

# Agenda – Constitutional and Legislative Affairs Committee

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Meeting Venue:	For further information contact:
Committee Room 1 – Senedd	Gareth Williams
Meeting date: 20 January 2020	Committee Clerk
Meeting time: 12.45	0300 200 6362
	<a href="mailto:SeneddCLA@assembly.wales">SeneddCLA@assembly.wales</a>

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- 1 Introduction, apologies, substitutions and declarations of interest**  
12.45
- 2 Motion under Standing Order 17.42 to resolve to exclude the public from the meeting for item 3:**  
12.45
- 3 Legislative Consent Memorandum on Direct Payments to Farmers (Legislative Continuity) Bill**  
12.45 – 13.15 (Pages 1 – 9)  
CLA(5)–03–20 – Legal advice note  
CLA(5)–03–20 – Briefing 1
- 4 Local Government and Elections (Wales) Bill: Evidence session**  
13.15–14.30 (Pages 10 – 49)  
Julie James AM, Minister for Housing and Local Government  
Cath Wyatt, Bill Manager, Local Government and Elections (Wales) Bill, Welsh Government  
Eoghan O’Regan, Lawyer, Welsh Government  
Chris Humphreys, Lawyer, Welsh Government

CLA(5)–03–20 – Briefing 2

[Local Government and Elections \(Wales\) Bill, as introduced](#)



Cynulliad  
Cenedlaethol  
Cymru      National  
Assembly for  
Wales

[Explanatory Memorandum](#)

[Statement of Policy Intent](#)

## **5 Instruments that raise issues to be reported to the Assembly under Standing Order 21.2 or 21.3**

14.30–14.35

Made Affirmative Resolution Instruments

### **5.1 SL(5)487 – Landfill Disposals Tax (Tax Rates) (Wales) (Amendment) Regulations 2020**

(Pages 50 – 68)

CLA(5)–03–20 – Paper 1 – Report

CLA(5)–03–20 – Paper 2 – Regulations

CLA(5)–03–20 – Paper 3 – Explanatory Memorandum

CLA(5)–03–20 – Paper 4 – Letter from the Minister for Finance and Trefnydd to the Llywydd, 6 January 2020

## **6 Paper(s) to note**

14.35 – 14.40

### **6.1 Letter from the First Minister to the Chair of the External Affairs and Additional Legislation Committee: European Union (Withdrawal Agreement) Bill**

(Pages 69 – 70)

CLA(5)–03–20 – Paper 5 – Letter from the First Minister to the Chair of the External Affairs and Additional Legislation Committee, 13 January 2020

### **6.2 Letter from the Minister for Health and Social Services: Health and Social Care (Quality and Engagement) (Wales) Bill**

(Pages 71 – 72)

CLA(5)–03–20 – Paper 6 – Letter from the Minister for Health and Social Services, 14 January 2020

### **6.3 Letter from the Minister for Health and Social Services to the Chair of the Health, Social Care and Sport Committee: Health and Social Care (Quality and Engagement) (Wales) Bill**

(Pages 73 – 83)

**CLA(5)–03–20 – Paper 7** – Letter from the Minister for Health and Social Services to the Chair of the Health, Social Care and Sport Committee, 14 January 2020

- 6.4 Letter from the Minister for Health and Social Services to the Chair of the Finance Committee: Health and Social Care (Quality and Engagement) (Wales) Bill**

(Pages 84 – 89)

**CLA(5)–03–20 – Paper 8** – Letter from the Minister for Health and Social Services to the Chair of the Finance Committee, 14 January 2020

- 6.5 Letter from the Minister for Environment, Energy and Rural Affairs: Inter-Ministerial Group Environment, Food & Rural Affairs meetings**

(Page 90)

**CLA(5)–03–20 – Paper 9** – Letter from the Minister for Environment, Energy and Rural Affairs, 16 January 2020

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

14.40

- 8 Local Government and Elections (Wales) Bill: Consideration of evidence**

14.40–15.00

**Date of the next meeting – 27 January 2020**

Document is Restricted

By virtue of paragraph(s) vi of Standing Order 17.42

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# Agenda Item 4

By virtue of paragraph(s) vi of Standing Order 17.42

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# Agenda Item 5.1

## SL(5)487 – The Landfill Disposals Tax (Tax Rates) (Wales) (Amendment) Regulations 2020

### Background and Purpose

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The Regulations prescribe the standard rate, lower rate and unauthorised disposals rate for landfill disposals tax chargeable on taxable disposals, made on or after 1 April 2020.

The rates from 1 April 2020 are as follows:

- The standard rate is £94.15 per tonne;
- The lower rate is £3.00 per tonne
- The unauthorised disposals rate is £141.20 per tonne.

Taxable disposals made on or after 1 April 2019, but before 1 April 2020, will remain subject to the rates prescribed by the Landfill Disposals Tax (Tax Rates) Wales Amendment Regulations 2018 (S.I. 2018/1209 (W. 246)).

The standard and lower rates for UK landfill tax will be consistent with the rates for landfill disposals tax in Wales from 1 April 2020 (UK landfill tax does not include an equivalent rate to the unauthorised disposals rate in Wales).

### Procedure

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Provisional affirmative.

### Technical Scrutiny

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No points are identified for reporting under Standing Order 21.2 in respect of this instrument.

### Merits Scrutiny

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The following point is identified for reporting under Standing Order 21.3 in respect of this instrument.

**21.3 (i) (that it imposes a charge on the Welsh Consolidated Fund or contains provisions requiring payments to be made to that Fund or any part of the government or to any local or public authority in consideration of any licence or consent or of any services to be rendered, or prescribes the amount of any such charge or payment).**

Section 25 of the Tax Collection and Management (Wales) Act 2016 provides that the Welsh Revenue Authority must pay amounts collected in the exercise of its functions into the Welsh Consolidated Fund. These Regulations prescribe the three rates of landfill disposals tax in Wales.

### Implications arising from exiting the European Union

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No implications are identified for reporting under Standing Order 21.3 in respect of this instrument.

### Government Response

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A government response is not required.





*Regulations laid before the National Assembly for Wales under section 95 of the Landfill Disposals Tax (Wales) Act 2017, for approval by resolution of the National Assembly for Wales within twenty-eight days beginning with the day on which the Regulations were made, disregarding any periods of dissolution or recess for more than four days.*

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W E L S H S T A T U T O R Y  
I N S T R U M E N T S

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**2020 No. (W. )**

**LANDFILL TAX, WALES**

**The Landfill Disposals Tax (Tax Rates) (Wales) (Amendment) Regulations 2020**

**EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations prescribe the standard rate, lower rate and unauthorised disposals rate for landfill disposals tax chargeable on taxable disposals (within the meaning of Part 2 of the Landfill Disposals Tax (Wales) Act 2017) made on or after 1 April 2020.

The standard rate is £94.15 per tonne, the lower rate is £3.00 per tonne and the unauthorised disposals rate is £141.20 per tonne.

Taxable disposals made on or after 1 April 2019 but before 1 April 2020 will remain subject to rates set by the Landfill Disposals Tax (Tax Rates) (Wales) (Amendment) Regulations 2018 (S.I. 2018/1209 (W. 246)) as a result of the amendment made by regulation 4 of these Regulations.

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, a Regulatory Impact Assessment has been prepared as to the likely costs and benefits of complying with these Regulations. A copy can be obtained from the Welsh Government, Cathays Park, Cardiff CF10 3NQ and on the Welsh Government's website at [www.gov.wales](http://www.gov.wales).

*Regulations laid before the National Assembly for Wales under section 95 of the Landfill Disposals Tax (Wales) Act 2017, for approval by resolution of the National Assembly for Wales within twenty-eight days beginning with the day on which the Regulations were made, disregarding any periods of dissolution or recess for more than four days.*

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W E L S H S T A T U T O R Y  
I N S T R U M E N T S

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**2020 No. (W. )**

**LANDFILL TAX, WALES**

**The Landfill Disposals Tax (Tax Rates) (Wales) (Amendment) Regulations 2020**

*Made* 6 January 2020

*Laid before the National Assembly for*

*Wales* 7 January 2020

*Coming into force* 1 April 2020

The Welsh Ministers make the following Regulations in exercise of the powers conferred on them by sections 14(3) and (6), 46(4) and 94(1) of the Landfill Disposals Tax (Wales) Act 2017<sup>(1)</sup>.

**Title and commencement**

**1.** The title of these Regulations is the Landfill Disposals Tax (Tax Rates) (Wales) (Amendment) Regulations 2020 and they come into force on 1 April 2020.

**Application**

**2.** These Regulations have effect in relation to a taxable disposal (within the meaning of Part 2 of the Landfill Disposals Tax (Wales) Act 2017) made on or after 1 April 2020.

