wales) Act 1994 received its Royal Assent, for a period of three years. It had already been in operation as a shadow Commission since 12 April 1994, following the completion of the work of the Advisory Committee on Staffing Matters. The Advisory Committee had been set up in September 1993 to ensure that staffing matters were taken into account throughout the legislative process, which began on 30 November 1993 with First Reading of the Local Government (Wales) Bill.

MEMBERSHIP

2. Three of the four members of the Advisory Committee, Sir Richard Lloyd Jones, Peter Bennett and Michael Towers, were appointed to the Commission. The fourth member of the Committee, D H Davies, was unfortunately unable to continue with his appointment due to ill health. The other three members of the Commission were Kevin Crowley, Eleri Jones, and Elwyn Morgan. This report at times refers to the work of the Advisory Committee in order to provide a full background to the Commission's approach to its duties.

CONTEXT

3. The context of the Commission's work was that the existing two tiers of local government, comprising 8 county councils and 37 district councils, were to be abolished in total and all their functions were to be merged and discharged by 22 new unitary authorities.

4. The new system was to come into force on 1 April 1996, having been postponed from 1 April 1995, and an upheaval so fundamental in nature was bound to affect the career prospects and pattern of life of many local government employees and to cause great stress and anxiety for them and their families. Staff employed in jobs which were specific to a particular location (for example care assistants and teachers) would see only a change of employer. The staff principally affected by the reduction in the number of authorities from 45 to 22 would be those clerical and administrative staff employed in local authority headquarters to provide central services, as well as staff working in county and district planning departments which were to be amalgamated. Staff working

in county council services such as education and social services, Powys apart, would see their departments divided up among the successor authorities and would, in many instances, be required to work in a new location.

5. The Government made clear in Parliament during consideration of the legislation that local government reorganisation was not expected to lead to a large reduction in the number of staff, and the Explanatory and Financial Memorandum to the Bill estimated a reduction in staffing levels of about 500. This compares with a local government workforce of some 150,000 employees (paragraph 5.1 of the White Paper "A Charter For The Future"). It had to be kept in mind, however, that any reduction in numbers would be likely to fall primarily within the comparatively narrow band of staff providing central services, where the impact would be proportionately greater. Throughout our work we were acutely conscious that the possibility of job losses was a source of great anxiety for staff, together with concern about the location and nature of their future employment for those staff whose jobs would be changing.

REMIT

6. Our terms of reference were set out in Section 40 of the Local Government (Wales) Act 1994 which required the Staff Commission for Wales to:

- a) advise the Secretary of State on the steps necessary to safeguard the interests of staff employed by
 - i) the old authorities;
 - ii) the new principal councils; or
 - iii) the Residuary Body;
- b) consider and keep under review
 - i) arrangements for the recruitment of the staff of any of those bodies; and
 - ii) the organisation, management and remuneration of the staff of the new principal councils;
- c) consider and keep under review the arrangements for the transfer of staff from any of the old authorities in consequence of any provision made by or under this Act; and
- d) consider such staffing problems and other staffing matters as may be referred to it by the Secretary of State as arising out of any provision made by or under this Act.

7. Guidance issued to us by the Secretary of State in August 1994 set out how he expected us to approach our task. In substance our remit was the same as the one given under Section 258 of the Local Government Act 1972 to the Staff Commission for Wales appointed in connection with the 1974 reorganisation of local government, except for the requirement to consider and keep under review the organisation, management and remuneration of the staff of the new principal councils. This latter requirement, which was new, controversial and unwelcome to local authorities, is discussed further in Chapter Four. In November 1995 the Secretary of State made an order bringing the new national park authorities within our remit. Our involvement with these authorities and other new bodies is discussed in Chapter Five.

8. Our role was advisory in nature; we could not direct local authorities to adopt a particular course of action. The Secretary of State could do so, but only acting on our advice: section 40(3) of the Act enabled him to give directions to any authority with respect to the supply of information requested, and the implementation of any advice given, by the Commission. Such action was required on only one occasion (described in paragraph 62).

9. Throughout our activities we sought, wherever possible, to work closely with local authorities to reach consensus on the best way forward. We had no role in advising on the non-staffing aspects of reorganisation and we sought to make it clear from the beginning that the Commission had no direct role in relation to political issues such as the number and size of authorities, the funding of reorganisation, or the compensation schemes. However we also made it clear to authorities, trade unions and other bodies that we would pass on their comments to the Welsh Office. We met the Secretary of State for Wales, the Parliamentary Secretary, and Welsh Office officials on various occasions and these provided valuable opportunities to communicate the concerns which we had heard.

ACTIVITIES

10. The early work of the Advisory Committee and the Shadow Commission, discussed in Chapter Two, together with the Secretary of State's guidance, gave us a clear view of our priorities and of the task before us. Broadly, the Commission's contribution to the transition from the old to the new structure of local government comprised:

- the exercise of controls over recruitment of staff by both the old and the new authorities, in the interests of the people currently employed in local government;
- the setting up and monitoring of machinery for dealing with appeals by individuals aggrieved by their assignment, on transfer orders, to one of the new authorities, or by their exclusion from prior consideration in competitions for posts with the new authorities;
- consideration of the organisation and remuneration of senior officers of the new

THE WORK OF THE ADVISORY COMMITTEE AND THE SHADOW COMMISSION

unitary authorities under Section 40 (2) (b) (ii) of the 1994 Act;

- the issue of guidance on a variety of matters relevant to local government and, on request, on matters specific to individual authorities;
 - advice to individuals, trade unions, and local authorities on matters of concern or doubt; and
 - distribution of staff bulletins informing staff of progress with reorganisation, of the Commission's latest guidance, and of any key issues of which they should be aware.
11. Our circulars provided a framework for authorities' preparations for reorganisation. While recognising the need for authorities to have the flexibility to respond to local circumstances with local solutions, our advice helped to bring about a consistent approach on matters of principle.

12. As work on reorganisation progressed, it became increasingly clear that the Commission offered a useful service both to individuals and authorities simply by acting as an independent and impartial source of information and advice. This was particularly true in the later stages of reorganisation where personnel departments, no doubt due to the volume and pace of work, were in some cases finding it difficult to respond promptly to staff with queries which were to them of the greatest urgency.

13. Reorganisation placed enormous pressure on local authority members, personnel departments and senior officers. Without their hard work and commitment, reorganisation would not have been possible. Their efforts are to be applauded.

THE ROLE OF THE ADVISORY COMMITTEE

14. As already indicated, the Advisory Committee laid the foundations for the work of the Staff Commission by identifying, and discussing with interested parties, the staffing issues which would need to be addressed in preparing for reorganisation. Its role was to:

- advise the Secretary of State on the draft guidance for the Staff Commission;
- consider what advice needed to be issued in advance of the establishment of the Staff Commission;
- consult interested parties; and
- consider any other issues referred to it by the Secretary of State.

15. The Committee met for the first time on 14 September 1993. At that early stage the proposed date for reorganisation was 1 April 1995. The subsequent postponement of that date by one year was not announced until 22 November during the Queen's speech debate. During that period there continued to be strong opposition to reorganisation from many quarters. The Assembly of Welsh Counties (AWC) and the Wales Trade Union Council (WTUC) had passed resolutions banning contact with the Welsh Office on reorganisation matters and, by implication, with the Committee. The district councils, in contrast, were willing to meet the Committee. The first in a series of meetings with district councils was held on 11 November when the Committee was reassured to discover that the key staffing issues which it had identified coincided broadly with those raised by councillors and officials. Despite the continuing AWC ban, the first in the Committee's round of meetings with the eight county councils was held on 2 December 1993.

16. In some instances during these early meetings the Committee met criticism from bodies which were strongly opposed to reorganisation and which viewed the Committee as an instrument of the Government. The Committee and later the Commission emphasised to authorities and trade unions that its only role was to protect the interests of staff; it could not and would not get involved in discussions of a political nature. In time these bodies acknowledged that we shared common goals and co-operated fully with us. By the end of March 1994 when the Advisory Committee was wound up, it had met 34 existing county and district councils and many other representative bodies eg UNISON, the Council of Welsh Districts (CWD), and AWC. We were especially grateful for the co-operation of local government throughout a most difficult time for officers and

councillors. These and our later consultations with local government and staff are discussed in more detail in paragraphs 34 - 40.

