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Ysgrifennydd y Cabinet dros Gyllid a Llywodraeth Leol
Cabinet Secretary for Finance and Local Government



Llywodraeth Cymru
Welsh Government

Huw Irranca-Davies AM
Chair
Constitutional and Legislative Affairs Committee
National Assembly for Wales
Cardiff Bay
CF99 1NA

20 March 2017

Dear Huw,

Landfill Disposals Tax (Wales) Bill

I would like to thank the committee for your report about Landfill Disposal Tax (Wales) Bill (the Bill).

I have considered the committee's recommendations and, in advance, of the general principles debate, I thought it would be helpful to provide some further information and points of clarification.

Of the 12 recommendations in the report, I am able to accept 10.

I have separately written to the Finance Committee setting out my response to its 24 recommendations, of which I am able to accept 23.

I hope the information in this letter helps to inform further scrutiny of the Bill as it progresses through Stage 2.

I am copying this letter to the chair of the Finance Committee.

Yours sincerely,

A handwritten signature in black ink that reads "Mark Drakeford".

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

Constitutional and Legislative Affairs report recommendations

Recommendation 1

We recommend that during the Stage 1 debate, the Cabinet Secretary explains:

- His justification for including extensive Henry VIII powers in the Bill;
- What alternative approaches he considered in drafting the Bill (instead of using extensive Henry VIII powers);
- In taking narrower Henry VIII powers than exist in current UK legislation, what powers he no longer has that remain in that existing UK legislation.

During my evidence session on 9 January, I explained that the starting point when developing this legislation was to include substantive provisions on the face of Bill unless there was good reason not to. We believe this approach improves the accessibility of this complex area of law by making the expectations on both the Welsh Revenue Authority (WRA) and the taxpayer as clear as possible, reflecting the approach Wales wants to take to the collection and management of taxes.

In comparison to landfill tax legislation in the UK and Scotland, we have included more provision in primary legislation – areas which are currently covered by secondary legislation, guidance or notices elsewhere. For example, provisions relating to weighing, water discount, non-disposal areas, mixed loads, prescribed activities and landfill invoices. These areas of the Bill are accompanied by secondary legislation powers to ensure the workability and longevity of the legislation.

This means the Bill does contain a significant number of powers that permit the amendment of primary legislation. This is not a decision we have taken lightly but has been based on a consideration of what the circumstances require; whether there is good reason for taking a power and whether it is a proportionate step to take. We have sought to strike a balance between providing a transparent tax regime and ensuring there is sufficient flexibility to respond to future developments, whether economic, technological or the result of developments in England, which we may need to respond to quickly.

It is also conceivable that we may need to change the law to respond to case law as litigation has been a feature of the tax in the UK. The creation of such powers in this Bill will not be a novel concept for landfill tax practitioners as they feature in landfill legislation in UK and Scotland.

The alternative to taking powers to amend primary legislation is to put more substantive provision into secondary legislation, which, as I explained in my evidence session, is not our preferred approach. We could also use the primary legislative process, which, in all parts of the UK, is resource-intensive and takes time. As there are currently only two devolved taxes, there is unlikely to be a need, at this stage, to make changes sufficiently regularly to justify an annual finance bill.

We have sought to take relatively-specific, tailored powers to make amendments to provisions in the Bill so we are as transparent as possible about how the powers could be exercised, while retaining the necessary degree of flexibility. In some cases, this is directly comparable to the approach taken in the current UK legislation – section 4(1) (disposal of material by way of landfill), for example.

However, we have a series of powers to amend provisions relating to what is within the scope of the tax (see section 6(4) (definition of disposal of material as waste); section 12(1) (exemptions) and section 32 (reliefs) where the UK legislation takes one more broad power to vary whether or not a disposal is to be treated as taxable (section 46 Finance Act 1996). We do not feel that this leaves us with lesser powers than exist in the UK legislation. We believe our approach aligns each power more closely with its purpose.

Recommendation 2

We recommend that the Cabinet Secretary justifies the use of each Henry VIII power contained in the Bill during the Stage 1 debate.

I accept this recommendation and I attach an annex providing the committee with an outline of each Henry VIII power taken in the Bill. I have identified the approach taken in the UK and Scotland in cases where there are broadly equivalent provisions.

Recommendation 3

We recommend that the Cabinet Secretary sets out during the Stage 1 debate whether he intends to use an annual finance Bill in future to cover changes to tax law.

I have written to the Finance Committee in relation to its recommendation four, which seeks a similar commitment and I replicate my response here for ease of reference.

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 routinely to 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 4

We recommend that, during the Stage 1 debate, the Cabinet Secretary explains the extent of the regulation-making power being sought under section 4(3) and, in particular, identifies the other enactments relating to the tax that could be amended.