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(1) 2017 anaw 3.

**Rates of landfill disposals tax**

3. The following rates are prescribed in accordance with sections 14(3) and (6), and 46(4) of the Landfill Disposals Tax (Wales) Act 2017 respectively—

- (a) the standard rate is £94.15 per tonne;
- (b) the lower rate is £3.00 per tonne; and
- (c) the unauthorised disposals rate is £141.20 per tonne.

**Amendment of the Landfill Disposals Tax (Tax Rates) (Wales) (Amendment) Regulations 2018**

4. In regulation 2 of the Landfill Disposals Tax (Tax Rates) (Wales) (Amendment) Regulations 2018<sup>(1)</sup>, after “1 April 2019” insert “but before 1 April 2020”.

*Rebecca Evans*

Minister for Finance and Trefnydd, one of the Welsh Ministers

6 January 2020

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(1) S.I. 2018/1209 (W. 246).

## **Explanatory Memorandum to the Landfill Disposals Tax (Tax Rates) (Wales) (Amendment) Regulations 2020**

This Explanatory Memorandum has been prepared by Welsh Treasury: Tax Strategy, Policy and Engagement Division and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

### **Minister's Declaration**

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Landfill Disposals Tax (Tax Rates) (Wales) (Amendment) Regulations 2020 and I am satisfied that the benefits justify the likely costs.

**Rebecca Evans**  
**Minister for Finance and Trefnydd**  
**7 January 2020**

## **PART 1 – EXPLANATORY MEMORANDUM**

### **1. Description**

- 1.1. The Landfill Disposals Tax (Tax Rates) (Wales) (Amendment) Regulations 2020 (“the regulations”) are being made under the Landfill Disposals Tax (Wales) Act 2017 (“LDT Act”)<sup>1</sup>. The LDT Act establishes and sets out the framework and operational arrangements for landfill disposals tax which replaced UK landfill tax in Wales when it was devolved in April 2018.
- 1.2. The regulations will amend the standard rate, lower rate and unauthorised disposals rate for landfill disposals tax which will apply to taxable disposals made on or after 1 April 2020 in Wales. Taxable disposals made on or after 1 April 2019 but before 1 April 2020 will remain subject to the rates set by the Landfill Disposals Tax (Tax Rates) (Wales) (Amendment) Regulations 2018 (“the 2018 Regulations”) as a result of the amendment made by these regulations.
- 1.3. Subject to the will of the Assembly, the regulations will come into force on 1 April 2020.

### **2. Matters of special interest to the Constitutional and Legislative Affairs Committee**

- 2.1. None

### **3. Legislative background**

- 3.1. The regulations are being made pursuant to sections 14 and 46 of the LDT Act:
  - Section 14 gives the Welsh Ministers powers to make regulations to prescribe the standard rate and the lower rate; and
  - Section 46 gives the Welsh Ministers powers to make regulations to prescribe the unauthorised disposals rate.
- 3.2. Section 95 of LDT Act requires the regulations varying the rates of LDT to be (i) laid before the Assembly, and (ii) have effect for no more than 28 sitting days, unless approved by the Assembly within this period. This is often known as the “provisional affirmative” procedure.

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

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

##### *Summary*

- 4.1. These regulations will amend the standard rate, lower rate and unauthorised disposals rate for landfill disposals tax, which will apply to taxable disposals made on or after 1 April 2020 in Wales, but they also amend the Landfill Disposals Tax (Tax Rates) (Wales) (Amendment) Regulations 2018 (“the 2018 Regulations”) to disapply the rates contained in the 2018 Regulations to disposals made on or after 1 April 2019.

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

- 4.2. In September 2017, the Welsh Government published its national strategy *Prosperity for All*<sup>2</sup>. One of its four key themes is ‘Prosperous and Secure’; a key objective of which is to drive sustainable growth and combat climate change. The introduction of landfill disposals tax legislation, including these regulations, will contribute towards this objective and the national well-being goals, in particular through actions to promote a low carbon economy and develop a more resource efficient economy, building on Wales’ success in recycling and reducing the environmental impacts of production and consumption.
- 4.3. Section 91 of the LDT Act places a duty on the Welsh Ministers to have regard, amongst other factors, to the objective of reducing landfill disposals in Wales when exercising their powers and duties under the LDT Act. In developing the regulations consideration has been given to how the rates support the objective of reducing waste to landfill and the Welsh Government’s ambitions for a zero waste Wales.
- 4.4. In developing landfill disposals tax for Wales, including the regulations, the Welsh Government has applied its five principles for the development of devolved tax policy and legislation to:
- raise revenue to support public services as fairly as possible;
  - help deliver wider fiscal and policy objectives, including jobs and economic growth;
  - be simple, clear and stable;
  - engage with taxpayers and wider stakeholders;
  - contribute directly to the Well-being of Future Generations (Wales) Act 2015 goal of creating a more equal Wales.
- 4.5 In order to provide stability, the approach taken to setting the rates has been that the devolved tax rates should only diverge from those of the

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<sup>2</sup> <http://gov.wales/docs/strategies/170919-prosperity-for-all-en.pdf>

predecessor tax rates as much as is necessary to reflect Welsh circumstances and priorities.

- 4.6 The revenue from landfill disposals tax will be used to directly fund public services in Wales, replacing part of the funding the Welsh Government receives from the UK Government<sup>3</sup>. The principle that there should be no less revenue available to fund public services has also been applied.

#### *Current position*

- 4.7 There are three rates of UK landfill tax; a lower rate for materials specified in the list of qualifying materials (and meeting certain requirements) a standard rate for all other materials and an unauthorised rate for waste disposed of at places other than authorised landfill sites. The standard rate has increased over time to incentivise diversion of waste from landfill towards prevention, re-use, recycling and recovery. The standard rate has risen from £7 in 1996-97 to £91.35 in 2019-20. The lower rate was £2 when the tax was introduced and is currently £2.90. These are the rates that are currently in force in Wales with effect from 1 April 2019.
- 4.8 Since 2014, the UK Government's approach has been to maintain the standard and lower tax rates in real terms (by the rate of inflation as measured by the Retail Price Index (RPI)). In the Autumn Budget 2017 the UK Government announced that both rates will increase in line with RPI in 2019 to 2020, the Scottish Government has set the same tax rates as the UK Government since landfill tax was devolved to Scotland in 2015.

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

- 4.9 Alongside the publication of the draft budget in December 2019, the Minister for Finance and Trefnydd announced the landfill disposals tax rates for 2020-21 will increase as follows –
- i. The standard rate will increase from £91.35 per tonne to £94.15 per tonne;
  - ii. The lower rate will increase from £2.90 per tonne to £3.00 per tonne; and
  - iii. The unauthorised rate would increase from £137 per tonne to £141.20 per tonne.
- 4.10 The approach to setting tax rates has been guided by the tax principles and the objective to reduce landfill disposals in Wales, as required by section 91 of the LDT Act. Delivering stability and certainty for taxpayers and the wider waste industry has also been a key factor in setting the rates. The approach for tax rates to only diverge from those

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<sup>3</sup> <http://gov.wales/funding/?lang=en>

of the predecessor tax rates as much as is necessary to reflect Welsh circumstances and priorities and the principle there should be no less revenue available to fund public services has also been applied.

4.11 On this basis, the proposed standard and lower rates of landfill disposal tax are consistent with UK landfill tax rates to provide the stability and certainty stakeholders have asked for. The unauthorised disposals rate, is set higher than the standard rate (standard rate + 50%), creating an additional financial deterrent for people seeking to avoid their environmental obligations and dispose of waste illegally. Setting the rate higher than the standard rate takes account of the increased negative impact on the environment of unauthorised disposals of waste. The rate also recognises that administrative costs incurred by legitimate operators will have been avoided and better reflects the enforcement costs of the Welsh Revenue Authority (WRA).

4.12 Regulation 3 provides the rates for 2019-20:

	<b>2019-20</b>
Standard rate	£94.15 per tonne
Lower rate	£3 per tonne
Unauthorised disposals rate	£141.20 per tonne

## **5. Consultation**

5.1. There is a no statutory duty to consult on these regulations and the proposed rates were announced by the Minister for Finance and Trefnydd alongside the publication of the Welsh Government's draft budget on 16 December 2019, and have been consistently trailed previously. As other tax administrations, the Welsh Government does not consult formally on tax rate changes as this remains a decision for Ministers. However, we listen to feedback and engage with external stakeholders on a regular and consistent basis. No concerns have been raised on these new proposed rates.