17. The main themes which emerged from the Committee's early meetings were:
 - uncertainty over the implications for reorganisation of the Transfer of Undertakings Protection of Employment (TUPE) Regulations (which implemented in the United Kingdom the European Commission's Acquired Rights Directive), and anxiety about the possible consequences of misinterpretation of these regulations;
 - debate as to whether all staff should be allowed to transfer to the new authorities;
 - concern over interim appointments and regrading, and payments for additional work in preparation for reorganisation;
 - agreement that guidance on competition and prior consideration (defined in paragraph 57) would be required;
 - agreement that an appeals mechanism would be required;

concern that the compensation for redundancy should be sufficiently generous to enable staff to leave local government voluntarily where appropriate (including those under 50, who formed the majority of staff) and to compensate for hardship encountered; and

concern that information on the compensation schemes should be made available promptly.

The Advisory Committee/Shadow Commission felt that early attention should be given to interim appointments, additional payments, and the principles of staff transfer. Accordingly consideration was given to these matters before the formal establishment of the Commission and the outcome of our deliberations is discussed below. The appeals mechanism and prior consideration, also viewed as high priorities, were dealt with in the weeks following formal establishment of the Commission and are discussed in Chapter Three, together with those issues which were identified in the Secretary of State's guidance to the Commission.

TUPE AND THE STAFF TRANSFER ORDERS

19. During its early round of meetings with local authorities in Autumn-Winter 1993 the Committee discovered that there was wide (but not unanimous) support for the principle of all staff transferring to the new authorities. Initially the Committee had a number of reservations about this concept. The Committee recognised that a reduction in the number of local authorities would lead to a reduction in the number of central

administration staff required. Long-term employment would not therefore be guaranteed for the staff transferring. In those circumstances it could be argued that transferring all staff, with or without a post, would merely prolong the period of uncertainty and anxiety for staff.

20. The Shadow Commission considered this question further at its early meetings. By this time more information had become available on the implications of TUPE for reorganisation. Potential complications arising from TUPE were mentioned at the Advisory Committee's initial briefing by the Welsh Office and were raised repeatedly by many interested parties at every stage of the reorganisation process.

21. Case law on the application of TUPE in the public sector was limited, and a variety of subjective interpretations of the regulations in relation to the local government reorganisation process in Wales were offered to us over the months. We made it clear throughout our work that we would not provide interpretations of TUPE; this could only be done by the courts. In view of this uncertainty over the implications of the regulations for the transfer rights of individual employees, the shadow Commission took a preliminary view in favour of transferring all staff, in spite of our earlier reservations, and informed the Welsh Office accordingly on 9 May 1994.

22. This view was reinforced in December 1994 when it emerged that, taking account of TUPE, the Welsh Office anticipated that staff of authorities whose areas were not split by reorganisation would automatically be included in the staff transfer order, but that inclusion would not be automatic for staff of the 13 authorities whose areas would be split. This situation appeared to us, regardless of TUPE, to be unfair to staff of the splitting authorities and to offer an unsatisfactory context for the transfer process and for discussions among authorities over the future destination of these individuals. We therefore followed up the Shadow Commission's earlier advice by writing to the Parliamentary Under Secretary of State for Wales on 8 December 1994 arguing for all staff to be treated on the same basis. We received many letters of support from local authorities for this stance, and we were pleased that the Minister responded positively to our request by agreeing to give effect to local authorities' decisions on the transfer of staff. Subsequently all local authorities in Wales, under a National Joint Council (NJC) agreement, made a commitment to transfer all staff who wished to be transferred.

23. We believed this commitment to transfer all staff who wished to be transferred to be fundamental to the achievement of a fair and smooth transfer process. It meant that transfer discussions focused on where staff were to transfer rather than whether they should transfer at all. We recognised that the process of appointing individuals to posts in the new authorities would always be an anxious period for staff but this transfer commitment would have a cushioning effect, allowing authorities time to reconsider their structures and to retrain staff where possible. But the over-riding benefit was that staff from splitting authorities would not be placed at a disadvantage from the very outset. Events proved the worth of the commitment to transferring all staff.

STAFF APPOINTMENTS AND REGRADING IN THE INTERIM

4. At its first meeting on 14 September 1993, the Welsh Office raised with the Advisory Committee the question of appointments and regradings of staff by existing authorities prior to reorganisation. It became apparent from the series of meetings which the Advisory Committee held with authorities that early advice on this issue would be welcome. We heard claims that some authorities were proposing to take action which would give their staff an advantage over their neighbours in the transfer process, as it was said had happened in the 1974 reorganisation. Although there appeared to be little evidence to support these claims, they were a source of anxiety for staff. The Shadow Commission therefore issued a draft circular, based on the Advisory Committee's earlier consultation with authorities, in June 1994. Our final guidance was published on 6 September 1994. It advised authorities to look for alternatives to permanent appointment when filling vacancies in those departments which were most likely to be subject to change as a result of reorganisation, and in general to avoid regradings. Its purpose was to avoid increases in staff numbers which could result in future redundancy and to avoid some staff being put at a disadvantage when it came to competing for particular posts with the new authorities. The guidance on filling vacancies did not apply to front-line posts which we recognised needed to be filled in order to maintain service delivery.

5. In response to representations from local government, we agreed that we would meet all appointment proposals as this would very likely have led to considerable delay. Instead prior to the election of the shadow authorities we asked existing authorities to consult their colleagues in the transition committees which were being established for the unitary authority areas before making such appointments and to come to the Commission only if there was no agreement on the need for an appointment or regrading.

6. In general this arrangement seemed to work well and local authorities acted in a flexible and sensible way. The Commission received very few referrals although there was an occasional complaint from trade unions that an authority was, for example, applying for advice on temporary appointments too rigidly.

PAYMENTS TO STAFF FOR ADDITIONAL WORK ON REORGANISATION

7. During its discussions with authorities on interim appointments the Advisory Committee also raised the question of payments for additional duties in the interim period. As a result of these discussions, the Advisory Committee concluded that guidance on this would be of benefit to local government. We sought the then Secretary of State for Wales' views on this in January 1994. He indicated his reservations about the need for the Committee to give any guidance on the subject and asked the Committee to view its initial conclusions. This was done and the shadow Commission eventually concluded that there were valid arguments supporting the need for guidance. In June 1994 we again put this view to the Welsh Office. In response the Welsh Office informed us that, in commenting on the Secretary of State's draft guidance to the Commission,

authorities had been divided between those in favour of central guidance on this matter and those which wished to retain the flexibility to determine levels of payments themselves.

28. In view of this lack of consensus among authorities we decided against setting central guidance and instead circulated to authorities, in September 1994, a model scheme which had been drawn up in one county area and which authorities individually might decide to adopt. Believing as we had done that there would be advantage in bringing about a common approach, we asked transition committees in each area to reach an agreed view about the basis on which officers would become eligible for payments for additional responsibilities, and the level of those payments.

29. The Commission was not made aware of any dissatisfaction with this approach and was content that it had provided a practical framework for authorities' decisions. In practice it appeared to work well.

COMPENSATION FOR REDUNDANCY

30. It was not part of our remit to recommend a compensation scheme for those made redundant or taking voluntary early retirement due to reorganisation. However it was clear from the Advisory Committee's meetings with local authorities that a scheme would be an important element of the transfer process. In June 1994 the Department of the Environment consulted relevant bodies on the proposals drawn up by the Government. We considered the arguments carefully and supported the view taken by local authorities that these proposals compared unfavourably with the terms offered in previous reorganisations. There was therefore a real risk that they would impede a smooth transition in Wales. We believed that the compensation terms should be substantially the same as in the 1986 reorganisation of the London and Metropolitan authorities. We also argued that, whatever the terms, they should be mandatory rather than discretionary as the Government proposed, since it would be unfair for some staff in Wales possibly to be treated less favourably than others. The Government declined to improve the level of compensation but did make the scheme mandatory.

31. Subsequently, in August 1995, the Welsh Office invited us to comment on the length of the "prescribed period" during which redundancy compensation would be available. We felt that it would be advantageous for authorities to have more time to test their new staffing structures and to adjust them as appropriate and for staff who were changing roles to have more time to adapt to the new arrangements. The Commission therefore took the view that the prescribed period should be increased from 15 months to at least 18 months and proposed that there should be flexibility for the period to be further extended if necessary. In the light of the Commission's and other responses, the Welsh Office extended the "prescribed period" to 21 months, ending on 30 September 1997. This decision was welcome to us.

32. As the scheme does not end until 18 months after reorganisation, it will be some

time before a considered view can be taken of the consequences for local government and for individuals of the compensation terms which were offered.