The power at section 4(3) allows the definition of a “disposal of material by way of landfill” to be amended. The power provides that such an amendment could be made by amending section 4 or any other enactment relating to the tax. An equivalent power is contained in both the UK landfill legislation (section 65 Finance Act 1996, where an amendment can be made in such way as HM Treasury think fit) and in the Scottish legislation (section 5 Landfill Tax (Scotland) Act 2014, which allows for the modification of any enactment).

The adoption of tax collection and management powers is a new field of legislation for Wales and we cannot fully anticipate what changes may be needed in the future until we are operating the two new taxes – land transaction tax and landfill disposals tax (LDT) – and have learned from that experience.

The circumstances and the point in time at which this power would be exercised cannot as yet be known. It is possible that if an amendment was needed this could necessitate

an amendment to another enactment relating to LDT, such as the Tax Collection and Management (Wales) Act 2016 or secondary legislation relating to LDT.

Recommendation 5

We recommend that the Cabinet Secretary justifies during the Stage 1 debate using the affirmative procedure for the making of the first set of regulations under section 14 and 45 rather than placing tax rates on the face of the Bill.

I have written to the Finance Committee in relation to its recommendation three, which seeks a similar commitment and I replicate my response here for ease of reference.

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. In addition, HMRC has indicated that it intends to review the list of qualifying materials 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.

Recommendation 6

We recommend that the Cabinet Secretary should table an amendment to section 15 of the Bill to place a list of qualifying materials on the face of the Bill.

Recommendation 7

The list included on the face of the Bill in section 15 could be added to in regulations subject to the affirmative procedure (because, as the Welsh Government acknowledges, they would relate to a change in taxation). Accordingly, we recommend that the Cabinet Secretary should table an amendment to that effect.

I have written to the Finance Committee in relation to its recommendation eleven, which seeks a similar commitment and I replicate my response here for ease of reference.

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 consideration of detail and discussion with stakeholders is necessary. If successful, 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 8

If the Cabinet Secretary decides to retain Schedule 2 on the face of the Bill, we recommend that he should table an amendment to the Bill, applying the affirmative procedure to the making of regulations under Section 40(9).

In seeking to develop a coherent piece of legislation we have sought to include as much detail in primarily legislation as possible. We believe this will improve the accessibility of the law in such a complex area. However, there are some matters which we have reserved for secondary legislation where there is good reason for doing so. For example, provision in relation to a 'bad debt' credit is to be made in regulations due to its technicality and complexity.

Schedule 2 can appropriately be described as containing simple administrative provision and the inclusion of Schedule 2 on the face of the Bill in our view furthers the accessibility argument. We believe it is reasonable to retain such a provision on the face of the Bill.

We note the view of the committee – and its predecessor – about the use of the negative procedure for regulations which amend primary legislation. During the Fourth Assembly, the First Minister explained in a letter to the committee that the choice of procedure is considered on the merits of each case and ultimately informed by a variety of factors, including the nature of the power, its likely scope, and the circumstances in which the power is to be used.

The negative procedure has been prescribed for making regulations under section 40(9) because it enables the Welsh Ministers to make changes to the information that must be contained in a "landfill invoice" issued pursuant to section 40 of the Bill. This regulation-making power allows the Welsh Ministers to add to or remove items from the list of information that must be contained in a 'landfill invoice' (as set out in Schedule 2). The Welsh Ministers will be unable to repeal Schedule 2. Any such changes would not have any substantive effect on the amount of tax a taxpayer is liable to. Using the negative procedure to amend this basic administrative schedule is in my view, reasonable.

On this basis I am unable to support this recommendation.

Recommendation 9

We recommend the Cabinet Secretary should table an amendment to the Bill, applying the affirmative procedure to the making of regulations under Section 59 (5).

I have given further consideration to the regulation-making power at section 59(5) and accept this recommendation. I do not accept the proposition that the negative procedure is never appropriate in the context of a power amending primary legislation (for the reasons noted in my response to recommendation eight above) but I recognise the fact that section 59 relates to the sharing of information with the WRA.

I intend to table a government amendment in respect of this issue in the course of the Bill's progress.

Recommendation 10

We recommend that the Cabinet Secretary justifies during the Stage 1 debate the need for the inclusion of section 67(2) in the bill and the power to subsequently amend or repeal that provision using section 67(4), including the extent of how the power to amend would be used.

I have given further consideration to the provisions set out in section 67 of the Bill and intend to remove section 67(2) and 67(4) from the Bill. I intend to table a government amendment at stage 2.