## PART 2 – REGULATORY IMPACT ASSESSMENT

### 6. *Impact of the Landfill Disposals Tax (Tax Rates) (Wales) (Amendment) Regulations 2018*

#### Options

- 6.1. In relation to setting the **lower and standard rates**, two options have been considered; to:
- Option 1a) - be consistent with UK landfill tax rates
  - Option 1b) - set 'Welsh specific' rates which are different from the UK rates
- 6.2. In relation to the **unauthorised disposals rate**, two options have been considered; to:
- Option 2a) - maintain the unauthorised disposals rate at 150% of the new proposed standard rate
  - Option 2b) - change the unauthorised disposals rate as a % of the new proposed standard rate
- 6.3. A brief description of each option and their anticipated impact is outlined below followed by an analysis of the costs and benefits at section 7.

#### **Lower and standard rates**

##### *Option 1a): be consistent with UK landfill tax rates*

- 6.4. This option would introduce regulations which are consistent with UK landfill tax rates, with the standard and lower rate of LDT increasing in line with inflation (as measured by the Retail Price Index) in April 2020.
- 6.5. A clear message from stakeholders was the need for consistency, certainty and stability for businesses. Replicating the UK landfill tax rates could achieve this. Industry experts have also consistently highlighted concerns about waste tourism across the England-Wales border and a consistent rate with the UK landfill tax would address this possible risk.

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

- 6.6 This option would introduce regulations that set the standard and/or lower rates specific to Wales at different rates from the UK rates. In one direction, this could help to support Welsh Government priorities and policies, including the ambitious goal of zero waste by encouraging

greater recycling, recovery and re-use of waste and efforts to reduce carbon emissions and tackle climate change. An alternative approach could increase revenue to invest in public services in Wales.

## **Unauthorised disposals rate**

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

6.8 This option would maintain the unauthorised disposals rate at 150% of the new proposed standard rate of tax. This would ensure that those disposing of waste illegally pay a greater amount of tax where they dispose of it illegally compared to the amount they would have paid if they had taken it to an authorised landfill site.

6.9 As there is a proposal to increase the standard rate in line with inflation, this will therefore increase the unauthorised disposals rate from £137.00 to £141.20.

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

6.10 The smooth implementation of LDT has been the priority for WRA since 1 April 2019. The registration of landfill site operators (LSOs), the approval of alternative weighing methods, and reliefs such as water discounts and site restoration reliefs have been the focus for WRA to enable them to successfully collect the tax in the first year of operation. The unauthorised rate is a further tool to assist public authorities in Wales, such as NRW and local authorities in tackling illegal waste and they have been working to develop how they will work in partnership with these other bodies before they start issuing charging notices for unauthorised disposals tax. The WRA continues to develop its approach to unauthorised disposals so there is therefore no evidence to suggest a change from the current approach, which is 150% of the standard rate.

## **7. Costs and Benefits**

7.1. The costs and benefits associated with each option have been produced using the best available information at the time.

7.2. The preferred option is for the Welsh Government to be consistent with UK landfill tax for the standard and lower rate (option 1a) and to maintain the unauthorised disposals rate at 150% of the new proposed standard rate (option 2a).

7.3. The WRA has delegated compliance and enforcement functions (including tackling unauthorised disposals) to Natural Resources Wales (NRW), who have existing relationships with the landfill site operators

and extensive knowledge of the waste industry. Compliance will be undertaken on a risk basis as is currently the case with UK landfill tax.

## **Lower and standard rate**

*Option 1a): be consistent with UK landfill rates*

- 7.4. A key priority for the Welsh Government was a smooth transition to LDT in 2018-19. Any changes to tax rates can be expected to have behavioural effects.
- 7.5. A reduction in LDT rates may encourage greater landfill disposals in Wales, which is not consistent with the Welsh Government's wider waste policy agenda. An increase in waste being disposed of in Wales would also have wellbeing and environmental impacts for communities. For example, it would:
- Increase waste, including potentially hazardous waste, travelling further distances on major roads and through residential areas;
  - Increase disruption for residents near landfill sites and waste transfer stations;
  - Increase the carbon footprint of waste disposal;
  - Increase pressure on existing landfill capacity, with potential calls for new landfill sites to be developed.
- 7.6. Conversely, an increase in LDT rates may encourage less waste to be disposed of to landfill in Wales than if landfill tax were to continue to apply, reducing the amount of revenue collected. This is inconsistent with our principle that there should be no less revenue available to fund public services. Further, an increase in LDT rates may encourage unauthorised waste disposals in Wales.
- 7.7. Stakeholders have suggested that the standard rate has reached its optimum level where landfilling these materials is the most expensive, and therefore least attractive, means of waste disposal. Increasing tax rates may incentivise unauthorised disposals of waste. Some stakeholders have made the case for increasing the lower rate to encourage greater recycling, re-use and recovery of these materials but the majority wanted consistency with UK rates to minimise the risk of waste tourism, including, at least initially, for the lower rate.
- 7.8. By setting rates that are consistent with UK landfill tax, public services in Wales will continue to benefit from tax revenue, while ensuring the risk of the movement of waste across borders is reduced.

## Costs

- 7.9. Under this option, the lower and standard LDT rates would increase in line with inflation as measured by RPI. This means the standard rate of

LDT would be £94.15 per tonne and the lower rate would be £3 per tonne in 2020-21.

7.10. As the proposed tax rates are consistent with the UK landfill tax, there is not expected to be any significant change in the amount of waste disposed of at authorised landfill sites in Wales. Overall revenue generated from landfill disposals tax in 2019-20 and 2020-21 is forecast to be £41m and £38m respectively. Despite the increase in tax rates, revenue is expected to fall as an increasing amount of waste is diverted away from landfill. This trend is expected to continue in future years. The forecasts in Table 1 do not include the tax revenue from unauthorised disposals.

**Table 1: Landfill disposals tax revenues forecast (£ million)**

	2019-20	2020-21	2021-22	2022-23
Landfill disposals tax (£m)	41	38	35	33

Source – OBR Spring forecast<sup>4</sup>

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

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

7.12. Wales is at the forefront of waste policy and landfill disposals tax is a useful additional lever to support Welsh Government waste policies and achieve our ambitious goal of a zero waste Wales.

7.13. This option would increase the incentive to separate and sort waste for disposal in order to secure the lower rate of tax which can have added benefits of enabling more waste to be recovered, re-used and recycled and reduce the amount of waste going to landfill.

7.14. However, analysis provided under option 1a (paragraphs 7.8 to 7.10) demonstrates the disbenefits associated with increasing and decreasing the tax rates as well as stakeholder’s preference for consistency with UK landfill tax rates.

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

7.15. Maintaining the unauthorised disposal rate at the 150% of the new proposed standard rate ensures a level of fairness, proportionality, and transparency. It offers an effective deterrent and recognises the increased negative impact on the environment of unauthorised disposals of waste and that in normal circumstances registered landfill site operators incur administrative costs relating to registration, filing, paying

<sup>4</sup> An updated forecast will be published alongside the draft budget on 16<sup>th</sup> December

and record-keeping and these would have been avoided along with penalties and interest, which would have been applied to a registered landfill site operator for failure to do these. Setting the rate at 150% of the new proposed standard rate keeps it in line with the standard rate increase which is in line with the retail price index and therefore helps to create a level playing field for legitimate waste businesses.

7.16. Consistent with the purpose of the tax as a lever to influence positive environmental behaviours this approach seeks to encourage individuals to make efforts to take up sustainable methods of waste disposal or, as a minimum, to take waste to a registered landfill site and pay a fair share of tax and thus protect revenue for investment in public services in Wales. Our approach further aims to bring benefit to the communities who are affected by unauthorised disposals by seeking to deter this activity in future.

### Costs

7.17. The introduction of a separate tax rate for unauthorised disposals came into force in Wales on 1 April 2018 and was aimed primarily at deterring unauthorised disposals rather than raising tax revenue. The WRA are responsible for determining the level of compliance and enforcement activity it undertakes in relation to unauthorised disposals. It is expected that its approach will be proportionate and cost-effective and be considered in the context of the wider initiatives being taking forward by the Welsh Government, NRW and local authorities to tackle other bodies to ensure that those dumping waste bear the cost of their actions tackle unauthorised disposals.

7.18. An industry report in 2015<sup>5</sup> highlighted that every £1 spent on waste crime enforcement is expected to return between £3.60 and £5.60 to government. This clearly makes the enforcement of these powers a valuable tool and one which could be a worthwhile investment in the long term.

7.19. Tax collected from unauthorised disposals will support the delivery of public services in Wales, with some revenue allocated to NRW and local authorities where they have been instrumental in assisting the investigation and pursuit of tax and to incentivise future action.

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

7.20. As mentioned above in 6.10, there is no evidence available to suggest whether the rate should increase or decrease.

