

**Mark Drakeford AM/AC**  
Ysgrifennydd y Cabinet dros Gyllid a Llywodraeth Leol  
Cabinet Secretary for Finance and Local Government



Llywodraeth Cymru  
Welsh Government

Simon Thomas AM  
Chair  
Finance Committee  
National Assembly for Wales  
Cardiff Bay  
CF99 1NA

20 March 2017

Dear Simon,

**Landfill Disposals Tax (Wales) Bill**

I would like to thank you for the committee's consideration of the Landfill Disposals Tax (Wales) Bill (the Bill) and the subsequent report about the general principles of the Bill. I welcome the opportunity to respond. My full response is attached to this letter.

I am pleased your first recommendation is to agree the general principles of the Bill, and I thank both the Finance Committee and the Constitutional and Legislative Affairs Committee in this regard.

Of the 24 recommendations in this report, I am pleased to be able to accept 23 of them.

I have written separately to the Constitutional and Legislative Affairs Committee setting out my response to its 12 recommendations.

I hope the attached information helps to inform the Finance Committee's further scrutiny should the Bill progress to Stage 2. I look forward to working with committee members on the legislation in the future.

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

Yours sincerely,

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

**Mark Drakeford AM/AC**  
Ysgrifennydd y Cabinet dros Gyllid a Llywodraeth Leol  
Cabinet Secretary for Finance and Local Government

## Landfill Disposals Tax (Wales) Bill – Stage 1

### Finance Committee Report Recommendations

#### **Recommendation 1**

The Committee recommends that the National Assembly agrees the general principles of the Landfill Disposals Tax (Wales) Bill.

I am grateful to the National Assembly committees and those who have contributed to the robust scrutiny of the Bill to date. I am pleased the Finance Committee has been able to recommend the general principles are agreed.

#### **Recommendation 2**

The Committee recommends that the Welsh Government continues to pursue the UK Government to gain assurances that the proposed changes to the Finance Bill 2017 will not adversely impact on landfill site operators prior to April 2018.

I accept this recommendation. As the committee will be aware, I wrote to the Financial Secretary to the Treasury on 14 December 2016 to seek assurances the proposed changes to the Finance Bill 2017 will not adversely impact on landfill site operators in Wales. The Financial Secretary has replied to my letter confirming that the proposals “do not alter the scope of the tax, nor do they impose additional administrative burdens on operators”. I attach a copy of the letter for your information.

I understand the detail of the proposals will be contained in secondary legislation, which is yet to be published. I will continue to work with landfill site operators in Wales, HM Treasury and HMRC to ensure there is minimal impact on Welsh landfill site operators before April 2018 when landfill tax is devolved to Wales.

#### **Recommendation 3**

The Committee recommends that the Welsh Government consider the provisions which are detailed on the face of the Bill and the provisions which will be implemented via regulations. The Committee believes there should be further detail on the face of the Bill, including the proposed rates of taxation, or as a minimum the proposed rates should be published before 1<sup>st</sup> October 2017.

#### **Recommendation 11**

The Committee recommends that section 15 (Qualifying material) should specify the list of qualifying materials, but that the Bill should also include a power to amend this list by regulation.

I am considering these recommendations together. As previously mentioned in my evidence to the committee, my starting point has been to include substantive provisions on the face of Bill wherever possible. In comparison to landfill tax legislation in the UK and Scotland, we have included more provision in primary legislation, including areas which are currently covered by secondary legislation, guidance or notices. Provisions relating to weighing, water discount, non-disposal areas, mixed loads, prescribed activities and landfill invoices are all examples of this.

There are therefore only a handful of substantive areas, which need to be dealt with by secondary legislation ahead of landfill disposals tax (LDT) becoming operational.

In the context of the rates of LDT and the list of qualifying materials, these were identified as areas likely to require regular review, particularly when changes are made to UK landfill tax. As the current UK landfill tax rates are due to run until 2018-19 (increasing by the rate of inflation), it is reasonable to assume that HM Treasury will review and announce new UK landfill tax rates this year.

I set out in my evidence to the committee my reasons for not placing the rates of taxation on the face of the Bill. However, I accept the committee's recommendation to give a commitment – similar to that I have already given in relation to land transaction tax – to announce the intended tax rates by 1 October 2017 with a view to bringing forward regulations after the UK Autumn Budget. This will further inform business planning and investments in the waste sector, while ensuring I have the flexibility stakeholders have indicated is required to be able to respond quickly if the UK Government makes any changes to tax rates in advance of the introduction of LDT in April 2018.