COMPENSATION FOR LOSS OF REMUNERATION

33. As with compensation for redundancy, we were consulted on the Government's proposals to compensate those employees who suffered a loss of earnings (detriment) as a direct result of reorganisation. We warmly welcomed these proposals in principle but again we urged that the scheme should be mandatory and suggested a number of improvements. We are pleased to say that the final scheme was made mandatory for eligible employees and the proposed minimum requirement of 2 years local government service was omitted, as was the proposed cap on payments by reference to the potential redundancy payment. The Government did not accept the suggestion that the compensation should also cover loss of holiday entitlement.

AFTER ROYAL ASSENT - CONSULTATION ARRANGEMENTS

34. As noted above, the Advisory Committee began the process of consulting with local government shortly after it was set up, and when the Shadow Commission replaced the Committee in April 1994 we continued with this exercise. By early August 1994 we, or our predecessor, had met all 45 of the existing local authorities in Wales. These meetings in our view afforded a solid platform of information and opinion on which the Commission was able successfully to build.

35. Shortly after the Act received Royal Assent in July 1994 local authorities were required to set up transition committees for each of the unitary authority areas. Although our visits to the 45 authorities had given us a useful insight into the problems facing different areas, we felt it was important for the Commission to meet the transition committees which would be coordinating preparations for reorganisation until the election of the 22 shadow authorities in May 1995. Accordingly we began a further round of visits in November 1994 and met 20 of the 22 transition committees; those in South Glamorgan declined our offer of a meeting. These discussions were helpful in confirming that we had identified the key issues of concern and that transition committees strongly supported the concept of an all-staff transfer. They also gave us an insight into how authorities were working together to prepare for reorganisation.

Trade Unions and Staff Representatives

36. During each of our rounds of meetings with authorities and transition committees - and later with shadow authorities (paragraph 8.5 below) - we also arranged to meet staff representatives and trade unions. We found these discussions particularly useful. Once initial suspicions about the objectives of the Commission had been overcome, staff representatives came to regard its members for the most part as a helpful source of

information and advice, a useful safety valve, and a convenient unofficial sounding board. For our part the meetings with staff representatives enabled us to compare employer perceptions with employee perceptions over particular issues in the same place on the same day, to clear up any obvious misunderstandings between them, and provide feedback where requested, always acting impartially. In two cases where employer/employee tensions had risen to a serious level we acted, in effect, as unofficial mediators with positive results in both cases.

37. These meetings were useful for another reason. We viewed it as essential that authorities should maintain good communications with staff and their representatives - this was a message which we constantly pressed upon authorities - and our meetings with staff and trade unions demonstrated, in a clear and concrete way, the importance we attached to communication with staff.

38. During these early meetings with staff representatives we learned that the impact of the reintroduction of compulsory competitive tendering on the reorganisation process was a source of great anxiety. While this was outside our remit, we agreed to pass their concerns on to the Secretary of State. We did so at a meeting with the Parliamentary Secretary held in November 1994 and continued to make the point to Welsh Office officials. We were pleased when the Secretary of State announced in June 1995 that the reintroduction of compulsory competitive tendering would be postponed for a further six months to 1 April 1997 and 1 October 1997, according to the type of service.

Commission Circulars

39. Following the establishment of the Commission we undertook a series of formal consultations with local authorities, trade unions and other bodies, on the questions about which we had been invited to produce guidance. It was clear to us that it was vital for systems to be put in place which could support a smooth and transparent transfer process and which would protect staff from the threat of unfair or unequal treatment. The key areas where we felt guidance was required were:

- the process of allocating staff to successor authorities;
- the appointments process, including decisions on whether competition was required and who should be eligible to apply for posts; and
- the appeals mechanism.

40. The outcome of our consultations on these, and other matters, are discussed in Chapter Three.

**PREPARING FOR TRANSFER -
DISAGGREGATION, COMPETITION,
PRIOR CONSIDERATION AND APPEALS**

THE STAFF TRANSFER ORDER

41. Initially it had been envisaged by the Welsh Office that the Commission would take a leading role in identifying staff for inclusion in the staff transfer order. This could have involved consideration of how TUPE would apply to different categories of staff. As noted above we considered any distinction to be inherently unfair and were fully in support of the agreement, which was reached by authorities early in 1995, to transfer all staff who wished to be transferred. This commitment radically altered our role in relation to the staff transfer order. Instead of needing to take a direct role in its preparation, we were able to concentrate on ensuring that appropriate systems were in place to underpin authorities' preparation of the order and to provide safeguards for staff. The national appeals mechanism clearly provided the key safety net for staff and our advice on prior consideration, competition, and recruitment and selection procedures, discussed in the following pages, underpinned these arrangements.

42. In the event it was necessary for the Commission directly to advise the Secretary of State on the staff transfer order only when authorities failed to reach agreement on the destination of individual employees. This occurred in four instances only and they were dealt with in the staff transfer no 2 order. The Commission maintained close contacts with the Welsh Office concerning the staff transfer no 3 order, but formal advice was not necessary.

43. In a few instances the staff transfer order transferred individuals to the joint employment of more than one authority. We recognised that in each case there was a particular reason for this decision - for example the authorities were planning to set up a joint committee to oversee a particular activity - but we were concerned that joint employment could lead to uncertainty for staff. In each case we urged the individuals' current employer to broker an agreement between the successor authorities as to which one of them would act as designated employer for the purposes of law for that group of staff. The authorities then confirmed that appropriate arrangements had been agreed among the successor authorities.

DISAGGREGATION

44. Where existing authorities were to be split among two or more new authorities, it was necessary for authorities to decide the relevant criteria for apportioning posts and staff to

each successor authority and we were asked to offer advice. We discussed these issues with those transition committees which were already getting to grips with them. We concluded that for the great majority of staff it would be readily apparent, by virtue of their job location, to which new authority they should transfer. For others the new authority would be readily identifiable by reference to the proportion of their work that was attributable to a particular location or area. For the remainder of staff with no ready geographical identity, apportionment could be in proportion to the share of the existing Council's budget spent in the new authority area, or in proportion to population. We suggested that authorities should agree locally the approach to be adopted with staff representatives, but that in the event of difficulty we would be inclined to adopt the share of budget criterion. The staff disaggregation process was an area where we felt that it was in the interests of staff for procedures to be developed and agreed in the light of local circumstances. We made it clear that we would be available to help through discussion and advice in the event of any difficulties.

45. Once agreement had been reached on the number of staff to transfer, authorities then had to develop, and agree with staff, the criteria to be used to determine which individuals would transfer to which authority. The criteria generally included personal preferences, domestic circumstances, length of service and the skills mix required by authorities. This was an anxious period for staff covered by this procedure. Decisions on disaggregation would affect not only their new place of work but also, potentially, their future employment prospects. Staff were anxious to avoid expressing a preference for an authority which might prove not to require their particular skills and some argued that they should not be obliged to express a preference for one authority or another until the unitaries had developed their staffing structures. While we sympathised with these anxieties we felt that delay was impracticable - in many instances personal preference would not in any case be the crucial factor in deciding where an individual would be assigned - as well as carrying risk to the whole transfer process. We also recognised that it would never be possible for all staff to be allocated to the authority of their first choice. We therefore placed a higher priority on ensuring that staff who were unhappy with the disaggregation would have the opportunity to make an appeal to transfer to a different unitary authority and to apply for jobs in other authorities.

THE APPOINTMENTS PROCESS

46. Our guidance on prior consideration, discussed in paragraphs 57 to 72, applied to posts where a competition was required. However we recognised that the time available for authorities to fill posts in their new structures would be limited. It would not be possible or necessary to fill every post by means of a competition. In many areas of local government activity, staff would be transferred to the new authority in their existing jobs. In other areas, however, authorities would have to decide in each case whether a competition was required or whether a post could be filled by an individual whose existing responsibilities provided a good match with the new job.

47. We recognised that decisions on whether a post needed to be filled by competition or by some form of job-matching would, of necessity, be for authorities to take locally. However we were also conscious that such decisions could be critical for an individual's future employment prospects, that individuals might fear that the job-matching approach could be open to abuse, and that the Commission could be asked to intervene in any dispute over such decisions. We concluded that we should offer our views on this matter but, in doing so, we felt that the experience of local authorities in this field should be given due weight and we sought not to encroach on authorities' responsibilities and proper discretion.

48. In our guidance, therefore, we identified some instances where a competition might be required: namely where job-matching (also referred to as "slotting-in") could disadvantage other staff. We emphasised the need for clear, transparent and agreed procedures, and drew authorities' attention to the possibility of appeals. We also made it clear that where we did receive queries from staff we would contact the authority concerned and would expect to uphold their decision only if good personnel practice had been followed. We felt that sufficient knowledge and experience of good recruitment practices existed in local government and for this reason we did not include any detailed guidance on selection procedures in our advice dated 13 March 1995.