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<sup>5</sup>[http://www.esauk.org/esa\\_reports/ESAET Waste Crime Tackling Britains Dirty Secret LIVE.pdf](http://www.esauk.org/esa_reports/ESAET_Waste_Crime_Tackling_Britains_Dirty_Secret_LIVE.pdf)

## Summary of the preferred option

- 7.21. The preferred option is for the Welsh Government to be consistent with the options used to set the rates in 2017-18, being the same as the UK Landfill Tax for the lower and standard rate (option 1a) and to maintain the unauthorised disposals rate at 150% of the new proposed standard rate (option 2a).
- 7.22. The key benefit is to provide certainty and stability for the waste industry, by broadly enabling consistency with how landfilled waste is charged in England and Wales and the risk of cross border movement of waste is reduced. It also ensures that the benefit of the tax revenue can continue to be secured for investment in public services in Wales.
- 7.23. The standard rate in particular is widely considered by stakeholders to be set at a level which reflects its environmental cost and promotes a more sustainable approach to waste management. This will help deliver wider benefits including supporting the delivery of the Welsh Government's National Strategy Prosperity for All and its wider waste and environment policies. In particular, continuing to enable the Towards Zero Waste Strategy and helping to deliver the goals set out in the Environment (Wales) Act 2016 and the *Climate Change Strategy for Wales*.
- 7.24. The unauthorised disposals rate seeks to support our policy ambition to deter unauthorised disposals which blight our communities. It will ensure that the increased negative impact of unauthorised disposals is recognised, it will support the creation of a level playing field for legitimate operators and it better reflects the enforcement costs of WRA. It is hoped the proposed rates will encourage illegal operators to manage their waste more sustainably and as a minimum take it to an authorised landfill site and pay a fair share of tax which supports public services in Wales.

## 8. Consultation

- 8.1. There is a no statutory duty to consult on these regulations. As other tax administrations, the Welsh Government does not consult formally on tax rate changes as this remains a decision for Ministers. However, we listen to feedback and engage with external stakeholders on a regular and consistent basis. No concerns have been raised on these new proposed rates.

## 9. Competition assessment

- 9.1. See **Appendix A**
- 9.2. At present there are 17 landfill site operators<sup>6</sup> in the market.
- 9.3. These Regulations are not expected to adversely affect levels of competition in Wales or the competitiveness of Welsh firms, as a percentage uplift in rates will affect every operator similarly in percentage terms.

## 10. Post implementation review

- 10.1. The effect of the LDT Act and these regulations will be assessed in a number of ways, including:
  - A review of the LDT Act and regulations will be completed within six years of the tax being devolved to Wales;
  - Data will be collected as part of LDT tax returns and these will provide an evidence base from which evaluation of a number of Welsh Government policies can be undertaken. The data will include information on LDT revenue and the tax base directly, for example, the tonnage of standard and lower rate materials sent to landfill in Wales or the amount of tax raised at the unauthorised disposals tax rate.
  - A programme of monitoring activity will be developed to correspond with key activities including enforcement activity on unauthorised disposals.
- 10.2. Any post implementation assessment of more qualitative aspects of landfill disposals tax's introduction will require the collection of further data. For example, direct engagement with landfill site operators (meetings/surveys etc.). Assessing the impact of operational matters is the responsibility of WRA although there is potential for collaborative evaluation with the Welsh Government.

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<sup>6</sup> <https://beta.gov.wales/welsh-revenue-authority-list-landfill-site-operators>

## APPENDIX A

### The Competition Assessment

There are two stages to the Competition Assessment. The first is a quick filter that assesses whether there is a risk of a significant detrimental effect on competition. The results of the competition filter are presented in the table below:

The competition filter test for landfill site operators	
Question	Answer yes or no
<b>Q1:</b> In the market(s) affected by the new regulation, does any firm have more than 10% market share?	Yes
<b>Q2:</b> In the market(s) affected by the new regulation, does any firm have more than 20% market share?	Yes
<b>Q3:</b> In the market(s) affected by the new regulation, do the largest three firms together have at least 50% market share?	Yes
<b>Q4:</b> Would the costs of the regulation affect some firms substantially more than others?	No
<b>Q5:</b> Is the regulation likely to affect the market structure, changing the number or size of businesses/organisation?	No
<b>Q6:</b> Would the regulation lead to higher set-up costs for new or potential suppliers that existing suppliers do not have to meet?	No
<b>Q7:</b> Would the regulation lead to higher ongoing costs for new or potential suppliers that existing suppliers do not have to meet?	No
<b>Q8:</b> Is the sector characterised by rapid technological change?	No
<b>Q9:</b> Would the regulation restrict the ability of suppliers to choose the price, quality, range or	No

Rebecca Evans AC/AM  
Y Gweinidog Cyllid a'r Trefnydd  
Minister for Finance and Trefnydd



Llywodraeth Cymru  
Welsh Government

Ein cyf/Our ref: MA/RE/5796/19

Elin Jones AM  
Llywydd  
National Assembly for Wales  
Cardiff Bay  
CF99 1NA

6 January 2020

Dear Llywydd,

### **Landfill Disposals Tax (Tax Rates) (Wales) (Amendment) Regulations 2020**

I have today made the Landfill Disposals Tax (Tax Rates) (Wales) (Amendment) Regulations 2020 under section 95 of the Landfill Disposals Tax (Wales) Act 2017 which comes into force on 1 April 2020. I attach a copy of the statutory instrument and the accompanying Explanatory Memorandum, which I intend to lay once the statutory instrument has been registered.

In accordance with the procedure set out in section 95 of the Landfill Disposals Tax (Wales) Act 2017, this instrument must be approved by the National Assembly for Wales by 28 January 2020 in order for it to remain in effect. In these circumstances I understand Standing Order 21.4A is relevant and the Business Committee may establish and publish a timetable for the responsible committee or committees to report. It may be helpful to know that I intend to hold the plenary debate for this item of subordinate legislation on 28 January 2020.

I am copying this letter to Mick Antoniw AM, Chair of the Constitutional and Legislative Affairs Committee, Llyr Gruffydd AM, Chair of the Finance Committee and Sian Wilkins, Head of Chamber and Committee Services.

Yours sincerely,

**Rebecca Evans AM**  
Y Gweinidog Cyllid a'r Trefnydd  
Minister for Finance and Trefnydd

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

David Rees AM  
Chair  
External Affairs and Additional Legislation Committee  
Senedd

13 January 2020

Dear David

During my appearance before the Committee on 6 January I agreed to write to you on matters regarding the EU (Withdrawal Agreement) Bill.

Alun Davies AM asked about the areas of dispute between the UK Government and the Welsh Government regarding the clauses in the Bill for which consent is required. There was dispute about 10 clauses in the October version of the Bill but this had declined to five when the Bill was re-introduced in December. Overall, there is a high degree of consensus on the clauses that require consent, but it is our view, though still not accepted by the UK Government, that the National Assembly's consent is required for the following clauses:

Clause	Summary
17 Interpretation: Part 3	This clause provides for the interpretation of Part 3 of the Bill
25 Retention of saved EU law at end of implementation period	This clause makes amendments to specified provisions of the EU (Withdrawal) Act, for example by substituting various references to 'exit day' so that they are references to 'IP completion day'. This is to ensure that the conversion of EU law into 'retained EU law' will now take place at the end of the implementation period.
26 Interpretation of retained EU law and relevant separation agreement law	This clause makes further amendments to substitute references to 'exit day' so that they refer to 'IP completion day'. This clause also defines the term 'relevant separation agreement law' and sets out rules of interpretation so that, so far as applicable, that body of law is interpreted in accordance with the Withdrawal Agreement, the EEA EFTA separation agreement and the Swiss citizens' rights agreement.
29 Review of EU legislation during implementation period	This clause provides for review of EU legislation during the implementation period.
36 Repeal of unnecessary or spent enactments	This clause repeals unnecessary or spent enactments.

I was also asked about clause 20, on financial provision to allow for payments to be made to the EU for the purposes of complying with any Withdrawal Agreement obligations.

On reflection, we agree that this clause modifies the competence of the Welsh Ministers, and that the consent of the Assembly is needed for this clause.

I am copying this letter to the Chair of the Constitutional and Legislative Affairs Committee.

Best wishes

A handwritten signature in black ink that reads "Mark Drakeford". The signature is written in a cursive, slightly slanted style.

**MARK DRAKEFORD**



Ein cyf/Our ref: MA/VG/5824/19

Mick Antoniw AM  
Chair, Constitutional and Legislative Affairs and Committee  
National Assembly for Wales  
Cardiff Bay  
Cardiff  
CF99 1NA

14 January 2020

Dear Mick,

I would like to thank the Constitutional and Legislative Affairs and Committee for its scrutiny of the Health and Social Care (Quality and Engagement) (Wales) Bill during Stage 1 of the legislative process. Building upon what I said at the Stage 1 General Principles debate on 26 November, I am pleased to respond to the recommendations made in the Committee's scrutiny report, published on 15 November 2019.

