

## **Explanatory Memorandum to The Landfill Disposals Tax (Administration) (Wales) Regulations 2018**

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

### **Cabinet Secretary Declaration**

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of The Landfill Disposals Tax (Administration) Regulations 2018 and I am satisfied that the benefits justify the likely costs.

**Mark Drakeford AM**  
**Cabinet Secretary for Finance**  
**Ysgrifennydd y Cabinet dros Gyllid**

**12 December 2017**

## CONTENTS

### THE LANDFILL DISPOSALS TAX (ADMINISTRATION) (Wales) REGULATIONS 2018

#### Contents

<b>PART 1 – EXPLANATORY MEMORANDUM</b>	<b>3</b>
1. Description	3
2. Matters of special interest to the Constitutional and Legislative Affairs Committee	3
3. Legislative background	3
4. Purpose and intended effect of the legislation	4
5. Consultation	8
<b>PART 2 – REGULATORY IMPACT ASSESSMENT</b>	<b>9</b>
6. Impact of establishing The Landfill Disposals Tax (LDT) (Administration) (Wales) Regulations 2018	9
Option 1: Do Nothing (do not introduce the regulations)	9
Option 2: Replicate existing landfill tax arrangements	9
Option 3: Develop ‘Wales specific’ arrangements	10
7. Costs and Benefits	11
Option 1: Do nothing (do not introduce the regulations)	11
Option 2: Replicate existing landfill tax arrangements	14
Option 3: Develop ‘Wales specific’ arrangements	14
8. Consultation	17
9. Competition assessment	18
10. Post implementation review	18

## **PART 1 – EXPLANATORY MEMORANDUM**

### **1. Description**

- 1.1. The Landfill Disposals Tax (Administration) (Wales) Regulations 2018 (“the regulations”) are being made under the Landfill Disposals Tax (Wales) Act 2017 (“LDT Act”)<sup>1</sup>. The LDT Act sets out the operational arrangements for landfill disposals tax which will replace UK landfill tax in Wales when it is devolved in April 2018.
- 1.2. The regulations also make amendments to the Tax Collection and Management (Wales) Act 2016 (“TCM Act”)<sup>2</sup> which sets out the arrangements for the collection and management of devolved taxes in Wales.
- 1.3. The regulations deal with administrative matters relating to landfill disposals tax in Wales. In particular:
  - they set out arrangements for qualifying mixtures of materials of waste fines<sup>3</sup> including loss on ignition (LOI) testing and;
  - they establish a customer insolvency credit.
- 1.4. Subject to the will of the Assembly, the regulations will come into force on 1 April 2018, the same date the Welsh Revenue Authority (WRA)<sup>4</sup> will begin collecting and managing the tax.

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

- 2.1. There are no matters of special interest to the Constitutional and Legislative Affairs Committee.

### **3. Legislative background**

- 3.1. The regulations are being made pursuant to sections 17, 54 and 93 of the LDT Act:
  - Section 17 gives the Welsh Ministers powers to make regulations in respect of qualifying mixtures of materials of waste fines (as defined at section 17(3));
  - Section 54 gives the Welsh Ministers powers to make regulations in respect of tax credits;

---

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

<sup>2</sup> <http://www.legislation.gov.uk/anaw/2016/6/contents>

<sup>3</sup> Fine particles of waste produced as a result of a waste treatment process that involves mechanical treatment

<sup>4</sup> <https://beta.gov.wales/welsh-revenue-authority>

- Section 93 gives the Welsh Ministers powers to make consequential and transitional provision.

3.2. The regulations are subject to the affirmative procedure.

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

4.1. The Welsh Ministers' purpose in bringing forward the regulations is to:

- set out additional requirements to assist landfill site operators to determine the correct tax liability of waste fines, including loss on ignition (LOI) testing and/or confer the powers necessary to enable a WRA notice to do so and;
- establish a customer insolvency credit which a landfill site operator may claim in circumstances where their customer becomes insolvent before having paid the landfill site operator for carrying out a taxable disposal.

4.2. In September 2017, the Welsh Government published its national strategy *Prosperity for All*<sup>5</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 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 our 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 this requirement supports reducing waste to landfill. Introducing additional arrangements for mixtures of materials of waste fines including LOI testing is expected to encourage waste producers to maintain and improve their efforts to sort and separate waste in order to qualify for the lower rate of tax. In doing so it is expected greater levels of waste may be diverted from landfill and recovered, re-used or recycled.

