

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



Llywodraeth Cymru
Welsh Government

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

14 June 2017

Dear Simon

Landfill Disposals Tax (Wales) Bill

I am pleased to confirm that in accordance with the Standing Order 26.28 I have laid the revised explanatory memorandum for the Landfill Disposals Tax (Wales) Bill. The document reflects the amendments to the Bill as agreed by the Committee during the stage 2 proceedings on 11 May, including the revised regulatory impact assessment and explanatory notes.

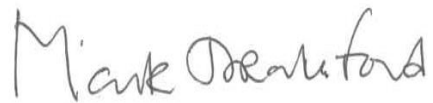
To be of assistance to Members, the Finance Committee and anyone wanting to focus on the areas of change in the explanatory memorandum, I have outlined the main changes at annex 1.

I am pleased to inform you that I met with the Cabinet Secretary for Environment and Rural Affairs, Lesley Griffiths AM on 16 May to discuss the management of the Landfill Disposals Tax Communities Scheme. Given the Scheme's wider environmental objectives, we have agreed that once the scheme has been established, the Cabinet Secretary for Environment and Rural Affairs will take responsibility for operating the Scheme, as procured, as well as ensuring the Scheme aligns with wider environmental objectives.

I would like to thank the Committee once again for its scrutiny of the Bill to date. Scrutiny is an important part of shaping and refining the legislation of Wales and I am pleased that the Welsh Government and the Committee have been able to take a responsive and collaborative approach to the new Welsh taxes. I look forward to discussing the proposed stage 3 amendments to the Bill on 20 June.

I trust you will find this information helpful. I am copying this letter to the chair of the Constitutional and Legislative Affairs Committee.

Yours sincerely

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

Mark Drakeford AM/AC

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

Annex 1

Landfill Disposals Tax (Wales Bill) – Overview of changes to the Explanatory Memorandum following Stage 2

Reason for change	Section of Bill as amended at Stage 2	Section of EMRIA	page/ paragraph references
<p>Pet Cemeteries Exemption</p> <p>Stage 2 Amendments 1 and 2</p> <p>Effect of Amendments: The exemption for pet cemeteries applies to disposal of dead pets and any container in which their remains, whether carcasses or ashes, are contained.</p>	Section 11 – Pet Cemeteries	<p>Part 1: Explanatory Memorandum; Chapter 3: Purpose and Intended Effect of Legislation;</p> <p>Annex 1: Explanatory Notes; Part 1-Chapter 3 – Exempt Disposals</p>	<p>Pg 17, para 3.37</p> <p>Pg 124, para 29</p>
<p>Taxable weight of material</p> <p>Stage 2 Amendments 3 and 4</p> <p>Effect of Amendments: An operator of an authorised landfill site must determine the weight of the material in a taxable disposal by using a weigh bridge. The operator must ensure that material is weighed on a</p>	Section 20 – Determination of weight of material by operator	<p>Part 1: Explanatory Memorandum; Chapter 3: Purpose and Intended Effect of Legislation;</p> <p>Part 2: Regulatory Impact Assessment. Chapter 8: Cost and Benefits;</p> <p>Annex 1: Explanatory Notes; Sections 18 to 20 – Calculation of taxation</p>	<p>Pgs 24-25, para 3.78 -3.81</p> <p>Pg 92, para 8.61</p> <p>Pg 126, para 45</p>

Reason for change	Section of Bill as amended at Stage 2	Section of EMRIA	page/ paragraph references
<p>weighbridge before the disposal is made and that the weighbridge meets the requirement in applicable weights and measures legislation. The provisions are silent on the point in time when the landfill site operator must determine the weight of material.</p>		<p>weight of material</p>	
<p>Disclosure of information</p> <p>Stage 2 Amendment 5</p> <p>Effect of Amendment: The amendment clarifies that although NRW and Welsh local authorities are authorised to disclose information to WRA to assist the latter in the collection and management of LDT, this does not permit a disclosure which contravenes the Data Protection Act 1988 or Investigatory Powers Act 2016.</p> <p>Further, in response to discussions in Finance Committee the information sharing provisions in the Tax</p>	<p>Section 59 – Disclosure of information to WRA</p>	<p>Part 1: Explanatory Memorandum; Chapter 3: Purpose and Intended Effect of Legislation;</p> <p>Annex 1: Explanatory Notes</p>	<p>Pg 34, para 3.129 Pg 34, para 3.130</p> <p>Pg 138, para 125 Pg 138, para 129</p>

Reason for change	Section of Bill as amended at Stage 2	Section of EMRIA	page/ paragraph references
<p>Collection and Management (Wales) Act section 18 have been cross referenced to make it clear how information sharing by WRA with local authorities or other bodies is governed.</p>			
<p>Taxable Weight of material Stage 2 Amendment 6</p> <p>Effect of Amendment: Clarify the scope of the penalty for failure to comply with section 20. So that liability to the penalty only arises if the operator fails to determine the weight of the material in a taxable disposal in accordance with section 20.</p>	<p>Section 60 – Penalty for failure to determine weight properly.</p>	<p>Part 1: Explanatory Memorandum; Chapter 3: Purpose and Intended Effect of Legislation</p> <p>Annex 1: Explanatory Notes</p>	<p>Pg 35, para 3.134</p> <p>Pg 139, para 131</p>
<p>Penalties Stage 2 Amendment 7</p> <p>Effect of Amendment: Reduces the maximum penalty payable from £5000 to £3000 for failure to comply with</p>	<p>Section 67 – Penalties relating to non-disposal areas</p>	<p>Annex 1: Explanatory Notes</p>	<p>Pg 140, para 137</p>

