



Cynulliad
Cenedlaethol
Cymru

National
Assembly for
Wales

Cofnod y Trafodion The Record of Proceedings

[Y Pwyllgor Cyllid](#)

[The Finance Committee](#)

25/01/2017

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Cofnodir y trafodion yn yr iaith y llefarwyd hwy ynddi yn y pwyllgor. Yn ogystal, cynhwysir trawsgrifiad o'r cyfieithu ar y pryd. Lle y mae cyfranwyr wedi darparu cywiriadau i'w dystiolaeth, nodir y rheini yn y trawsgrifiad.

The proceedings are reported in the language in which they were spoken in the committee. In addition, a transcription of the simultaneous interpretation is included. Where contributors have supplied corrections to their evidence, these are noted in the transcript.

Aelodau'r pwyllgor yn bresennol
Committee members in attendance

Mike Hedges Bywgraffiad Biography	Llafur Labour
Steffan Lewis Bywgraffiad Biography	Plaid Cymru The Party of Wales
Eluned Morgan Bywgraffiad Biography	Llafur Labour
Nick Ramsay Bywgraffiad Biography	Ceidwadwyr Cymreig Welsh Conservatives
Mark Reckless Bywgraffiad Biography	UKIP Cymru UKIP Wales
Simon Thomas Bywgraffiad Biography	Plaid Cymru (Cadeirydd y Pwyllgor) The Party of Wales (Committee Chair)

Eraill yn bresennol
Others in attendance

Jacqueline Doone	Rheolwr Treth Anuniongyrchol, Biffa Group Limited Group Indirect Tax Manager, Biffa Group Limited
Jennifer Doyle	Uwch Reolwr Prosiect, Cory Environmental Senior Project Manager, Cory Environmental
Gareth Pritchard	Partner Treth, Deloitte LLP Tax Partner, Deloitte LLP
Mike Trotman	Cyfarwyddwr Cyswllt, Deloitte LLP Associate Director, Deloitte LLP

Swyddogion Cynulliad Cenedlaethol Cymru yn bresennol
National Assembly for Wales officials in attendance

Bethan Davies	Clerc Clerk
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Helen Jones	Y Gwasanaeth Ymchwil The Research Service
Georgina Owen	Dirprwy Glerc Deputy Clerk
Katie Wyatt	Uwch-gynghorydd Cyfreithiol Senior Legal Adviser

*Dechreuodd rhan gyhoeddus y cyfarfod am 10:00.
The public part of the meeting began at 10:00.*

Cyflwyniad, Ymddiheuriadau, Dirprwyon a Datgan Buddiannau Introductions, Apologies, Substitutions and Declarations of Interest

[1] **Simon Thomas:** Croeso nôl, **Simon Thomas:** Welcome back to the felly, i'r Pwyllgor Cyllid. Rydym ni'n Finance Committee. We're ailgychwyn. Mae'r offer cyfieithu ar recommencing. Translation gael. equipment is available.

[2] Translation equipment is available—translation on channel 1 and the sound on channel 0.

Papurau i'w Nodi Papers to Note

[3] **Simon Thomas:** Felly, croeso **Simon Thomas:** So, welcome back to nôl i'r Pwyllgor Cyllid. Rydym yn the Finance Committee. We are parhau gyda'r dystiolaeth ar y Bil continuing with the evidence on the Treth Gwarediadau Tirlenwi (Cymru), Landfill Disposals Tax (Wales) Bill, ond, yn gyntaf oll, hoffwn i'r pwyllgor but, first of all, I would like the nodi dau bapur. committee to note two papers.

[4] Yn gyntaf oll, llythyr gan First of all, a letter from the Secretary Ysgrifennydd Gwladol Cymru. of State for Wales. You will recall that Byddwch yn cofio ein bod wedi we have invited the Secretary of State gwahodd yr Ysgrifennydd Gwladol i to give evidence to the committee roi tystiolaeth i'r pwyllgor ynglŷn â about the implementation of fiscal gweithredu gweithdrefnau cyllidol o procedures in relation to devolved

dan ddatganoli trethi. Mae'r Ysgrifennydd Gwladol wedi cynnig cwrdd yn breifat gydag aelodau'r pwyllgor yn unigol, ond nid yw e wedi cytuno eto i ddod i sesiwn gyhoeddus.

taxes. The Secretary of State has offered to meet in private with committee members on an individual basis, but has not yet agreed to attend a public session.

[5] Byddwn i'n hoffi ailysgrifennu at yr Ysgrifennydd Gwladol gan ofyn iddo fe roi tystiolaeth mewn sesiwn gyhoeddus i ni fel pwyllgor. Rwy'n meddwl fod hynny'n briodol gan fod Bil Cymru yn gyfrifoldeb ar y cyd rhwng yr Ysgrifennydd Gwladol a Llywodraeth Cymru—nid Bil Cymru, mae'n ddrwg gyda fi, ond Deddf Cymru.

I would like to write again to the Secretary of State asking him to give evidence in a public session to us as a committee. I think that that is appropriate because the Wales Bill is a joint responsibility between the Secretary of State and the Government of Wales—not the Wales Bill, sorry, but the Wales Act.

[6] Hefyd, byddwn i'n awgrymu mai ffordd dda iawn o wneud hynny fyddai ei wahodd i sesiwn y Cynulliad yng Nghasnewydd, a'i wneud fel rhan o'r gwaith allgyrraedd y mae'r Cynulliad yn ei wneud drwy fynd i dref Casnewydd. A ydych chi'n hapus i fi, felly, ddal i bwyso ar yr Ysgrifennydd Gwladol i ddod i roi tystiolaeth i'r pwyllgor? Rydych chi'n hapus gyda hynny. Diolch yn fawr.

Also, I would suggest that a very good way of doing so would be to invite him to the Assembly session in Newport, as part of the outreach work that the Assembly is doing by going to the town of Newport. Are you happy for me to press again for the Secretary of State to come and give evidence to the committee? You are happy with that. Thank you.

[7] Mae'r ail lythyr, gan Gadeirydd y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol, yn rhoi gwybodaeth i'r pwyllgor ynglŷn â'r gwaith y maen nhw'n ei wneud ynglŷn â San Steffan a sefydliadau datganoledig. Mae'n wahoddiad i ledaenu'r wybodaeth yn ehangach a hefyd yn gofyn am unrhyw sylwadau gan aelodau'r pwyllgor. A ydych chi'n nodi ac yn cydnabod yr ohebiaeth, os gwelwch

The second letter, from the Chair of the Constitutional and Legislative Affairs Committee, provides the committee with information about the work they are doing in relation to Westminster and the devolved institutions. It's an invitation to disseminate the information more widely and it also asks for any comments from members of the committee. Would you note and

chi'n dda? lawn. Pawb yn hapus gyda acknowledge the correspondence, hynny. please? Okay, everyone is content.

10:02

Y Bil Treth Gwarediadau Tirlenwi (Cymru): Sesiwn Dystiolaeth 6 Landfill Disposals Tax (Wales) Bill: Evidence Session 6

[8] **Simon Thomas:** Felly, gyda **Simon Thomas:** So, we now turn to hynny, fe wnawn ni droi at y tystion y the witnesses this morning and the bore yma a'r Bil Treth Gwarediadau Landfill Disposals Tax (Wales) Bill. Tirlenwi (Cymru). Diolch yn fawr i'r Thank you very much to both ddau o Deloitte. A gaf i ofyn i chi witnesses from Deloitte. May I ask ddatgan eich enw a'ch swyddogaeth you to declare your name and role for ar gyfer y Cofnod yn gyntaf plîs? the Record of Proceedings please?

[9] **Mr Pritchard:** I'm Gareth Pritchard, a tax partner for Deloitte.

[10] **Mr Trotman:** I'm Mike Trotman, an associate director with Deloitte.

[11] **Simon Thomas:** Thank you for your written evidence, which, can I say at the outset, was a model of the written evidence that the committee likes to receive? Thank you for that; it was very thorough but also extremely concise and very good indeed. I understand, however, you'd like to make a brief opening statement.

[12] **Mr Pritchard:** Yes. We've been working with the Chartered Institute of Taxation on our submissions, and they haven't been able to be here today but have given us a statement that they wanted us to read out on their behalf—as follows:

[13] 'Mike Trotman is a member of the Chartered Institute of Taxation's environmental taxes working group. The CIOT specifically endorses the following points of the response submitted by Deloitte LLP, dated 11 January 2017, to the Finance Committee of the National Assembly for Wales. Please note that where the CIOT has not endorsed certain elements, it should not be taken that we disagree with them, just that we do not have the relevant expertise to comment. The CIOT endorses Deloitte's comments on the impact of waste tourism where different rates and rules between England, Wales and Scotland may drive unwanted behaviour, covering letter item 3 and appendix item 1. The challenge for Wales is to what extent revisions in

English landfill tax law should be mirrored in Wales—and that is the taxable disposal definition in our appendix items 1, 2 and 5, and the ambiguity of using subjective tests, such as small and incidental, in appendix item 7.

[14] **Simon Thomas:** Thank you for that and thank you for that additional evidence, which has been read on the record. At the end of the session, there will be a draft transcript of the record, so you'll be able to check that that is precisely what you wanted to say.

[15] Can I turn now to the evidence that we've received? First of all, it's clear from the evidence and your statement now that you do support the general principles of the Bill. However, can you tell the committee whether you feel the Bill has missed any opportunities to address the current legislation and whether you feel there's anything that could have been done to strengthen the current regulations around the landfill tax?

[16] **Mr Trotman:** The whole history of landfill tax in the UK has been quite a fraught one in terms of litigation and challenge. So, as an opportunity, yes, we think that the Bill has moved it on and has benefited from being able to examine and respond to that history—areas like the inclusion of tax on unauthorised tipping and unauthorised landfill are a welcome advancement in the tax. Whilst there are still developments taking place in the tax in England, as it will be, the flexibility that I think this Bill and the subordinate legislation will give you will allow you to respond both to those changes and, where necessary, to developments in the industries. So, yes, I think we would endorse that.

[17] **Simon Thomas:** Could you say just a little more about the changes in England and how—? We've had some other evidence that they may slightly overtake this Bill, and the Bill may need amending, at least by regulation, quite soon or quite quickly. Is there anything that could be done at this stage, if you like, to head off those changes at the pass? Should we be looking at things that can be done now to ensure that that has happened, or are you content that the regulation-making powers are futureproofing the Bill enough?

[18] **Mr Trotman:** The changes in England are still yet to take place—they will take place when Royal Assent is given to the Finance Bill 2017. The change there, which came about after consultation with stakeholders, is to address some of the ongoing litigation that we've seen around landfill tax—in particular, litigation around what is waste and what is meant by waste, and

[*Inaudible.*], which we're looking at to determine what is waste. Litigation years ago, in particular a case involving the Waste Recycling Group, examined that very closely and went in the taxpayer's favour. In the UK, legislation was changed extensively to dictate specific activities on landfill sites, which then came into tax—so, seemingly removing the decision as to what is and what isn't waste, to some extent.