4.4. The regulations seek to update, clarify or bring together the most appropriate elements of the existing legislation and guidance and make changes to better reflect Welsh circumstances and needs.

4.5. In developing landfill disposals tax for Wales including the regulations, the Welsh Government has applied its principles for the development of devolved tax policy and legislation to:

---

<sup>5</sup> <http://gov.wales/docs/strategies/170919-prosperity-for-all-en.pdf>

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

## Qualifying mixtures of fines including LOI testing

### *Background and current position*

- 4.6. UK and Scottish landfill tax both include bespoke requirements and arrangements for when landfill site operators wish to claim the lower rate of tax in relation to a disposal consisting of a mixture of waste fines. These have evolved over time and are contained in various pieces of legislation and guidance.
- 4.7. This includes LOI testing arrangements which were introduced in April 2015 for UK landfill tax and in October 2016 for Scottish landfill tax. An LOI test involves taking a sample of the fines and testing it under laboratory conditions, so as to determine the biodegradable and/or combustible element of the waste, which is indicative of the likely pollution potential of the material<sup>6</sup>. The result of a LOI test is then used (alongside other requirements) to determine whether or not a mixture of waste fines qualifies for the lower rate of tax.
- 4.8. In the 2015 consultation *Landfill Disposals Tax*<sup>7</sup>, the majority of respondents broadly welcomed introducing similar requirements and arrangements in Wales when landfill tax was devolved. The Welsh Government has liaised with HMRC and Revenue Scotland to learn from their experiences, particularly with regards to compliance.
- 4.9. Section 15 and Schedule 1 of the LDT Act set out which materials can be eligible for the lower rate of landfill disposals tax and what conditions they need to meet and section 16 sets out a list of additional requirements that a mixture of materials needs to meet in order to qualify for the lower rate of landfill disposals tax. Six of the seven requirements at section 16 apply to all mixtures of materials but the seventh envisages the possibility of there being additional requirements that apply to mixtures of waste fines. This is intended to assist landfill site operators in determining the correct amount of tax chargeable and to safeguard the revenue for investment in public services in Wales.

---

<sup>6</sup> The combustible material will include organic material that, when landfilled, will produce methane (a powerful greenhouse gas) and leachate. This organic material is typically contained in standard rate wastes (i.e. non-qualifying material). Waste policy aims to reduce the landfilling of this material, to help reduce greenhouse gas emissions from landfill.

<sup>7</sup> <http://gov.wales/betaconsultations/finance/landfill-disposals-tax/?lang=en>

- 4.10. Section 17 of the LDT Act builds on this seventh requirement by setting out the enabling powers for regulations that can be made in relation to qualifying mixtures of waste fines. Section 17(2) and (3) set out the provisions that could be included in secondary legislation and section 17(5) allows for the possibility of certain provisions being made by way of a WRA notice which has the force of law.
- 4.11. This approach seeks to ensure that the Welsh Ministers are able to afford WRA an appropriate amount of flexibility to respond to learning which emerges over time in a new policy area. As technological and scientific developments are allowing for more precise testing of loads of waste fines, it is appropriate to be able to respond to these and incorporate suitable requirements and safeguards around entitlement to the lower rate.

*Purpose and intended effect*

- 4.12. The regulations use the enabling powers at section 17 of the LDT Act to introduce additional requirements for waste fines and to give WRA powers to build on these requirements by way of a notice. This includes LOI testing requirements, in a similar vein to LOI testing arrangements that are in place in the context of UK and Scottish landfill tax at present.
- 4.13. Regulation 4 of the regulations contains the requirements that all mixtures of waste fines material must meet (in addition to those at requirements 1-6 of section 16 of the LDT Act) in order to qualify for the lower rate, including: pre-acceptance checks for mixtures of materials delivered to the landfill site; record keeping requirements; and the maximum LOI percentage threshold of 10%. Many of the requirements will be further detailed in a WRA notice to enable them to have substantive effect.
- 4.14. Regulation 5 is about the LOI testing requirements in relation to certain mixtures of material if they are to be eligible for the lower rate and sets some fundamental test conditions around the temperature at which a sample must be heated and for how long. Further detail regarding the LOI test will be covered within the WRA notice including: the testing cycle, sample preparation, testing methodology, calculating the LOI percentage, action following a failed LOI test and record keeping requirements.
- 4.15. Regulations 6 and 7 are about WRA powers to ask landfill site operators to carry out a LOI test outside the normal cycle or for the WRA to take a sample and carry out its own LOI test. These are intended to support compliance activity and ensure the correct amount of tax is being applied.
- 4.16. Regulations 8, 9 and 10 contain information about specific record-keeping penalties (of up to £3,000) in relation to waste fines and how they can be assessed and recovered. This approach is consistent with the assessment of penalties in the LDT Act (Part 5, Chapter 4).
- 4.17. Regulation 11 enables a WRA notice or direction to make different provision for different scenarios and allows WRA to make provision for

transitional arrangements, so as to cater for landfill site operators who were operating under the UK landfill tax regime before 1 April 2018.