With regard to placing the list of qualifying materials on the face of the Bill, I believe there is some value in setting the list of qualifying materials alongside tax rates and that a degree of flexibility is needed to be able to respond to changes elsewhere in the UK. However, I can see that placing the qualifying materials on the face of the Bill may provide clarity to landfill site operators. Further discussion and consideration of the detail is necessary. Subject to this, I will look to bring forward a government amendment later in the Bill process.

Consistency with England in this area is important so that there is a smooth transition to LDT. The list in Wales needs to be able to adapt quickly to changes made in the UK and I am grateful to the Finance Committee and the Constitutional and Legislative Affairs Committee for recognising this and suggesting that if the qualifying materials were on the face of the Bill that it should be accompanied by a regulation making power to change the list.

#### **Recommendation 4**

The Committee recommends that the Welsh Government commits to working with the Committee to bring forward a financial framework bill as soon as possible, to allow an annual budget/finance bill to be introduced.

Given the level of taxation currently devolved – land transaction tax and landfill disposals tax will be devolved in April 2018 – it would be disproportionate at this time to consider the introduction of an annual Finance Bill to routinely consider legislative changes to taxation.

However, the Welsh Government welcomes the opportunity to work with the finance committee to further this agenda as Wales' fiscal responsibilities increase – Welsh rates of income tax will be introduced from April 2019.

#### **Recommendation 5**

The Committee recommends that the Welsh Government considers the definition of disposal of material as waste in section 6 (Disposal of Waste) to ensure clarity and simplicity.

I am happy to accept the principle of this recommendation and to provide further clarification to the Committee about this.

The appropriate definition of a taxable disposal and the definition of a disposal of material as waste was a key issue during the development of the Bill and chapter 2 of Part 2 of the Bill has been carefully crafted to reflect the conclusions arrived at as a result of those deliberations. To provide the committee with a more in-depth insight into the process of consideration, I attach an annex outlining the relevant provisions in the Bill; the relevant case law and alternative options which were considered during the development of the Bill.

I trust this additional background information will be useful and will demonstrate the range of considerations that need to be balanced and the thorough and considered approach that has been taken.

#### **Recommendation 6**

The Committee recommends that the Welsh Government addresses the issues raised regarding operator and controller to satisfy itself, and the Committee, that this will not be an issue in Wales.

I am happy to accept this recommendation and would like to confirm my officials have clarified the issues raised during the committee's scrutiny with stakeholders.

The example of a situation involving a controller, which was provided by Deloitte (referenced at paragraphs 72 and 80 of the committee's report), arose in England; stakeholders have confirmed this is a rare occurrence and they have not encountered a similar situation and are not aware of any sites in Wales which may have such circumstances.

In developing the Bill, we carefully considered the existing UK provisions on controllers and tested them with stakeholders. Moreover, HMRC confirmed that there are no controllers registered with them in Wales and Natural Resources Wales confirmed that this was also their understanding. In light of this evidence and the feedback from stakeholders, we concluded that the provisions making controllers liable to LDT were unlikely to be needed.

Scotland has also grappled with this issue and has defined a controller on the face of its Bill and taken a regulation-making power to make provision for controllers to be liable to the tax.

We decided that, in the interests of future-proofing and in the event that data becomes available once LDT is collected by the Welsh Revenue Authority (WRA) to suggest that controllers are a live issue in Wales, we would take the same approach. The Bill therefore defines a controller and takes a power – subject to the affirmative procedure – to make provision in this area should it be required in the future.

#### **Recommendation 7**

The Committee recommend that the Welsh Government consider the wording in section 11 (Pet Cemeteries) regarding the disposal of dead pets, with particular consideration to simplifying the law and ensuring bilingual consistency.

During my evidence to the committee on 2 February 2017, I confirmed I would look at this issue. I am happy to accept this recommendation and confirm I will table a government amendment at Stage 2.

## **Recommendation 8**

The Committee remains unsure on the occasions when an exemption may be applied to an unauthorised disposal and recommend that the Welsh Government review Chapter 3 of Part 2 of the Bill, giving consideration to where exemptions may be applied to unauthorised disposals in the future.

