



Llywodraeth Cymru
Welsh Government

LAND DISPOSALS TAX (WALES) BILL

Policy intent for subordinate legislation to
be made under this Bill

December 2016

LANDFILL DISPOSALS TAX (WALES) BILL

POLICY INTENT FOR SUBORDINATE LEGISLATION

1. These statements of policy intent set out the current policy approach for the subordinate legislation for the Landfill Disposals Tax (Wales) Bill.
2. The subordinate legislation which has express policy intentions to prescribe matters of procedural detail and provide flexibility for matters which may require adjustment to facilitate effective implementation and operation relate to:
 - i. Tax rates (s.14(3), 14(6) & 45(4);
 - ii. Qualifying material (s.15) ;
 - iii. Qualifying mixture of materials: fines (loss on ignition testing) (s.17(1));
 - iv. Tax credits (s.53(1)) ; and
 - v. Transfers of businesses as going concerns (s.86).
3. This subordinate legislation may require stakeholder engagement or consultation and will be subject to Assembly scrutiny and therefore the policy intentions may be subject to change.
4. The Welsh Government considers the other subordinate legislation powers contained in the Bill essential in order to:
 - i. make changes to accommodate future circumstances, policy or legislative changes,
 - ii. respond to innovation and changes in the operation of landfill sites or technological advances; and
 - iii. enable the Welsh Ministers to respond promptly to any changes in landfill tax rates, particularly in England, to mitigate against any negative impacts on businesses in Wales.
5. These statements are to assist the responsible Committee during the scrutiny of the Bill.
6. Details of all the subordinate legislative powers and the Assembly procedure for each subordinate legislative power are set out in detail in chapter 5 of the Explanatory Memorandum.

Section	Description	Policy intention
PART 2: THE TAX AND TAXABLE DISPOSALS		
Section 4(3)	The Welsh Ministers may, by regulations, modify the meaning of a disposal of material by way of landfill.	This power enables the Welsh Ministers to respond to circumstances in the future, and the changes required cannot be predicted with certainty at this point in time.
Section 6(4)	The Welsh Ministers may, by regulations modify the meaning of a disposal of material as waste.	This power enables the Welsh Ministers to respond to circumstances in the future, and the changes required cannot be predicted with certainty at this point in time.
Section 8(5)	The Welsh Ministers may, by regulations, provide for a landfill site activity to be a specified landfill site activity and so be treated as a taxable disposal and they may do so in relation to an authorised site or elsewhere. Welsh Ministers may also or to modify or remove a specified landfill site activity.	This power enables the Welsh Ministers to respond to circumstances in the future, and the changes required cannot be predicted with certainty at this point in time.
PART 3: TAXABLE DISPOSALS MADE AT AUTHORISED LANDFILL SITES		
Section 12(1)	The Welsh Ministers may, by regulations, create new exemptions from LDT or modify or remove an existing exemption. The Welsh Ministers may provide that an exemption will only apply subject to specified conditions being met.	This power enables the Welsh Ministers to respond to circumstances in the future, and the changes required cannot be predicted with certainty at this point in time.
Section 14(3)	The Welsh Ministers may, by regulations set the standard rate of tax and section 14(7) provides that these regulations may set out different rates of tax for different descriptions of materials.	<p>Section 14(2) sets out how the amount of tax to be charged on a taxable disposal of material at an authorised landfill site will be calculated; namely by multiplying the taxable weight of the material in tonnes by the standard rate.</p> <p>The ability to set the tax rates is an integral feature of the tax regime. The power enables the Welsh Ministers to</p>

		<p>set the standard rate applicable to LDT.</p> <p>This power will enable the Welsh Ministers to respond promptly to any changes in landfill tax rates, particularly in England, to mitigate against any negative impacts on businesses in Wales, providing them with certainty and confidence. This will also assist in protecting public funding in Wales, as well as implementing wider policy changes.</p> <p>Subsection (7) notes that regulations under this power may specify different rates for different descriptions of material. This is so that any changes in the classification of waste, innovations or advances in technology within the waste industry or policy changes could be reflected in the rate if this was considered appropriate.</p> <p>A similar power is provided in section 13(2) of the Landfill Tax (Scotland) Act 2014; save that it does not allow for different standard rates to be set for different descriptions of material.</p>
Section 14(6)	The Welsh Ministers may, by regulations set the lower rate of tax and section 14(7) provides that these regulations may set out different lower rates of tax for different descriptions of materials.	<p>Section 14(5) sets out how the amount of tax to be charged on a taxable disposal of qualifying material or a qualifying mixture of materials at an authorised landfill site will be calculated; namely by multiplying the taxable weight of the material in tonnes by the lower rate.</p> <p>This power enables the Welsh Ministers to specify the lower rate of tax for the purposes of LDT.</p>