## **Customer Insolvency Credit**

### *Background and current position*

- 4.18. Section 54 of the LDT Act sets out the powers the Welsh Ministers have to make provision for the circumstances in which a person is to be entitled to a tax credit in respect of LDT. Section 54(2) sets out the provisions that may be included in regulations; among other things provision could be made which specifies the conditions that must be met for an entitlement to a credit to arise and the procedure for claiming a credit.
- 4.19. The existing landfill tax system includes a credit known as 'Bad Debt Relief'. The processes and procedures for applying this credit has evolved over time and are contained in various pieces of legislation and HMRC guidance.
- 4.20. The Landfill Tax (Scotland) Act 2014 and the Scottish Landfill Tax (Administration) Regulations 2015 follow to a significant extent UK landfill tax provisions for the purposes of Scottish Landfill Tax, although the bad debt relief has been redefined to only apply where the customer who owes the debt has become insolvent.
- 4.21. In the 2015 consultation *Landfill Disposals Tax*, the majority of respondents did not want bad debt relief to be offered at all and others suggested that the circumstances for the credit should be limited to an insolvency event. The views of respondents have been taken on board in our regulations.

### *Purpose and intended effect*

- 4.22. The policy intent is to create a tax credit that is linked to customer insolvency. It is intended that an entitlement to such a credit will arise where a landfill site operator has accounted for and paid landfill disposals tax in respect of a disposal but has not received payment from the customer behind that disposal due to an insolvency event. The credit recognises that there may be circumstances in which, although a liability to landfill disposals tax has arisen, and a payment has been made to WRA in satisfaction of that liability, there are wider factors at play that mean that it will be appropriate to allow a tax credit to be claimed (provided certain conditions are met), so that the revenue is effectively refunded.
- 4.23. The regulations give landfill site operators an entitlement to a tax credit, known as customer insolvency credit, where a customer becomes insolvent before having paid the operator for carrying out a taxable disposal.

- 4.24. Introducing a customer insolvency credit will encourage waste businesses to employ good business management practices and will ensure landfill sites are not adversely affected if their customers go insolvent.
- 4.25. Regulation 14 of the regulations sets out the requirements that must be met in order for the entitlement to arise. Regulation 18 sets out the manner in which the amount of the entitlement to credit is to be calculated. Regulations 19 and 20 specify the manner in which an amount of credit may be claimed and the manner in which credit may be given.
- 4.26. A person who makes a claim for credit must hold and preserve the evidence specified in regulation 22 and must also keep a customer insolvency credit record in accordance with regulation 23.
- 4.27. A person who has benefited from an amount of credit may be required to make payments to WRA in certain circumstances. Those circumstances are specified in regulations 24 (where the customer has subsequently made a payment) and 25 (where there is a failure to keep records by the claimant).
- 4.28. Regulations 26 and 27 and the Schedule make a number of amendments and modifications to the LDT Act and the TCM Act 2016 in connection with tax credits.

## **5. Consultation**

- 5.1. Details of consultation undertaken are included in the Regulatory Impact Assessment in Part 2.



## **PART 2 – REGULATORY IMPACT ASSESSMENT**

### **6. Impact of establishing The Landfill Disposals Tax (LDT) (Administration) (Wales) Regulations 2018**

#### Options

- 6.1. Three options have been considered in relation to this regulation:
- Option 1 - do nothing (do not introduce the regulations)
  - Option 2 - replicate existing UK landfill tax arrangements
  - Option 3 - develop 'Welsh specific' arrangements
- 6.2. 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.