Recommendation 11

We recommend that the Cabinet Secretary clarifies during the Stage 1 debate:

- Why it is necessary to take section 90 powers that make incidental, consequential, supplemental, transitional, transitory or saving provision'; and
- The full extent of those incidental consequential, supplemental, transitional, transitory or saving provision powers and in particular how he intends to use all of them.

This regulation-making power is needed to ensure the Welsh Government has sufficient flexibility to address technical issues relating to the transition from landfill tax to LDT or issues which are identified after LDT comes into force.

Unlike the UK Government, we will not be able to make use of an annual finance Bill to make these changes by primary legislation. It is therefore particularly important to ensure this Bill includes adequate future-proofing.

It is envisaged that any secondary legislation made under this power would, in the first instance, relate to the transition from landfill tax to LDT so the process is as seamless as possible and that the new law operates as intended.

The power may also be relied on to supplement another regulation-making power which may be used to respond to a future need (for example, if section 12 were used to introduce a new exemption from LDT, section 90 could be relied upon to make a consequential change to the Bill or the Tax Collection and Management (Wales) Act to ensure the new exemption could be operated effectively).

I have provided the committee with our interpretation of the different terms used in order to assist the committee's understanding of how envisage this provision will be applied:

Incidental: A provision that is necessary or expedient to make the Bill work properly.

Consequential: A provision that is necessary or clearly desirable in consequence of what is in the Bill.

Supplemental: A provision that supplements the Bill by adding matters (typically procedural machinery) that are required to implement what is in the Bill.

Transitional: A provision that manages the transition from the landfill tax regime to the LDT regime.

Transitory: A provision that is transitional but has a limited shelf life, such as a provision that will expire on a particular day.

Saving: A provision that saves the operation of an existing piece of legislation or rule of law.

Recommendation 12

We recommend that the Cabinet Secretary should table an amendment to the Bill to apply the affirmative procedure to the making of regulations under section 90(1) in accordance with section 90(2).

I believe that if these provisions amend primary legislation, regulations made under section 90 should follow the negative procedure if they do not affect a person's tax liability. If they have the effect of creating or increasing a charge to tax, they should, in every case, follow the affirmative procedure.

This follows the approach taken in the Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Bill.

A tax provision made under section 90, which amends primary legislation but does not affect a person's tax liability, would be a narrow and technical change. It would include a change to the information which a taxpayer has to provide to the WRA in a tax return.

The power cannot be used to make regulations containing new, substantive provisions, or to make fundamental changes to other legislation or to extend the scope of this Bill. It can only make the necessary changes to ensure that the provisions of this Bill work properly. This power would only be used for such matters as making changes to other legislation needed in consequence of the provisions of this Bill, or to deal with unforeseen details arising out of the implementation of the new system.

On this basis I am unable to support this recommendation.

ANNEX - RECOMMENDATION 2

This Annex is to outline the purpose of each Henry VIII power taken in the Landfill Disposals Tax (Wales) Bill and identifies the approach taken in the UK and Scotland, in cases where there are broadly equivalent provisions.

Section 4 (3) Power for the Welsh Ministers to modify the meaning of a disposal of material by way of landfill.

Why is a delegated power needed?

- Section 4 sets out the meaning of a disposal of material by way of landfill, this being the first condition that needs to be satisfied under section 3 for there to be a taxable disposal.
- This power enables the Welsh Ministers to amend the meaning of a disposal by way of landfill.
- This power gives the Welsh Ministers flexibility to respond to circumstances in the future, whether technological, environmental or to take account of the position elsewhere, particularly in England.

What is the position in the UK and Scottish legislation?

- Section 65(5) Finance Act 1996 confers an order making power on the Treasury to vary the meaning of a disposal by way of landfill in such way as it thinks fit (subject to the provisional affirmative procedure if it is making something a taxable disposal that would not otherwise be and the negative procedure in all other cases).
- Section 5(6) of the Landfill Tax (Scotland) Act 2014 confers an order making power on Scottish Ministers to vary the meaning of a disposal by way of landfill (subject to the provisional affirmative procedure if it is making something a taxable disposal that would not otherwise be and the negative procedure in all other cases).

Section 6 (4) Power for the Welsh Ministers to modify the meaning of a disposal of material as waste.

Why is a delegated power needed?

- Section 6 sets out the meaning of a disposal of material as waste, this being the third condition that needs to be satisfied under section 3 for there to be a taxable disposal.
- This power enables the Welsh Ministers to amend the meaning of a disposal of material as waste.
- This power gives the Welsh Ministers flexibility to respond to circumstances in the future, whether technological, environmental or to take account of the position elsewhere, particularly in England.

What is the position in the UK and Scottish legislation?