[19] The legislation changes coming about will go a step further and will remove the concept of waste from defining whether material is subject to tax or not. So, the waste criterion will be removed—the practical effect of that being that any material going over the boundary of a landfill site will be within the scope of the tax. It's a fairly fundamental change, but then I think the tax has undergone some fairly fundamental changes over the years anyway. Your response: I suspect that your ability to change secondary legislation will be enough to respond to that. Given that it's imminent, if it goes through in the Finance Bill this year, it doesn't make a great deal of sense to pre-empt it by doing anything now. I think it's a reactive thing that you might need to do, and I would suspect—it's a legal question, perhaps, more than a fundamental tax question—that your powers will allow you to react pretty rapidly when that happens, if it happens.

[20] **Simon Thomas:** Thank you for that. The reason for thinking in those terms is that the Welsh Government's been very clear what the purpose of this tax is. As well as, of course, the devolution in itself, it's set out the principles by which it wants to enact this tax. Some of those have turned around making it as simple as possible for the taxpayer, having a regime that is easily understandable within the Welsh context, but also the England-and-Wales context, and the potential for what's called waste tourism—people taking waste to another site simply to take advantage of slightly different tax regimes. I just wondered whether those aspects or those principles had been—. You state in your written evidence that they are read through on the Bill, but, with changes happening elsewhere in the England-and-Wales context, does that mean that those principles can be maintained with the Bill as it currently is, or will they in themselves lead inevitably to re-examining the Bill in fairly short order?

[21] **Mr Pritchard:** I think that our position is that the Bill adequately addresses those issues, and the fact that we've got the capability through secondary legislation and regulation to react quite quickly means that we have got a framework there that will allow us to meet those requirements.

[22] **Simon Thomas:** Would I be correct, then, in inferring from what you've said about secondary and primary legislation that you're content with the balance between what's on the face of the Bill and what is contained within secondary legislation?

[23] **Mr Trotman:** Yes.

[24] **Mr Pritchard:** Yes.

[25] **Simon Thomas:** Okay, can I turn to Eluned Morgan, please?

[26] **Eluned Morgan:** Can I start by asking you something I haven't quite understood in your evidence? This Bill introduced a novel approach to, basically, unauthorised fly-tipping, because now there's a possibility in the scope of the tax to look at that issue. How do we tax something that is illegal? Sorry, I don't know; I obviously haven't understood this properly.

[27] **Mr Pritchard:** I think there are examples of things being taxed where they're illegal in other areas. For example, VAT can be applied to illegal activity. If it's proven that there's been some illegal activity, you can apply VAT to it. So, there's precedent there to apply tax to an illegal activity and I think the Bill clearly sets out when the tax will be applied to a disposal that the Act or the Bill specifies as being taxable.

[28] **Eluned Morgan:** Okay. We've just got to find those people who are doing it.

[29] **Mr Pritchard:** That's the problem. Once you've found them and you've caught them, you can tax them, but you've got to catch them first.

[30] **Eluned Morgan:** Okay. Right, okay, I just wanted to understand that. You've suggested that establishing tax liability by inference is challenging. I just wonder if you could expand on that a bit, what you mean by that and what needs to change in the Bill to address that.

[31] **Mr Trotman:** Clarity is something, obviously, which is a theme of the Bill and of any tax, for that matter. And, certainly, in the Bill as drafted it does mention that it can be inferred whether someone has disposed of material to a landfill site that is a taxable disposal by the fact that they've disposed of it to landfill site. I think—kind of circular—we would urge caution when it comes to trying to seek out what's in the mind of the person

undertaking the taxable activity at the time that he's doing it. It's very difficult to establish. [*Inaudible.*—often results in that kind of difficulty to establish whether something is taxable or not. So, I think the point we were making is that, ideally, the tax legislation would be clear and rely on facts as to whether somebody falls within the tax or not, rather than relying on an inference from their behaviour.

[32] **Eluned Morgan:** Okay. So that's something that you would definitely suggest needs to be tightened up within the Bill. Okay. I just wondered if you could elaborate on this issue of a controller. There are times when the person who's controlling a site, effectively, allows somebody else to dispose of their waste on the site, but with permission of the controller. Do you think there should be just one controller and one person who's liable for the tax, or—? Does it not complicate matters if you are allowed to effectively sub-contract a particular site?

[33] **Mr Pritchard:** I think it may complicate matters, but it's a system that is present in the English version of the landfill tax legislation and whilst our experiences of having to cope with controllers versus operators and who's the taxable person in that scenario are relatively thin on the ground, we don't see that in practice too much. It is a useful mechanism now and again because—. I think Mike's got an example of where we dealt with a situation where it was critical to have that distinction between the controller and the operator. I don't know, Mike, if you want to—

[34] **Eluned Morgan:** Why was that? Yes, if you can—

[35] **Mr Pritchard:** —talk them through the example.

[36] **Mr Trotman:** Yes. And it may not be a common occurrence, and Natural Resources Wales may well have better evidence as to where it does and doesn't happen, but certainly we have experience of where a licensed site exists, and there's an operator of that site, but an adjacent waste producer is allowed to deposit material and to control the rate and location of material from their adjacent site onto the licensed site—all legitimate, all within the permit conditions of the licensed conditions, but entirely without the knowledge or measurement of the actual site operator, for operational reasons.

10:15

[37] So, in that instance, the waste producer was also controlling the rate and flow of waste onto the licensed site. That might be rare, but there probably are industries that are more predisposed to operating like that, and it may be extremely rare in Wales, but it strikes us that whilst it is more complicated, having that extra definition, it may have the effect of ensuring that tax is collected, in a situation where it might not otherwise readily fall into the definitions already in the Bill.

[38] **Eluned Morgan:** Okay.

[39] **Mr Trotman:** And it is, as Gareth said, in the current English legislation. It's more complex, but it might add to protecting the revenue by expanding that definition.

[40] **Eluned Morgan:** Okay.

[41] **Simon Thomas:** Sorry. Could I just ask what that English legislation does? What's different about it that allows this person to be correctly defined, if you like—the person who's actually doing the depositing of the waste?

[42] **Mr Trotman:** Yes. In certain circumstances, if there's more than one person held entirely liable—

[43] **Simon Thomas:** So it's a joint and several—

[44] **Mr Trotman:** A joint and several liability for the controller. Correct. That's right.

[45] **Simon Thomas:** Which is missing at the moment in—. As you see it.

[46] **Mr Trotman:** There's no mention of a controller that I can see there, no. The particular example that I have in mind, which I just explained, would not be caught in the draft Bill.

[47] **Eluned Morgan:** Can I ask you about mixed loads? Obviously you want to avoid mixed loads where possible, but there's an understanding that at times that's going to happen. Do you think that that's something in terms of percentage that should be defined on the face of the Bill, or something that should be put in the regulations, in terms of the percentage mixed allowed?

[48] **Mr Pritchard:** I think when reading through the Bill, our strong view, collectively, when we talked about it was that the regulation was the right place to put that, because again, it allows you to react quickly and to flex those percentages at a far quicker pace and perhaps react to what England are doing in that area.

[49] **Eluned Morgan:** And is there potential for adverse consequences in the sense that people will go up to the percentage if we define that, even in regulations? So, actually, it will increase the amount of mixed loads. Is it defined somewhere at the moment? What are the rules at the moment?

[50] **Mr Trotman:** There isn't a percentage defined at the moment, so there is talk of 'small amounts'. However you define it, I suspect it's going to be tested, or could be tested. It strikes me that having a percentage at least draws a definitive line that you can discuss and be challenged on, whereas interpreting terms like 'small' and 'insignificant' is far more difficult to establish in law. It's a matter of fact that mixed loads will arise, because that's how waste is predicted; that's how waste arises. It will always be, I think, a bone of contention, perhaps, to establish exactly what is 'small'.

[51] **Eluned Morgan:** Can you just explain to me how—? Sorry, I don't know much about waste, so I just wondered if you could explain how practically it's weighed. Do you have the weight of the lorry and then you have the weight of the waste, and then you subtract one from the other? Is that how it works?

[52] **Mr Trotman:** There are probably better people than me, maybe your other evidence providers, who might be able to give you more detail on that, but, yes, having a weighbridge that operates on the basis that it knows the scale and the type of vehicle and can then net off those weights to determine what the content is that's being carried, is the principle that's being applied. But—

[53] **Mr Pritchard:** Sorry, Mike. That's one of the issues that we thought through when we were looking at the controller/operator point, because in the conventional way that waste might be brought to a landfill site, you would have a weighbridge, and then you'd use a computation, much like you've defined, but there might be instances where you have an adjacent site where waste might arrive on the landfill site in a different way—maybe water, waste or sewage that could be piped in quite legitimately onto the landfill site. So that was one of the reasons why we thought a mechanism to have a controller and an operator distinction might be quite useful in the Welsh

legislation.

[54] **Eluned Morgan:** Okay. Do you think there's an issue in terms of when you weigh: whether that should be done before or after?

[55] **Mr Trotman:** Before or after—?

[56] **Eluned Morgan:** Disposal.

[57] **Mr Trotman:** Well, for clarity, you need it to be before, and typically it's done when it enters the site and—

[58] **Eluned Morgan:** Right. We just keep the current system.

[59] **Mr Trotman:** —systems have developed over the years of weighbridge systems integrated with IT systems and accounting systems that have been found to work quite well, I think. So, I doubt we'd advocate changing that, ultimately.

[60] **Eluned Morgan:** Can I ask you about potential tax loopholes? Have you found any holes in the Bill, potentially?

[61] **Mr Trotman:** No.

[62] **Eluned Morgan:** Okay, good.

[63] **Mr Pritchard:** No, none at all.

[64] **Eluned Morgan:** Thank you.

[65] **Simon Thomas:** The committee will be visiting a landfill site next week, so I suspect we'll have lots of weighbridges and will be shown lots of different ways of weighing things. The only thing—. I just wanted to ask you again, really, because this 'small and incidental'—to me, 'small and incidental' is like 2 per cent or 3 per cent, but some others might say 10 per cent is a small and incidental amount. Within that there's a lot of scope for either variation or potentially abuse if people just use it, as Eluned Morgan was asking, up to the limit, as it were. Is there any working definition that you're aware of that people use in this way? Or is this going to have to be tested by regulation, and, potentially, as you did I think suggest, by one or two test cases or appeals against the new Welsh Revenue Authority?