49. Subsequent feedback from authorities suggested that the process of filling posts in the new authorities would have been an impossible task if job-matching had not been used to reduce significantly the number of competitive interviews which had to be held. Feedback from members of staff confirmed that it is vital, first, that arrangements exist locally for individuals to appeal against job-matching decisions and, secondly, that the criteria to be used in determining whether a job-match exists or whether a competition is required are clear and transparent enough to allow an objective debate to be held in the event of an appeal.

Equal Opportunities

50. The Secretary of State's guidance invited the Commission to consider issuing guidance on equal opportunities responsibilities. Authorities were, of course, already under a duty to comply with the law on avoiding sex and racial discrimination. We believed it was right to consider whether additional guidance would be of benefit to authorities during the transition process. We had discussions with the Equal Opportunities Commission Wales who agreed to prepare appropriate guidelines for local authorities on the issues which were likely to arise in the context of reorganisation. We also consulted the Commission for Racial Equality and as a result we drew authorities' attention to their responsibilities under the Race Relations Act 1976 when we circulated the Equal Opportunities Commission's guidance to authorities in April 1995.

51. Following representations from the Equal Opportunities Commission in January 1996 and from the Chairmen of the Welsh Committees for the Employment of People with Disabilities we issued a further letter on 31 January 1996 drawing authorities' attention

once again to their statutory responsibilities for avoiding discrimination.

The Welsh Language

52. We received representations from UNISON regarding the stipulation of Welsh language ability as a requirement for certain posts; the union expressed concern that potential candidates could be unfairly excluded from consideration. We made clear our view that it was for local authorities to determine in each instance, within the relevant legislation, the validity of a requirement to speak Welsh.

Recruitment and Selection Procedures - Complaints

53. Having given due weight to local authorities' personnel experience, we were disappointed when, during the period of making appointments at chief officer level, we received representations from unions and individuals expressing concern that authorities were not in all circumstances following best personnel practice or the Equal Opportunities Commission's guidance. We considered these representations and in September 1995 we issued circular 6/95 on recruitment and selection procedures. This circular drew authorities' attention to the importance of good personnel procedures and made it clear that we would follow up any complaints we received about departures from good practice.

54. Between August 1995 and March 1996 we received and investigated 10 formal written complaints about decisions taken by authorities during the process of shortlisting candidates. We were made aware, by a number of informal representations, that these formal complaints did not constitute the sum total of individuals who were unhappy with their treatment; there may have been many more who did not feel able to complain for fear of jeopardising their chances of employment elsewhere in the organisation or in other authorities. However we could only act if complainants supplied written evidence to us.

55. It would not be right to publish correspondence or advice which relates to an identifiable individual; this report therefore cannot discuss the cases which we dealt with in any great detail. Our approach was to ask the unitary authority for its comments on the complaint. In most cases there were satisfactory explanations and we did not find grounds to take the matter further. However we were unable to uphold the authority's approach in two of these cases and in each instance we considered whether to draw our concerns to the attention of the Secretary of State. While we had reservations about the procedures which had been adopted, we did not have evidence that this had materially affected the final outcome of the selection process. As a result we did not find grounds to advise the Secretary of State (under section 40(3) of the Act) to direct an authority to re-run an appointment. To do so, we would have had to provide the Secretary of State with evidence that it would be fair and reasonable for him to overrule the authority and any contract of employment already entered into: otherwise the direction might not be sustainable in a court of law.

56. While the ten cases which we dealt with comprised only a tiny fraction of the staff who were transferred to the new authorities, we were nevertheless disappointed that, either as a result of poor communication with staff, or a lack of transparency in the selection procedures, or of actual bad practice, some individuals had felt sufficiently aggrieved by the appointment process to approach us formally. Fair and transparent appointment procedures were absolutely vital to maintaining morale among staff transferring to a new authority.

PRIOR CONSIDERATION

57. Prior consideration was the name given to the arrangement where authorities gave priority, in the first instance, to a particular group of staff when advertising and filling vacancies. This arrangement was designed to offer protection to staff during the transfer and appointment process. It did not guarantee that individuals would be shortlisted for, or successful at, interview; but it gave them the right to have their applications considered before candidates from outside the prior consideration group could apply.

58. Recognising that prior consideration arrangements could have a significant impact on individuals' employment prospects, we made an early start on debating this question. We issued our first consultation circular on prior consideration on 16 September 1994. This set out the Commission's views on competition for chief executives and on which groups of staff should be eligible to apply for posts where competition was required at chief officer level and below. The Welsh Office had indicated that chief executive appointments should be subject to full open competition and the Commission supported this view. We discovered that prior consideration was a subject on which authorities held a range of views, and debate on this matter continued well into 1995. In January 1995, having considered the responses to the consultation exercise, we issued circular 1/95 on prior consideration. This was followed by circular 3/95 in March and by further advice to the Secretary of State in April and to authorities in May and August. The contents of our guidance are discussed in more detail in paragraphs 59 to 72 below.

Appointment of the Chief Executive

59. When considering what advice we needed to issue to local authorities we recognised that the first step each authority would need to take would be to appoint its head of paid service. Any delays in making this appointment could have a knock-on effect on other appointments, holding up the recruitment of chief officers and thus the preparation of departmental organisation structures. Indeed at one point some authorities argued that the Commission should establish a timetable setting out the date on which each unitary authority would conduct its interviews, and should itself supervise the process. We did not consider this to be practical.

60. We were conscious that the appointment of the head of paid service would set the tone for subsequent appointments. In November 1994 therefore (some ten months

before our later advice on avoiding bad practice in recruitment procedures) following discussions with the Society of Local Authority Chief Executives (SOLACE), we issued a consultation circular on the appointment of the chief executive, which included an advertisement checklist and suggestions for information to be given to prospective candidates. It did not include specific advice on selection procedures but it did emphasise that the process should be, and should be seen to be, fair. We recommended that each new authority should have an independent appointment observer to give impartial advice on procedures. This was controversial at the time but all authorities complied with our guidance and appointed an independent observer.

61. We were concerned to ensure that nothing was done by the existing authorities to prejudice the consideration by the new authorities of applications for posts. We initially advised local government that it was for the new authorities to determine the job descriptions for their heads of paid service and to place advertisements in the press. However some transition committees argued that valuable time could be saved if advertisements were placed before the elections, even if only on a provisional basis and subject to confirmation by the new authorities afterwards. We agreed that if transition committees wished to take this step, without prejudice to the ultimate decision of the new authority, we would not seek to prevent them. The majority of transition committees published advertisements in advance. We asked to see copies of the advertisements before they were published and copies of the draft job descriptions and person specifications which were prepared, and these were supplied.

62. Responses to our consultation circular on prior consideration indicated that there was wide, but not unanimous, support for recruitment of the chief executive by means of full open competition. Some bodies thought competition should be restricted to Wales, or to existing chief executives in Wales, in the first instance. In the course of our meetings with transition committees and local authorities we gained an impression that there was a feeling of uncertainty as to whether every new authority would apply fully open competition arrangements. We concluded that it would be in the interests of all new authorities and of potential candidates for the posts if the process was put beyond all doubt. Given that a new authority could otherwise decide at very short notice after the election not to follow our guidance, we requested the Secretary of State, in April 1995, to make open competition mandatory, as advised in our circulars on prior consideration. He agreed and issued a direction accordingly under section 40(3) of the Local Government (Wales) Act 1994.

Prior Consideration - Chief Officer Posts

63. We took a view at a very early stage that, for posts at first tier chief officer level, prior consideration should be given to serving local government officers in Wales. The majority of responses to the consultation supported this view and this remained our position throughout the reorganisation process. There was some debate as to what constituted a chief officer post and we defined it as a first tier post:

- directly responsible to the head of the authority's paid service; or
- included in the corporate management team (where such a structure was being adopted); or
- required by statute.

Prior Consideration - Posts Below Chief Officer Level

64. For posts below chief officer level we felt that prior consideration could either be given to staff in the predecessor authorities or to staff in authorities in the former county area. In Powys there was no difference between these two options, as all authorities in the former county area would form part of the new unitary authority. However in Aberconwy and Colwyn (Conwy) for example it would have made a significant difference to the number of staff eligible for consideration for posts in that authority. This was because the authority was made up of two district council areas located in two neighbouring counties. In this case restricting prior consideration to predecessor authorities would mean that staff in four authorities (Gwynedd CC, Clwyd CC, Aberconwy BC and Colwyn BC) would be eligible for prior consideration, while extending prior consideration to all staff in the former county area would mean that staff in an additional nine district councils (Ynys Môn, Arfon, Dwyfor, Meirionnydd, Delyn, Alyn & Deeside, Wrexham Maelor, Rhuddlan and Glynwdr) would be eligible. This example shows clearly the tension which existed in some areas between the wish to give as many staff as possible an opportunity to apply for vacancies and the practical difficulties which could arise in doing so.