		<p>The ability to set the tax rates is an integral feature of the tax regime. The power enables the Welsh Ministers to set the initial lower rate applicable to LDT and provides the Welsh Ministers with power to vary the tax rates in future.</p> <p>This power will enable the Welsh Ministers to respond promptly to any changes in landfill tax rates, particularly in England, to mitigate against any negative impacts on businesses in Wales, providing them with certainty and confidence. This will also assist in protecting public funding in Wales, as well as implementing wider policy changes.</p> <p>Subsection (7) notes that regulations under this power may specify different rates for different descriptions of material. This is so that any changes in the classification of waste, advances in technology within the waste industry or policy changes could be reflected in the rate if this was considered appropriate.</p> <p>A similar power is provided in section 13(5) of the Landfill Tax (Scotland) Act 2014 and section 13(6) provides that different lower rates may be set for different descriptions of material.</p>
<p>Procedure in relation to sections 14(3) and</p>	<p>The Welsh Ministers have the power by regulation to set the rates of tax to be applied to a taxable disposal.</p>	<p>The first set of regulations specifying the tax rates must be laid and approved by resolution of the Assembly before they can come into force— using the affirmative resolution procedure.</p>

14(6)		<p>Subsequent regulations to vary existing tax rates would be subject to the provisional affirmative procedure. This enables any variation to the tax rates to have effect from the date the regulations are made (signed) and laid. The regulations must be approved by the Assembly within 28 days of being laid if they are to continue to have effect (disregarding any period where the Assembly is in recess for more than 4 days or has been dissolved).</p> <p>The advantage of this provisional affirmative procedure is that it ensures any variation can have effect at short notice, while retaining the Assembly's key role in giving approval to the variation before it has permanent legal effect.</p> <p>If the Assembly does not approve any variation within the period prescribed in the Bill (28 days, excluding any period where Assembly dissolved or in recess for more than 4 days), the variation will cease to have effect. Taxpayers who have paid more tax as a result of the (failed) regulations will be able to apply to WRA for a refund of the difference between the two rates.</p> <p>The approach has been used to set and vary devolved tax rates in Scotland, adopting this approach to setting and varying the tax rates of LDT will enable changes to be made promptly while ensuring the Assembly ultimately approves any variation before it has permanent effect.</p>
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Section 15	<p>The Welsh Ministers may by regulations, list a qualifying material along with any conditions that must be met, either in relation to qualifying material generally or in relation to qualifying material of a particular description.</p>	<p>This gives the Welsh Ministers power to set out a list of qualifying materials (and conditions) for the purpose of Requirement 1 at section 15.</p> <p>In order to qualify for the lower rate of tax both requirements 1 and 2 will need to be met. This power will enable the Welsh Ministers to maintain consistency with the rest of the UK on material qualifying for the lower rate of tax.</p> <p>A similar power is provided at section 42(3) Finance Act 1996 and section 13(4) Landfill Tax (Scotland) Act 2014. The underlying list of qualifying materials and conditions they have to meet is set out in the Landfill Tax (Qualifying Material) Order 2011 and The Scottish Landfill Tax (Qualifying Material) Order 2016.</p>
Section 16(1)	<p>The Welsh Ministers may, by regulations prescribe any materials that must not be included in a qualifying mixture of materials.</p>	<p>This section gives the Welsh Ministers the power to prescribe any material that must not be included in a qualifying mixture of material, meaning that such a mixture would not qualify for the lower rate of tax.</p> <p>The purpose of this is to allow the Welsh Ministers to consider, due to the environmental impact or other circumstances, whether certain material, in however</p>