- No direct equivalent but a wide power to vary is taken at section 46 Finance Act 1996 that confers an order making power on the Treasury to make provision that would result in a disposal which would otherwise be a taxable disposal not being a taxable disposal or a disposal which would otherwise not be a taxable disposal being a taxable disposal, in such way as it thinks fit (subject to the provisional affirmative procedure if it is making something a taxable disposal that would not otherwise be and the negative procedure in all other cases).
- No direct equivalent but a wide power to vary is taken at section 11 Landfill Tax (Scotland) Act 2014 that confers an order making power on the Scottish Ministers to make provision that would result in a disposal which would otherwise be a taxable disposal not being a taxable disposal or a disposal which would otherwise not be a taxable disposal being a taxable disposal (subject to the affirmative procedure).

Section 8 (5) Power for the Welsh Ministers to provide that a landfill site activity is to be a specified landfill site activity or is to cease to be a specified landfill site activity or to modify the description of a specified landfill site activity.

Why is a delegated power needed?

- Section 8 sets out a list of specified landfill site activities that will be treated as a taxable activity, regardless of whether or not the conditions for a taxable disposal under section 3 are met.
- This power enables the Welsh Ministers to modify the list of specified landfill site activities or the description of activities on that list or to remove activities from that list.
- This power gives the Welsh Ministers flexibility to respond to circumstances in the future, whether technological, environmental or to take account of the position elsewhere, particularly in England, or to deal with potential avoidance activity.

What is the position in the UK and Scottish legislation?

- The equivalent list of specified activities are set out in secondary legislation rather than in primary legislation in the UK (*Landfill Tax (Prescribed Landfill Site Activities) Order 2009/1929*); these regulations are made under an order making power to do so conferred at section 65A Finance Act 1996.
- The equivalent list of specified activities are set out in secondary legislation rather than in primary legislation in Scotland (*Scottish Landfill Tax (Prescribed Landfill Site Activities) Order 2014/367*); these regulations are made under an order making power to do so conferred at section 6 Landfill Tax (Scotland) Act 2014.

Section 12 (1) Power for the Welsh Ministers to create an additional exemption from tax, modify an existing exemption or remove an exemption. The regulations may provide for an exemption to apply subject to conditions.

Why is a delegated power needed?

- Chapter 3 of Part 2 provides for there to be exemptions from tax for certain disposals of material. This means that although a disposal would have met the definition of a taxable disposal at section 3, it will not be treated as a taxable disposal. Two exemptions are currently set out at sections 10 (multiple disposals of material at the same site) and 11 (pet cemeteries).
- This power enables the Welsh Ministers to create new exemptions, modify the list of exemptions or the description of exemptions on that list or remove exemptions.
- This power gives the Welsh Ministers flexibility to respond to circumstances in the future, whether technological, environmental or to take account of the position elsewhere, particularly in England.

What is the position in the UK and Scottish legislation?

- No direct equivalent but a wide power to vary is taken at section 46 Finance Act 1996 that confers an order making power on the Treasury to make provision that would result in a disposal which would otherwise be a taxable disposal not being a taxable disposal or a disposal which would otherwise not be a taxable disposal being a taxable disposal, in such way as it thinks fit (subject to the provisional affirmative procedure if it is making something a taxable disposal that would not otherwise be and the negative procedure in all other cases).
- No direct equivalent but a wide power to vary is taken at section 11 Landfill Tax (Scotland) Act 2014 that confers an order making power on the Scottish Ministers to make provision that would result in a disposal which would otherwise be a taxable disposal not being a taxable disposal or a disposal which would otherwise not be a taxable disposal being a taxable disposal (subject to the affirmative procedure).

Section 16(4): Power for the Welsh Ministers to add to, modify or remove the requirements that must be met in order for a mixture of lower rate and standard rate materials to qualify for the lower rate of LDT. The power also enables Welsh Ministers to make further provision about matters that must be taken into account when determining whether a requirement is met or to modify or remove existing provision about those matters.

Why is a delegated power needed?

- Section 14 provides for there to be a lower rate of tax where a disposal consists entirely of one or more qualifying materials or is a qualifying mixture of materials and section 16 sets out a list of requirements that must be met in order for a mixture of materials to qualify for the lower rate.
- This power enables Welsh Ministers to add to, modify or remove the requirements that must be met in order for a mixture of lower rate and standard rate materials to qualify for the lower rate of LDT. The power also enables Welsh Ministers to make further provision about matters that must be taken into account when determining whether a requirement is met or to modify or remove existing provision about those matters.
- This power gives flexibility to respond to circumstances in the future, whether technological, environmental or to take account of the position elsewhere, particularly in England and to react to learning once LDT is operational in Wales, if appropriate.
- The power allows the Welsh Ministers to provide greater clarity around what may be considered an acceptable amount of non-qualifying material (standard rate material) in a mixed load if that load is to be taxed at the lower rate. This power also provides the Welsh Ministers with the ability to respond should there be a misuse of the principle surrounding mixed loads.