[66] **Mr Trotman:** There hasn't been a great deal of litigation around definitions of 'small' or 'incidental'. In fairness to Her Majesty's Revenue and Customs—I can't speak for them, obviously, but they've obviously put resource into trying to determine how those definitions are applied on sites. There's almost two parts to it: first of all, what do you mean by 'small'? And, secondly, within a particular load, how do you establish what's in there to come to that decision in the first place? That puts a great emphasis on the operator, of course, to undertake views and assessments of the material coming in, because, once it's come into the landfill site and it's disposed into the void, it's very hard then to go back into the void and determine that fraction thereafter. So, it's very difficult—I think it is, and I'm not sure there is an easy answer to it, otherwise I'm sure, all these years into landfill tax and duties, we would have seen a more practical way of doing it. There's guidance, of course, which will help the industry come to a view, and maybe, when the guidance is drafted here, having that percentage figure in there to lever off is going to perhaps provide greater clarity than it does currently in England.

[67] **Mr Pritchard:** I think the point that we are making was driven by experience in other tax areas of where you have references to 'small and incidental' or 'incidental' in the legislation, and then what's ensued is many, many years of litigation in determining what is 'small and incidental', so there is an opportunity for you to define that yourselves, and, so as to remove the requirement of the court to determine what 'small and incidental' is, you can choose now. And any certainty and clarity that you can give in the Bill or in the regulations would be of great help to operators in the market.

[68] **Simon Thomas:** Because it would be the operators, in effect—under the Bill as it's structured they are the people who are responsible for the tax. So, if they allow an abuse, they would be liable under this Bill.

[69] **Mr Pritchard:** Absolutely.

[70] **Simon Thomas:** Nick Ramsay.

[71] **Nick Ramsay:** Thanks, Chair. It's certainly whetted my appetite for our visit to a landfill site—looking forward to that. Morning to you both. A couple of quite straightforward questions from me. Do you think—? First and foremost, you mentioned in your opening statement the issue of the border and keeping the regime similar, certainly in the first instance, with that

across the border. Do you think the standard and lower rates of landfill tax should remain similar to England?

[72] **Mr Pritchard:** I think our shared view is absolutely that that—I mean, if that's the policy objective, that you want to avoid waste tourism, then the way that you do that is to maintain parity on the rates with our colleagues over the border.

[73] **Nick Ramsay:** And what are the implications if the rates are substantially different in Wales? You've just mentioned waste tourism: is that the primary problem?

[74] **Mr Pritchard:** I think so. The explanatory documents that come with the Bill identify quite a few as well. There could be other environmental issues associated with increased traffic, et cetera, if you're moving waste from one part of the country to the other. But I think the differential would need to be quite large in the per tonnage rate in order to encourage people to move significant and material amounts of waste from one part of the country to somewhere else.

[75] **Nick Ramsay:** Would it need to be that different? I think it was last week we took evidence that suggested—I can't remember the witness that actually said this—that because the amount—. Let me get this right. The travelling cost relative to disposal is actually quite a small proportion. So, because of that, that means that you wouldn't need to have rates too different across the border to mean that people would find it beneficial, profit-wise, to travel.

[76] **Mr Pritchard:** I think the point I was making was that it would depend how far away—the further you start to travel, the higher the cost. But if you've got a border—and a lot of our landfill sites are on the border, or a material proportion—then that is a risk, yes, and the transport cost would come down, obviously, the closer the site.

[77] **Nick Ramsay:** As Eluned Morgan said, we're trying to become experts in this field in quite a short space of time, so forgive me if the questions are a bit muddled. Do you think that the initial tax rate should appear on the face of the Bill rather than being set in regulations, or do you not have a concern about that one way or the other?

[78] **Mr Pritchard:** I don't have a concern one way or the other. It would

seem sensible to us, as we read through the well-drafted legislation, that the regulations are a good place to put them, for the reasons we've made before: so that you can keep pace, if you want to, with what's happening elsewhere in Great Britain.

[79] **Nick Ramsay:** Because evidence we've taken says that, in Westminster, in UK law up till now, tax laws tended to have the rates much more upfront. But then they rely, I think, on a finance Bill periodically to alter it, which we don't have here.

[80] **Mr Pritchard:** Absolutely.

[81] **Nick Ramsay:** But, as far as you're concerned, whether it's on the face of the Bill or in regulations—. Would the people you represent be reassured, knowing earlier on what those tax rates are, or are they just going to assume that, whatever they are, they'll have to adjust to deal with them?

[82] **Mr Pritchard:** I think that's a safe assumption, and I don't think that any of the conversations that we've had with our clients have concerns that have been framed in that way.

[83] **Mr Trotman:** It's a commercial market, waste management, and even disposing of waste into landfill is a commercial sector. So, I guess the greater clarity and the more advanced warning that any waste operator has as to what they will have to charge their customers will be useful. They won't be able to apply that rate, clearly, until the rate changes, but it is a commercial market.

[84] **Nick Ramsay:** I suppose, from their point of view, whatever the initial rates are that are set, there's the potential to change them anyway later on. So, I can understand why you're not bothered one way or the other whether it's regulations or on the face of the Bill. Great. That's me done, Chair.

[85] **Simon Thomas:** Thank you. Yes, Mark Reckless.

[86] **Mark Reckless:** In your written evidence you express, I think, some concern over a shift from the current legislation on tax exemptions and instead making those reliefs in the Welsh Bill. Can you explain why that's a concern for you?

[87] **Mr Pritchard:** I'll start, and then—.

[88] **Mr Trotman:** Yes.

[89] **Mr Pritchard:** So, I think our high-level point there was that we—and it's not a tax point—couldn't necessarily see the rationale, but we suspect that there was a policy rationale for that shift, because we're used to dealing with the English legislation where the relief from the tax is predominantly given by way of exemption as opposed to an exemption and relief regime, and we thought a more straightforward and certain legislative framework would be better served by having exemptions enshrined in the Bill rather than having a sort of two-sided system with reliefs and exemptions. That was the point.

[90] **Mr Trotman:** Yes, the reliefs do appear to require more, or the nature of the reliefs are that they do require more evidence, more support, before being able to claim them. But, as we see it, they'll all be reported, whether it's exemptions or reliefs. So, the effect on the tax is—

[91] **Mark Reckless:** Sorry, did you say that exemptions will be reported as well?

10:30

[92] **Mr Trotman:** I believe they will, yes.

[93] **Mark Reckless:** Right. I thought the concern was a reporting concern, that on a tax return you had to claim these reliefs, whereas exemptions, you just took the exemption and there wasn't the same administrative cost because you don't need to claim it. So, can you explain to me the sense in which people are having to have an administrative process to claim the exemption?

[94] **Mr Trotman:** Well, the exemption will apply if the criteria are fulfilled, so there's not a great deal of evidence perhaps required to support those, but with the reliefs there is more. For instance, for bad debt relief, there are conditions that would need to be adopted and fulfilled and documented before the relief can be claimed, but they would still be claimed via the return.

[95] **Mark Reckless:** I understand that with relief, what I'm trying to pin down is whether there's a similar issue with exemption. My understanding,

which may be incorrect, was that, an exemption, as long as you were within the terms of it, you just didn't pay the tax. I wasn't clear just now whether you were suggesting, actually, there was an administrative burden around claiming that exemption. Did you say that, or not?

[96] **Mr Trotman:** No, I don't think we're concerned about the administrative burden for exemptions. The administrative burden for exemptions and reliefs is the same as is currently in operation in England. I think the point we were making was as much an observation as—

[97] **Mark Reckless:** I'm really sorry, I'm still unclear. Could you speak a little louder? The difference around exemptions and reliefs—. I'm clear about claiming this relief through the tax return. Is there an equivalent or any administrative process or difficulty about an exemption at all?

[98] **Mr Trotman:** No.

[99] **Mark Reckless:** No. Good. In your written evidence, you suggest that a reason this difference may be in our Bill is because the Welsh Government is intending to use failure to claim a relief not being applicable to unauthorised sites—I would caution making an assumption that they'd thought it through in that way; we will question them about it. But the overall compliance cost of people having to claim reliefs for these, rather than it being an exemption, how significant do you think that would be? And how realistic or large scale is it going to be that there are disposals at unauthorised sites and rather than just fining people when we do get that, actually, there's going to be a significant sum raised by them not being able to claim the relief? Is that really a significant issue compared to the administration costs?

[100] **Mr Trotman:** I don't have figures, but from experience I would say there isn't a great deal of cost involved in seeking the reliefs. There is a process that they would have to go through to get the relevant evidence together, but I am not aware—I wouldn't expect that to be a significant cost. Your second point, sorry, was whether or not that is going to be more significant for an unauthorised disposal.

[101] **Mark Reckless:** No, the comparison between that and this idea that, as the relief would only be available for authorised sites, there would be an ability to apply tax to people who are using unauthorised sites. Is that, in practice, likely to be significant?

[102] **Mr Trotman:** I would imagine that the reliefs available to an unauthorised site would be far less, in that they simply wouldn't have the documentary evidence and the history to claim them. It's a policy objective, I guess, as to whether you want to make those reliefs available and bend over backwards, perhaps, to allow those reliefs to be applied to unauthorised disposal. I can see reasons why you wouldn't, but I guess that's a policy point. In practice, though, just to reiterate, I wouldn't expect an unauthorised disposal of waste to have the adequate history and documentation to maybe claim some of the reliefs in any case.

[103] **Mark Reckless:** To the extent they're unauthorised I'm not sure I'd be expecting them to be paying tax in the first place. The range of exemptions we've got—as to whether they're exemptions or reliefs, we'll leave that point now—is there a sufficient number? Are there any others you think we should be introducing or considering?

[104] **Me Trotman:** No, we think that they are reflective of what's happening currently in the industry, and no need for any further ones to be introduced at this time.

[105] **Mark Reckless:** And the facility for the Welsh Government to be able to amend or modify the reliefs or exemptions through regulations, is that something you would support?

[106] **Mr Pritchard:** Yes.

[107] **Mark Reckless:** Can I move on to the issue—?

[108] **Simon Thomas:** Sorry, Mark. Nick Ramsay, just on this point.

[109] **Nick Ramsay:** Yes, it's an interesting area, this idea of taxing—not just fining but taxing for unauthorised sites. Mark Reckless has asked you most of those questions, but just for clarity, you do think in principle that this Bill gets it right or is innovative in seeking to make clear that if you are carrying out an unauthorised site, then any profit you think you might have made regardless of the fines you have to pay would go because you'll be paying the tax conventionally. That's not same in the Westminster—I keep saying Westminster—in the UK body of law, as I understand it.

[110] **Mr Trotman:** That's correct, yes. There is no provision for an unauthorised tip to be taxed until or unless it finds its way into a licensed

landfill site. So, it strikes us that it's an extra deterrent against that kind of behaviour.

[111] **Nick Ramsay:** An extra deterrent. Fine, thanks.

[112] **Simon Thomas:** Back to Mark Reckless.