With regard to the level of detail set out on the face of the Bill in respect of the duty of candour, this is something which has been carefully considered, both when the Bill was being prepared and as we have progressed through Stage 1 of the scrutiny process. Section 3 of the Bill clearly sets out the circumstances in which the duty comes into effect. Statutory guidance to be issued under section 10 will explain these circumstances, what the duty of candour means and set out when the duty will apply, including explanation and illustration of what is meant by "more than minimal" harm. Section 4 makes clear the key steps to be followed once the duty has been triggered, with the detail of the procedure itself to be set out in regulations.

I have placed on record my commitment to co-develop the statutory guidance with professional and patient representatives, so that the circumstances in which the duty applies is clearly understood and roundly described in a way that is accessible to all. I intend that the guidance will contain examples and case studies which will make it reader-friendly for clinicians, service users and the wider public.

I fully appreciate it is a delicate balancing act to decide how much detail goes on the face of the Bill and/or secondary legislation and how much is contained in statutory guidance. I understand the Committee's desire to seek an explanation for the approach we have taken. I am keen to learn from the experience of other jurisdictions, like England and Scotland, in this regard and in my view the Bill strikes an appropriate balance.

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

With regard to the future use of the powers in section 26 of the Bill, I have no foreseeable plans to use those powers in respect of amendments to primary legislation. All those amendments currently required have been included within Schedule 3 to the Bill. However, it is important to retain a power in order to ensure that the Bill can be implemented effectively in all circumstances. As required by Section 23(3) any changes to primary legislation would be subject to the affirmative procedure and therefore subject to the approval of the Assembly.

In terms of secondary legislation we will need to make some consequential changes to existing regulations, for example, to remove references to Community Health Councils, but this is a standard part of the implementation process for all Bills. Those regulations will be subject to the Assembly's negative resolution procedure which mirrors the choice of process taken in other Acts of the Assembly.

Finally, I have considered the Committee's comments about Section 26(1) and, in particular, the use of the word "expedient".

I will be bringing forward a Government amendment to replace the word "expedient" with the word "appropriate" so that the power in section 26(1) may be exercised where it is "necessary or appropriate" for the purposes of the Act.

It must be remembered that the scope of power in Section 26(1) is not to make regulations containing new or substantive provision but rather to make changes to ensure the Bill's other provisions work in practice – the provision made must be a supplementary, incidental, consequential, transitory, transitional or savings provision and must be for the purposes of the Act.

An appropriate power is needed so that consequential or transitory provision can be made that gives the best effect to the policy intentions of this Bill, enable it to be implemented effectively and ensure that the wider statute book is kept up to date and accessible. This is consistent with drafting practice in other Bills both in Wales and more widely in the UK.

In closing, I will also be writing to the Chairs of the Health, Social Care and Sport and the Finance Committees with regard to their Stage 1 reports and will copy all letters to all three Committee Chairs.

Yours sincerely,

A handwritten signature in black ink that reads "Vaughan Gething". The signature is written in a cursive, flowing style.

Vaughan Gething AC/AM  
Y Gweinidog Iechyd a Gwasanaethau Cymdeithasol  
Minister for Health and Social Services



Llywodraeth Cymru  
Welsh Government

Vaughan Gething AC/AM  
Y Gweinidog Iechyd a Gwasanaethau Cymdeithasol  
Minister for Health and Social Services

Ein cyf/Our ref: MA/VG/5824/19

Dai Lloyd AM  
Chair, Health, Social Care and Sport Committee  
National Assembly for Wales  
Cardiff Bay  
Cardiff  
CF99 1NA

14 January 2020

Dear Dai,

I would like to thank the Health, Social Care and Sport Committee for its scrutiny of the Health and Social Care (Quality and Engagement) (Wales) Bill during Stage 1 of the legislative process.

In Annex A to this letter I acknowledge and set out my response to the 21 recommendations made within the Committee's scrutiny report, published on 15 November 2019. Building upon what I said at the Stage 1 General Principles debate on 26 November 2019, this reflects my current view on the matters raised.

I will also be writing to the Chairs of the Constitutional and Legislative Affairs and the Finance Committees with regard to their Stage 1 reports and will copy all letters to all three Committee Chairs.

I look forward to continuing to work with Members as the Bill progresses through the Assembly.

Yours sincerely,

**Vaughan Gething AC/AM**  
Y Gweinidog Iechyd a Gwasanaethau Cymdeithasol  
Minister for Health and Social Services

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

**Pack Page 73**

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

## **Annex A: Welsh Government response to the recommendations of the Health, Social Care and Sport Committee regarding the Health and Social Care (Quality and Engagement) (Wales) Bill.**

On 15 November 2019 the Health, Social Care and Sport Committee published its Stage 1 scrutiny report in respect of the Health and Social Care (Quality and Engagement) (Wales) Bill. This document provides the Welsh Government's response to the recommendations included in that report.

**Recommendation 2.** We recommend that the Minister amends the Bill to make provision for the issuing of statutory guidance relating to the duty of quality. Such guidance should, amongst other things, clearly set out how the duty of quality in service provision will be assessed and how an organisation would demonstrate an improved outcome. It should also include details of how innovations and improvements designed in one area will be spread and scaled across the whole of Wales.

### **Welsh Government response: Accept**

This was helpfully raised at Committee. I have reflected on what was discussed and am grateful to the Committee for their contribution on this matter.

At stage 2, I will table amendments to Part 2 of the Bill (improvement in health services) to enable the Welsh Ministers to issue statutory guidance in relation to the quality duty provided for in the Bill. Local Health Boards, NHS Trusts and Welsh Special Health Authorities will all have a duty to have regard to the guidance in their exercise of their functions.

As you will be aware, I am keen to issue guidance to the NHS to assist in the implementation of the duty of quality and to give a practical guide to how we expect NHS bodies to perform the duty. I intend this to be a practical, user friendly document with illustrative examples of how we envisage the duty working in practice. As I stated in Committee, having this guidance to support the duty on the face of the Bill will also help the scrutiny architecture we have in place such as the regulators, Assembly Members and other stakeholders who all have an interest in ensuring the duty of quality is successfully embedded.

**Recommendation 3.** We recommend that the Minister amends the Bill to make explicit reference to the need to focus on prevention and improve population health as part of the duty of quality.

**Recommendation 4.** We recommend that the Minister amends the Bill to make specific provision for appropriate workforce planning/staffing levels as part of the duty of quality.

**Recommendation 5.** We recommend that the Minister amends the Bill to make specific provision for a duty to secure improvements to health equity as part of the duty of quality.

**Recommendation 6.** We recommend that the Minister amends the Bill to make specific provision for the consequences of non-compliance with the duty of quality.

**Recommendation 7.** We recommend that the Welsh Government ensures that guidance on the Bill clearly sets out how the duty of quality will align with existing social care duties, and how it will support the integration agenda

**Welsh Government response: Reject amendments to the Bill, but will cover the matters outlined in the recommendations within statutory guidance**

Statutory guidance will be co-produced with professional and patient representatives to support and assist NHS bodies in their implementation of the duty of quality.

In doing so the guidance will further describe what is meant by quality and how it will work in practice, including: how it should apply across **all** functions and processes of NHS bodies; what it means for considerations and decisions made at all levels; how the quality of services should be considered at a wider population level and how NHS bodies can demonstrate they have complied with the duty, via their annual quality reports, mandated by the Bill.

The guidance will help illustrate how the duty applies to key considerations such as prevention and population health, workforce planning and staffing arrangements and tackling health inequities. It will also highlight the links with existing social care duties, to support integrated services, and explain that non-compliance with the duty will raise concerns and could lead to escalation measures.

**Recommendation 8.** We recommend that the Welsh Government amends the Bill to make specific provision for a duty on health and social care providers to co-operate in order to secure improvements for services users

**Welsh Government response: Reject**

I have carefully considered the views of stakeholders' in this regard and am confident we have the means to achieve this within the existing legislative framework.

The Social Services and Well-being (Wales) Act 2014 mandates co-operation and partnership arrangements between local authorities and their relevant partners, including health boards and NHS Trusts, to achieve better outcomes, promote well-being of people and to improve the efficiency and effectiveness of service delivery.

In doing so, the Act places duties on health and local government partners to work together to assess the needs of their population. Under the direction of Regional Partnership Boards they must jointly produce a report on the outcomes of these population assessments and develop a joint area plan for how care and support needs will be met over a three year period.