I am happy to accept the principle of this recommendation and provide further clarification to the committee about this.

There are two exemptions in the Bill, which relate to multiple disposals of material (section 10) and pet cemeteries (section 11) – both of these exemptions are only applicable in the context of disposals made at an authorised landfill site.

However, Chapter 3 of Part 2 of the Bill is constructed in such a way that allows for the possibility of an exemption being created in the future that could apply to disposals made at authorised landfill sites, unauthorised disposals (as defined at section 3(3)(b)) or to both.

This is in contrast to Chapter 3 of Part 3 of the Bill that sets out reliefs from LDT. The Bill is constructed so that reliefs can only ever be created in relation to disposals made at authorised landfill sites.

The rationale for this difference stems from the fact that a relief has to be claimed by a landfill site operator on a tax return so the WRA can carry out compliance checks and gather data about the use of reliefs. This scenario is not applicable in the context of an unauthorised disposal, where tax returns will not be made.

The effect of an exemption is to take a disposal outside the scope of the tax entirely, with no registration or filing requirements being triggered as a result of an exempt disposal.

There is no intention at present to create an exemption that would apply to unauthorised disposals. However, ensuring the Bill allows for this possibility provides future flexibility, particularly in view of the fact that the application of the tax to unauthorised disposals is a relatively new concept and whilst this principle has been established in Scotland, it has not yet been tested in a practical sense or in the courts or tribunals. The potential scope of the unauthorised disposals provisions is wide. In this context, it is particularly important that there should be scope to ensure that these provisions do not have unintended and undesirable consequences.

In relation to both authorised and unauthorised disposals, section 6 of the Bill provides that a taxable disposal occurs only where the person responsible for the disposal of the material intends to discard that material. This test has been discussed comprehensively within the Committee and I have provided further technical advice on it. It means that, in determining whether the tax is payable, there must be an analysis of the responsible person's intention and whether material was discarded. This can be fact specific and open to different interpretations. The extensive litigation around this demonstrates the scope for disagreement and the fact specific nature of the analysis.

In response to this, and in order to put beyond doubt that certain disposals at landfill sites are taxable, section 8 of the Bill prescribes a list of activities that are to be treated as taxable disposals.

Conversely, however, and given the potentially wide scope of the unauthorised disposals provisions, it may be necessary in the future to put beyond doubt that certain activities outside landfill sites will *not* be taxable. LDT should not be an obstacle to people carrying out legitimate activity. For example, where it fulfils a genuine and positive environmental function such as where material is dredged from a waterway and deposited on its bank where the purpose of placing it in the natural environment is to act as a buffer against costal erosion, or to provide a natural habitat to wildlife, or to reinforce river banks against erosion.

In many circumstances, it should be obvious where material is not being discarded and LDT should not be charged. But time and experience may show that there are instances where it would be helpful and beneficial to provide absolute clarity and certainty in the law. In this context, section 12 of the Bill is an important safeguard, by providing the flexibility to change the exemptions and enable a common sense approach to be developed.

#### **Recommendation 9**

The Committee recommends the Government review section 26 (Material from bed of river, sea or other water) to ensure that material removed in the course of flood prevention is subject to the same reliefs as materials removed in the interest of navigation.

Flood prevention is an important issue and I am happy to accept this recommendation. Work will now be undertaken with a view to bringing forward a government amendment later in the Bill process.

#### **Recommendation 10**

The Committee recommends that the Welsh Government review section 27 (Material resulting from mining and quarrying) to ensure there is no scope for confusion amongst stakeholders.

I accept the committee's recommendation. My officials have liaised with stakeholders to ensure there is no scope for confusion on this matter. The Local Authority Recycling Advisory Committee (LARAC) has clarified the 20% figure given in evidence to the committee related to the total percentage of waste resulting from quarrying and mining in the UK, not all of which goes to landfill. Natural Resources Wales has confirmed that less than 1% of quarrying and mining waste is sent to landfill – there are several options for managing that waste further up the waste hierarchy.

The Welsh Government is working with a range of waste producers, for example the construction and demolition sector, to encourage greater prevention, re-use, recovery and recycling of waste.