#### **Option 1: Do Nothing (do not introduce the regulations)**

- 6.3. The do nothing option would involve not introducing additional arrangements for qualifying mixtures of fines including LOI testing or a customer insolvency credit.
- 6.4. By not introducing these regulations requirements to determine tax liability including pre-acceptance checks and a LOI test could not be implemented for mixtures of waste fines. Instead reliance would be placed on the landfill site operator's judgement (subjective) on inspection of the load and other such evidence such as the waste transfer note.
- 6.5. This could create some confusion, particularly for waste businesses along the Wales-England border as they will be operating within two different systems in relation to waste fines. It is unlikely to be welcomed by stakeholders, particularly landfill site operators who advocated the introduction of LOI testing in UK landfill tax in 2015 to provide certainty and consistency about the tax treatment of waste fines. It may also undermine efforts to encourage tax compliance and positive environmental behaviours.
- 6.6. By not introducing the regulations landfill site operators would not be entitled to any reimbursement, whether in the form of bad debt relief or a credit in circumstances where their customer becomes insolvent before having paid the operator for carrying out a taxable disposal. Whilst the majority of respondents to the 2015 consultation on landfill disposals tax did not think reimbursement should be offered; landfill site operators have raised concerns at its potential removal.

#### **Option 2: Replicate existing landfill tax arrangements**

- 6.7. The do minimum option is to introduce regulations which replicate the existing landfill tax arrangements for waste fines including LOI testing and bad debt relief. This would mean that the new tax system being created

would be recognisable to landfill site operators and there would be similar processes which would provide stability and reassurances to businesses.

- 6.8. A clear message from stakeholders was the need to implement a replacement tax which provides consistency, certainty and stability for businesses. Replicating the existing UK landfill tax in these areas could achieve this.
- 6.9. However, stakeholders also commented there are areas of confusion with the existing UK landfill tax legislation and greater clarity would be welcomed. In addition, there is evidence UK landfill tax is susceptible to some tax evasion, particularly around the misclassification of waste in order to achieve the lower rate of tax.
- 6.10. Further, in relation to bad debt relief, the majority of respondents to the 2015 consultation on landfill disposals tax did not think it should be offered with others suggesting that the conditions in which it was made available should be tightened and linked to an insolvency event.

### **Option 3: Develop 'Wales specific' arrangements**

- 6.11. This option would broadly replicate UK arrangements thereby maintaining similar processes which would provide stability and reassurance for landfill site operators but would also introduce some changes to clarify and simplify existing areas of confusion within the legislation and address key policy issues highlighted by stakeholders as mentioned above.
- 6.12. The changes seek to make the arrangements in each of these areas more transparent, pragmatic, workable and proportionate. In doing so this approach seeks to tighten up arrangements to safeguard them from abuse; ensure that compliance is straightforward so that landfill site operators can meet their tax obligations and; enable the WRA to identify those who have failed to adhere to these rules and take appropriate enforcement action.
- 6.13. Under option 3, changes would be sought to:

#### *Mixtures of waste fines including LOI testing*

- The regulations introduce two record-keeping penalties in relation to waste fines. In doing so, they also allow the WRA to take account of other documentary evidence when determining compliance with record-keeping requirements. This is consistent with the approach to non-disposal areas in the LDT Act.
- Unlike the UK and Scotland, the regulations specifically confer powers on the revenue authority (WRA) to direct that a landfill site operator carries out an LOI test and empowers the WRA to take a sample of fines and carry out its own LOI test. This provides greater clarity around compliance arrangements.

## *Customer Insolvency Credit*

- Create a tax credit that is linked to customer insolvency. It is intended that an entitlement to such a credit will arise 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. We have also defined more broadly the definition of insolvency than Scotland (regulation 17).
- Set out requirements which will have to be met in connection with a disposal before an entitlement to a credit can arise. For example, the disposal must have taken place on an authorised landfill site, the landfill site operator must have paid and accounted for LDT on that disposal and a landfill invoice must have been issued to the customer by the operator.
- Prescribe a clear set of timescales that need to be adhered to, in order to be entitled to the credit. This option would specify a time limit in which the customer is to become insolvent (a period of 12 months beginning with the date on which the landfill invoice was issued) and a time limit for the landfill site operator to claim the credit (6 months from the insolvency event compared to 12 months in UK and Scottish landfill tax).

## **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. This information has been prepared through discussion with stakeholders including taxpayers (landfill site operators), the wider waste industry, tax experts and professional industry bodies.
- 7.2. The preferred option is for the Welsh Government to introduce arrangements specific to Wales (option 3).