In parallel, NHS bodies and local authorities must prepare and review their Integrated Medium Term Plans every 3 years. These plans set out how they will work together to continuously improve health services for the people they serve.

The outcomes of these assessments enable local authorities and health boards to plan together how they can address those needs, jointly or individually, in a seamless and integrated way. Improvement in outcomes, across the health and social care system, is very much a shared value and key driver in meeting the priorities set out in A Healthier Wales.

**Recommendation 9.** We recommend that the Minister amends the Bill to make specific provision for the consequences of non-compliance with the duty of candour.

**Welsh Government response: Reject amendments to the Bill but will cover within statutory guidance**

I am pleased to note the Committee agrees that financial sanctions are not appropriate. As with the duty of quality, the statutory guidance on the duty of candour will clearly explain the relationship between the duty and the NHS Wales Performance Framework, including the Escalation and Intervention arrangements. We will also ensure that where appropriate it clearly aligns with the Putting Things Right arrangements and provides clarity on how the duty fits with the All Wales Raising Concerns (Whistleblowing) Policy.

**Recommendation 10.** We recommend that the Minister clarifies his intention in regard to what will happen to candour reports, once produced, including how they will be monitored and scrutinised.

**Welsh Government Response: Accept**

The intention is to co-produce the statutory guidance on candour with professional and patient representatives. Therefore, the detail of how best to utilise the reports will be worked through as part of that process.

Actions I would expect to see include, regular updates to be provided at Quality and Safety Committee meetings, so independent members can seek assurance that the duty is being discharged and learning being taken forward, with escalations to the Board where appropriate.

It is intended the Welsh Government will monitor the content of the candour reports alongside other sources of information such as serious incident reports and complaints data. This will inform regular Quality and Delivery, and Joint Executive Team meetings with health boards and can also inform discussions and evidence considered through the NHS Escalation and Intervention arrangements. Healthcare Inspectorate Wales will also take the reports into account as part of its intelligence gathering, to support its programme of inspection and review activity.

Further detail about the duties to report on quality and candour can be found within Annexes 2 and 3 to my letter to the Committee on 30 August 2019<sup>1</sup> which provide draft outlines of the guidance.

The statutory guidance on candour will set out how Local Health Boards and NHS Trusts should use the data gathered, through reporting annually, to help inform their new annual quality reports and how providers of NHS care can evidence they are promoting a culture that encourages candour and the learning that stems from it.

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<sup>1</sup><http://www.senedd.assembly.wales/documents/s93589/Letter%20from%20the%20Minister%20for%20Health%20and%20Social%20Services%20regarding%20the%20Health%20and%20Social%20Care%20Qualit.pdf>

**Recommendation 11.** We recommend that the Minister amends the Bill to make provision for the members of the Citizen Voice Body to be appointed by the National Assembly for Wales.

**Welsh Government response: Reject - but will ensure additional stakeholder involvement in the process**

I have listened to the arguments that were made by Committee members on this point. I have also revisited the evidence given by stakeholders. I am aware this is a subject that has elicited some strong views and I welcomed the opportunity, at Committee, to set out our policy rationale for the position we have adopted in the Bill.

I am confident in the approach taken in the Bill – that members of the Board of the Citizen Voice Body will be appointed through the public appointments process, with additional stakeholder involvement at the Advisory Assessment Panel stage, and that all other members (staff and volunteers) will be recruited by the Body itself.

In making appointments to the Board of the Citizen Voice Body, the Welsh Ministers will be bound by the Governance Code on Public Appointments, which sets out the process and principles to follow. As such, the appointments will be independently regulated by the Commissioner for Public Appointments and, ultimately, all Ministers are answerable to the National Assembly for Wales for their decisions.

These appointments will be made solely on merit; in the public interest; without obligation, through a process that is open, transparent, fair and impartial.

In my evidence to the Committee and at the General Principles debate, I confirmed how I believe this significantly improves the current situation with regard to appointment of members and employment of staff within the CHCs.

The Bill establishes the Citizen Voice Body as a legal entity in its own right, with powers to recruit its own staff and volunteers and enter into its own contracts, with its own governance framework, in a way that ensures it can exercise its functions independently of government.

The Bill makes clear that the Body itself will set its own objectives and priorities for the year, in its published annual plan, after consulting whoever it considers appropriate. At the end of each financial year the Body will report on the exercise of its functions, laying a copy before the National Assembly for Wales, and a statement of its accounts will be submitted to the Welsh Ministers and the Auditor General.

These measures will serve to ensure a high degree of independence for the new Body and provides clear opportunities for scrutiny of its work.

**Recommendation 12.** We recommend that the Minister amends the Bill to make provision for the Citizen Voice Body to have a qualified right of access to health and social care settings for the purpose of speaking to service users, and carrying out reasonable and proportionate checks on the care being provided. Specific conditions or restrictions on the use of this power could be set out in detail in accompanying regulations or statutory guidance

**Welsh Government response: Reject – but on 2 December 2019 the Government tabled an amendment to the Bill to introduce a Code of Practice on Access.**

The question of access to settings where health or social care services are provided has prompted considerable debate during Stage 1 of the scrutiny process.

The Bill creates a new Citizen Voice Body whose objective and overarching purpose is to represent the public's interest in health and social care. The Citizen Voice Body's central function is to seek the views of the public and I have been clear that seeking views at the point at which services are delivered is a key element. Ensuring that service users can participate in shaping the delivery of services is a fundamental aspiration behind this part of the Bill. I have listened to evidence from stakeholders about how this might be achieved. I have taken account of all the evidence from those in favour of a power of unannounced access for the Body and those that have raised concerns against it.

The Government amendment tabled on 2 December 2019 requires the Welsh Ministers to publish a Code of Practice relating to access to premises at which health services or social services are provided for the purpose of seeking the views of individuals. The Code will be subject to statutory consultation before being issued so that all stakeholders have an opportunity to comment on its content.

The intention is that the Code will recognise the Body's function of seeking views while also recognising the need to safeguard the privacy of service users and service providers. The Code may, for example, recommend the factors the Body ought to take into account when requesting access to premises such as making requests at reasonable times. It may also make recommendations about the need for those conducting visits to have appropriate training and checks. As noted above, its content will be subject to consultation.

One of the principal benefits of the Code is that it will be able to reflect the variety of settings where health and social services are provided. Vastly different forms of care, support and treatment are delivered across these settings, responsive to individuals' needs and wishes. The Code will be a living document, capable of responding to changes in practice and experiences in applying the Code. It will carry the necessary weight to ensure all parties discharge their respective responsibilities.

It must also be remembered that, whilst important, accessing premises is only one way in which the Body can seek views. It has a duty under the Bill to set out in a statement of policy how it proposes to seek the views of the public (section 14). It will therefore be essential that the Body has a strategy to maximise its engagement with members of the public, using the resources that are available to it. It is our hope that this will enable the Body to reach large numbers of the public with a variety of means such as, for example, online activity, discussion groups and consultations. The Body may engage not only with current service users, but past users, prospective service users, their family members etc in order to ensure the views they hear are as representative as possible.

Similarly, NHS bodies and local authorities are required to make arrangements to bring the activities of the Citizen Voice Body to the awareness of people receiving health and social services (section 17). These new duties are intended to increase public involvement, awareness and engagement in the work of the Body and the shaping of services.

The purpose of accessing premises will be to seek views about health and social services in order to enable the Body to represent the public interest. Carrying out checks on the quality of health and social care services is undertaken against regulatory standards by the inspectorates, the Healthcare Inspectorate Wales and Care Inspectorate Wales. To give the new Body a role in carrying out checks on the care being provided would change its nature and would duplicate and blur the line of responsibility between the Body and the inspectorates.

As I have stated, and as the inspectorates themselves have stated, our expectation is that the Citizen Voice Body will work as an equal partner with the inspectorates as their functions, although different, are complementary in giving the overall picture.

**Recommendation 13.** We recommend that the Minister amends the Bill to include the Welsh Ministers on the list of persons to whom the Citizen Voice Body may make representations.

**Welsh Government response: Reject**

It is appropriate that the Citizen Voice Body has the ability to make representations to NHS bodies and local authorities, as they provide or commission health or social care and therefore will be in a position to make any changes to services on the ground as a result of consideration of the representations. As the Welsh Ministers do not commission or provide services, it is not considered appropriate to include them in the list of bodies to whom the Body can make representations.

However, the Welsh Ministers will be in receipt of and closely monitor the Body's annual plan and annual reports, therefore providing opportunities for the Body to shape national policy and highlight best practice. As with any other Welsh Government Sponsored Body, there will be a working relationship between the Body and the Welsh Government sponsor that will give the Body opportunity to raise issues with the Welsh Ministers.