Further detail is available on the Welsh Government's website:

[http://gov.wales/topics/environmentcountryside/epq/waste\\_recycling/bysector/?lang=en](http://gov.wales/topics/environmentcountryside/epq/waste_recycling/bysector/?lang=en)

### **Recommendation 11**

The Committee recommends that section 15 (Qualifying material) should specify the list of qualifying materials, but that the Bill should also include a power to amend this list by regulation.

See response to recommendation 3.

### **Recommendation 12**

The Committee recommends that the Welsh Government should review the Bill in relation to section 16 (Qualifying mixtures of material) with particular reference to the provisions under this section which refer to a 'small amount'

I accept the principle of this recommendation and set out here how the arrangements in section 16 work together and my policy intention with regard to the regulation-making power at section 16(3).

Section 16 (qualifying mixtures of materials) is an area where we have sought to strengthen the existing UK model, to provide greater clarity for landfill site operators to assist them in applying the correct tax rate. This section has been the subject to careful consideration and discussion with stakeholders.

The committee heard a range of evidence from stakeholders in relation to the 'small and incidental' test and the regulation-making power at section 16(3), which allows for the definition of small (but not incidental) to be further defined by reference to a prescribed percentage and, as was the case when we were developing the Bill, stakeholders presented a range of views on this issue.

Section 16 of the Bill sets out six requirements (or seven in the case of fines), all of which must be met in order for a load containing a mixture of both qualifying (lower rate) and non-qualifying material to be eligible for the lower rate. None of these requirements represent a significant departure from the current UK guidance and practice. However, we have sought to clarify the position by setting out a clear list of requirements on the face of the Bill.

In addition to requirement one – that the load contains only a small amount of non-qualifying material that is incidental to the qualifying material – others include a requirement that non-qualifying material cannot have been deliberately mixed with qualifying material for the purpose of disposal (requirement three) and a ban on the arrangements having been made for the purpose of avoiding tax (requirement seven). This is designed to filter out cases where a mixture has been artificially put together (for example, taking materials from one part of a building site and adding them to those from another) or presented in a way designed to minimise the appearance of standard rate material).

Requirement one is further explained at section 16(2) as requiring an assessment of the weight and volume of non-qualifying material in a load and the potential of that material to cause harm. These concepts will not be new for landfill site operators as they reflect HMRC guidance and practice. We have sought to clarify and codify the position in the Bill and I expect the WRA to work with landfill site operators to develop practical guidance of how the small and incidental test should be applied to assist them in making their assessment.

The purpose behind the regulation-making power at section 16(3) is to offer an additional means of defining the small (but not the incidental) test at requirement one. This is the most substantive difference between the current approach to mixed loads and that proposed by the Bill.

The proposal to set a percentage threshold to further define a 'small amount' was put forward by stakeholders in our initial engagement with them and as a result was included as a question in our consultation in 2015. The responses to the consultation were split, some respondents felt that there would be practical implications of introducing a threshold; some of which the committee has heard about as part of the evidence – for example some said it could encourage a deliberate mixing of materials up to the specified threshold whilst others said it would provide a helpful and definitive level.

Given the nature of the responses, the opportunity was taken to explore this issue further with stakeholders. They recommended that a power be taken in the Bill to allow the flexibility to introduce a percentage to define small at a later date. They felt that time needed to be taken to gather evidence and allow further discussion and consideration of the issues.

I have listened to the views of stakeholders and reflected these in the Bill. This is why the Bill includes a power to introduce a percentage threshold and why there are no plans to use this power at present.

The inclusion of this power is important so that there is flexibility to give further consideration to this issue, to enable us to respond to future developments and to learn from WRA's operational understanding of the tax. Stakeholder consultation and careful consideration of the practical implications will be central to the exercise of this power.

I am however, interested in and will listen carefully to the views of others on the approach proposed in this area during the stage 1 debate.

### **Recommendation 13**

The Committee recommend that the Welsh Government should review the Bill in relation to section 20 (Determining the weight of material by operator) with particular reference to the requirement to 'determine the weight of the material in a taxable disposal **before** the disposal is made'

I am happy to accept this recommendation. I am grateful to the committee for bringing this issue to my attention and confirm I will table a government amendment at Stage 2.

### **Recommendation 14**

The Committee recommends the Welsh Government monitors and publishes the number of unauthorised disposals and subsequent prosecutions to measure the success of the provisions around unauthorised disposals.

I accept this recommendation, although note this is an operational matter and it will be for the WRA to lead on the provision of monitoring and evaluation of measures to prevent tax evasion through unauthorised disposals.