### **Option 1: Do nothing (do not introduce the regulations)**

#### *Mixture of waste fines including Loss on Ignition (LOI) testing*

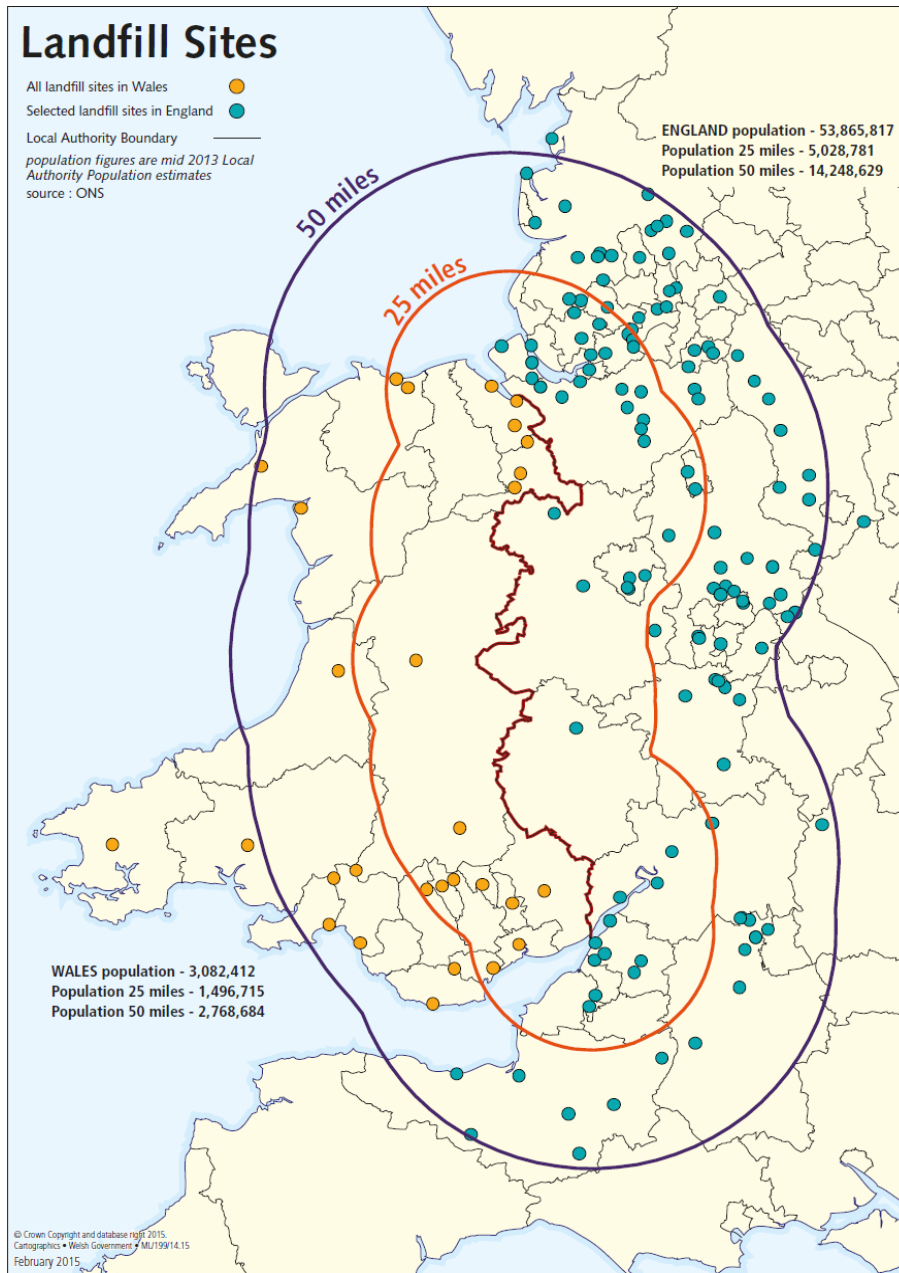
- 7.3. Without these regulations there would not be any obligation to complete a pre-acceptance questionnaire on mixtures of waste fines to better understand how they had been produced and their content and no obligation to carry out a LOI test.
- 7.4. Compared to the current situation, this would result in cost-savings for waste businesses producing fines waste as the average cost of an LOI test, which is passed on to them by the landfill site operator, is £30. Under UK landfill tax, in normal circumstances the LOI test must be completed 1 in every 1,000 tonnes. A business producing 50,000 tonnes of waste fines per year could save £1,500.