Reason for change	Section of Bill as amended at Stage 2	Section of EMRIA	page/ paragraph references
requirements set out under sections 55 and 56.			
<p>Penalties</p> <p>Stage 2 Amendment 8</p> <p>Effect of Amendment: A penalty under section 67(1) of the Bill will apply to each separate failure to comply with a requirement imposed by or under section 55 (duties of operator in relation to non-disposal area) or section 56 (duties to keep and preserve records).</p>	Section 67(1) – Penalties relating to non-disposal areas	Part 1: Explanatory Memorandum; Chapter 3: Purpose and Intended Effect of Legislation	Pg 32 para 3.121
<p>Relief from Tax</p> <p>Stage 2 Amendment 11</p> <p>Effect of Amendment: Allows a relief from tax to be applied to a taxable disposal of material removed from the bed of a river, canal or other watercourse, dock, harbour or approaches to a harbour without</p>	Section 26 – Material removed from bed of river, sea or other water	Annex 1: Explanatory Notes	Pg 128, para 56 and 57

Reason for change	Section of Bill as amended at Stage 2	Section of EMRIA	page/ paragraph references
it being necessary to show that it was removed 'in the interests of navigation.			
<p>Landfill Disposal Tax Communities Scheme</p> <p>Stage 2 Amendment 12</p> <p>Effect of Amendment: A new section has been inserted into the Bill as introduced. This places a duty on the Welsh Ministers to prepare and publish a landfill disposal tax communities scheme, which will provide grant funding for the benefit of communities affected by landfill disposal.</p>	Section 90 – Landfill Disposal Tax Communities Scheme	<p>Part 1: Explanatory Memorandum; Chapter 1: Description;</p> <p>Part 1: Explanatory Memorandum; Chapter 3: Purpose and Intended Effect of Legislation;</p> <p>Part 1: Explanatory Memorandum; Chapter 4: Consultation;</p> <p>Part 2: Regulatory Impact Assessment; Chapter 6: Regulatory Impact Assessment (Table 5: Summary RIA);</p> <p>Part 2: Regulatory Impact Assessment; Chapter 7: Options;</p> <p>Part 2: Regulatory Impact Assessment; Chapter 8: Costs and</p>	<p>Pg 6, para 1.4</p> <p>Pg 40, para 3.159</p> <p>Pg 47, para 4.15</p> <p>Pgs 72-74</p> <p>Pgs 78-80, paras 7.18-7.38</p> <p>Pgs 96-105, paras 8.83-8.112</p>

Reason for change	Section of Bill as amended at Stage 2	Section of EMRIA	page/ paragraph references
		Benefits; Annex 1: Explanatory Notes	Pg 120, para 12 (Part 5 – supplementary provision); Pgs 143-144, paras 164-167
<p>Disclosure of information</p> <p>Stage 2 Amendment 13</p> <p>Effect of Amendment: Regulations made under section 59(5) of the Bill for the purpose of adding, modifying or removing persons that may disclose information to the WRA under section 59 are subject to the affirmative procedure.</p>	N/A	Part 1: Explanatory Memorandum; Chapter 5: Power to make Subordinate Legislation.	Pg 64, entry in relation to section 59(5)
<p>Taxable weight of material (Water Discount)</p> <p>Stage 2 Amendment 14</p> <p>Effect of Amendment: An operator of an authorised landfill site who has approval to apply a water discount in relation to a taxable disposal will have the discretion to apply that discount</p>	Section 19 – Calculation of taxable weight of material by operator	<p>Part 1: Explanatory Memorandum; Chapter 3: Purpose and Intended Effect of Legislation;</p> <p>Annex 1: Explanatory Notes</p>	<p>Pg 26, paras 3.88 – 3.89 and 3.92</p> <p>Pg 126, para 44</p>

Reason for change	Section of Bill as amended at Stage 2	Section of EMRIA	page/ paragraph references
<p>or a lesser discount. Where an operator applies a water discount they must do so subject to the conditions of the approval (if any are in place).</p>			
<p>Taxable weight of material (Water Discount)</p> <p>Stage 2 Amendment 16</p> <p>Effect of Amendment: Where WRA calculate the taxable weight of material and there is approval for a water discount, they are to apply the discount subject to the conditions of approval.</p>	<p>Section 22 – Calculation of taxable weight of material by WRA</p>	<p>Part 1: Explanatory Memorandum; Chapter 3: Purpose and Intended Effect of Legislation</p>	<p>Pg 25, paras 3.80 and 3.81</p>
<p>Taxable weight of material (Water Discount)</p> <p>Stage 2 Amendment 17 and 18</p> <p>Effect of Amendment: Where WRA calculate the taxable weight of material and find that an operator has approval to apply a water discount but is in breach of that approval, WRA may ignore</p>	<p>Section 23 – Calculation of taxable weight of material by WRA: cases of non compliance</p>	<p>Annex 1: Explanatory Note.</p>	<p>Pg 127 para 53</p>