It is important to remember the provisions are intended primarily as a deterrent to tax evasion. They are intended to ensure that unauthorised disposals are more financially



risky and so a less attractive option for those tempted to ignore their environmental obligations and evade tax.

I would expect the WRA's compliance approach to unauthorised disposals to be proportionate and cost-effective and to be considered in the context of the wider work that Natural Resources Wales and local authorities are doing in relation to illegal waste disposals. As such, I anticipate the WRA's operational focus will be on larger unauthorised waste sites where significant tonnages of waste have been deposited of illegally and the tax evaded.

It is anticipated the majority of any non-compliance will be addressed by the WRA through the civil investigation and penalty regime set out in the Tax Collection and Management (Wales) Act and further developed within the Landfill Disposal Tax (Wales) Bill. I will consult on whether the WRA should have criminal powers in the spring.

### **Recommendation 15**

The Committee recommends that the Welsh Government gives consideration to changing the 75 day period to pay the tax on unauthorised disposals which could have occurred up to 20 years before action is taken.

I accept this recommendation and confirm that I have given further consideration to this issue. Fairness and consistency of approach have been important factors in the development of both LDT and land transaction tax. I believe that the approach set out in the Bill is the right one and reflects stakeholder's views.

I set out below, for the committee's information, how the 75-day period has been calculated; how it is consistent with our approach to the treatment of authorised disposals and the application of the General Anti Avoidance Rule (GAAR) and explain the 20-year timeframe.

To consider properly the 75-day period, it is important to consider separately the two different types of notice that apply in the context of unauthorised disposals. Firstly, the *preliminary notice* is about the WRA gathering facts and deciding whether or not to issue a charging notice, for which there is no real equivalent in an authorised context, although this could be likened to a WRA enquiry. This is intended as an appropriate safeguard given the context and if a person feels they need more time (beyond the initial 45 days allocated) to respond to a preliminary notice then the WRA may agree to extend the timescales. It is also a requirement that the WRA considers any representations and evidence made to it. I would expect the WRA to have satisfactory evidence to issue a charging notice in relation to an incident up to 20 years in the past.

Secondly, the *charging notice* is a request to pay tax where the WRA has formed the view that a person is chargeable to tax, which is analogous to a determination or assessment under part 3 of the Tax Collection and Management (Wales) Act for authorised disposals, following the issuing of which a person also has 30 days to pay the tax.

If a person has further representations to make or evidence to put forward following receipt of a charging notice then they may request a review or appeal to the First Tier Tribunal. In this event, the payment of the tax may be postponed pending the outcome of the review or appeal. Insofar as all this operates, unauthorised taxpayers are being treated the same as authorised taxpayers.

The timescales are in line with the process in place for issuing notices under GAAR (as set out in Part 3A Tax Collection and Management (Wales) Act, as inserted by Part 7 Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Bill). Under GAAR, a taxpayer has 45 days (or such longer period as WRA agree) to respond to a notice of proposed counteraction before the WRA issues a final counteraction notice, which, when concluding that a tax advantage is to be counteracted, will trigger a duty to pay tax within 30 days.

The time afforded to the WRA for bringing a claim is to allow for the possibility of undetected activity; it is not to allow WRA up to 20 years to investigate an incident. We are aware that activity can go undetected for a number of years due to its remote location or a person's efforts to operate behind a veil of legitimacy.

The WRA is subject to a limit of four years from the point of becoming aware of a disposal to investigate and to issue a notice. This timescale is based on evidence from discussions with environmental regulators and other tax authorities regarding the time taken to bring forward environmental and tax civil and criminal action. The WRA's behaviour, including any unreasonable delay, would be open to review and appeal.

I am however, interested in and will listen carefully to the views of others on the approach proposed in this area during the stage 1 debate.

#### **Recommendation 16**

The Committee recommends that the Welsh Government should review the provisions in section 61 (Penalty for applying water discount incorrectly) to ensure that operators are not penalised should they not apply for the full discount available to them.

I am happy to accept this recommendation. I am grateful to the committee for bringing this issue to my attention and I will table a government amendment during Stage 2.

#### **Recommendation 17**

The Committee recommends that the Welsh Government should review the penalty associated with failing to register with the Welsh Revenue Authority.