- 7.5. However, it could also increase non-compliance with standard rate material either unintentionally or deliberately being mixed with lower rate waste fines leading to the lower tax rate being incorrectly applied. This would result in less tax being collected to invest in public services in Wales. The financial implications of misclassification of waste can be significant given the current lower rate of tax is £2.70/tonne and the standard rate of tax is £86.10/tonne. An industry report<sup>8</sup> noted in 2014 that revenue lost as a result of misclassification of waste could be as much as £200m across the UK. Misclassification of waste can be difficult to detect and without these regulations it would considerably weaken the compliance tools available to the WRA.
- 7.6. Compliant landfill site operators welcomed the introduction of LOI testing in 2015 as it helped to create a fairer playing field and provided greater confidence in determining the tax liability of waste fines. Not introducing these regulations would be widely considered a backwards step.
- 7.7. Analysis produced when determining the tax rates suggested that small changes in tax rates could encourage cross-border movement of waste. There may be a similar response if there were no regulations to assist with determining the correct rate of tax. This could lead to a higher amount of waste being disposed of in Wales as waste businesses seek to avoid the cost of the LOI test in England and less rigorous compliance arrangements. The Wales/England border is populous and has a range of waste management businesses including landfill sites along both sides which can be seen at Figure 1.
- 7.8. An increase in waste being disposed of in Wales would have wellbeing and environmental impacts for communities, for example, an increase in waste, travelling further distances on major roads and through residential areas; increased disruption for residents near landfill sites and waste transfer stations; increased carbon footprint of waste disposal and; increased pressure on existing landfill capacity.
- 7.9. This option would also remove an 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.
- 7.10. In summary, this option would be inconsistent with Welsh Government priorities set out in its National Strategy and wider waste policies of working towards a zero waste Wales. It would also sit uncomfortably with the duty at section 91 of the LDT Act for 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.

---

<sup>8</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)

Figure 1 - Landfill Sites and Populations – Wales/England Border <sup>9</sup>



<sup>9</sup> Location of landfill sites based on HMRC data 2012  
[http://customs.hmrc.gov.uk/channelsPortalWebApp/channelsPortalWebApp.portal?\\_nfpb=true&\\_pageLabel=pageExcise\\_ShowContent&id=HMCE\\_PROD\\_009941&propertyType=document](http://customs.hmrc.gov.uk/channelsPortalWebApp/channelsPortalWebApp.portal?_nfpb=true&_pageLabel=pageExcise_ShowContent&id=HMCE_PROD_009941&propertyType=document)

## *Customer Insolvency Credit*

- 7.11. The majority of the respondents to the 2015 consultation on landfill disposals tax were not in favour of offering bad debt relief with respondents commenting that operators should be encouraged to implement best business practices and put in place appropriate contracts with their customers. Some also commented that other industries are not supported in this way. As such, this option would be generally welcomed by a range of stakeholders. Further, by not introducing the regulations there may be an increase in the revenue as WRA would not be reimbursing landfill site operators for these unpaid costs.
- 7.12. However, landfill site operators did raise concerns with this option and given the economic climate the Welsh Government believes it is fair and appropriate to offer some form of reimbursement. To not do so could contribute to financial difficulties for the landfill site operator and in a worst case scenario it could contribute to the closure of the landfill site. An unplanned reduction in landfill capacity in Wales could also lead to an increase in waste being disposed of illegally. Consequently, this could result in additional financial pressures for the Welsh Government, local authorities and the environmental regulator.

### **Option 2: Replicate existing landfill tax arrangements**

- 7.13. Landfill tax is a well established tax which has been in operation since 1996. This option would mean that the new tax system being created would be familiar to landfill site operators and there would be similar processes which would provide stability and reassurances to businesses. As it would involve replicating the current regime therefore there will not be any changes that incur an additional cost to landfill site operators, waste businesses or WRA.
- 7.14. However, it would be a lost opportunity to make changes, for example where stakeholders have said greater clarity would be welcomed. Further, stakeholders were not supportive of replicating the existing landfill tax arrangements for bad debt relief and raised some issues regarding the practical implementation of the LOI testing arrangements.

### **Option 3: Develop 'Wales specific' arrangements**

*Costs previously identified in the LDT Act Regulatory Impact Assessment (RIA)*<sup>10</sup>

- 7.15. As reported in the LDT Act RIA there will be a cost to landfill site operators and tax experts for the time required to familiarise themselves with the legislation including these regulations, estimated to be £6,600 and £13,000 respectively. The cost will be incurred in 2017-18.