65. In our consultation circular of September 1994 we had taken the view that prior consideration should be limited to the smaller (predecessor) authority area. The responses to our consultation showed that there was no consensus among local government and a number of other approaches were also put forward. Each approach had its advantages and disadvantages, and in some cases the arguments were finely balanced. However we were persuaded that overall it would be fairer to more staff to set the broader, county-wide, area and we informed authorities of our conclusion in January 1995. At that early stage the commitment to the principle of all-staff transfer had not yet been made formal and we believed that, without a guarantee of transfer, the interests of staff would be better protected by a wider prior consideration field. In reaching this decision we were very conscious of the lack of unanimity of opinion within local government on this issue, and when we were approached by authorities with alternative proposals for handling prior consideration in their areas we listened to their representations sympathetically.

Local Arrangements

66. After it had been confirmed that it would be possible for all staff to transfer if they wished to be transferred, authorities in some areas became more interested in pursuing a third option. They concluded that the fairest approach would be to limit prior

consideration, not only to staff in the predecessor authorities, but to limit it further to those staff who would be transferring to the employment of that unitary authority. This view arose because in some areas prior consideration on a predecessor authority basis would offer county council officers the opportunity to apply for posts in three or more unitary authorities, while staff in those district councils which were not being split could apply for posts in only one authority. This third approach, which was generally referred to as the "pool" approach, also had the advantage, for unitary authorities, of restricting the number of staff to whom they had to circulate vacancies.

67. The Commission considered these proposals carefully. We were conscious that there were some disadvantages associated with this approach. In particular, with this arrangement staff who were unhappy at being allocated to a particular unitary authority would have fewer opportunities to apply for posts in the neighbouring unitary authorities than they would have had under the county-wide arrangement. For this reason it was important for authorities to take particular care to ensure that their disaggregation procedures were clear, equitable, and endorsed by staff. Staff who were dissatisfied with the outcome of the disaggregation exercise would, of course, have the opportunity to appeal against their assignment to a particular authority. In order to be fair to these individuals therefore, authorities would need to be certain that no such appeals were outstanding when circulating vacancies to staff. This made it all the more important for the appeals mechanism to operate quickly and effectively.

68. We discussed these concerns with the authorities involved and, taking account of the commitment to transfer staff which had just been confirmed, we concluded that, where there was unanimous support for local arrangements in a particular area, we would not object to such agreements. We set out some criteria for these arrangements in our circular 3/95 in March 1995: the agreement of all the existing and new authorities in the area and that of staff and trade union representatives was required before we would approve local prior consideration arrangements departing from our guidance.

69. Local authorities' recent agreement to transfer all staff was crucial to our decision to accept local arrangements. Without this commitment the "pool" arrangement would have been unacceptable to us. It would have meant that staff excluded from the STO (for example because they were judged not to be covered by TUPE) would also have been denied the opportunity to apply for posts when vacancies were first advertised. We could not have consented to an approach with such implications.

Consideration of "Placed" and "Unplaced" Staff

70. Another difference of view on prior consideration emerged within local government, after the publication of our guidance, as a result of a National Joint Council agreement stating that staff transferring on a "placed" basis - which we understood to mean staff who would be transferred in their existing jobs or who had been allocated to specific jobs with the new authority without competition - should be entitled to prior consideration only after "unplaced" staff had been considered. We took the view that in general "placed"

staff should not be excluded from prior consideration but we recognised that the NJC agreement carried much weight with local authorities and trade unions and, in May 1995, accepted that, subject to the safeguards set out in paragraph 68, the local arrangements referred to above could also cover this issue. By early January 1996 we had approved local agreements in all eight counties. These local arrangements appeared to work well in practice.

Wider Advertisement

71. Where unitary authorities wished to advertise vacancies outside the prior consideration field, on an all-Wales or open competition basis, we asked councils to approach the Commission before taking this step. We were thus able to satisfy ourselves that authorities were giving proper consideration to local government employees before looking to appoint external candidates.

72. Prior to 1 April 1996 we received approaching 200 requests from local authorities to proceed to open advertisement, the majority of which we were able to agree immediately. In a small number of cases there appeared to be qualified local candidates and we asked authorities to interview them before proceeding to the second stage. The prior consideration arrangements which operated after 1 April 1996 are discussed in Chapter Six.

APPEALS

73. Our guidance from the Secretary of State required us to determine the most effective appeals mechanism for individuals wishing to challenge decisions affecting them as a direct result of reorganisation. We considered this one of our highest priorities and in September 1994 we took steps to set up an informal working group involving trade unions, the local authority associations and the Local Government Management Board (LGMB).

74. The Secretary of State's guidance invited us to consider the existing Provincial Councils machinery, adapted to suit the particular needs of the reorganisation in Wales, as had happened in the last local government reorganisation. We believed that the fundamental nature of the changes proposed on this occasion meant that it was vital that an effective and speedy mechanism was put in place. We were concerned therefore that the special appeals mechanism should focus on those issues which would have the greatest impact on individuals' future employment prospects and which would be most difficult to resolve locally. A rapid response would be essential, particularly in relation to staff transfer order issues, and the working group considered carefully what changes were required to the existing Provincial Councils arrangements to enable them to cover those groups of staff not previously covered by them and to work more quickly.

75. We concluded that the main issues which an individual member of staff might want

to contest were, first, exclusion from the transfer order or secondly, inclusion in the transfer order but, from the individual's point of view, assigned to the wrong new authority. We were also persuaded that there needed to be a right of appeal against failure to include an individual in the appropriate group to be given prior consideration for posts where competition was taking place. The local government representatives on the working group identified certain other matters which they wished the machinery to cover, but accepted that these should not be monitored by the Commission and should not delay consideration of appeals in respect of the main issues. We were concerned that before the Provincial Councils machinery was brought into play every effort should have been made at local level to resolve the dispute, and that once the Provincial Councils machinery was activated appeals would be decided quickly. We therefore recommended a strict timetable for submission and consideration of the relevant documentation and for arranging a hearing. We thought it important that the panel set up to hear an appeal should have an independent chairman, as, although the appeal panel members would have no personal interest in the case, the panel would consist of an equal number of representatives from the employer and employee sides.

76. We issued our circular (4/95) on appeals arrangements on 5 May 1995. This set out the two appealable issues with which the Commission was concerned and the additional three issues put forward by local government. It described the procedures and deadlines which would apply and indicated that the LGMB would be undertaking further work to make the arrangements fully operational.

77. Accordingly, the LGMB and UNISON drew up a list of independent appeals chairpersons in consultation with local government which the Commission was able to endorse in August 1995. We held a meeting with independent chairpersons in September to discuss the appeals mechanism and any issues which they wished to raise. The matters discussed included local prior consideration arrangements, staff covered by the appeals mechanism, and the role of the independent chairpersons.

78. The LGMB also produced, again in consultation with unions and local government, standard appeals documentation for use by authorities and steps were taken to ensure that the specially adapted Provincial Councils arrangements were extended to cover all local government employees as we had envisaged.

79. By September 1995 a framework was in place at national level for appeals to be heard. We then focused on urging authorities to ensure that effective local mechanisms were in place so as to ensure that only those appeals which could not be resolved at local level came to national level. During our meetings with unitary authorities in September - October 1995 we received assurances from all authorities on this point but subsequently learned of delays in one county. We successfully pressed this authority to make swift progress in agreeing a mechanism with staff.

80. Subsequently, the majority of appeals were dealt with at local level and twelve

80. Subsequently, the majority of appeals were dealt with at local level and twelve reached the national level. Of these, eight related to the staff transfer order, of which two were upheld by the appeals panels. The low number of national appeals which were lodged suggests that the local appeals arrangements worked effectively. We would like to offer our thanks to the Provincial Secretaries and to the independent chairpersons for their support and assistance in developing and running the appeals arrangements.

TRAINING AND COUNSELLING

81. The Secretary of State's guidance invited us to consider whether advice on training and counselling was required. We were concerned to ensure that local authorities should put in place arrangements for preparing staff for the changes they would be facing. We discussed what might be needed with representative local government officers and with the Local Government Management Board in Wales, and in January 1995, were able to issue advice to local authorities for them to consider when planning their training programmes and counselling arrangements.