		<p>small a quantity should never be able to be present in a mixture qualifying for the lower rate.</p> <p>This power will allow the Welsh Ministers to accommodate future circumstances, policies, innovation, changes in the operation of landfill sites or technological advances.</p> <p>A similar power is provided in Landfill Tax (Scotland) Act 2014 s.13(4).</p>
Section 16(3)	The Welsh Ministers may, by regulations specify a percentage (by reference to the weight or volume of material, or both) so as to set a limit for the purposes of requirement 1 at section 16(1) on what is meant by a small amount of non-qualifying materials in a qualifying mixture of materials.	<p>This section gives the Welsh Ministers the power to specify the percentage of material meets the requirement for a small amount of non-qualifying material in a qualifying mixture of materials so that the lower rate would not apply if the amount exceeded that percentage.</p> <p>The purpose of this provision is to allow the Welsh Ministers to specify a percentage to qualify the meaning of a small amount if the operational experience of WRA suggests that not defining small amount is resulting in a risk to the revenue.</p> <p>It is our intention to retain the provisions as drafted on the face of the Bill; however, should we need to make changes to accommodate future circumstances or policies then these regulations would allow us to do so.</p>
Section 16(4)	The Welsh Ministers may, by regulations add, modify or remove requirements that must be met for a mixture to be a qualifying mixture of materials to which the lower rate of tax may be applied. In	This power enables the Welsh Ministers to respond to circumstances in the future, and the changes required cannot be predicted with certainty at this point in time.

	<p>addition, the Welsh Ministers may make further provision about matters that must be or may be taken into account for the purpose of determining whether a requirement is met, or modify or remove existing provision on those matters.</p>	
<p>Section 17(1)</p>	<p>The Welsh Ministers may, by regulations set out further requirements that must be met in the case of a mixture of materials consisting entirely of fines, in order for that mixture to be treated as a qualifying mixture of materials and eligible for the lower rate of LDT.</p>	<p>This section gives the Welsh Ministers the power to prescribe further requirements that must be met in the case of a mixture of materials consisting entirely of fines, meaning that such a mixture would not qualify for the lower rate of tax if it did not meet such requirements.</p> <p>The purpose of this regulation making power is to provide the Welsh Ministers with a tool which aims to prevent the waste misclassification of fines from mechanical treatment plants which for example have been produced through the process of segregation, sorting and screening (i.e. the small fragments of waste which remain after waste has been processed).</p> <p>The policy intention is that a disposal of a mixture of materials which consists entirely of fines can be classified as a qualifying mixture of materials (and therefore lower rated) provided that the requirements set out at section 16 and any further requirements specific to fines and set out in regulations are met.</p> <p>The policy intent is to use the regulation making powers to introduce a loss on ignition test (LOI) for fines in Wales, in a similar vein to the LOI testing regimes operating in relation to UK and Scottish landfill tax at present. An LOI test involves taking a sample of the fines and testing it under laboratory conditions, so as to</p>

		determine the biodegradable and/or combustible element of the waste, which is indicative of the likely pollution potential of the material. The result of an LOI test can then be linked to the requirements a mixture of fines must meet in order to be capable of qualifying for the lower rate of tax.
Section 21(9)	The Welsh Ministers may, by regulations amend or repeal provision relating to the application of a discount in respect of water present in material.	This power enables the Welsh Ministers to respond to circumstances in the future, and the changes required cannot be predicted with certainty at this point in time.
Section 32(1)	The Welsh Ministers have the power, by regulation to create an additional relief from tax or, modify or remove an existing relief from tax.	This power enables the Welsh Ministers to respond to circumstances in the future, and the changes required cannot be predicted with certainty at this point in time.
Section 40(9)	The Welsh Ministers may by regulations amend Schedule 2 to the Bill. Schedule 2 specifies the information required to be included in a landfill invoice which is issued pursuant to section 40 of the Bill.	This power enables the Welsh Ministers to respond to circumstances in the future, and the changes required cannot be predicted with certainty at this point in time.
PART 4 - TAXABLE DISPOSALS MADE AT PLACES OTHER THAN AUTHORISED LANDFILL SITES		
Section 45(4)	The Welsh Ministers have the power by regulation to set the unauthorised disposals rate of tax which may be applied to a taxable disposal made at a place other than an authorised landfill site and to set out different rates for different descriptions of materials.	<p>Section 45(2) sets out how the amount of tax to be charged on a taxable disposal of material made at a place other than a landfill site; namely by multiplying the taxable weight of the material in tonnes by the unauthorised disposals rate.</p> <p>The ability to set the tax rates is an integral feature of the tax regime. The power enables the Welsh Ministers to set the unauthorised disposals rate applicable to LDT.</p> <p>These provisions do not have an equivalent in either UK</p>

