



The UK Environmental Law Association's Wales Working Party

Evidence Submission on the Landfill Disposals Tax (Wales) Bill

to the

National Assembly for Wales's Finance Committee

Introduction

1. The UK Environmental Law Association (UKELA) is pleased to have the opportunity to submit its views and comments to the National Assembly for Wales's Finance Committee on the contents of the Landfill Disposals Tax (Wales) Bill (hereafter referred to as 'the Bill').
2. The UK Environmental Law Association aims to make the law work for a better environment and to improve understanding and awareness of environmental law. UKELA's members are involved in the practice, study or formulation of Environmental Law in the UK and the European Union. It attracts both lawyers and non-lawyers and has a broad membership from the private and public sectors.
3. UKELA prepares advice to UK Governments with the help of its specialist working parties, covering a range of environmental law topics. This response has been prepared by UKELA's Wales Working Party.

Overview

4. The landfill tax is a key policy lever in the Welsh Government's objective of less than 5 per cent of waste sent to landfill by 2025, with an ultimate ambition of zero waste by 2050. As highlighted in the *Towards Zero Waste 2010–2050 Progress Report July 2015* (<http://gov.wales/docs/desh/publications/150724-towards-zero-waste-progress-report-en.pdf>), Wales has made significant and commendable progress towards these goals and while a causal link is difficult to firmly establish, it is logical to assume that the landfill tax was a contributing factor to the progress already made. The current landfill tax has operated as a successful behavioural change mechanism and UKELA fully supports its continuation in the form of a landfill disposals tax from April 2018.
5. Given the disapplication of the existing landfill tax in Wales in the near future, a 'do-nothing' approach would lead to significant funding implications for Wales resulting from lost tax revenue. More significantly from an environmental perspective, the absence of a landfill tax in Wales where one exists in England is highly likely to lead to so-called 'waste tourism', i.e. would perversely incentivise the transportation of waste from England to Wales, something which could eventually lead to the need for more landfill sites in Wales – a development which would extensively undermine the Welsh Government's waste strategy and commitment to sustainability.
6. In terms of any potential barriers to the implementation of the provisions and any unintended consequences arising from the Bill, one can take confidence from the fact that the Bill does not represent a radical departure from the existing regime under the Finance Act 1996 and associated secondary legislation. Further, where the Bill does

introduce new provisions, e.g. the extension of landfill disposal tax to unauthorised disposals of waste at places other than authorised landfill sites, this has already occurred in Scotland (following the enactment of the Landfill Tax (Scotland) Act 2014). If unforeseen problems arise in the future, the Bill contains a number of provisions which enable regulations to be made to amend the landfill disposal tax regime. As such, the Bill pays sufficient regard to the need to future proof.

7. Given the nature of UKELA as an organisation, the comments provided below relate only to the environmental aspects of the Bill, i.e. no opinion is offered on the parts of the Bill relating to the technical and administrative provisions for tax collection and enforcement. However, the extent to which the Bill is able to achieve its environmental and sustainability objectives is dependent to a significant extent on the provision of robust enforcement and inspection mechanisms and sufficiently dissuasive penalties for non-compliance.

Specific Comments

8. Definition of taxable disposal: the definition provided by clause 3 of the Bill is clear and the use of four conditions in order to determine whether a taxable disposal is made should provide a clear checklist for enforcement officers and operators of landfill sites. Clause 3 can only be fully understood by reference to clauses 4, 5 and 6, which provide definitions of the conditions provided in clause 3. The definition of 'disposal of material as waste' (cl.6) utilises the familiar concept of "intention to discard" (utilised in the EU Waste Framework Directive); historically this concept has generated litigation but is now fairly settled as a legal concept. Clause 6(2) creates an inferred intention to discard from the fact that material is deposited in a landfill disposal area; this represents a common sense approach to the issue which should reduce the scope for protracted legal argument. However, there might be cases where it is argued that the inference has been rebutted by contrary evidence.

9. Definition of qualifying materials: the Bill adopts an identical approach to the current landfill tax regime in that qualifying materials will be listed in regulations. In the interests of certainty and consistency and in order to avoid waste tourism, it is sensible to maintain a broadly similar list to the remainder of the UK.

10. The omission of a specific threshold to define 'small quantity' for the purposes of clause 16 (qualifying mixtures of materials) is also worthy of comment. Natural Resources Wales has argued against the use of a threshold on the basis that it would encourage less efficient methods for segregating waste and might encourage some operators to deliberately mix wastes to achieve the limit set. While there is some force in this argument, it is contended that the issue is finely balanced; the argument advanced by NRW is premised on the assumption that the threshold will be relatively high (the example given is 10 per cent), a considerably lower threshold might not be problematic. Further, requirement 3 of clause 16 provides that a mixture will not qualify for the lower rate of tax where non-qualifying materials have been deliberately mixed with qualifying material. In theory, this provision would alleviate the problem of operators mixing wastes up to the threshold (although issues of evidence and proof would arise). Finally, a threshold approach would be more objective than the current use of the ambiguous test of 'small quantity'. Ultimately, UKELA will support the approach which has the greatest potential to reduce landfill. As such before any future regulations designed to introduce a threshold (as provided for by clause 16(3)) are enacted, we would advocate the development of an evidence base to ascertain how the 'small quantity' test is administered in practice.

11. The inclusion of unauthorised disposals of waste at places other than authorised landfill sites: UKELA welcomes the extension of the landfill disposals tax regime to cover disposals of waste at non-landfill sites. The stated purpose of the extension is to deter those who attempt to

evade the landfill disposal tax by altering the balance of financial risks and rewards. The new provisions are only likely to produce an enhanced deterrent effect if backed up by meaningful enforcement activity, thereby increasing the likelihood of apprehension. In terms of the approach taken by clause 46, the use of presumptions in cases of persons who controlled a motor vehicle from which the disposal is made and owners, lessors etc of the land on which the disposal is made is a pragmatic solution to the problems which might otherwise arise in proving that a person has knowingly caused or knowingly permitted a disposal to be made.

12. The establishment of the Landfill Communities Scheme: the Welsh Government has stated that the new grant scheme is intended to maximise the amount of funding reaching projects. However, the extent to which funding levels to community and environmental projects is maintained (and hopefully increased) is dependent on the political will and funding priorities of the Welsh Government. In order to avoid funding levels changing in accordance with political vagaries, we would advocate a statutory duty to allocate a certain percentage of the revenue generated by the landfill disposals tax to the Landfill Communities Scheme. On practical level, the new proposed streamlined distribution process is welcomed as a means of reducing administrative burdens.

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