What is the position in the UK and Scottish legislation?

- The rules relating to qualifying mixtures of materials do not appear in legislation but can be published in a HMRC direction, under powers conferred at section 63 of the Finance Act 1996.
- The rules relating to qualifying mixtures of materials do not appear in legislation but can be published in a Revenue Scotland direction, under powers conferred at section 14 of the Landfill Tax (Scotland) Act 2014.

Section 21(9): Power for the Welsh Ministers to amend or repeal any provision relating to the application of a water discount in the LDT Bill.

Why is a delegated power needed?

- Section 21 allows WRA to agree to a discount when calculating the taxable weight of material in a taxable disposal to take account of water present in material, subject to conditions that are set out in that section.
- This power enables Welsh Ministers to amend or repeal any provision in the Bill that relates to the water discount.
- This power gives flexibility to respond to circumstances in the future, whether technological, environmental or to take account of the position elsewhere, particularly in England and to react to learning once LDT is operational in Wales, if appropriate.
- The water discount is also offered to ensure that there is no incentive for operators to reduce the amount of water needed. The water discount provisions recognise and reflect the practical reality that added water will either not go into the landfill cell itself or will not stay within it.

What is the position in the UK and Scottish legislation?

- Provisions are set out in secondary legislation rather than in primary legislation in the UK (*Landfill Tax Regulations 1996/1527*); made under a power to do so conferred at section 68 Finance Act 1996.
- Provisions are set out in secondary legislation rather than in primary legislation in Scotland (*Scottish Landfill Tax (Administration) Regulations 2015/3*); made under a power to do so conferred at section 15 Landfill Tax (Scotland) Act 2014.

Section 32(1) Power for the Welsh Ministers to create an additional relief from tax, modify an existing relief or remove a relief. The regulations may provide for an exemption to apply subject to conditions.

Why is a delegated power needed?

- Chapter 3 of Part 3 provides for there to be reliefs from tax for certain disposals of material made at authorised landfill sites. This means that although a disposal would have met the definition of a taxable disposal at section 3, tax will not be chargeable as it will be relieved from tax. Reliefs must be claimed in a tax return.
- Four exemptions are currently set out at sections 26 - 31.
- This power enables the Welsh Ministers to modify the list of reliefs or the description of reliefs on that list or to remove a relief. Regulations may provide for a relief to apply subject to conditions.
- It is intended that this power would enable the Welsh Ministers to respond to circumstances in the future such as technological or policy changes, so as to incentivise the responsible disposal of certain materials.

What is the position in the UK and Scottish legislation?

- No direct equivalent but a wide power to vary is taken at section 46 Finance Act 1996 that confers an order making power on the Treasury to make provision that would result in a disposal which would otherwise be a taxable disposal not being a taxable disposal or a disposal which would otherwise not be a taxable disposal being a taxable disposal, in such way as it thinks fit (subject to the provisional affirmative procedure if it is making something a taxable disposal that would not otherwise be and the negative procedure in all other cases).
- No direct equivalent but a wide power to vary is taken at section 11 Landfill Tax (Scotland) Act 2014 that confers an order making power on the Scottish Ministers to make provision that would result in a disposal which would otherwise be a taxable disposal not being a taxable disposal or a disposal which would otherwise not be a taxable disposal being a taxable disposal (subject to the affirmative procedure).

Section 40 (9) Power for the Welsh Ministers to amend Schedule 2.

Why is a delegated power needed?

- Section 40 makes provision for tax to be chargeable in respect of the accounting period in which a landfill invoice is issued rather than in the accounting period when the taxable disposal is made, provided that the landfill invoice is issued within 14 days of a disposal and contains the information specified in Schedule 2.
- This power allows the Welsh Ministers to amend the information that is to be contained in a landfill invoice, as specified at Schedule 2.
- It is intended that this power would enable the Welsh Ministers to respond to circumstances in the future. This power is required to amend the technical detail that is required in a landfill invoice. This power will only need to be used where operational practice changes and in order to continue to manage the tax invoice effectively WRA would need an amendment to Schedule 2.

What is the position in the UK and Scottish legislation?

- Contents of a landfill invoice is set out in secondary legislation rather than in primary legislation in the UK (*Landfill Tax Regulations 1996/1527*); made under power to do so conferred at section 61 Finance Act 1996.
- Contents of a landfill invoice are set out in secondary legislation rather than in primary legislation in Scotland (*Scottish Landfill Tax (Administration) Regulations 2015/3*).