		<p>or Scotland.</p> <p>The first set of regulations specifying the tax rates must be laid and approved by resolution of the Assembly before they can come into force— using the affirmative resolution procedure.</p> <p>Subsequent regulations to vary existing tax rates would be subject to the provisional affirmative procedure. This enables any variation to the tax rates to have effect from the date the regulations are made (signed) and laid. The regulations must be approved by the Assembly within 28 days of being laid if they are to continue to have effect (disregarding any period where the Assembly is in recess for more than 4 days or has been dissolved).</p> <p>The advantage of this provisional affirmative procedure is that it ensures any variation can have effect at short notice, while retaining the Assembly’s key role in giving approval to the variation before it has permanent legal effect.</p> <p>If the Assembly does not approve any variation within the period prescribed in the Bill (28 days, excluding any period where Assembly dissolved or in recess for more than 4 days), the variation will cease to have effect. Taxpayers who have paid more tax as a result of the (failed) regulations will be able to apply to WRA for a refund of the difference between the two rates.</p>
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Section 46(3)	The Welsh Ministers may, by regulations, make further provision about the circumstances in which a person is (or is not) to be treated as meeting the charging condition, and matters that are to be taken into account in determining whether a person does (or does not) meet that condition.	This power enables the Welsh Ministers to respond to circumstances in the future, and the changes required cannot be predicted with certainty at this point in time.
Section 51(1)	The Welsh Ministers may, by regulations make further or different provision about the procedures for issuing preliminary notices and charging notices; the payment of an amount of tax charges by a charging notice and; any other matters relating to or arising from the charging or payment of an amount of tax under this section.	This power enables the Welsh Ministers to respond to circumstances in the future, and the changes required cannot be predicted with certainty at this point in time.
PART 5: SUPPLEMENTARY PROVISION		
Section 53(1)	The Welsh Ministers may, by regulations make provision for circumstances in which a person will be entitled to claim a tax credit in respect of landfill disposals tax and may, among other things, specify	This section gives the Welsh Ministers the power to prescribe the circumstances in which a person is entitled to claim a tax credit.

	<p>conditions that must be met and the procedure for claiming it.</p>	<p>These regulations will enable the Welsh Ministers to create a tax credit and to set out the persons that are eligible to claim a credit, how they go about claiming the credit and the conditions they are required to meet in order to claim the credit. They may also set out the records that are required to be kept to support a claim and provide the Welsh Revenue Authority with the power to withhold a credit if it is not satisfied that the relevant conditions have been met, including record keeping requirements.</p> <p>It is intended that this power will be used to create a credit for customer insolvency (currently know as a bad debt credit under LFT), which can be claimed in circumstances where a landfill site operator has accounted for and paid LDT in respect of a disposal but has not received payment from the customer behind that disposal due to an insolvency event having taken place. The regulations would provide further detail as to when an entitlement would arise and what conditions and requirements would need to be met in order to claim the credit.</p> <p>There are similar powers at ss. 51-53 Finance Act 1996 and ss. 18-20 Landfill Tax (Scotland) Act 2014.</p>
<p>Section 54(10)</p>	<p>The Welsh Ministers may by regulations make further or different provision about the contents of a notice (issued under section 54(1)) designating a non disposal area.</p>	<p>This power enables the Welsh Ministers to respond to circumstances in the future, and the changes required cannot be predicted with certainty at this point in time.</p>