Reason for change	Section of Bill as amended at Stage 2	Section of EMRIA	page/ paragraph references
or reduce the discount to be applied.			
<p>Relief from tax (refiling relief)</p> <p>Stage 2 Amendment 19</p> <p>Effect of Amendment: Allows a relief from tax to be applied to a taxable disposal of material consisting entirely of qualifying material, disposed of at an authorised landfill site (or part of such a site), if the authorised landfill site was used as an open-cast mine or quarry. Further, a disposal is only relieved from tax if it is made in accordance with a condition of planning permission to wholly or partly refill the site after operations cease. In addition this relief from tax is only applicable where no previous taxable disposals have taken place, other than disposals under this section 31 or section 27 of the Bill.</p>	Section 31- Refilling open-cast mines and quarries	<p>Part 1: Explanatory Memorandum; Chapter 3: Purpose and Intended Effect of Legislation;</p> <p>Annex 1: Explanatory Notes</p>	<p>Pg 18, para 3.42</p> <p>Pg 129, para 66</p>
Taxable weight of material (water discount penalty)	Section 61 – Penalty for applying water discount	Annex 1: Explanatory Notes	Pg 139, para 132

Reason for change	Section of Bill as amended at Stage 2	Section of EMRIA	page/ paragraph references
<p>Stage 2 Amendment 20</p> <p>Effect of Amendment: Clarifies scope of the penalty. Liability to the penalty only arises if an authorised landfill site operator applies a discount without having approval under section 21 of the Bill to do so, or where an operator applies a discount which is greater than the discount approved under section 21 of the Bill.</p>	<p>incorrectly</p>		
<p>Qualifying Material</p> <p>Stage 2 Amendment 22, 23, 24</p> <p>Effect of Amendment: The qualifying materials and the conditions (if any) attached to each material will be listed in Schedule 4 to the Bill (rather than in regulations).</p>	<p>Section 15 – Qualifying Materials</p>	<p>Part 1: Explanatory Memorandum; Chapter 1: Description;</p> <p>Part 1: Explanatory Memorandum; Chapter 3: Purpose and Intended Effect of Legislation;</p> <p>Part 1: Explanatory Memorandum; Chapter 5: Power to make Subordinate Legislation;</p> <p>Annex 1: Explanatory Notes</p>	<p>Pg 6, para 1.4</p> <p>Pg 22, paras 3.61- 3.63</p> <p>Pg 55, entry in relation to section 15.</p> <p>Pg 125, para 35</p>

Reason for change	Section of Bill as amended at Stage 2	Section of EMRIA	page/ paragraph references
		Sections 15 – Qualifying material	
<p>Qualifying Material</p> <p>Stage 2 Amendment 25</p> <p>Effect of Amendment: Inserts a new schedule into the Bill to specify groups of material and conditions (if any) associated with the material that qualifies for the lower rate of tax under section 14.</p>	Schedule 1- Qualifying Material: Special Materials and Conditions	Part 1: Explanatory Memorandum; Chapter 3: Purpose and Intended Effect of Legislation; Annex 1: Explanatory Notes	Pg 40, para 3.160 Pg 120, para 12 (Part 3 – Taxable Disposals made at authorised landfill sites)
Provision of examples of how Welsh Ministers may distinguish between the affirmative and negative procedure in relation to section 90 of the Landfill Disposals Tax (Wales) Bill as introduced.	Section 91	Annex 1: Explanatory Notes	Pg 144, paras 168-170
Welsh Government commitment to announce the LDT tax rates by 1 October 2017	N/A	Part 1: Explanatory Memorandum; Chapter 3: Purpose and Intended Effect of Legislation;	Pg 12, para 3.9; Pg 21, para 3.53

Landfill Tax Forecasts – updates to the OBR forecasting.	N/A	Part 1: Explanatory Memorandum; Chapter 3: Purpose and Intended Effect of Legislation.	Pg 11, Table 2
Clarification of where a taxable disposal will be considered to have taken place and further explanation of the intention to discard test.	N/A	Part 1: Explanatory Memorandum; Chapter 3: Purpose and Intended Effect of Legislation; Annex 1: Explanatory Notes	Pgs 15-16, paras 3.28-3.33 Pg 122, para 18
Tax Credits - Bad Debt Relief. Ensuring consistency with the Statement of Policy Intent published on 21 April	N/A	Part 1: Explanatory Memorandum; Chapter 3: Purpose and Intended Effect of Legislation	Pg 20, para 3.49
Welsh Government agreement to work with the National Assembly for Wales to discuss the need for an annual Finance (Wales) Act in the future.	N/A	Part 1: Explanatory Memorandum; Chapter 3: Purpose and Intended Effect of Legislation	Pg 21, para 3.58