82. In August 1995 we followed this up with a questionnaire seeking information on the steps the existing authorities were taking to prepare staff for reorganisation. Less than half of authorities responded and some were of the view that it would not be possible for authorities to take decisions on their training strategies until the process of slotting staff into posts had been largely completed and the outcome of the local government revenue settlement had been made known - ie in December or January. The Commission therefore issued a follow-up circular in January 1996 encouraging new authorities to avoid redundancies wherever possible by retraining staff. Again this elicited a low response, but events were to prove that authorities did indeed seek at all times to keep compulsory redundancies to a minimum.

AFTER THE SHADOW AUTHORITY ELECTIONS

83. The shadow unitary authorities were elected on 4 May 1995, by which time the Commission had consulted, and issued guidance, on all the major issues which affected the interests of staff - ie interim appointments, payments for additional duties, the principle of all-staff transfer, competition and prior consideration, disaggregation, equal opportunities, and appeals arrangements.

84. After the elections of the shadow authorities our main remaining tasks were:

- our duty under section 40(2)(b)(ii) of the Act to consider and keep under review the organisation, management and remuneration of staff of the new authorities (see Chapter Four);
- monitoring the implementation of the prior consideration arrangements;

**SECTION 40 (2) (b) (ii) -
ORGANISATION, MANAGEMENT AND
REMUNERATION OF
STAFF IN THE NEW AUTHORITIES**

- ensuring that the special appeals mechanism was in place before the publication of the draft staff transfer order;
- keeping track of authorities' progress in preparing contributions to the draft staff transfer order;
- dealing with queries and complaints from staff, in particular in relation to the appointments process.

85. During September and October 1995 we met all 22 shadow unitary authorities, and trade union and staff representatives, to discuss their progress in each of the above areas. The preceding paragraphs have already described what action was required in relation to all but the first of the tasks listed above. Our approach to our responsibilities under section 40(2)(b)(ii) is discussed in Chapter Four.

86. The requirement for the Staff Commission to "consider and keep under review the organisation, management and remuneration of the staff of the new principal councils" was unexpected, and appeared only when the Local Government Bill was published. The Commission was concerned both at the nature and apparent breadth of the requirement as drafted, being unclear whether it was intended to be an on-going review of management structures and pay in the new authorities, as many of the existing councils feared.

87. In response to an urgent request by the Committee for consultations, the Welsh Office clarified - and subsequently included in their published guidance to the Commission - that in discharging this duty the Commission should "keep a particularly close watch on the number and remuneration of senior managers [and would be] unlikely to need to concern itself with staff in lower grades". Even this narrower role brought with it concern about the risk of the Commission encroaching inappropriately on authorities' discretion and responsibilities in this area, and concern that it could lead to disputes with authorities at a time of turmoil for them. We were most anxious not to jeopardise our prime duty, which was to oversee a smooth transfer process while safeguarding the interests of staff and avoiding any risk to the provision of services to the public; and which we sought to carry out in partnership with authorities.

88. Moreover we recognised that we would be working under a number of constraints. The first of these were the statutory powers of, and relationships between the Commission, the Secretary of State and local authorities. The Commission did not have the power to direct local authorities to adopt a particular course of action. The Secretary of State could do so, but only on the advice of the Commission. It was essential therefore that such advice was precisely worded and clear in its purpose and also that the Secretary of State could demonstrate, in a court of law if necessary, that he had acted reasonably in making a direction based on that advice. For their part, local authorities had the legal responsibility for determining the management structures and salary levels to be adopted. We were acutely conscious that we would need to have a strong justification for any intervention in local authorities' decisions, and to have complete confidence in any advice and supporting evidence we presented to the Secretary of State.

89. The second constraint was the lack of formally recognised benchmarks or guidelines on appropriate staffing structures, salary levels and management costs.

This meant that any judgement about whether a particular salary or group of salaries were set too high would be highly subjective. The only framework for authorities' decisions on salaries of senior managers were the salary bands for chief executives and senior officers which had been earlier agreed by the appropriate Joint Negotiating Committees at UK level. These very broad salary scales were grouped into bands according to the authority's population size. As the population bands overlapped and authorities had the freedom to pitch salaries anywhere within their particular band, it was possible within the JNC agreement for a small authority to set higher salary levels for similar posts than a larger authority. We did not believe that it would have been reasonable for us to recommend that all local authorities, as a matter of principle, work within lower or narrower salary scales than those set by the JNC. This left each of the unitary authorities free, if it so chose, to set relatively high salaries for an authority of its size, within the JNC agreement and within its discretion.

90. In view of these considerations we concluded that we would need to have very solid grounds for taking any action with authorities and we decided to adopt a pragmatic approach: if we were to advise the Secretary of State to intervene in local authorities' decisions, it would need to be shown that such intervention was necessary in order to safeguard the interests of staff.

91. Our continuing concern throughout was that if an authority incurred relatively high costs on the salaries and fringe benefits of senior management and later found itself in financial difficulties, structures at more junior levels could suffer, resulting in otherwise avoidable redundancies. Given the subjective nature of the work and the lack of reliable comparators, it was a difficult task to assess whether authorities' senior management structures did carry this risk.

92. We obtained information from unitary authorities on their structures as they developed, examining them for any apparent anomalies which we then discussed with the authority concerned. We sought to work with authorities on an informal basis, and indeed in many cases we contacted authorities simply for the purpose of clarifying our understanding of their proposals. At that early stage our concerns were necessarily very tentative. Examples of the points we raised with unitary authorities included: apparently high numbers of senior managers either in total or relative to the population served, salaries which were higher than might be expected for the associated level of responsibility, and overall management costs which appeared to be high either in total or relative to the population served. These very informal contacts proved useful as in a number of instances our early discussions led to unitary authorities reviewing their structures and identifying scope for savings.

93. In broad terms, we found it unnecessary to contact just over one third of authorities, we had informal contacts with another third, while, with the remaining third, our concerns were more serious. Where these concerns persisted, we entered into correspondence or held formal meetings with these authorities. In most cases they either provided a justification

for the particular staffing structure being adopted or stated their intention of exercising tight control over staffing costs generally and we were thus persuaded that it would not be right to seek to intervene.

94. However in a very small number of instances, and despite such assurances, we continued to have serious concerns about the cost burden arising out of a particular structure and its potential implications for junior staff. These were cases where, in small authorities, a higher than average proportion of the budget had been allocated to senior management costs. In each case we made our views clear to the authority concerned and considered whether to draw these cases to the attention of the Secretary of State. In considering this step we recognised that our calculations had to be treated with caution for a number of reasons:

- due to the diseconomies of scale, management costs were likely to be higher, as a proportion of the budget, in smaller authorities;
 - other factors such as the authority's socio-economic position, geography, or recruitment difficulties might drive up salaries; and
 - the information we had was being constantly updated with the result that our data and calculations were indicative at best, making it impossible to be certain at any one point that a particular authority's costs were significantly in excess of the average.
95. There were also considerable constraints over the nature of the direction which we could ask the Secretary of State to issue, should we conclude that this was justified in a particular instance. If, for example, an authority had been required by us to reduce its management costs by a given amount or percentage, it could have argued, with some justification, that the reduction was subjective or even arbitrary. Similarly a requirement on an authority to remove a given post from its structure could have led to claims that such action would affect its ability to deliver services effectively.

96. In addition we were conscious, first, that intervention by the Secretary of State could have resulted in delays prejudicial to a unitary authority's preparations for reorganisation; and, secondly, that to intervene effectively we would need to do so at an early stage in the process of developing structures and appointing officers. However we could not have a full picture of all authorities' structures until the end of the appointment process, at which stage the time for effective intervention would already have passed.

97. Taking all these considerations into account we concluded that, while we had good reason for anxiety in some cases (of which we made those authorities fully aware), there were too many doubts over the quality of the information which we had available to allow us to identify any authority for public scrutiny. Without clear and incontrovertible evidence that the interests of junior staff would be jeopardised by decisions on senior

LOCAL GOVERNMENT STAFF TRANSFERRING TO OTHER BODIES

NATIONAL PARK AUTHORITIES

101. In November 1995 the Secretary of State made an order bringing the new national park authorities (NPAs) within the remit of the Commission. Our advice to NPAs focused on three areas:

- recruitment of the national park officer/head of paid service;
- salary of the national park officer/head of paid service;
- prior consideration arrangements for recruitment to other posts in the NPA.

102. We consulted on the arrangements for the appointment of the head of paid service/national park officer. The options were competition, open or ring-fenced, or direct transfer of the existing national park officer. The arguments were finely balanced but in the light of the responses to the consultation - and in particular some strong representations that a competition at this late stage in the reorganisation process would put existing national park officers at an unfair disadvantage because other comparable posts in unitary authorities would already be filled - we concluded that the post should be filled by direct transfer of the existing national park officer. In reaching this conclusion, we did, in fact, have sympathy with the view that an open competition would be preferable and, had we been considering this issue at an earlier stage in the process, we would have advised accordingly. However we felt that the stage reached in the reorganisation timetable effectively ruled this out.