I accept this recommendation and I confirm I have reviewed this penalty in line with the other penalties associated with Welsh taxes. An overarching principle has been to ensure that the penalties associated with the Welsh taxes and subsequently within the Bill are fair and proportionate.

I set out here how careful consideration has been given to the penalty in the context of the mischief that is being tackled, as well as other penalty provisions in the Tax Collection and Management (Wales) Act 2016.

It is important to highlight that the £300 registration penalty also has a daily default penalty of up to £60 attached to it. If a person continues to carry out taxable operations without being registered, they will be liable to a further penalty or penalties of up to £60 for each day. Further, the registration penalty applies in addition to the duty to account for and pay tax on a taxable disposal (the penalties for which are set out in Part 5 Tax Collection and Management (Wales) Act).

As Natural Resources Wales stated in its evidence, developing landfill sites take years of planning and there are environmental permits, which take time to process. The

likelihood of a landfill site operator going through this process and not then registering is extremely low. However, the application of a penalty sends the message that landfill site operators must comply with the registration requirements.

#### **Recommendation 18**

The Committee recommends that the provision for bad debt relief and the circumstances in which it may be applied should be on the face of the Bill, supplemented by a regulation making power subject to the affirmative procedure.

The Welsh Government has given this matter considerable and detailed thought. I believe it is appropriate for the Welsh Government to be able to work through the detail of how the credit system will work once the rest of the LDT system is in place – we anticipate the regulations will be technical and intricate and better suited to secondary legislation.

Taking a power to make regulations on credits is consistent with the approach taken in the UK and Scotland.

In my evidence to the committee on 2 February, I confirmed my intention to introduce these regulations in autumn 2017. In developing the regulations we will work with stakeholders to ensure they are workable and fit for purpose.

On this basis, I do not accept this recommendation. However, I will provide the committee with further detail of the policy intent behind the regulations during stage 2 to assist scrutiny.

#### **Recommendation 19**

The Committee recommends that a provision to establish a communities scheme should be referred to on the face of the Bill, but details relating to the application of the actual scheme could be provided for by other means.

I am fully committed to having a Communities Scheme and recognise the clear benefits it provides for communities located around landfill sites. I have demonstrated this commitment through the passage of this Bill; in December 2016 I issued an update paper outlining a number of proposals for the scheme, I have written to you separately summarising the response to the update paper and I have committed to launch a procurement exercise to appoint the distributive body in the spring.

I appreciate the Committee's and stakeholders' concerns and I can confirm that I will consider this further with a view to bringing forward a government amendment later in the Bill process.

#### **Recommendation 20**

The Committee recommends that the Welsh Government should confirm the proportion of landfill disposals tax revenues that will be allocated to the Landfill Disposals Tax Communities Scheme prior to the Bill coming into force.

I accept this recommendation. An overall value for the Landfill Disposals Tax Communities Scheme will be announced as part of the procurement launch in spring 2017. The final decision about the allocation for this scheme will be made in the context of the Budget discussions in the autumn.

## Recommendation 21

The Committee recommends that, in considering the implementation of a Landfill Disposals Tax Communities Scheme, the Welsh Government should give consideration to the following areas raised in evidence:

- Reviewing the geographical coverage of the scheme to address potential difficulties finding local projects over time, or too much demand within the 5 mile radius;
- The need to ensure the eligibility of cross-border projects;
- An equitable split of funding allocated to the three themes of biodiversity, waste minimisation and other environmental enhancements;
- Making the scheme available to communities with repeated instances of unauthorised waste disposals (in the event that tax was charged);
- Including the remediation of orphaned or abandoned waste disposal sites within the scope of the scheme

I welcome the evidence from stakeholders to the committee and in response to the update paper I published in December. Further consideration will be given to these and I will provide further details about the scheme's operation during the procurement exercise to appoint a distributive body.

In response to the specific issues raised:

- The geographical coverage of the scheme will be kept under review. The five-mile rule – and its extension to waste transfer stations – seeks to strike a balance between ensuring those communities most affected by the disposal of waste to landfill are supported by a range of projects without spreading the funding too thinly. We will be working with the distributive body to look at how individual projects are considered and approved. This will depend on a number of different factors, including the number and type of projects and the amount of money available;
- The distributive body should look at opportunities jointly to fund cross-border projects. There will only be a small number of English communities close to landfill sites in Wales. A map was included in the update paper on page 11 – this shows a small number of landfill sites located in North Wales, bordering with England;
- In developing the LDT Communities Scheme, we have sought to simplify the administration of the scheme to maximise the amount of funding available to support projects. I am not in favour of a rigid, arithmetical split between the three project areas. It is important we fund projects which deliver the best outcomes for communities – a 'quota' funding approach may have the perverse consequence of funding unsuitable projects in order to meet a prescribed limit. Overriding principles of fairness and impartiality, however, will apply, to ensure equitable outcomes.