Section 46 (3) Power for the Welsh Ministers to make further or different provision about the circumstances in which a person is to be treated as meeting (or not meeting) a charging condition and matters that are to be taken in to account when determining whether a person meets (or does not meet) a charging condition.

Why is a delegated power needed?

- Section 46 sets out the circumstances in which a person will meet the charging condition, of which WRA needs to be satisfied before it can trigger a liability for LDT in relation to an unauthorised disposal.
- This power enables the Welsh Ministers to make further or different provision about the circumstances in which a person is to be treated as meeting (or not meeting) a charging condition and matters that are to be taken in to account when determining whether a person meets (or does not meet) a charging condition.
- It is intended that this power would enable the Welsh Ministers to respond to circumstances in the future and to react to learning once LDT is operational in Wales, if appropriate.
- Section 46 of the Bill sets out the circumstances in which a person is to be treated as meeting (or not meeting) a charging condition and matters that are to be taken in to account when determining whether a person meets (or does not meet) a charging condition in order to determine whether a taxable disposal for the purposes of an unauthorised disposal has been made. New circumstances may be identified to the WRA, for example as a result of technological advances. The Welsh Ministers require this power to protect the revenue, ensure that balance of risk remains high and encourage compliance.

What is the position in the UK and Scottish legislation?

- No equivalent provision.

Section 51 (1) Power for the Welsh Ministers to make further or different provision about the procedures for issuing preliminary notices and charging notices; the payment of an amount of tax charges by a charging notice and; any other matters relating to or arising from the charging or payment of an amount of tax under this Chapter.

Why is a delegated power needed?

- Chapter 2 of Part 4 of the Bill sets out the process by which LDT is to become chargeable on an unauthorised disposal, including the persons who may be liable and the notices that WRA need to issue in order to trigger a liability to LDT.
- This power enables the Welsh Ministers to amend the provisions and procedures as they currently apply under this Chapter.
- It is intended that this power would enable the Welsh Ministers to respond to circumstances in the future and to react to learning once LDT is operational in Wales, and applicable to unauthorised disposals, if appropriate. Where operational practices demonstrate that it is necessary to amend this section of the Bill, to ensure that its objective of the provision of a framework for charging tax on unauthorised disposals of waste works effectively. The Welsh Ministers will require a tool to make these necessary changes to strengthen the financial deterrent to undertaking illegal waste activity and tackle a potential source of tax evasion.

What is the position in the UK and Scottish legislation?

- No equivalent provision.

Section 53 (1) Power for the Welsh Ministers to make provision for circumstances in which a person is to be entitled to a tax credit in respect of the tax.

Why is a delegated power needed?

- The Bill does not make any provision for tax credits to be available in relation to LDT.
- This power enables the Welsh Ministers to make provision for tax credits and the detail around how any credit would operate.
- It is intended that this power will be used to create a credit for customer insolvency (currently known as a bad debt credit under LfT), which can be claimed in circumstances where a landfill site operator has accounted for and paid LDT in respect of a disposal but has not received payment from the customer behind that disposal due to an insolvency event having taken place. The regulations would provide detail as to when an entitlement would arise and what conditions and requirements would need to be met in order to claim the credit.

What is the position in the UK and Scottish legislation?

- Section 51 Finance Act 1996 provides a regulation making power in relation to credits and is supplemented by sections 52 and 53 (all of which are subject to the negative procedure).
- Section 18 Landfill Tax (Scotland) Act 2014 provides a regulation making power in relation to credits and is supplemented by sections 19 and 20 (all of which are subject to the negative procedure).

Section 54 (10) Power for the Welsh Ministers to make further or different provision about the contents of a non-disposal area designation notice issued under section 54.

Why is a delegated power needed?

- Section 54 gives WRA the power to designate part of an authorised landfill site as a non-disposal area by issuing a notice to a landfill site operator. If WRA does so, this section sets out what a notice must or may specify and the process for making, varying or cancelling a designation.
- This power enables the Welsh Ministers to make further or different provision about the contents of a designation notice issued under this section.
- It is intended that this power would enable the Welsh Ministers to respond to circumstances in the future and to react to learning once LDT is operational in Wales, if appropriate. The designation of a non disposal area provisions are intended to provide information to WRA to enable WRA to distinguish between those activities on a landfill site which constitute a taxable disposal and those which are non-taxable uses of waste. This is important to determine correct tax liability. The Welsh Ministers require a tool to be able to reflect any future changes which may affect the efficient collection and management of the tax.

What is the position in the UK and Scottish legislation?