103. In advising on the salaries of national park officers, we took account of representations received during the earlier consultation exercise to the effect that existing national park officers' responsibilities would not be changing significantly under the new regime and that a direct transfer could be justified on these grounds. On that basis we advised that the existing salary should not be improved without a convincing case being made for an increase. Our view was that an independent job evaluation would be the appropriate means of determining whether such evidence existed. It would enable a consistent approach to be adopted by the three park authorities and we advised accordingly. In the event Snowdonia National Park Authority found it possible, on the retirement of the existing officer, to appoint a national park officer at the previously established salary level. Brecon Beacons and Pembrokeshire Coast national park authorities appointed the existing officers on their existing salaries and confirmed that an independent job evaluation would be carried out in due course.

management structures, we were not in a position to advise the Secretary of State to intervene in local authorities' decision-making processes. As a result of all these factors, there was no instance in which we felt we could have justified advising the Secretary of State to issue a direction to an authority.

98. We informed the Secretary of State of our preliminary conclusion in August 1995. We then confirmed that the position had not changed once we had to hand a fuller picture of the senior structures and salaries for all 22 unitary authorities in December 1995. We continue to have no evidence that intervention by the Secretary of State could have been justified.

99. At the start of the exercise we had serious reservations about how far it was appropriate and feasible for the Commission to carry out its Section 40(2)(b)(ii) duty. It could be argued that our decision not to recommend intervention demonstrates that these reservations were justified and that this duty should never have been placed at our door. We have given this question careful consideration. Our conclusion is that our work in this area did have some measure of success, mainly in underlining to authorities the importance of protecting junior staff. We doubt whether it would have been feasible to conduct a comprehensive review into management structures at a time when shadow authorities were having to move very quickly to recruit their senior managers. The key factor was the very wide flexibility allowed by the JNC agreement, which itself had been properly entered into through established negotiating procedures between employers and employees.

100. We have concluded that this task, even in the restricted manner in which we carried it out, was not wholly compatible with our responsibility for working with authorities to safeguard the interests of staff during the transfer process. Furthermore we believe that it was not feasible for an organisation with our remit, size and resources to carry out this task in a comprehensive and effective way.

ACTIVITIES AFTER 1 APRIL 1996

104. Our advice on prior consideration arrangements for vacancies below national park officer level was that prior consideration should apply to all staff in the former county area or areas covered by the national park. If NPAs wished to pursue a different approach they were free to agree a local arrangement with staff and authorities in the area.

COMBINED FIRE AUTHORITIES

105. In a separate exercise to local government reorganisation, the Home Office undertook a reorganisation of fire authorities in Wales. The existing eight county-based fire authorities were merged into three combined authorities. The Welsh Office guidance invited the Commission to consider the position of support staff who worked wholly or partly for the fire service, although not under the direct management of the chief officer. We consulted county councils on the numbers of central support staff working wholly or mainly on fire authority matters. The responses indicated that the numbers were in single figures and we wrote to county councils in July 1995 suggesting that an agreement should be reached locally on whether the individuals concerned should transfer to the fire authority or to the unitary authority. The establishment of the new authorities and the transfer of staff to them was then effected through three combination orders made by the Home Secretary in December 1995.

STAFF TRANSFERRING TO THE ENVIRONMENT AGENCY

106. As a result of the establishment of the Environment Agency on 1 April 1996, a number of waste regulation staff working in district councils were to be transferred to the Agency by means of a transfer scheme prepared by the Secretary of State for Wales. There was a possibility that a small number of these individuals - who were covered by the Welsh Office's dispute mechanism relating to the Environment Agency - would also wish to make an appeal under the Provincial Councils special appeals mechanism. In October 1995 therefore we issued advice on the links between these two procedures. In the event no such appeals were lodged.

MONITORING THE TRANSFER

107. We were conscious that, while the commitment to transfer all staff who wished to be transferred offered important protection to staff, it could not guarantee their long term employment position. Accordingly in the weeks before and after 1 April 1996 we were in regular contact with authorities concerning their progress in finding posts for "unplaced" staff. In the event the local authorities informed the Commission that there were 233 unplaced staff as at 1 April 1996. At the time of writing (September 1996) this had been reduced to 21 and authorities were continuing their efforts to accommodate those staff. The redundancy compensation scheme will continue to operate until 30 September 1997; the full extent of redundancies arising from reorganisation will not, therefore, be known for some time. Nevertheless it is noteworthy that authorities have sought, as far as possible, to effect reductions in staffing levels by means other than compulsory redundancy.

PRIOR CONSIDERATION ARRANGEMENTS AFTER 1 APRIL 1996

108. In February 1996 we considered what prior consideration arrangements should apply after 1 April 1996 and issued a consultation circular inviting authorities' and others' comments on our views. We proposed that if an authority was unable to fill a vacancy from within its existing staff complement it should then invite applications from all staff of authorities in the former county area and that this arrangement should apply until 31 March 1997. Our view was that this approach would cover any remaining "unplaced" staff in neighbouring authorities while also giving staff who had been transferred to a new location, or who were receiving detriment compensation, the opportunity to apply for any vacancies which were of interest to them.

109. In the light of the responses we received we concluded that this was the right approach but we recognised that in some areas authorities might wish to continue with their existing local prior consideration arrangements, or with a modified version of them. Our circular (4/96) therefore allowed for authorities to operate local arrangements provided that they had the agreement of all authorities and staff representatives in the former county area.

110. Our circular gave authorities discretion to decide when it would be appropriate to advertise posts on an all-Wales basis and when to proceed to fully open competition. Our monitoring of these arrangements to date indicates that authorities are operating within the spirit of the agreement and seeking to give priority to local government staff in Wales where appropriate.

TRAINING AND COUNSELLING

111. Following reorganisation training and employment were now matters for the new authorities to determine in the usual way. We remained convinced of the importance of training and counselling and in May 1996 we drew authorities' attention to this in Circular 5/96.

APPEALS ARRANGEMENTS AFTER 1 APRIL 1996

112. In May 1996 we consulted authorities and other bodies on the period during which the special appeals arrangement should continue to apply. We concluded that the appeals mechanism should continue to operate for up to 18 months according to the subject of the appeal as follows:

- appeals against the staff transfer order should continue to be available for six months after 1 April;
- appeals concerning prior consideration could be made until 31 March 1997, when the prior consideration arrangements would cease to have effect; and
- an appeal mechanism concerning compensation would be required for the duration of the "prescribed period" for compensation payments relating to reorganisation, that is until 30 September 1997.

FUTURE ARRANGEMENTS

113. Since 1 April we have received decreasing numbers of queries from individuals and authorities. These have reached a sufficiently low level for the staffing levels of the Secretariat to be reduced to one part-time member of staff. We do not expect that further guidance from the Commission will be necessary in the coming months, but we will continue to be available until July 1997, should our services be required.

CONCLUSIONS

114. In a reorganisation of this nature and scale, it was vital for some mechanism to be developed to consider how the interests of staff could best be safeguarded. This was particularly so during the early stages when uncertainty and anxiety was prevalent (see Chapter Two). We believe that the Staff Commission, and its predecessor the Advisory Committee, were well placed to perform this task. We also believe that our remit - other than our duty under Section 40(2)(b)(ii) of the Act, for the reasons set out in Chapter Four - provided the right framework for us to work together with authorities and other bodies to protect staff. We regard it as beneficial to this process that our role was advisory in nature, with the Secretary of State's power of direction available as a last resort. It was necessary for us to advise the Secretary of State to use this power on no more than one occasion (paragraph 62), which we regard as a measure of the success we had in our endeavours to reach a consensus with authorities wherever possible.

115. When the Local Government (Wales) Bill was first published it was anticipated by the Welsh Office that local government staffing levels would reduce by approximately 500 as a result of reorganisation. From the earliest days and throughout the reorganisation, there were widespread fears that the number of redundancies would be significantly higher than that estimate. It is not possible at this stage to arrive at an accurate assessment of the impact reorganisation had, or will have, on local government staffing levels. We have explored this matter and drawn the following, tentative, conclusions.

116. Part III of the Local Government (Compensation for Redundancy) Regulations 1994 provided for compensation to be paid to qualifying individuals "whose loss of employment was attributable to any provision made by or under" the 1994 Act. A total of 1,640 of the staff who left local government employment prior to 1 April 1996 were eligible for compensation under this scheme; their departures have thus been clearly identified as resulting from reorganisation.