Moreover, the Body may choose to make representations to NHS bodies and local authorities across Wales, for example, to those members of a Regional Partnership Board, presenting opportunities to influence their work in planning and commissioning health and social care services to meet the needs of their populations.

**Recommendation 14.** We recommend that the Minister amends the Bill to require a response from the appropriate organisation to any representation made by the Citizen Voice Body.

**Welsh Government response: Reject - but on 2 December the Government tabled an amendment to place a duty on the Welsh Ministers to issue statutory guidance on how the duty to have regard to representations should work in practice.**

I have noted the Committee's comments on the nature of the representations that the Citizen Voice Body may make and what can be done to ensure not only they are listened to, but that the Body and the public can see they are being listened to. Whilst the duty to have regard already carries considerable weight, I have taken account of what the Committee has

said and on 2 December 2019 tabled an amendment to require the Welsh Ministers to issue statutory guidance on how this will work in practice.

It is clear that the Body will need to be kept up to date with how a public authority is dealing with their representation, and, most importantly, the outcome of that representation. The publication of statutory guidance will enable us to set out how this should happen in a proportionate way that reflects the different types of representation that may be made.

NHS bodies and local authorities will have a duty to have regard to that guidance when considering the representations and in exercising any of their functions to which the representations relate.

I believe this is stronger than a bare duty to respond to a representation. The guidance will underpin the importance of advising the Body of the outcome of the representation. From the evidence we have heard during scrutiny to date it is knowing what difference a representation has made is what will be key to the Body's ability to demonstrate to the public that engaging with the Body and providing their views is meaningful, adds value and can be impactful.

**Recommendation 15.** We recommend that the Minister amends the Bill to require the Citizen Voice Body to make arrangements for internal local structures.

#### **Welsh Government response: Accept in part**

As the explanatory memorandum to the Bill shows, we are committed to the principle that the Citizen Voice Body is established to represent the views of the public across health and social care and therefore it needs to be able to exercise its functions at local, regional and national levels in order to be successful. I have consistently supported this view.

However, the written and oral evidence received by the Health, Social Care and Sport Committee makes clear that it is important to stakeholders that this principle is enshrined. Therefore, on 2 December 2019, a Government amendment was tabled to require the Citizen Voice Body, when preparing its statement of policy (under section 14), to specify how it proposes to ensure it will represent the interests of and be accessible to people in all parts of Wales.

This strikes an appropriate balance between allowing the Body to determine for itself, based on its own assessment of need, operational matters such as where its offices should be based and on requiring the Body to ensure it is accessible to and able to represent the views of all people across Wales.

**Recommendation 16.** We recommend that the Minister amends the Bill to make provision for volunteers to be recruited to the Citizen Voice Body. This should include a requirement to build a diverse volunteer base that represents all sectors of society.

#### **Welsh Government response: Reject**

The Citizen Voice Body is established as an independent body corporate. Consequently, it has the power to recruit volunteers without the need for a specific provision on the face of the Bill and this will enable it to build a diverse volunteer base that represents all sectors of

society. Estimated costs for training volunteers and paying expenses etc are set out in the Regulatory Impact Assessment. The recruitment of volunteers have therefore been factored into the costings.

Anecdotal evidence from the CHCs suggests that many would-be applicants for CHC membership are currently deterred from applying because of the very formal application and interview process. The fact that the Citizen Voice Body will have the flexibility to determine its own volunteer model therefore has real potential to increase both the number and diversity of volunteers.

Officials have had an initial conversation with the Wales Council for Voluntary Action who have indicated they would be happy to share their experience of recruiting and retaining volunteers with the Implementation Board that will be set up to facilitate the establishment of the new Body.

**Recommendation 17.** We recommend that the Minister amends the Bill to include a duty on health bodies and local authorities to co-operate with the Citizen Voice Body.

#### **Welsh Government response: Reject**

The Bill already provides that NHS bodies and local authorities must promote awareness of the activities of the Citizen Voice Body (section 17) and provide it with information that it reasonably requests (section 18). Stage 2 Government amendments have also been tabled which, if passed, will further strengthen the relationship between the Citizen Voice Body and NHS bodies and local authorities:

- (i) the code of practice relating to access to premises for the purpose of seeking people's views; and
- (ii) statutory guidance will address the handling of representations made by the Citizen Voice Body regarding health and social services, ensuring the Body is kept up to date and informed of the outcome of their representations.

When taken together, these provisions set a strong framework for cooperation between the Citizen Voice Body and NHS bodies and local authorities. I expect the new Body and its partners in the NHS and local government to build on these statutory arrangements as their relationships develop.

**Recommendation 18.** We recommend that the Minister reconsiders the resources set aside for the establishment and operation of the Citizen Voice Body, with a view to increasing them. Any changes in this area will need to be reflected in the Regulatory Impact Assessment.

#### **Welsh Government response: Reject**

The Regulatory Impact Assessment presents a best estimate of the costs of the Bill, based upon the available evidence at this time. It is important to recognise that the Citizen Voice Body will be an independent Welsh Government Sponsored Body, with the discretion to use its funding in different ways to that envisaged in the RIA. It will, however, have to operate within its financial envelope to deliver its functions.

The funding that will be provided to the new Body compares very favourably with that available to similar bodies in the other parts of the UK that exercise broadly comparable functions. On the basis of an annual budget of £4.7 million for the new Body, this will mean a funding per head of population figure of £1.52. In 2017/18 this was £0.54 for Health Watch in England and £0.84 for the Patient and Client Council in Northern Ireland.

I am satisfied that this is a sufficient level of funding which balances competing pressures on the public purse whilst ensuring investment in strengthening the citizen voice and delivering value for money. As stated in response to some of the recommendations made by the Finance Committee, any unforeseen financial implications will be managed within the existing budget allocated for this legislation, over the budget planning period as set out in the RIA. Any additional costs beyond that will be incorporated into future budget plans.

**Recommendation 19.** We recommend that the Minister reports back to us on progress with work to reform the system of regulation and inspection across the health and social care services. He should do this within 12 months.

**Welsh Government response: Accept**

I will be content to update the Committee on this matter in the coming year.

**Recommendation 20.** We recommend that the Welsh Government brings forward proposals in the future to address the regulatory imbalance between clinical staff and non-clinical managers in the NHS. This is not a matter for this Bill.

**Welsh Government response: Reject**

I agree with the Committee view this is not a matter for this Bill.

I am not proposing to address the matter in regulation. However, we are planning during 2020 to undertake a review on the appointment process, contracts and performance systems in place for NHS Executives and senior leaders. This will consider what further improvements are needed. Furthermore, we will be reviewing the 'Codes of Conduct and Accountability for NHS Boards' and the 'Code of Conduct for NHS Managers Directions', published in January 2007, to ensure they reflect the current regulatory and governance landscape. We are also engaging with NHS England on how the central database of directors it is creating will ensure that movement of individuals between the four UK countries, as well as from abroad, can be monitored and mitigated.

I am content to report back to the Committee on progress on these matters in the coming year.

**Recommendation 21.** We recommend that the Minister reports back to us on the work being undertaken to improve the quality of leadership and management within the health service. He should do this within 6 months.

I am content to update the Committee on the work being undertaken to improve the quality of leadership and management within the health service within the coming year.

# Agenda Item 6.4

Vaughan Gething O.C./AM

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



Llywodraeth Cymru  
Welsh Government

Ein cyf/Our ref: MA/VG/5824/19

Llyr Gruffydd AM  
Chair, Finance Committee  
National Assembly for Wales  
Cardiff Bay  
Cardiff  
CF99 1NA

14 January 2020

Dear Llyr,

I would like to thank the Finance Committee for its diligent and detailed work in considering the financial implications of the Health and Social Care (Quality and Engagement) (Wales) Bill. I acknowledge the 9 recommendations made by the Committee within its scrutiny report, published on 15 November 2019, and enclose my response to each of these in Annex A.

I am pleased the Committee supports our approach to developing estimates of the cost and benefits of the Bill via engagement with key stakeholders, including NHS bodies and local authorities and that it believes this will aid us in realising the cultural changes the Bill is looking to achieve.

A number of the Committee's recommendations relate to those areas where it has not been possible to meaningfully quantify the costs and benefits of those cultural changes. I remain firmly of the view that attempting to frame the conversation about quality and candour in terms of monetary value does not take into account the fact that the benefits of introducing these two duties are not capable of being monetised in a meaningful way, but do recognise the Committee's role and interest in probing this. The majority of the benefits expected to arise from the Bill's provisions are non-financial – they are benefits in terms of improved services, experiences and outcomes. These are of real and significant benefit to the people who use and provide health services but do not lend themselves to being monetised.

Consequently, it has not been possible for me to accept, in full, all of the Committee's recommendations in these areas. However, I acknowledge the intent behind them and in each case we have carried the principles and underpinning reasoning through as far as possible.