Section 55(7)	The Welsh Ministers may by regulations make further or different provision about circumstances in which the operator's duty under section 55(1) (to ensure that material is dealt with in accordance with a non-disposal area designation notice) does not apply.	This power enables the Welsh Ministers to respond to circumstances in the future, and the changes required cannot be predicted with certainty at this point in time.
Section 59(5)	The Welsh Ministers may by regulations add, modify or remove persons or descriptions of persons from the list of those who may disclose information to the Welsh Revenue Authority for the purpose of assisting it in the collection and management of LDT.	This power enables the Welsh Ministers to respond to circumstances in the future, and the changes required cannot be predicted with certainty at this point in time.
Section 67(4)	The Welsh Ministers may, by regulations amend or repeal 67(2) so that a separate penalty under section 67(1) would then apply to each failure to comply with requirements under section 55 or 56, even if those failure derived from the same act or omission.	This power enables the Welsh Ministers to respond to circumstances in the future, and the changes required cannot be predicted with certainty at this point in time.
Section 72(1)	The Welsh Ministers may, by regulations make further or different provision for the procedure for assessing penalties and the amounts of penalties under Chapter 4 of Part 5.	This power enables the Welsh Ministers to respond to circumstances in the future, and the changes required cannot be predicted with certainty at this point in time.
Section 80	The Welsh Ministers may, by regulations add to, repeal or otherwise amend provisions about the designation of groups of bodies corporate, in relation to LDT. The regulations may (among other things) make provision about the bodies corporate that may be designated as members of a group and about the effects of designation.	This power enables the Welsh Ministers to respond to circumstances in the future, and the changes required cannot be predicted with certainty at this point in time.
Section 83	The Welsh Ministers may, by regulations add to, repeal or otherwise amend provisions about cases where persons carry on business in partnership or	This power enables the Welsh Ministers to respond to circumstances in the future, and the changes required cannot be predicted with certainty at this point in time.

	as an unincorporated body, in relation to LDT.	
Section 85	The Welsh Ministers may, by regulations add to, repeal or otherwise amend provisions relating to the tax about cases where a person who has carried on a landfill business dies, becomes incapacitated or becomes subject to an insolvency procedure. The regulations may (amongst other things) make provision relating to the circumstances in which a person becomes, or ceases to be incapacitated or subject to insolvency procedure and the duties, liabilities and entitlements relating to the tax where a person has died, becomes incapacitated or become subject to insolvency procedure. Provision may be made which applies whether or not anyone else carries on a person's landfill business.	This power enables the Welsh Ministers to respond to circumstances in the future, and the changes required cannot be predicted with certainty at this point in time.
Section 86	The Welsh Ministers may, by regulations make provision for securing the continued application of LDT legislation where a landfill business is transferred from one person to another as a going concern. The regulations may (among other things) make provision about notification requirements, liability and or entitlements relating to the tax; anything done before the transfer in relation to the tax and record keeping. The regulations may further make provision in respect of penalties, reviews and appeals.	<p>The Welsh Ministers intend to exercise this power to make provision for the continued application of LDT to cases where a landfill business is transferred from one person to another. It is intended that the regulations will prescribe the notification procedure that will apply to such transfers and further the entitlements and liabilities that will be transferred.</p> <p>A similar power is provided in section 58(5) Finance Act 1996 and section 37(5) Landfill Tax (Scotland) Act 2014.</p>
Section 88(1)	The Welsh Ministers may, by regulations make provision for and in connection with requiring a controller of an authorised landfill site to be liable for tax. The regulations may (among other things) make provision about the procedural arrangements as set	This power enables the Welsh Ministers to respond to circumstances in the future, and the changes required cannot be predicted with certainty at this point in time.

	out in section 88(3).	
PART 6: FINAL PROVISIONS		
Section 90(1)	The Welsh Ministers may, by regulations under this act make such incidental, consequential, supplemental or transitional, transitory or saving provision as they think appropriate for the purpose of, or in connection with, or for giving full effect to, any provision made by or under this Bill. Regulations under this section may amend, revoke or repeal any enactment (including any enactment contained in, or made under this Bill).	<p>This power would only be used for such matters as making changes to other legislation needed in consequence of the provisions of this Bill or regulations made under it, or to deal with unforeseen details arising out of the implementation of the new system.</p> <p>Transitional, saving and consequential elements are designed to cater for the process of moving from one landfill transaction tax regime to another, so that the process is as “seamless” as possible and that the new law operates as intended.</p>
Section 94(2)	The Welsh Ministers may appoint by order made under a statutory instrument the coming into force date of provisions in the Bill, save for Part 1 (overview) and Part 6 (final provisions) that will come into force on the day the Bill receives Royal Assent.	This power will allow the Welsh Ministers to prescribe the days on which the provisions in the Bill will come into force. It is intended that all provisions (save for those in Parts 1 and 6) will come into force before 1 April 2018.