117. It is impossible to say how many of the remaining 124 staff who left on voluntary severance or voluntary early retirement terms prior to 1 April 1996, but were not covered by Part III of the Regulations, would have remained with local government had reorganisation not been implemented. We can assume, however, for the great majority, that reorganisation was a factor in their decision to leave local government, either wholly or in part. These figures give an indication of the scale of the upheaval in staffing arrangements which accompanied reorganisation. Nevertheless it is noteworthy that these reductions in staffing levels were, on the whole, achieved voluntarily and that compulsory redundancies, at this stage, have been kept to a minimum.

118. The preceding pages have described in detail how we set about fulfilling our duties

under Section 40 of the 1994 Act. In these concluding paragraphs we wish simply to draw attention to those aspects of the reorganisation process which we consider to be of particular significance.

* We believe that the commitment to transfer all staff who wished to be transferred (paragraphs 19 to 23) was fundamental to the promotion of a smooth disaggregation and transfer of staff to the new authorities. In the circumstances of the reorganisation it was, in our view, also the fairest course.

* The appeals mechanism and our guidance on prior consideration (paragraphs 57 to 80) provided an important safety net for staff who were unhappy with their assignment to a particular authority.

* Although we received a small number of formal complaints concerning selection procedures (paragraphs 53 to 56), we believe that in the majority of cases staff were treated fairly during the appointment process. It should be emphasised that the adoption of clear, transparent and agreed criteria for determining whether a job-match existed or a competition was required was crucial to achieving a fair outcome, together with the establishment of a clear and agreed mechanism for staff to appeal against shortlisting decisions.

* A related issue was that of communication with staff and trade unions. In some instances difficulties could have been avoided, and the anxieties of staff relieved, by those authorities adopting a pro-active approach to communicating with staff. At times the pace of events could make it difficult for official channels of communication to work more effectively than the unofficial channels. But this simply underlined the importance of a conscious effort being made to keep staff informed of developments, especially to explain why delays in the decision-making process had occurred. The Staff Commission was able to perform a useful role in circumstances where a breakdown in communication had occurred by drawing the concerns of staff to the attention of management and urging them to address these concerns.

119. We believe it was especially helpful to our work that the six Commissioners represented a wide spectrum of experience. With hindsight we judge that it would have been advantageous for all six to have been appointed at the outset of the task, as members of the Advisory Committee.

120. In drawing our report to a close we wish to emphasise that our work was greatly assisted by the goodwill and help that we received throughout from local government and staff representatives. We may be forgiven for restating our respect and admiration for the personnel officers; the pressures they faced should not be underestimated. Thanks are also due to the Local Government Management Board (Wales), the national and regional officers of the trade unions, the Equal Opportunities Commission and many

others whose advice was invaluable. A final and special vote of thanks is reserved for our Secretariat for their loyal and effective service - whenever extra effort was required it was given willingly and enthusiastically - and for their valuable contributions to our discussions.

GLOSSARY

AWC	Assembly of Welsh Counties
CWD	Council of Welsh Districts
Disaggregation	Process of allocating staff from authorities whose areas were being split to the successor authorities.
JNC	Joint Negotiating Committee(s) - part of the local government mechanism for reaching agreement on matters relating to pay and terms and conditions of service.
Job-matching	Process of determining whether posts in the new authorities' staffing structures provided a suitable match with the responsibilities of postholders in the old authorities.
LGMB	Local Government Management Board
NJC	National Joint Council(s) - part of the local government mechanism for reaching agreement on matters relating to pay and terms and conditions of service.
Prior consideration	The arrangement where authorities gave priority, in the first instance, to a particular group of staff when advertising and filling vacancies.
Slotting-in	Process where an authority, having determined that a job-match exists, allocates an individual to a post in the new structure without requiring a competitive interview to be held.
STO	Staff transfer order - an order made under section 42 of the 1994 Act transferring staff to the employment of the relevant successor authority.
TUPE	The Transfer of Undertakings (Protection of Employment) Regulations.
WTUC	Wales Trade Union Council
Unplaced	The term commonly used to describe an individual for whom a post in the successor authority has not yet been identified.

LIST OF COMMISSION CIRCULARS AND GUIDANCE

Date	Subject
21 October 1993	Advice to existing authorities about recruitment and related matters prior to reorganisation - Advisory Committee circular
9 May 1994	Staff transfer - Advisory Committee advice to Secretary of State
24 June 1994	Membership and role of the Staff Commission - circular 1/94
27 June 1994	Staff appointments and regradings in existing authorities in the interim period - draft circular
8 July 1994	Proposed compensation for redundancy scheme - letter to Department of the Environment
6 September 1994	Staff appointments and regradings in existing authorities in the interim period - circular 2/94
6 September 1994	Additional payments for additional responsibilities - guidance letter
16 September 1994	Staff bulletin no 1
16 November 1994	Appointment of head of paid service - draft circular
8 December 1994	Staff transfer - letter to Secretary of State
19 December 1994	Compensation for redundancy scheme - letter to Department of the Environment
3 January 1995	Prior consideration - circular 1/95
13 January 1995	Staff bulletin no 2
13 January 1995	Training - circular 2/95
20 January 1995	Proposed compensation for loss of remuneration scheme - letter to Department of the Environment

20 January 1995 Staff transfer - Parliamentary Secretary's response to the Commission's letter of 8 December

7 February 1995 Appointments: head of paid service - Commission circular

28 February 1995 Prior consideration: position of trainees - Commission guidance

1 March 1995 Appeals arrangements for local government reorganisation - draft circular

13 March 1995 Prior consideration: local agreements - circular 3/95

13 March 1995 Staff transfer process: disaggregation and appointments - Commission guidance

13 March 1995 Prior consideration: placed and unplaced staff - consultation letter

28 March 1995 Staff bulletin no 3

21 April 1995 Open competition for head of paid service posts - direction sought from the Parliamentary Secretary

27 April 1995 Open competition for head of paid service posts - Secretary of State agrees to issue direction

28 April 1995 Equality implications of local government reorganisation - Commission circulates guidance prepared by Equal Opportunities Commission

4 May 1995 Shadow authority elections are held

5 May 1995 Role of Staff Commission and guidance issued - letter to proper officers of shadow authorities

5 May 1995 Appeals arrangements for local government reorganisation - circular 4/95

5 May 1995 Head of paid service: salaries - Commission letter to shadow authorities

16 May 1995 Staff eligible for prior consideration - guidance on "placed" and "unplaced" staff

19 May 1995 Staff bulletin no 4

26 May 1995 Senior management salaries and structures - letter to Secretary of State

4 July 1995 Fire service support staff - guidance letter

9 August 1995 Senior management structures and salaries - letter to Secretary of State

25 August 1995 Training questionnaire issued

30 August 1995 Staff bulletin no 5

31 August 1995 Prior consideration: confirmation of the Commission's guidance - circular 5/95

14 September 1995 Prior consideration and the staff of the WJEC - consultation letter

15 September 1995 Recruitment and selection procedures - circular 6/95

18 September 1995 National park authorities: appointment of head of paid service - consultation letter

28 September 1995 National park authorities - guidance from Welsh Office

18 October 1995 Prior consideration and staff of the WJEC - confirmation of guidance

23 October 1995 Transfer of waste regulation staff to the Environment Agency: dispute arrangements - circular 7/95

31 October 1995 National park authorities: recruitment arrangements - Commission guidance

27 November 1995 National park authorities: salaries of head of service - Commission guidance

1 December 1995 Senior management structures and salaries - final advice to Secretary of State

6 December 1995	National park authorities: prior consideration - circular 8/95
6 December 1995	National park authorities: application of Section 40(2)(b)(ii) - circular 9/95
6 December 1995	Staff bulletin no 6
23 January 1996	Training - circular 1/96
31 January 1996	Avoiding discrimination - circular 2/96
12 February 1996	Prior consideration arrangements after 1 April 1996 - consultation circular 3/96
14 March 1996	Staff transfer no 2 order - Commission advice to the Welsh Office
26 March 1996	Prior consideration arrangements after 1 April 1996 - Commission guidance, circular 4/96
2 April 1996	Staff bulletin no 7
3 May 1996	Training - circular 5/96
13 May 1996	Duration of the provincial councils appeals arrangements - consultation circular 6/96
15th July 1996	Appeal Arrangements - Duration of the Special Provincial Councils arrangements
15th July 1996	Winding down the Commission.

Copies of the circulars and guidance letters listed above can be obtained from

LGRG Division 1, Welsh Office, Cathays Park, Cardiff, CF13NQ.