[113] **Mark Reckless:** Moving on to penalties, I will come to the water discount in a moment, but initially can I ask you about two penalties: failure to register with the Welsh Revenue Authority, with a penalty of £300 potentially; and failure to comply with the requirements of a notice designating a non-disposal area, with a potential for a £5,000 penalty? Are those penalties appropriate and set at the correct level in your view?

[114] **Mr Trotman:** I guess you assess penalties by how much they've been used and how effective they are at changing the behaviour you want to change. I guess only history will tell us that. But at the moment, from a distance, they strike us as being about right.

[115] **Mr Pritchard:** Our view is that they are appropriate. The issues that we've seen with penalty regimes and tax in other areas are generally sent along whether a penalty is disproportionately large for the crime or the error that's been made, and it doesn't strike us that the penalties that have been enshrined in the Bill are disproportionately large.

[116] **Mark Reckless:** And the proposed penalty for not applying a water discount, what would be the rationale of a penalty for not claiming a discount? Do you understand that? Does that make any sense to you?

[117] **Mr Trotman:** I guess the agreement that was entered into with the WRA needs to be met and fulfilled. So, typically in penalty regimes, it's common to see penalties arising for failing to fulfil the obligations that you've signed up to, whether or not those obligations were in your favour or not. So, I figure that's the rationale behind it, but a water discount per se I think we've endorsed as being something that should be included in the Bill.

[118] **Mark Reckless:** Okay. Now, currently in the currently applicable legislation, if I can call it that, the water discount is only available when it's over 25 per cent water, I think. In your written evidence, you, I think, support that floor being done away with. Can you explain why?

[119] **Mr Trotman:** Yes. If there's a justification for having a water discount at all, then we can see no real justification for limiting it to where the water exceeds 25 per cent. It doesn't seem practical or sensible to provide a water discount where it's 26 per cent and not where it's 24. So, the rationale behind that threshold doesn't seem sensible to us. There's another argument as to whether you should have water discounting at all, but that's a different debate, and I'm sure the NRW would have submitted something—

[120] **Mark Reckless:** And is the argument of having the water discount that the water just sinks into the earth, and it isn't something that's filling up space and landfill in the longer term?

[121] **Mr Trotman:** The argument for having a water discount is that it's only there by necessity for moving the waste, so therefore the water element itself is not waste. But, of course, if that water itself, when it goes into landfill, becomes a polluting content of a landfill, then the water discount would not be available. So, the rationale is that the water itself is not actually waste. It's just a means of getting what is true waste to a landfill site.

[122] **Mark Reckless:** Okay. I hear what you say about the 25 per cent limit—if there's a substantial amount of water, and it's being used to transport it, and it just soaks into the ground, and it isn't a pollutant. I can understand that. But do we really want to get into applying discounts for small or de minimis amounts of water where, frankly, it's not substantial? Isn't that the rationale for that cut-off? Is it really a good idea to lose that 25 per cent floor?

[123] **Mr Trotman:** Well, I guess we're back to the definition of substantial again.

[124] **Mark Reckless:** What you said now seems rather to go against what you said to us perhaps 10 minutes ago in another context—why don't we define the small and incidental?

[125] **Mr Trotman:** I think the practicalities of the way the industry works means that it's very difficult to extract water sometimes. It's very difficult to move waste without having water added to it. Ultimately, I suspect that, because of changes to the permits and the licensing arrangements for landfill, whereby, if water enters into the site, and water as waste is being prevented, then there may in future not be any need for any water discounting arrangement for landfill tax. I guess it comes down to a policy

decision as well as to what you want to do with the way that current operators get on with their water discounting and whether they fulfil the agreements that they've got in place. They will have some agreements in place in sites around the rest of the UK, and I would guess they have water discounting agreements in place with the landfill sites in Wales currently. Whether you want to retain that, I guess, will be something for you to decide and become part of your policy.

[126] **Mark Reckless:** Thank you. Chair, I'd welcome discussing and trying to understand this water discount, and why water is used to transport waste, perhaps on our visit next week.

[127] **Simon Thomas:** We'll be able to seek that out next week, and of course ask the Minister as well why it's in the Bill in its current form. Mike Hedges.

[128] **Mike Hedges:** On water—[*Inaudible.*—]—sells, but I don't think that's a matter that really affects you particularly. Can I ask you about a weighbridge, though? Shouldn't every site have a weighbridge? I know they will break down from time to time, but I have a nervousness about sites that have not got a weighbridge and aren't able to make an estimate of the weight of the material going in. I see that as leaving a substantial loophole there. Shouldn't all sites have a weighbridge for going in and out? Now, a weighbridge will break down from time to time, and I wouldn't want to stop landfills working for the whole time that weighbridge was down, but I think that actually having a weighbridge there should be part of the licensing arrangement for a landfill site. Would you agree with that?

[129] **Mr Trotman:** Yes, broadly. I guess that the smaller sites, if they get licensed and aren't able to install a weighbridge, might have objections to that, but it makes absolute sense for determining the accuracy of the tax that you have a weighbridge. I would agree with that.

[130] **Simon Thomas:** Steffan Lewis.

[131] **Steffan Lewis:** Diolch, Chair. Moving to unauthorised waste disposals and the cost implications, you mentioned in your written evidence, and you highlighted, a couple of concerns in terms of complications—possible complications. Could you summarise what you see as the possible barriers to implementing the provisions of the Bill that relate to unauthorised disposals?

[132] **Mr Trotman:** Well, first off, I think regardless of whether you have the policy in the Bill, you still have to identify and locate and track down the person who's disposed of the waste. So, in terms of raising revenue, and actually applying the tax, there's clearly still a way to go to achieve that. But as a deterrent, it strikes us that it is clearly giving the message to those who would operate unauthorised sites that it would be very expensive for them to do so, and would cease to be economic. So, yes, we endorse all of that.

10:45

[133] **Steffan Lewis:** So, broadly, you think it's just a matter that's unavoidable, because of the nature of it being unauthorised, rather than anything specifically in the Bill, or the mechanics of the Bill, that's an impediment to achieving the aspirations in the Bill.

[134] **Mr Pritchard:** Yes.

[135] **Mr Trotman:** Yes. And the Bill talks also about identifying people who have knowingly caused or knowingly permitted disposals to take place. We've identified that as being an area of contention and complication. Again, our knowledge of other taxes means that it's actually quite difficult to prove some sort of guilty knowledge on the part of a taxpayer who is clearly—well, not clearly, but often seeking to avoid tax, as to whether they actually knew that they were avoiding tax when they undertook a certain kind of behaviour. So I think the practicalities of implementing that part of the Bill are more challenging, but the deterrent effect of having that part of the Bill is a really good part of it.

[136] **Steffan Lewis:** So, in terms of the parts of the Bill that look at holding certain persons responsible for unauthorised disposals, do you think actually that aspect of the Bill is more to do with deterrence rather than actually whether we're going to be in a situation where tribunals are set up to determine whether people are knowingly or unknowingly allowing unauthorised disposals? Do you think it's actually something that's going to be used, because of the difficult nature of this area?

[137] **Mr Trotman:** I think the policy, as we understand it, is that it is a deterrent, but I guess any deterrent is only going to remain a deterrent if it's occasionally taken out and used. But it's a novel piece of legislation for landfill tax. I know Scotland have the same kind of format. Time will tell how often it can be used and how often it needs to be used in order to maintain

the deterrent.

[138] **Steffan Lewis:** And you mention in your consultation response that 75 days is a disproportionately short time frame after the issue of a preliminary notice in which tax has to be paid on unauthorised disposals. What would you consider a better time frame?

[139] **Mr Pritchard:** I think our view there—I think if you've issued a preliminary notice, you can apply for an extension of time to pull information together that would allow you to either contest or agree the information that's contained in the preliminary notice and settle on the matter. I think the observation we had there was that, once a charging notice has been issued, the Bill, as we read it, didn't allow for extensions of time to permit the unauthorised, or allegedly unauthorised, disposer of waste to collate any more information. So, that rigid timeline after the charging notice had been issued to us struck us as, perhaps, a bit rigid, because it could take someone a fair amount of time to collate the information that they were required to provide in those circumstances. And because you can issue a charging notice without having issued a preliminary notice, we thought that there could be some regulation that allowed for extensions of time within reasonable limits, once a charging notice had been issued, as well as once a preliminary notice had been issued. That's the point we were making.

[140] **Simon Thomas:** Because it could relate to things that go back 20 years.

[141] **Mr Pritchard:** Quite.

[142] **Steffan Lewis:** Another aspect of your written evidence was the potential difficulties in data sharing between various bodies—WRA, NRW and local authorities—and balancing that with the confidentiality of businesses. You suggest that data relating to wholly unauthorised disposals will be very limited or negligible, even. Can you just elaborate further on, in particular, the bit about the confidentiality of business? What's the concern there, in terms of the data sharing?

[143] **Mr Trotman:** Well, conceivably, the unauthorised part of the Bill could apply to legitimate operators who may have had, or are found to have had, some potentially unauthorised disposals outside of their licensed sites. I guess the Bill has tended—I, indeed, read it in the context of unauthorised disposals by people who are deliberately evading tax; of course, it could be,

potentially, that that part is applied to people who are, for the most part, legitimately seeking to pay their tax but have come across something or have failed to spot something.

[144] So, the concern there is that the 20-year term is a long time for anybody to actually go back and find any evidence to challenge an assessment giving it away. Also, it's more likely that those normally compliant taxpayers will have records, and NRW and other agencies will have records pertaining to them to make them more accessible to this part of the Bill than someone who was deliberately evading the tax and clearly has no interest and has never retained any records for that purpose. So, our thoughts were there that the checks and balances would, I'm sure, be there—but it was to point that out.

[145] **Steffan Lewis:** Is there anything further that could be done to the Bill in order to strengthen those checks and balances?

[146] **Mr Trotman:** Guidance we'd be interested to see. I know that wouldn't necessarily have legal force, but, certainly, guidance would, maybe, help clarify some of the points.

[147] **Mr Pritchard:** I don't think our observation was that information sharing was, on the face of it, a bad thing. We accept that it's going to be a good thing, but it's that disparity, perhaps, in the volume of information that might be available for an authorised landfill operator, as opposed to someone who acts illegally. It might put the authorised and good citizen at a disadvantage.

[148] **Steffan Lewis:** Finally, on the point of those public bodies, do you have any view on the kind of additional resources that they'll require to implement the Bill—NRW, WRA, et cetera?

[149] **Mr Trotman:** No. Clearly, they've been given the compliance role, and as we've touched upon, compliance for landfill is quite difficult, because once it's in the landfill, it's very difficult to go back and determine what was put in there and what rate of tax should have been applied. So, I'm sure they will have techniques and, with their experience of the sector, anyway, they'll be well equipped to decide what they need.

[150] **Steffan Lewis:** Thank you.

[151] **Simon Thomas:** Thank you. Mike Hedges.