- Provisions are set out in secondary legislation rather than in primary legislation in the UK (*Landfill Tax Regulations 1996/1527*); made under a power to do so conferred at paragraph 1A of Schedule 5 Finance Act 1996.
- Provisions are set out in secondary legislation rather than in primary legislation in Scotland (*Scottish Landfill Tax (Administration) Regulations 2015/3*); made under a power to do so conferred at section 30 Landfill Tax (Scotland) Act 2014.

Section 55 (7) Power for the Welsh Ministers to make further or different provision about the circumstances in which the duty to comply with a designation notice does not apply.

Why is a delegated power needed?

- Section 55(1) puts a landfill site operator under a duty to ensure that material is dealt with in accordance with a designation notice when one is in place and applicable. Sections 55(2)-(5) set out a number of exceptions to this duty.
- This power enables the Welsh Ministers to make further or different provision about the circumstances in which the duty to comply with a designation notice will not apply.
- It is intended that this power would enable the Welsh Ministers to respond to circumstances in the future and to react to learning once LDT is operational in Wales, if appropriate.

What is the position in the UK and Scottish legislation?

- Provisions are set out in secondary legislation rather than in primary legislation in the UK (*Landfill Tax Regulations 1996/1527*); made under a power to do so conferred at paragraph 1A of Schedule 5 Finance Act 1996.
- Provisions are set out in secondary legislation rather than in primary legislation in Scotland (*Scottish Landfill Tax (Administration) Regulations 2015/3*); made under a power to do so conferred at section 30 Landfill Tax (Scotland) Act 2014.

Section 59 (5) Power for the Welsh Ministers to add, modify or remove a reference to a person or description of persons who, in accordance with section 59 can disclose information to WRA for the purpose of assisting it in the collection and management of the tax.

Why is a delegated power needed?

- Section 59 lists persons (NRW and local authorities) who are able to disclose information to WRA for the purpose of assisting it in the collection and management of LDT.
- This power enables the Welsh Ministers to add, modify or remove a reference to a person or description of persons under subsection (2).
- It is intended that this power would enable the Welsh Ministers to respond to circumstances in the future – for example, the creation or merger of a relevant public body in Wales.

Section 67 (4) Power for the Welsh Ministers to amend or repeal section 67(2) so that a penalty would then apply to individual breaches, even if those breaches derived from the same act or omission.

As noted in response to recommendation 10 of the report, a government amendment will be brought forward during the Bill process to remove sections 67(2) and (4) from the Bill.

Section 72 (1) Power for the Welsh Ministers to make further or different provision about the amounts of penalties under this Chapter or the procedure for assessing them.

Why is a delegated power needed?

- Chapter 4 of Part 5 sets out new penalties that will apply in an LDT context (in relation to registration, weighing and non-disposal areas).
- This power enables the Welsh Ministers to make further or different provision about the amounts of those penalties or the procedure for assessing them. It does not allow for the creation of new penalties.
- It is intended that this power would enable the Welsh Ministers to respond to circumstances in the future, including the position elsewhere and financial conditions (in ten years time, a £300 penalty may be insufficient), as well as allowing lessons learnt through operational practice to be responded to, if necessary.
- The power is available to, for example, encourage compliance in Wales where in the light of operational experience there is a need to increase the deterrent or alternatively to ensure comparability with the rest of the UK.

Section 80 (1) Power for the Welsh Ministers to add to, amend or repeal any provision made by about the designation of groups of body corporate.

Why is a delegated power needed?

- Sections 76-79 deal with WRA's power to designate two or more bodies corporate as a group for the purpose of LDT; the conditions and process for doing so and the implications of such a designation.
- This power enables the Welsh Ministers to modify any of those provisions about groups of companies.
- It is intended that this power would enable the Welsh Ministers to respond to circumstances in the future, including changes to other legislation in this area and to react to learning once LDT is operational in Wales, if appropriate.

What is the position in the UK and Scottish legislation?

- Section 59 Finance Act 1996 makes provision for groups of companies.
- Section 38 Landfill Tax (Scotland) Act 2014 makes provision for groups of companies.

Section 83 Power for the Welsh Ministers to add to, amend or repeal any provision made by about cases where persons carry on business in partnership or as an unincorporated body.

Why is a delegated power needed?

- Sections 81 and 82 deal with WRA's treatment of partnerships or unincorporated bodies carrying on a landfill business.
- This power enables the Welsh Ministers to modify any of those provisions about partnerships or unincorporated bodies.
- It is intended that this power would enable the Welsh Ministers to respond to circumstances in the future, including changes to other legislation in this area and to react to learning once LDT is operational in Wales, if appropriate.

What is the position in the UK and Scottish legislation?