---

<sup>10</sup> <http://www.assembly.wales/laid%20documents/pri-ld10839-em-r/pri-ld10839-em-r-e.pdf>

7.16. The WRA will delegate compliance and enforcement functions 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. The funding allocated to NRW to carry out these functions (including the compliance and enforcement costs related to these regulations) is included in the operating costs of the WRA. The total budget for the WRA has recently been reviewed, implementation costs and operational running costs is £6.3m for 2017/18 and for 2018/19 and subsequent years will be £6m.

#### *Mixture of waste fines including Loss on Ignition (LOI) testing*

7.17. This option builds on established practices around pre-acceptance checks and LOI testing and does not introduce any new additional costs. The legislation also introduces a number of new penalties to deal with cases of non-compliance. These provisions will only impose costs on those individuals or businesses that choose to operate outside of the law. At this stage, levels of non-compliance are not known and so these costs cannot be quantified.

7.18. The detail of the arrangements will be set out in a WRA Notice; the expectation is that the testing cycle will remain consistent with existing arrangements and so there should not be additional costs to landfill site operators. Furthermore, transitional arrangements will allow landfill site operators to carry over arrangements for existing customers, rather than setting up new LOI testing arrangements from 1 April 2018.

7.19. These regulations provide a “Welsh specific” solution. The key benefit of introducing the LOI testing regime is to provide certainty and stability for the landfill site operators, by broadly enabling consistency with how waste fines are treated in England and Scotland and reducing the risk of cross-border movement of waste. It also ensures that the benefit of the tax revenue can continue to be secured for investment in public services in Wales.

7.20. The main changes made in response to the concerns raised by stakeholders has been to introduce an LOI testing regime with which they are familiar and which provides consistency for all landfill site operators, whilst better reflecting established practices. The LOI tests should give landfill sites operators’ confidence in determining the tax liability. This will also give the WRA and NRW clear tools and guidelines in their compliance and enforcement role and assurances that the right amount of tax is being paid which will contribute to public services in Wales.

#### *Customer Insolvency Credit*

7.21. The main benefit for introducing the customer insolvency credit is it provides stability and certainty for landfill site operators. It also encourages good business practice and that proper contracts are in place between the landfill site operator and their customers. It will also ensure landfill sites are not adversely affected if their customers go insolvent. Given the economic

climate the Welsh Government believes it is fair and appropriate to offer a credit in relation to 'bad debt' where the customer has become insolvent.

- 7.22. This option also seeks to tighten and clarify existing legislation establishing a clear set of steps for when the credit is available, which supports businesses but also seeks to protect the revenue.
- 7.23. It is difficult to forecast the cost of this to landfill site operators in Wales as data is currently provided on an England and Wales basis. There may be some minor additional costs for landfill site operators and WRA in ensuring that all steps required to be taken for the credit have been met and that the landfill site operator has registered as a creditor.
- 7.24. There are also some cost benefits for the landfill site operator as the time period for when the credit can be claimed has been shortened to assist landfill site operators in managing their cash flow. They will be entitled to claim the credit at an earlier date than in the rest of the UK (after 6 months instead of 12 months). This approach was supported by respondents to the 2015 consultation landfill disposals tax and is consistent with VAT provisions.

### **Summary of the preferred option**

- 7.25. The preferred option is Option 3, to develop Wales' specific regulations. This will be achieved by the Landfill Disposals Tax (Administration) (Wales) Regulations 2018, subject to the will of the Assembly and is expected to come into force from 1 April 2018 when landfill tax will be dis-applied in Wales.
- 7.26. The key benefit is to provide certainty and stability for the waste industry, by broadly enabling consistency with how landfilled waste is treated 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.
- 7.27. Wider benefits include 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, Climate Change *Strategy for Wales*.
- 7.28. In drafting the regulations we have sought to update, clarify or bring together the most appropriate elements of the existing legislation and made changes to better reflect Welsh circumstances and needs.