[152] **Mike Hedges:** Last question: do you support the decision to establish the landfill disposals tax community scheme and do you agree it should operate outside the Bill?

[153] **Mr Trotman:** Yes and yes, I think, is the answer.

[154] **Mike Hedges:** That's me.

[155] **Simon Thomas:** Thank you for your evidence, therefore. As I said earlier, we'll have a transcript for you to just correct for any inaccuracies at that stage. But thank you for the oral evidence, and, as I said earlier, the written evidence was very useful to the committee, as well. Diolch yn fawr iawn. The committee will take a quick break until 11 o'clock when we'll resume with the next witnesses.

*Gohiriwyd y cyfarfod rhwng 10:53 a 11:02.
The meeting adjourned between 10:53 and 11:02.*

**Y Bil Treth Gwarediadau Tirlenwi (Cymru): Sesiwn Dystiolaeth 7
Landfill Disposals Tax (Wales) Bill: Evidence Session 7**

[156] **Simon Thomas:** I welcome our two new witnesses. Thank you for your written evidence as well. Could I just ask you to state your names and your titles, as it were, for the record please?

[157] **Ms Doone:** Jacqueline Doone. I'm the group indirect tax manager for Biffa Waste Services Ltd.

[158] **Ms Doyle:** I'm Jennifer Doyle. I'm a senior project manager for Cory Environmental.

[159] **Simon Thomas:** Thank you for assisting the committee with the scrutiny of the landfill disposals Bill. I'd like to start just with general questions. Again, from the written evidence that Cory has given as well, it's clear you're supporting the general principles of the Bill. Have you been able to think about how the Bill may operate in the operating environment, if you like, within your own context? And do you feel the Bill needs any improvements in order to ensure what the Welsh Government has set out to do, which is that the Bill should have the least burden on taxpayers and

should be easily readable—though as a Welsh Bill—in an England—and-Wales situation?

[160] **Ms Doyle:** Yes, for the most part, we think that it's a well-drafted Bill. We like the way that much of the detail will be dealt with through regulations, which makes sense, so that it's more flexible and easier to change in the future as you go on. There is one point that, if you don't mind, I'll ask Jacqui to enlarge upon—we think it's quite important and we couldn't actually see it within the Bill—which relates to bad debt provision.

[161] **Simon Thomas:** Bad—?

[162] **Ms Doyle:** Bad debt provision.

[163] **Simon Thomas:** Bad debt, okay.

[164] **Ms Doyle:** We believe it is included in the UK legislation but not in the Scottish and not in the Welsh. So, if I can hand over to Jacqui and let her explain why we believe that's important.

[165] **Ms Doone:** At the moment, under UK legislation, we have the ability to claim bad debt relief 12 months after the debt has gone bad and we've taken reasonable action to pursue the debt. This would normally be in the case of where the companies either won't pay us, and we've had to take legal action to try and enforce that—but sometimes you can't enforce the debt—or they've disappeared and gone to ground, and you don't know where they are. But recently it's come to my attention that Biffa has been the subject of pretty sophisticated fraud, where someone set up a fraudulent company to mimic a real customer.

[166] **Simon Thomas:** This usually only happens on the internet, but this is a real—

[167] **Ms Doone:** I know. It is very unusual—to the extent of a fake website, fake e-mail addresses and that type of thing. Obviously, when we've gone to collect the debt, the customer said, 'We don't tip with you.' So, it's obviously unravelling. In that instance, we tried to go through the normal due diligence process, we've credit referenced everybody et cetera and we've had contracts signed and they've disappeared. Under the current provisions, it would seem that we can't get bad debt back. So, whilst we obviously paid the tax in absolute good faith, we have absolutely no recourse against the fraudsters

out there, unless they're caught by a criminal investigation.

[168] **Simon Thomas:** If such a relief were to be sought, what burden of proof would you envisage, in the other legislation, that you would need to provide? Because clearly these don't always proceed to a full criminal investigation. Therefore, how would, for example, the Welsh Revenue Authority know that—I'm not saying that you would do this—another company wasn't trying to scam them by claiming bad debt relief when, in fact, some other arrangement had pertained?

[169] **Ms Doone:** I think you'd have to produce documentary evidence—how you've set up the customer, what due diligence you've undertaken—and then, probably each case would be pretty individual, I would have thought. But if you're proceeding to a criminal investigation, you would provide documentation through to the relevant investigation authorities. So, I think if you can prove that you've taken reasonable steps, then you should be allowed to reclaim your tax back. Likewise, in the normal scenario, where the customer is a genuine customer, but they haven't paid you, but again, you've sought legal recourse, you can see that we've chased the debt and we've done our utmost to get the debt back, then again, we believe that we should be allowed to reclaim that tax back.

[170] **Simon Thomas:** This is the first time that this has been specifically raised with the committee, but my attention has just been drawn to the fact that the Government, in the explanatory memorandum, does say that it anticipates introducing a bad debt credit, but clearly from what you've said, you'd prefer that to be on the face of the Bill, so that the operators knew what was happening and the detail around that.

[171] **Ms Doone:** Yes, we would.

[172] **Simon Thomas:** I don't know if anyone wants to come in on this point. Mike Hedges.

[173] **Mike Hedges:** I can see what's happened in terms the scam, but don't you take the licence number of all vehicles coming in?

[174] **Ms Doone:** Yes, but it's when they use third-party customers. So, they're not actually using their own vehicles.

[175] **Mike Hedges:** But haven't you got to claim against the people who are

doing the tipping?

[176] **Ms Doone:** No, because the contract's not with them. The contract's with the producer of the waste and not the transporter of the waste.

[177] **Mike Hedges:** Sorry, but can I just pursue this for a second? Surely the transporter of the waste is the one who's put the waste on your site and therefore you—

[178] **Ms Doone:** No.

[179] **Mike Hedges:** You've got not claim against them whatsoever.

[180] **Ms Doone:** No.

[181] **Mike Hedges:** I will pursue this with some other people, because I find it difficult to understand how somebody can tip on a site using a vehicle and not have the final liability.

[182] **Ms Doone:** If I explain how our sector works, that probably makes it clearer—

[183] **Simon Thomas:** We are visiting a landfill site next week as a committee, so we will see it in operation.

[184] **Ms Doone:** Okay, perfect. Our contract is with the waste producer. So that's what the legal relationship is. That producer can use either their own truck or they can sub-contract it to a third party and it is very common that they will use a third party, because they probably don't need those trucks all the time.

[185] **Mike Hedges:** The point I was trying to make is: the third party has now tipped on your land.

[186] **Ms Doone:** No.

[187] **Mike Hedges:** They haven't.

[188] **Ms Doone:** No. Legally, the producer has tipped the waste.

[189] **Eluned Morgan:** Is that something that might be looked at? Would it be

better, just as an exploration—? Would it be possible to do it so that, actually, the liability—? They would effectively be locked into a relationship with—

[190] **Ms Doone:** You would probably find that the producer of the waste cannot get anyone to transport their waste.

[191] **Eluned Morgan:** Of course, that makes sense. Yes.

[192] **Ms Doone:** If you think how much the tax is per tonne, no transporter— because it's not their business—wants to be liable for that.

[193] **Eluned Morgan:** No, okay, right.

[194] **Simon Thomas:** Thank you for that. We'll pursue it next week and we'll see it in operation as well. I think it is with Eluned Morgan now—if you want to take the questions forward. Thank you.

[195] **Eluned Morgan:** There's an attempt at the moment to change the law in relation to definitions in England. How concerned would you be if those definitions were different between Wales and England? Is that a problem?

[196] **Ms Doone:** Our preference would be that they were the same because then it makes it easier for both our customers and Biffa itself to apply the rules. It's enormously difficult, every time there's a change in legislation, to explain it to your customer base in the first place. So, if they're different, we'll obviously comply with that, but our preference would be for commonality, particularly considering where our landfill site is—it's quite close to the England-Wales border, and that could cause unintended issues if they are different.

[197] **Eluned Morgan:** We heard some evidence from Deloitte before you came in. They were a little bit concerned at the fact that tax liability by inference is challenging and needs to be changed. They'd rather see it based on fact rather than inference. Is that something that you'd recognise, something you'd be concerned with?

[198] **Ms Doone:** Yes, it would be easier if it was stipulated rather than by inference because what one company views as being right and proper, another company potentially might view it slightly differently, and you get differences in interpretation.

[199] **Eluned Morgan:** So, trying to find the correct wording for that would be quite crucial, you think?

[200] **Ms Doone:** Yes, I think so.

[201] **Eluned Morgan:** Okay, so that's something that perhaps we need to look at. There are times when the licensee of a site allows other people to dispose of waste on their site. I just wondered whether you think there should be just one controller or whether that kind of subcontracting, effectively, is something that should be continued.

[202] **Ms Doone:** I must admit, I did look at the Deloitte comment—and I don't know if it's different on your side, Jenny—but we control what the third party are doing, so—

[203] **Eluned Morgan:** I assumed that would be the case.

[204] **Ms Doyle:** I can't see a particular issue.

[205] **Ms Doone:** No, I don't see an issue, because we've always operated, as the landfill operator, so that you're still responsible for ensuring that you're accounting for your tonnages and the right rate of tax.

[206] **Ms Doyle:** I think, in that situation, the responsibility is in the right place.

[207] **Ms Doone:** Yes, with the landfill operator.

[208] **Ms Doyle:** It's with the operator that's actually in control of the information and the operation. So, I think that actually makes sense.

[209] **Simon Thomas:** You'd want to be in control of that, I assume.

[210] **Ms Doyle:** Yes, that's right.

[211] **Ms Doone:** Yes. I didn't really understand it, I must admit. Certainly, from an environmental angle—not tax at all—you are completely responsible for what happens on your site and ensuring compliance with environmental issues.

[212] **Ms Doyle:** And health and safety, so it's just an extension of your normal responsibilities, basically.

[213] **Ms Doone:** Yes. Maybe they've seen slightly different operations elsewhere, but, certainly from our perspective, we control the site and what happens on the site.

[214] **Eluned Morgan:** I think they gave an example of somebody who may have a lot of waste that is alongside, but that they somehow have a relationship with the waste operators where they can effectively dump—. I was quite surprised that that would be the case.

[215] **Ms Doyle:** I don't know; maybe it's a very particular example. It's not within our normal—

[216] **Ms Doone:** No, we wouldn't allow that normally.

11:15

[217] **Eluned Morgan:** Can I ask you about mixed loads? Obviously, that's something we'd want to avoid if possible. I just wondered whether you think we should be stipulating a certain percentage, a maximum percentage of mixed loads, and whether that should be on the face of the Bill, or in the regulations. It's not very clear at the moment, is it—the definitions?

[218] **Ms Doone:** No, and HMRC have no intention from their side of ever defining what 'small' is, and it can, from an operator's perspective, be quite frustrating that you don't know what 'small' means. We've got one view, HMRC currently have another view, and then, you just revert back to very limited legislative cases around it. We would welcome more clarity around that area. I would be honest—that would be very beneficial for us.