- Provisions are set out in secondary legislation rather than in primary legislation in the UK (*Landfill Tax Regulations 1996/1527*); made under a power to do so conferred at paragraph section 58 Finance Act 1996 (subject to the negative procedure).
- Provisions are set out in secondary legislation rather than in primary legislation in Scotland (*Scottish Landfill Tax (Administration) Regulations 2015/3*); made under a power to do so conferred at section 37 Landfill Tax (Scotland) Act 2014 (subject to the negative procedure).

Section 85 Power for the Welsh Ministers to add to, amend or repeal any provision made by about cases where a persons carrying on a landfill business dies, becomes incapacitated or is subject to an insolvency procedure.

Why is a delegated power needed?

- Section 84 sets out a procedure for where a person carries on the landfill business of another person who dies, becomes incapacitated or is subject to an insolvency procedure- in terms of notification requirements and the impact of a WRA decision to treat the person carrying on a business as the other person.
- This power enables the Welsh Ministers to modify any provision on this subject.
- It is intended that this power would enable the Welsh Ministers to respond to circumstances in the future, including changes to other legislation in this area and to react to learning once LDT is operational in Wales, if appropriate.

What is the position in the UK and Scottish legislation?

- Provisions are set out in secondary legislation rather than in primary legislation in the UK (*Landfill Tax Regulations 1996/1527*); made under a power to do so conferred at paragraph section 58 Finance Act 1996 (subject to the negative procedure).
- Provisions are set out in secondary legislation rather than in primary legislation in Scotland (*Scottish Landfill Tax (Administration) Regulations 2015/3*); made under a power to do so conferred at section 37 Landfill Tax (Scotland) Act 2014 (subject to the negative procedure).

Section 86 Power for the Welsh Ministers to make provision in relation to LDT when a landfill business is transferred from one person to another as a going concern.

Why is a delegated power needed?

- The Bill does not make any provision in relation to the application of LDT provisions if a landfill business is transferred as a going concern.
- This power enables the Welsh Ministers to make provision for tax credits and the detail around how any credit would operate.
- It is intended that this power will be exercised to make provisions for the continued application of LDT to cases where a landfill business is transferred from one person to another. It is intended that the regulations will prescribe the notification procedure that will apply to such transfers and further the entitlements and liabilities that will be transferred.

What is the position in the UK and Scottish legislation?

- Provisions are set out in secondary legislation rather than in primary legislation in the UK (*Landfill Tax Regulations 1996/1527*); made under a power to do so conferred at paragraph section 58 Finance Act 1996 (subject to the negative procedure).
- Provisions are set out in secondary legislation rather than in primary legislation in Scotland (*Scottish Landfill Tax (Administration) Regulations 2015/3*); made under a power to do so conferred at section 37 Landfill Tax (Scotland) Act 2014 (subject to the negative procedure).

Section 88(1) Power for the Welsh Ministers to make provision in relation to the liability of controllers of authorised landfill sites to LDT.

Why is a delegated power needed?

- The Bill does not make any provision in relation to controllers of authorised landfill sites, save to define who is a controller.
- This power enables the Welsh Ministers to make provision in relation to controllers, including notification requirements and circumstances in which a controller will be liable to pay LDT.
- It is intended that this power would enable the Welsh Ministers to respond to circumstances in the future and to react to learning once LDT is operational in Wales, if appropriate. It is currently understood that there are no controllers of authorised landfill sites operating in Wales and that this provision is unlikely to be needed. This provision would allow us to react to change should there be future developments.

What is the position in the UK and Scottish legislation?

- Substantive provision is made on the secondary liability of controllers at Part VIII of Schedule 5 Finance Act 1996.
- An equivalent power to section 88(1) is taken at section 17(1) of the Landfill Tax (Scotland) Act 2014 (subject to the affirmative procedure).

Section 90(1) Power for the Welsh Ministers to make any incidental, consequential, supplementary, transitional, transitory or saving provision in order to give full effect to any provision in (or made under) the Bill.

Why is a delegated power needed?

- This power would only be used for such matters as making changes to other legislation needed in consequence of the provisions of this Bill, or to deal with unforeseen details arising out of the implementation of the new system.
- Transitional, saving and consequential elements are designed to cater for the process of moving from one land transaction tax regime to another, so that the process is as “seamless” as possible and that the new law operates as intended.
- This power cannot be used widely and is limited: it cannot be used to do anything contrary to the provisions of the Bill that the Assembly will have considered and approved.

What is the position in the UK and Scottish legislation?

- Section 71(9) provides that any order or regulation made under Part 3 Finance Act 1996 may include such supplementary, incidental, consequential or transitional provisions as appear necessary or expedient.
- Section 40(1) Landfill Tax (Scotland) Act 2014 allows Scottish Ministers to make such incidental, supplementary, consequential, transitional, transitory or saving provision as they consider appropriate and such an order may modify any enactment.