I very much value the Committee's words of caution about the accuracy of estimated costs. I am keen to emphasise my continued commitment to monitoring these very carefully and to

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

will continue to work closely with our key stakeholders to keep these under constant review during the implementation phase.

Finally, I would like to make you aware that on 2 December 2019 I tabled three Government amendments to the Bill and that I intend to table a further tranche of amendments during Stage 2. Any financial impacts associated with these changes will be set out in the revised Regulatory Impact Assessment which we will table following Stage 2 proceedings.

I will also be writing to the Chairs of the Constitutional and Legislative Affairs and the Health, Social Care and Sport Committees with regard to their Stage 1 reports and will copy all letters to the three Committee Chairs.

Yours sincerely,

A handwritten signature in black ink that reads "Vaughan Gething". The signature is written in a cursive, flowing style.

**Vaughan Gething AC/AM**

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

## **Annex A: Welsh Government response to the recommendations of the Finance Committee regarding the Health and Social Care (Quality and Engagement) (Wales) Bill.**

On 3 July 2019, the Finance Committee considered the financial implications of the Health and Social Care (Quality and Engagement) (Wales) Bill and on 15 November published its scrutiny report. This document provides the Welsh Government's response to each of the 9 recommendations included in that report.

**Recommendation 1:** The Committee recommends the Welsh Government undertakes further work analysing and estimating the benefits of the Bill, which are identified as key drivers for implementing the legislation. This information, which should include a sensitivity analysis to show the potential range of values, should be included in a revised Regulatory Impact Assessment published following Stage 2 proceedings.

### **Welsh Government response: Reject**

Prior to introduction of the Bill, significant work was undertaken in investigating the available evidence and our conclusion on this point was that due to the lack of data around the cost benefits of avoiding poor quality healthcare, any sensitivity analysis would have been too broad to be meaningful in practice.

The majority of the benefits expected to arise from the Bill's provisions are non-financial – they are benefits in terms of improved services, experience and outcomes. These are things that are of real benefit to the people who use and provide services but are not easily or robustly monetised. In producing the Regulatory Impact Assessment as published, we have sought to strike an appropriate balance between a quantified assessment of the costs we anticipate will result from the legislation and the risk of presenting a spurious estimation.

Work is underway to scope the programme of monitoring and evaluation activity that will measure the non-financial benefits of the Bill. This will include the specific benchmarked indicators we anticipate will show measurable improvement over the post-implementation period.

### **Financial Implications**

There are no financial implications as a result of our response to this recommendation.

**Recommendation 2:** The Regulatory Impact Assessment assumes that a significant proportion of the costs arising from the requirements of the Bill will be absorbed by stakeholders, such as NHS bodies without setting out the likely implications of it. The Committee recommends that further information should be included in the revised Regulatory Impact Assessment.

### **Welsh Government response: Reject**

The Regulatory Impact Assessment presents an appropriate assessment of the likely costs and benefits of the legislation and was developed via close engagement with

stakeholders, including NHS bodies. The RIA concludes that the duties being placed on NHS bodies through the Bill are both appropriate and proportionate. The RIA also includes, where it is possible, opportunity costs as a result of the provisions in the Bill including releasing staff for training to embed the new ways of working.

Regulatory Impact Assessments are a value for money analysis - to extend the analysis to consider how those costs will be funded moves beyond their design and intended purpose. Matters of affordability and funding are of course important considerations for the Welsh Government, but will be of interest to the Assembly, and as such will be closely monitored during the implementation phase.

### **Financial Implications**

There are no financial implications as a result of our response to this recommendation.

**Recommendation 3:** The Committee recommends that further work be undertaken in respect of the likely ongoing costs to arise from the duty of quality, which are not quantified in the Regulatory Impact Assessment. This should include sensitivity analyses to show the potential range of values and be included in a revised Regulatory Impact Assessment at Stage 2.

### **Welsh Government response: Reject**

We remain of the view the ongoing costs arising from the duty of quality will be in the main determined by decisions taken by individual NHS bodies and Welsh Government is not in a position to pre-empt those decisions. We will undertake further work in the revised EM on providing some examples of existing best practice, where some individuals are already working in the ways which will be required by the duty. This will demonstrate values on current individual best practice cases but does not provide the evidence on future decisions and outcomes that enables us to robustly present an estimate of the total cost (or even the range of costs) across Wales.

### **Financial Implications**

There are no financial implications as a result of our response to this recommendation.

**Recommendation 4:** The Committee recommends the Welsh Government reconsiders the levels of costs for awareness and training for the duties of quality and candour and these are included in a revised Regulatory Impact Assessment at Stage 2.

### **Welsh Government response: Accept in Principle**

The cost estimates for developing course materials and the public awareness campaign for the duties of quality and candour, set out in the Regulatory Impact Assessment, are based on the best available information at this time. They have been based on engagement with the relevant stakeholders and our previous

experience of implementing other comparable legislation, including the Putting Things Right campaign that was used to launch the new NHS complaints procedure, back in 2011.

In considering this recommendation, the estimates included in the Regulatory Impact Assessment have been reviewed. No new evidence was presented during Stage 1 scrutiny on the levels of costs in these areas and therefore only minor amendments have been made to better reflect inflationary pressures when referring to historic figures. We will continue to work closely with the relevant stakeholders, as the Bill progresses through scrutiny and during the implementation phase, to monitor the cost and practicalities of the proposals.

### **Financial Implications**

Any unforeseen financial implications will be managed within the existing budget allocated for this legislation, over the budget planning period as set out in the Regulatory Impact Assessment. Any additional costs required will be incorporated into future budget plans.

**Recommendation 5:** The Committee recommends the Welsh Government prepares a sensitivity analysis to show the impact of changes in the number of incidents on the ongoing cost arising from the introduction of the duty of candour. This information should be included in a revised Regulatory Impact Assessment at Stage 2.

**Recommendation 6:** The Committee recommends the Welsh Government undertakes further work on legal costs arising from the Bill and updates the Regulatory Impact Assessment at Stage 2. This should include a sensitivity analysis to demonstrate a range of costs, where appropriate.

**Recommendation 7:** The Committee recommends that a sensitivity analysis is undertaken to show how fluctuations in the assumptions about the volume of additional complaints impacts on the number of staff required for the new Citizen Voice Body and its expected running costs. This information should be included in a revised Regulatory Impact Assessment at Stage 2.

**Recommendation 8:** The Committee recommends that the Regulatory Impact Assessment should reflect the potential range of ICT costs rather than the low cost estimate.

### **Welsh Government response: Accept**

A revised Regulatory Impact Assessment will be laid at the end of stage 2 which will contain the additional information requested.

### **Financial Implications**

Any unforeseen financial implications will be managed within the existing budget allocated for this legislation, over the budget planning period as set out in the

Regulatory Impact Assessment. Any additional costs required will be incorporated into future budget plans.

**Recommendation 9:** The Committee recommends that in revising the Regulatory Impact Assessment, information is included about the methodologies and specific content of the post implementation review. This should include information about the baseline position against which the impact of the Bill can be measured and assessed.

**Welsh Government response: Accept**

Work is underway to scope a programme of post implementation monitoring and review activity. A revised Regulatory Impact Assessment will be laid at the end of stage 2 which will contain some detail of the intended methodologies and planning approach to establish the baseline position to evaluate the success and impact of the Bill's provisions.

**Financial Implications**

Any additional financial implications will be managed within the existing budget allocated for this legislation, over the budget planning period as set out in the Regulatory Impact Assessment. Any additional costs required will be incorporated into future budget plans.

# Agenda Item 6.5

Lesley Griffiths AC/AM

Gweinidog yr Amgylchedd, Ynni a Materion Gwledig  
Minister for Environment, Energy and Rural Affairs



Llywodraeth Cymru  
Welsh Government

Mick Antoniw AM  
Chair  
Constitutional and Legislative Affairs Committee  
National Assembly for Wales

16 January 2020

Dear Mick

I wish to inform you of this year's dates for the Inter-Ministerial Group Environment, Food and Rural Affairs (IMG EFRA) meetings. These dates will be subject to change and are scheduled for the following dates:

- 13 January
- 17 February
- 23 March
- 27 April
- 15 June
- 14 September
- 26 October
- 16 November
- 7 December.

These meetings focus on key issues relating primarily to preparations for the UK's exit from the European Union. All four UK Administrations are represented.

I would also like to inform you the meeting scheduled for 25 November 2019 was cancelled due to the General Election.

Regards  
Lesley

**Lesley Griffiths AC/AM**

Gweinidog yr Amgylchedd, Ynni a Materion Gwledig  
Minister for Environment, Energy and Rural Affairs