[219] **Ms Doyle:** I'll just answer that. I'd guard against stipulating measures that you can't—something that you can't measure. There's no point in saying 10 per cent of this, 5 per cent of that, 1 per cent of the other, because they've then got to be able to measure it, and you can't, sort of, pull a load of waste apart and take out all the individual bits to measure whatever it is that you think is the 'small'. So, there comes a point—I guess it comes back to your comment about inference, really—where there's got to be a degree of classic common sense, I guess, on whether the impact of what's in there is significant. And, again, it's coming to airy-fairy words that can be interpreted

in different ways. But I think that's kind of what we're paid to deal with—those areas that are a little bit grey, and you need to be able to work out in a sensible manner what actually makes a difference and what doesn't. And it may well be that—. We know that it is the case that people come up with different opinions of what's 'small' or what's 'significant'. That's fine, but then, as long as there's a sensible forum for arguing the toss on that and coming to a conclusion that's sensible and everybody's comfortable with, I think that's fair enough. So, I would just guard against going down the track of trying to absolutely pin it down, because I don't think you'll be able to.

[220] **Eluned Morgan:** So, that leaves us with a little problem then. So, we've got 'small'—.

[221] **Ms Doyle:** It does, but I think there always will be a little problem. I can't, in practice, see a sensible way around it, other than expecting people to be able to work it out and be sensible.

[222] **Eluned Morgan:** So, putting a percentage in would not be the right way to go.

[223] **Ms Doyle:** I think it could be very difficult to work. You could put one in, but then people would be arguing about what the percentage was—was it by weight, was it by volume, was it by whatever else? And, then, how would you actually measure it, and the actual measuring of it is quite problematic in itself, isn't it?

[224] **Ms Doone:** Absolutely, because once it's on the truck and it tips out, you have no way or physical means on site—and, when you see it next week, you'll understand how massive these sites are—to then be weighing things. You can't.

[225] **Ms Doyle:** You might have to pick through a load, and the thing that's significant may not be visible anyway. So, there comes a point where you've got to draw the line and say, 'This is the sensible way of going forward on this one.'

[226] **Eluned Morgan:** What's the dispute mechanism at the moment?

[227] **Ms Doyle:** I don't know. You tell me. You probably know more about the disputes that I do, actually, Jacqueline.

[228] **Ms Doone:** At the moment, you basically discuss through with HMRC what your processes and procedures are. We've never ended up in an all-out dispute, because they're suffering from the same problem we are—they don't know what 'small' is. So, even though you may be discussing it with your officer, and you've both got slightly different views, I'm not aware that it's ever gone forward, because, if you get to court, you will both have the problem of what 'small' is. And I think there's only one case, and that has always taken the natural meaning of 'small' from the dictionary. So, we are struck with this word of 'small', which neither side really knows what it means.

[229] **Eluned Morgan:** Right, but you're saying there's case law that exists.

[230] **Ms Doone:** There is. It actually, I think, relates to corporation tax. It is a tax case from 20-odd years ago of what 'small' is.

[231] **Eluned Morgan:** Okay. What about any loopholes in the Bill? Are there any obvious loopholes that you think that we've missed? I guess that's more one for the tax people really, isn't it?

[232] **Ms Doone:** I'm not seeing anything that jumps out. Unfortunately, sometimes the legislation has to run for a while before it beds down, and you're thinking, 'Oh, we missed that', and it needs to be revisited.

[233] **Ms Doyle:** Somebody might find a loophole for you once it becomes operational, and it may need changing.

[234] **Ms Doone:** Invariably, the loopholes will come from customers because their cost base is being challenged. Everything here seems to run through more or less on parallel with what we've got at the moment, and we're all aware of where the current disputes are.

[235] **Eluned Morgan:** Okay, thank you.

[236] **Simon Thomas:** Can I just ask again about—because the wording in this Bill is 'small' and 'incidental'? So you've got two contestable ideas there, and, from a tax legislation point of view, that's quite difficult because, for tax, you'd like to pin it down; both for the taxpayer and for the tax collection authority you'd like to be clear about these things. You said you wouldn't like firm definitions, but would you like to see some sort of guidance, either from the Welsh Government or the Welsh Revenue Authority, setting out what they

would expect you to do, or what their natural interpretation would be?

[237] **Ms Doyle:** Your interpretation of ‘small’ and ‘incidental’, perhaps. That might be helpful and that might be a better way.

[238] **Simon Thomas:** What do you rely upon now to make that decision? Is it your decision on sight when you look at the load, or is it the origin of the load that tells you what the load is?

[239] **Ms Doone:** It’s normally at the origin. So, when the contract is set up originally, and invariably if there’s any dispute—not dispute, uncertainty—in our mind, we will ask for technical analysis, such as chemical analysis, of the material. It may well entail a site visit, to go and see the producer, and then we will agree with them either it’s standard rated, or, indeed, it is qualifying material because the standard element is so small and they can’t reasonably—

[240] **Simon Thomas:** And that’s really the only contestable thing—it’s whether that amount of the material at the standard rate is significant enough to put into the standard rate.

[241] **Ms Doone:** Absolutely. I suppose what would be helpful would be examples, saying this is an example of where the material should be at the standard rate, or where it would qualify for the lower rate.

[242] **Simon Thomas:** Thank you. Nick Ramsay.

[243] **Nick Ramsay:** Diolch. Good morning. I’d like to ask you a few questions relating to the tax rates and the implications of differing rates and the like. First of all, quite simply, do you think the standard and lower rates of landfill tax should remain similar in Wales to those in England?

[244] **Ms Doone:** Unless England pushes up their lower rate of tax, yes, because it will encourage waste tourism without a doubt; whoever’s got the lower rate will attract the waste.

[245] **Nick Ramsay:** A pleasant thought.

[246] **Ms Doyle:** It might be a pleasant thought if you wanted to see landfills completed quickly for some reason, which may be a political decision rather than a commercial one, if you like, if that were your wish.

[247] **Mark Reckless:** When did you first come across the phrase ‘waste tourism’?

[248] **Ms Doyle:** It was with you [*Laughter.*]

[249] **Nick Ramsay:** I think we might have invented it, actually. [*Laughter.*]

[250] **Ms Doyle:** What’s the Welsh for ‘waste tourism’, then we’ll write it down?

[251] **Simon Thomas:** I don’t think we want to develop it, that’s one thing for certain.

[252] **Ms Doyle:** Well, if you don’t want that, then they should probably stay pretty similar, but it may be that, politically, you do want to for a period. If you felt that you’d had enough of these landfill sites and you wanted them full, then you might want to adjust your rates. So, I wouldn’t say that it’s necessarily a bad thing per se. It’s purely a political decision.

[253] **Nick Ramsay:** A political decision. It’s interesting you qualified it by, ‘Of course, we’re presuming that the English rates stay pretty much where they are, but if there was a big change there, we might change it’. In terms of the variation in rates between England and Wales, what level of variation would cause a significant change? We took some evidence last week that suggested you wouldn’t need much of a variation to actually see quite a significant amount of waste tourism.

[254] **Ms Doone:** That’s quite right. We are—I’m sure Jenny’s the same—very price sensitive. Our customers are incredibly sensitive to even 50p movement. If they view it that it is more economical to pay the haulage to go further, they will do so.

[255] **Nick Ramsay:** Because the haulage is—. As I said to the previous witnesses, the haulage price, proportionally, is quite low compared with the actual disposal. Is that right?

[256] **Ms Doyle:** It depends on what your tax rate is on the waste.

[257] **Ms Doone:** Yes.

[258] **Ms Doyle:** Obviously, if you're on lower tax rate waste, then the haulage cost is proportionately higher than if it's a standard rate.

[259] **Nick Ramsay:** Okay. Do you think the—. You might say that this is a political decision as well, but do you think the initial tax rate should appear on the face of the Bill, rather than being set in regulations, or do you not have an issue with how it's done? As things stand at the moment, the Bill doesn't have the rates—those will be followed through in regulations—whereas at UK level they tend to put initial rates on the face of the Bill.

[260] **Ms Doone:** I don't think it matters, to be honest, no.

[261] **Nick Ramsay:** I suppose there is an issue about how soon you know what those rates are going to be. So, if they were on the Bill, they would be out there at the consideration stage rather than later on.

[262] **Ms Doone:** Yes, that is a fair point, because our customers like certainty as to what they will be paying for the next year. So, currently, as soon as we have the UK budget and we know what the rates are going to be, we send that out to our customer base, so that they can forward plan their budgeting. So, yes, in that respect, it would be handy to have it on the face of the Bill.

[263] **Ms Doyle:** Yes, if you're trying to match the rest of the UK and its rates, it'll depend, potentially, on budget decisions there, mightn't it—on the timing of those? So, depending on what your consultation period is on your Bill and putting it on, you maybe don't want to pre-empt what it's going to be—it might be a timing issue, really, more than anything else.

[264] **Nick Ramsay:** The Welsh Government has said—its maxim has been, through all tax devolution—that certainly in the initial stages it's beneficial to keep the regime similar to that across the border.

[265] In their consultation response, Natural Resources Wales said that if HMRC apply the changes to landfill tax that they have planned in April 2017 to landfill sites in Wales, two sets of tax changes will need to be made. Do you have any views on the effect of making two changes to the landfill tax system? That was a long question. [*Laughter.*]

[266] **Ms Doyle:** It doesn't really matter—do what you will.

[267] **Ms Doone:** We will comply, whatever the changes are. If we have one set and are then forced to change it, we will comply with that set. It obviously makes it easier for both your customers and for us, with our information technology system, to have one set of rules that you comply with. But, if we have to comply with two, we will do so.

[268] **Nick Ramsay:** Okay, thanks. In relation to VAT, we've heard that contracts between parties routinely include provisions that state that pricing would be adjusted in the event of changes to the rate of VAT to protect the parties. Do you think that contracting parties would routinely take a similar approach in relation to landfill disposals tax?

[269] **Ms Doyle:** I didn't quite understand your VAT one, actually. I read through that and thought, 'I don't quite—

[270] **Ms Doone:** Is that the passing on of the tax? Is that what—?

[271] **Ms Doyle:** This is when the VAT—. It's when you've got a contract with somebody and the VAT rate is agreed at the beginning—

[272] **Ms Doone:** And then it changes.

[273] **Ms Doyle:** And then it changes part way through a contract. Is that it?

[274] **Nick Ramsay:** You don't see it as a—?

[275] **Ms Doyle:** Normally that would just be passed through on the—.

[276] **Nick Ramsay:** Yes, that's fair enough. If so—well, you don't, so 'if so' doesn't really fly, does it? [*Laughter.*]

[277] **Ms Doyle:** No, it's normally passed through, so I don't think it's a particular issue.