## 8. Consultation

- 8.1. The Welsh Government published a consultation *Landfill Disposals Tax*<sup>11</sup> in February 2015. The consultation sought views on proposals to help inform the policy and structure of landfill disposals tax.
- 8.2. The consultation received 279 responses from a range of stakeholders: individuals and various organisations representing different sectors from across Wales and the UK including the waste industry, environmental bodies and the third sector as well as tax professionals. The consultation closed in May 2015 and a summary of the responses was published in September 2015.
- 8.3. The consultation responses and engagement events were particularly helpful in highlighting areas where it was important to maintain consistency with arrangements in the rest of the UK; and where there were opportunities for clarifying and updating the existing legislation and making changes to better reflect Welsh circumstances and needs.
- 8.4. Responses to some questions of specific relevance to the regulations are summarised as follows:
  - *Should bad debt relief be offered and if so, in what circumstances is it appropriate?* The majority of respondents did not want bad debt relief to be offered at all, with others suggesting the circumstances in which it should be offered be limited to an insolvency event. A number of respondents also advocated shortening the timescale for claiming bad debt relief from 12 months to 6 months which is consistent with VAT. Given the economic climate it was felt fair and appropriate to offer a credit in relation to 'bad debt' where the customer has become insolvent.
  - *Would you support the introduction of a Welsh Loss on Ignition (LOI) test when Landfill Tax is devolved? Please explain your reasons.* The majority of respondents supported the introduction of a LOI test with several respondents supportive of the Welsh Government's intention to monitor the outcome of the UK and Scottish Governments' approaches. Of those in favour of a Welsh LOI test, one recurrent theme was regarding the importance of maintaining "cross-border consistency", to avoid cross-border movement of waste.
- 8.5. In order to inform policy and legislative proposals a Technical Experts Group was established with representation from NRW, the Welsh Local Government Association, tax professionals and the waste industry. In addition, Welsh Government officials regularly meet with landfill site operators and have visited several landfill sites and met operators' finance teams to better understand how UK landfill tax is administered. As part of this engagement, landfill site operators were sent a questionnaire seeking more details and views on the existing LOI testing regime. There has also

---

<sup>11</sup> <http://gov.wales/betaconsultations/finance/landfill-disposals-tax/?lang=en>

been regular engagement with HMRC, Scottish Government and Revenue Scotland and their knowledge and experience has been taken into account.

- 8.6. On customer insolvency credit, detailed and extensive discussions with landfill site operators and technical experts have highlighted the careful balance that needs to be struck between a policy preference to ensure that landfill waste is deposited appropriately at a landfill site even if the financial situation of the waste producer is challenging, and encouraging landfill site operators to implement robust contract management and good business relationships with their customers. External stakeholder discussions suggested that an approach that retained a credit but narrowed the circumstances in which it is available under UK legislation to something more akin to the approach taken by the Scottish Government would be appropriate for Wales.

## **9. Competition assessment**

- 9.1. See **Appendix A**

## **10. Post implementation review**

- 10.1. The effect of the LDT Act will be assessed in a number of ways. Regarding these specific regulations the following activities will take place:

- An independent review of the LDT Act and regulations will be completed within 6 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 the:
  - amount of customer insolvency credit claimed as well as who is claiming the credit;
  - Number of LOI tests undertaken by LSOs and more detailed information on the failed LOI tests (requiring a separate form to be submitted to the WRA);
  - An assessment of compliance with the loss on ignition tests will take place once a reasonable period of time has elapsed. Implementation and compliance reviews by HMRC and Revenue Scotland will also be considered as part of this work.

- 10.2. The WRA notice setting out the detailed arrangements to assist landfill site operators to determine the tax liability of waste fines will be reviewed annually, and updated as and when necessary. This will provide the WRA with flexibility to update its requirements in this area through evaluating implementation of a new policy area; and taking on board any technological developments in the field of environmental waste.

- 10.3. Any post implementation assessment of more qualitative aspects of landfill disposal tax' 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.

- 10.4. The Welsh Government and WRA will also work closely with the UK and Scotland to learn from their experiences and to establish best practice.

## 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?	No
<b>Q2:</b> In the market(s) affected by the new regulation, does any firm have more than 20% market share?	No
<b>Q3:</b> In the market(s) affected by the new regulation, do the largest three firms together have at least 50% market share?	No
<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 location of their products?	No

The competition filter test for Laboratories that will be carrying out Loss on Ignition Tests

<b>Question</b>	<b>Answer yes or no</b>
<b>Q1:</b> In the market(s) affected by the new regulation, does any firm have more than 10% market share?	No
<b>Q2:</b> In the market(s) affected by the new regulation, does any firm have more than 20% market share?	No
<b>Q3:</b> In the market(s) affected by the new regulation, do the largest three firms together have at least 50% market share?	No
<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 location of their products?	No