It will be important for the distributive body to monitor the types of projects and size of funding awards and to make this data publicly available. This will assist the distributive body to identify where additional training and tools may be needed to ensure a good representation of high-quality applications across the three project areas.

- We have discussed with stakeholders the possibility of supporting communities which have experienced repeated incidences of unauthorised disposals. There was

general agreement that funding should not explicitly be awarded to these areas as this would send the wrong message to those running illegal waste sites and those people taking their waste to these sites. There were also concerns that, due to the investigation process, we would not be able fairly to support all affected communities. Natural Resources Wales and local authorities should use their existing environmental powers to address these sites. I have extended the coverage of the scheme to new areas of Wales and all communities in these areas may apply for funding.

- At present, there is not evidence to support the inclusion of orphaned and abandoned waste disposal sites within the scope of the scheme. Provision is already in place for the environmental regulator to assess the management and aftercare of orphaned landfill sites. Before a landfill site permit is granted and the commencement of disposal operations, it is a requirement of the landfill directive that financial provision is made in the event of the landfill site operator becoming unable to meet the liabilities arising from the permit, (such as gas and leachate management) including the aftercare of the landfill site.

Financial provision for landfill sites must be sufficient, secure and available. This may be achieved for example, through renewable bonds, escrow accounts or cash deposits. Natural Resources Wales has published [guidance for landfill site operators](#) on financial provision. The Cabinet Secretary for Environment and Rural Affairs will be consulting later this year about changes further to strengthen and simplify the operator competence and financial requirements, which operators should meet when applying for or holding an environmental permit.

### **Recommendation 22**

The committee recommends the Welsh Government provides more detailed costs for enforcing the provisions in relation to unauthorised waste disposal.

This is an operational matter for the WRA. However, when the information is available I expect the WRA to provide more detailed costs for enforcing the provisions in relation to unauthorised waste disposal and that information is made available in an accessible and useful format. On this basis, I accept this recommendation.

The WRA Implementation Programme is funding a post within Natural Resources Wales to assist in the design and delivery of the compliance and enforcement function for LDT.

### **Recommendation 23**

The Committee recommends that the Welsh Government commits to reviewing the tax yield from unauthorised waste disposals and establishes a revenue sharing arrangement to support Natural Resources Wales and local authority compliance and enforcement activities.

I agree with this recommendation. In relation to unauthorised disposals of waste, where Natural Resources Wales (as the environmental regulator) and local authorities have been instrumental in assisting in the investigation and pursuit of LDT. I recognise the case that they could be allocated some of the additional LDT revenue raised as a result of their compliance and enforcement efforts to cover costs and encourage future action. This incentive can be achieved through existing powers and would be subject to the normal budget scrutiny.

After April 2018, we will have a better understanding of the scale and scope of unauthorised disposals in Wales and will seek to ensure any revenue-sharing arrangement with Natural Resources Wales and local authorities is proportionate and collectively agreed.

I expect the WRA to assist in giving operational effect to this agreement. I also expect the WRA to consider reporting this in its annual report.

**Recommendation 24**

The Committee recommends that the Welsh Government publishes revised further set up costs for the Welsh Revenue Authority and the switch-off costs for Landfill Tax when available.

I have written to you separately to provide an update on the WRA costs. I provided the following update:

“WRA costs are centred in two main areas, staff costs (those working on the implementation and people needed to operate the WRA effectively from October 2017), and the provision of digital and ICT services to collect and manage its taxes.

To date, the establishment of the WRA has cost £1.3 million. We are forecast to spend around £3.5 million on implementation in 2017/18. There will also be a further £1 million or so of implementation costs in 2018/19. Overall the implementation costs remain under the £6.3 million previously published”.

The joint transition project with HMRC will provide landfill tax switch-off costs in April. These were zero for the Scottish Government and we expect the same for Wales.