[278] **Ms Doone:** Our standard contracts are written so that, where there's a legal change of tax rate, that is passed back through to the customer.

[279] **Simon Thomas:** I think that's what we're trying to get at. This would be a new regime in Wales. Is there a way within the contract system in which you'd reflect changes in the landfill tax in Wales?

[280] **Ms Doone:** There's a standard clause around tax to allow you to pass the additional cost on, yes.

[281] **Nick Ramsay:** So, in conclusion to this section, from what you've said in response to those questions, whatever transpires, from your point of view and that of your stakeholders, it's a matter of complying and you will have to do that. So, in terms of how the legislation is formed or whatever the means are to get to that point, you're not so concerned about that; it's the end point that you're concerned about.

11:30

[282] **Ms Doone:** It's the end point, yes. And I suppose, for us, it's having as much advance warning as we can have as to what the regime will be, how it will look, so that we can educate our customers and also make the appropriate changes that we need to make, to remain compliant.

[283] **Nick Ramsay:** Great.

[284] **Simon Thomas:** Okay, thank you. Mark Reckless.

[285] **Mark Reckless:** What are your views on the reliefs and exemptions set out in the Bill?

[286] **Ms Doone:** They're pretty well mirroring what we've got anyway, at the moment, which I view as a very positive thing. I didn't really have any particular comments because they allow you to achieve what you can achieve currently, and I think, particularly around water discount, that's very important, because that's really crucial to some industries, to have that. From an operator's perspective, as long as we can have the exemptions around restoration, in-filling with just qualifying material, that you're exempt there—. So, we're okay with that.

[287] **Mark Reckless:** But in this Bill the exemptions, including the example you give, are transferred into reliefs. Are you okay with that, or does that raise any concerns for your organisation?

[288] **Ms Doone:** I don't think it does, because you just adhere to the way that the relief works, and as long as you do that, you will get the relief. I suppose it might be in some way easier if they were called 'exemptions', but I think that's just a minor point for us.

[289] **Ms Doyle:** It's just the terminology really.

[290] **Mark Reckless:** Jennifer, you said, I think, 'the terminology' then. Some of the witnesses have suggested to us that they're against them becoming reliefs rather than exemptions because it means they'll have to claim it on their tax return and there'll be extra administrative costs. Is that not a concern for your organisation?

[291] **Ms Doyle:** I don't see that administrative element being a huge cost, to be honest with you.

[292] **Mark Reckless:** Okay. We mentioned—sorry—

[293] **Simon Thomas:** That was one of the—. What's unclear is why the Government has decided to do exemptions and reliefs, rather than just all reliefs or all exemptions. And I suppose the argument may be that it's easier to take away a relief than it is to take away an exemption. I don't know whether that is a concern, or—

[294] **Ms Doyle:** Is that the case then?

[295] **Simon Thomas:** That's fair enough, you're—

[296] **Ms Doyle:** No, I'm asking: is it the case?

[297] **Simon Thomas:** Well, because—

[298] **Ms Doyle:** Is it easier to take away a relief than it is to take away an exemption?

[299] **Simon Thomas:** Well, it's uncertain what the policy intention is, to be honest with you; we're not sure.

[300] **Ms Doyle:** Okay.

[301] **Simon Thomas:** But you're taking a very practical approach to it. You've got to do it and that's the end of it. [*Laughter.*]

[302] **Ms Doyle:** It may be one of those where we let it run and then if we find that it is an issue, then perhaps that's something we might seek to

change in the future if need be, but I don't see that it—

[303] **Mark Reckless:** It may be too late then. [*Laughter.*]

[304] Can I follow up on the issue about the water discount? Could you actually just explain briefly the rationale for the water discount and why people add water to assist with transporting waste?

[305] **Ms Doyle:** There are different examples. I might give a different one from Jacqui.

[306] **Ms Doone:** Okay. From the examples I'm familiar with, from customers that come to us, it's nearly all around anaerobic digestion. So, this is where a plant is taking in food stock, and taking the food stock completely as it is sold in the shop. So, for example, packaged sandwiches is a classic example. They would come in to you in their packaging, and what you have to do is to basically shred the food and the packaging to get the packaging off, because you're not de-packaging by hand, you're doing it by machinery. And the way you do that is by using water. So you will basically pulp the material, you will then add water and put it through a centrifugal force, and the water allows separation, and the weight density will determine where the material goes. The plastic will float to the top, and you're basically skimming off, for example, the plastics and the paper. You can't use that at all in your anaerobic digestion process, so you put it into a skip, and the skip will go to landfill because it can't go anywhere else—it can't be recycled. So, therefore, the material comes in with additional water, so you're getting the discount for that additional water. The reason that the discount is there anyway, for water, is that landfill sites are open, they're subject to natural rain coming onto them, and you pump the water out in the form of leachate, which you will see next week. Therefore, the Government decided that water shouldn't be subject to tax because you're going to pump it out of your site to the best of your ability anyway. Some processes have to have water added to them to make them work in the first place, so that you can do either recycling of the material or you can generate—in my example, anaerobic digestion generates green electricity, which everybody likes to have. Have you got any—?

[307] **Mark Reckless:** Jennifer, do you have any further examples?

[308] **Ms Doyle:** Yes. The only example I can think of is one from north Wales, actually. One of our north Wales sites was dealing with this one. There had been a site where there had been an operation where somebody had

abandoned their waste and it had set on fire and, of course, the fire brigade had come along and added water to it. So, our claim was for the water discount on the water added to put the fire out, basically. As simple as that. So, that was why water was added. So, you could then subsequently get rid of the waste at landfill because, obviously, if it's still hot you can't move it. It's quite basic, really.

[309] **Ms Doone:** So, back to your point, it's not for the transportation of the waste: it's for an industrial process that has occurred to the waste before it gets to the landfill site. So, the transportation point is minor.

[310] **Mark Reckless:** Do you think that the floor of 25 per cent that we'd had, to date, in legislation before there would be any tax relief—? Do you think that should carry over to the Welsh legislation or we should do away with it?

[311] **Ms Doone:** The 25 per cent: I'm not sure why it came in historically, but currently, what it does is that, for HMRC, it stops spurious claims. So, what it means is that, where you've got a process, you have to document your process; you have to track the additional water percentage that is added, so you know what your natural element is and what your additional element is. Therefore, the water discounts that are given are for genuine industrial processes. I think if it was less, you would be inviting a lot of claims that you're then going to have to verify.

[312] **Mark Reckless:** Okay. There's a proposal to apply a penalty if people fail to apply a water discount. What could be the rationale for that? Why would the Welsh Revenue Authority—? Why would we worry about more tax being paid than might conceivably be due if someone claimed a discount?

[313] **Ms Doone:** Well, at the moment, the landfill operator has the right to say whether they will or will not accept the material. For that, you are looking at your permit to see what you can bring in. So, it may well be that a customer wants—. I haven't actually known this in real life, but it could be that they have a process, they want to bring in a material, but you're not permitted for it; in which case you would have to refuse to take the material because you legally can't have it on your site.

[314] **Mark Reckless:** What's that got to do with a penalty for—?

[315] **Ms Doone:** You said for not applying the water discount.

[316] **Mark Reckless:** Well, the water discount. That appears in the Bill, and I, at least, haven't really understood why it's in the Bill as yet, to be about, I think it was, £500. It was either £200 or £500 for an operator failing to apply the water discount to a tax return. I just don't understand why we want to penalise people for not claiming discounts they might on paying those out.

[317] **Ms Doyle:** I'm kind of with you on that. I don't understand that either.

[318] **Ms Doone:** No.

[319] **Ms Doyle:** I don't have an example of it, actually, at all.

[320] **Ms Doone:** Maybe that's just in general with ensuring that you have the right figures on your return, but if you've got a water discount, you would have given it directly to your customer.

[321] **Mark Reckless:** Yes, I thought it would be a commercial thing between them, you know, and if the operator fails to claim it, that was their look out, but perhaps the Minister may enlighten us on that. There's also a proposed penalty of £300 for failing to register with the WRA. Is that appropriate, do you think?

[322] **Ms Doone:** Well, in light of the fact that you are taxing unlicensed sites as well—[*Laughter.*]

[323] **Ms Doyle:** I think that's great.

[324] **Ms Doone:** [*Continues.*—which we're actually very much with, £300 is not a great deal of money, quite frankly, in considering how much landfill tax actually incurs.

[325] **Mark Reckless:** So, would you support that being higher as a penalty?

[326] **Ms Doone:** Yes. If you want your illegal operators, yes, it should be higher.

[327] **Mark Reckless:** Jennifer.

[328] **Ms Doyle:** No problem with it.

[329] **Mark Reckless:** And as a final point, I just want to question you about the failure to comply with the requirement of a notice designating a non-disposal area, which I think I understand from previous witnesses is perhaps an area of your site where you've been told you're not allowed to have disposal. Five thousand pounds is the penalty for that. Is that proportionate?

[330] **Ms Doyle:** No, it's not not allowed to have disposal—it's an area where you can put materials that are not subject to tax at the point that they're actually placed in it. That's what it is.

[331] **Ms Doone:** So, for example—

[332] **Ms Doyle:** You are allowed to use the area.

[333] **Ms Doone:** For example, it's mainly for restoration materials, so when you need to restore your site all landfill operators stockpile suitable materials, because once you go to cap, you just want to get on and do it, but you will accumulate the material you need—normally, it can be anything up to a three-year period that you'll be stockpiling it—so that when the cell is closed and you start capping, you just go ahead and cap and get it all done in one time.

[334] **Mark Reckless:** Sorry, can you explain to me what is a notice designating a non-disposal area? What does that mean to you?

[335] **Ms Doone:** Right. To me, it's what's currently known as an information area. So, you apply for a designated area of your site—a specific area—you'll submit maps showing, 'This is the area and these are the tonnages that I want to store in there', how long you want to store them for and what material types are going to go into that area. It comes over the weighbridge, you log it as a non-taxable deposit, and it sits in that storage area until the point in time where you want to use it. All of ours are currently—well, the majority of ours are currently for restoration materials, which are typically inert soil-type material. When you start capping, you will take it out of the designated area, log it as coming out and log it as restoration material. So, you've got a full audit trail of the materials coming in, sitting there and then going out, and where the final resting place of that material is.

[336] **Mark Reckless:** So, is a £5,000 fine for failure to comply with the requirements of a notice designating a non-disposal area appropriate in your view?

[337] **Ms Doone:** I think that's quite harsh, actually. [*Laughter.*]

[338] **Ms Doyle:** The areas are defined on a map and we submit the map—the plan of the site—showing the area. I think sometimes there can be occasions when maybe if you're putting inerts in an area, they might slightly go outside it. So, it would be a bit harsh to fine someone £5,000 for slightly going over the boundary, or something like that, over a short period. That would be a bit harsh.

[339] **Mark Reckless:** And because they've gone over the boundary, they should be paying tax on the bit that's gone over the boundary under the terms of the—

[340] **Ms Doone:** Technically—

[341] **Ms Doyle:** Technically, but that's—. You know, I guess that's the common sense bit we were talking about.

[342] **Mark Reckless:** So, would you like to see the £5,000 and the £300 swapped? [*Laughter.*]

[343] **Ms Doone:** That would be our preference.

[344] **Ms Doyle:** It would, yes. The answer is 'yes'. But that's what these areas are, and also when materials are coming out of that area for restoration, we tell you how much materials are coming out and when it's going to be used.

[345] **Mark Reckless:** Thank you. Chair, if next we can see a non-disposal area on our visit—

[346] **Simon Thomas:** Hopefully, we won't be part of it. [*Laughter.*] Mike Hedges.

[347] **Mike Hedges:** You mentioned weighbridges—do all your sites have weighbridges, and do you think all sites should have weighbridges?

[348] **Ms Doone:** No, not all our sites have weighbridges.

[349] **Ms Doyle:** Ours do.

[350] **Ms Doone:** So, they do when we're taking in waste. So, where waste operations are enforced, all our sites have operational weighbridges. I mean, they do go down from time to time—you've got to be aware that they can malfunction or you can't get the weight to transfer or whatever—but they are naturally taken out at a certain point in time, and that time will be when you're restoring the site because where the weighbridge physically sits, you need to fill it with soils.

[351] **Mike Hedges:** Sorry, I didn't phrase it properly. When it was in use, I was thinking of when people were taking waste down to be measured.

[352] **Ms Doone:** Yes. Always.

[353] **Ms Doyle:** Absolutely.

[354] **Simon Thomas:** Steffan Lewis.

11:45

[355] **Steffan Lewis:** Diolch. On the issue of unauthorised disposals, do you support, generally, the inclusion of unauthorised disposals in this Bill and do you believe that there are any barriers to implementing the provisions in the Bill that relate to unauthorised disposals—what practical barriers there might be?

[356] **Ms Doone:** So, we very much support this, because, obviously, waste crime is a real problem. As you know, in the UK, it's unregulated, so the fact that you've actually defined it, we would hope, would start changing attitudes to it. I must admit, I think it's going to be a very hard thing to do, just by its very nature, but I would hope that the deterrent will be that whoever is doing this will have to pay the tax. Obviously, once it's in the ground, it's very difficult to determine how much tax they need to pay you, but the burden of proof will be on them to tell you how much they've squirrelled away. But I didn't look too closely at it, because it won't impact us—

[357] **Simon Thomas:** You'd never be in that position.

[358] **Ms Doone:** No. Well—. [*Laughter.*]

[359] **Ms Doyle:** What I was thinking was—like Jacqui, I very much support the idea, I think it's great—if you can work closely with NRW to get a successful prosecution on something that's fairly high profile and implement this successfully, I think if you can do that, even if it's in only one or two cases, that would be a fantastic deterrent, it really would be, if you could follow it through. I think the key is going to be working very closely with NRW and really targeting something quite specific that you feel you've got a very high chance of success on, and, like I say, following it through and really giving it—. We're quite happy to help you advertise it, if you like, give publicity to it before the Bill comes into play, but I think having a success fairly quickly after you've introduced it will be the very best deterrent that you could possibly have.

[360] **Steffan Lewis:** That was going to be my follow-up question now in terms of the sections relating to the certain persons responsible for unauthorised disposals. They're going to be difficult. Their inclusion initially might act as a great deterrence, but if time goes by where no-one is prosecuted, then—

[361] **Ms Doyle:** I don't think inclusion alone is going to be a huge deterrent, because I think the deterrent is actually having a successful case.

[362] **Steffan Lewis:** Do you think, then, that those public bodies responsible are going to need significant additional resources in order to, because of how complicated it is—?

[363] **Ms Doyle:** Well, maybe use some of the landfill tax revenue for that. There's not a huge amount there, as I made the point in the letter, but I think just using some of that and targeting it at something quite specific fairly early on would be very, very effective. It's just my view, but, like I say, it's kind of up to you, really.

[364] **Steffan Lewis:** There's a section that enables the WRA to issue a preliminary notice of up to 20 years after it appears an unauthorised disposal was made. Do you think 20 years is an appropriate period?

[365] **Ms Doone:** Yes, that's in line, really, with current legislation where there's been a fraud—you can go back 20 years, and I think you probably do need those powers to make it pretty clear to whoever's perpetuating the illegal activity that it's not going to go away. So, if it is, you know, a farmer who is letting people tip on his land, it stays with him forever, essentially. So,

yes, I think 20 years is appropriate.

[366] **Steffan Lewis:** Does the regulatory impact assessment adequately estimate the impact the Bill will have on landfill site operators?

[367] **Ms Doone:** Sorry, could you say that question again?

[368] **Steffan Lewis:** The regulatory impact assessment—do you think that adequately reflects the impact that the Bill will have on landfill operators?

[369] **Ms Doyle:** I only very briefly read through that, I admit, but, on face value, it seemed fine.

[370] **Ms Doone:** Yes.

[371] **Steffan Lewis:** Finally, Deloitte were raising potential concerns about information sharing between WRA, NRW and local authorities, because of how this could impact on business confidentiality. Is that a concern that you share at all?

[372] **Ms Doyle:** No, because the majority of the information that we share with you and that we share with NRW is public information anyway. So, I would say that there would be only, possibly, very limited elements that might be a problem, but I don't really see a particular one.

[373] **Ms Doone:** The only place we'll get quite tetchy about is actually the detail of the return that we submit to you, because it has monetary values on it. But the same as Jenny, we submit all required returns to the Environment Agency et cetera, and most of that is public information.

[374] **Ms Doyle:** And if the information we're providing to you helps you with a prosecution of someone who's doing an illegal disposal, then we'd be very happy for you to share.

[375] **Ms Doone:** I suppose the only thing on that, which might help you, is speeding up the whistleblowing process, which is a little bit onerous with HMRC. I know from talking to them it's quite long-winded, but if there was a quicker process whereby people could call in and tell you about illegal activity, that would speed up the prosecution rate, I'm sure. Because the problem with all of these activities is they are very here and now, and then they go. So, you've got to react very quickly. You can't do a two-year

investigation because it will be gone, and whoever's involved will be gone.

[376] **Steffan Lewis:** Thank you.

[377] **Simon Thomas:** Thank you. Just on non-*authorised disposals*, there's the potential in the Bill to introduce a third rate of tax for those. So, I presume from the comments you've made you'd be very content if that was quite a punitive rate.

[378] **Ms Doone:** Yes. [*Laughter.*]

[379] **Simon Thomas:** Okay. Which might fund enforcement activities.

[380] **Ms Doyle:** It might, but if you're very successful it might just be a one-off event, which is maybe a good thing, I don't know.

[381] **Simon Thomas:** Either way, you would get more legitimate business, which is reasonable enough. Mike Hedges.

[382] **Mike Hedges:** Can I just carry on from that point first? I think one of the dangers that has existed up till now is the fines have been such, it's been worth—you actually make money just by paying the fines, because you can put an awful lot of landfill in, and the fines aren't commensurate with how much money you're making. So, one or two people have considered it worth the risk. They go to court, they get fined several times, and when they get threatened with jail for contempt of court, that's when they stop. Surely this would be an example—once they find out it's costing them more, with not just the fine but the additional landfill tax as well, then that could very well act as a deterrent, because what you've said is—as long as we find some people doing it and make sure that action is taken.

[383] **Ms Doyle:** Could I just ask you: is it your intention for this third level of landfill tax to be imposed as an additional fine? Would there be the fine, that additional tax, and then, if the waste is subsequently removed and taken to landfill, would there be landfill tax again? Is that the idea?

[384] **Mike Hedges:** Yes. As far as I can see it, yes, that would be the idea.

[385] **Simon Thomas:** As the Bill is currently constructed, that's possible, yes.

[386] **Ms Doyle:** I think it needs to be made clear as well, perhaps, when you do your publicity, that there would actually be these three things. Otherwise they might think they're just paying the landfill tax as a fine, and then it's not payable again when it is removed.

[387] **Mike Hedges:** So, there is double landfill tax. We all don't want people just opening parcels of land in order to dump. It's not good for the environment, it's not good for the area where it happens, it's just not good for the Welsh economy, and it's certainly not good for tax up to now. So, I think the more we can act to do anything possible to stop people doing it, so much the better.

[388] The questions I've got are on the landfill disposals tax community scheme. I know Biffa are engaged in that and it's incredibly popular, can I say that?

[389] **Ms Doone:** It is, yes.

[390] **Mike Hedges:** What's your view on the decision to establish a landfill disposals tax community scheme and operate it outside the Bill?

[391] **Ms Doone:** Yes, I mean, that will work. The landfill community fund, as it currently stands, as you said, is enormously popular, oversubscribed all the time from parties. You know, we'd work with it whichever way. The thing that we do do, because we are involved with it with the Biffa Award, is publicise it, and we do tell people, 'You can apply for this.' I suppose, because we have no real involvement in it, we wouldn't be promoting it, as such; you'd be promoting it yourselves.

[392] **Mike Hedges:** There's consideration of moving the limit from 10 miles to 5 miles, and Pwllfawatkyn is used, isn't it, in Swansea valley?

[393] **Ms Doone:** Yes.

[394] **Mike Hedges:** Ten miles from there takes in an awful lot of areas that are not really affected by the action you're taking. In fact, it takes in areas you don't even take waste from in any large quantity. So, would you support reducing it to five miles? The other thing is that there's also talk about bringing it in for waste transfer stations, which also means the people—. So, the people who are being affected by the waste coming in, because even on the best-run sites, you do have extra lorries bringing waste in and

sometimes, despite using the water, you have a bit of dust—. So, would you support reducing it to five miles?

[395] **Ms Doone:** Yes, I would. With the current Biffa Award, we've had to reduce the distance anyway, because 10 miles is when we had an awful lot going into the scheme. That has, with the tonnages reducing, dwindled dramatically. So, as a matter of course, we've had to refocus where we are putting moneys to, and it is going back to the communities directly around the landfill sites that are impacted by the trucks, et cetera. So, yes, around transfer stations would make perfect sense, because they get a tremendous amount of traffic on their roads.

[396] **Ms Doyle:** Just on that, just a couple of comments: from our perspective, because a lot of the sites that we've got have been running for many, many years, sometimes it's quite difficult to get schemes to come forward that are within the locale anymore, because they've taken quite a lot over a long period. So, in our experience, sometimes a little—we've been, in some places, doing the opposite to Jacqui and looking further afield. So, I think it's a case for yourselves to just do what you think is right and try it, and, if the five miles doesn't work for you, then change it. It's as simple as that. It's the same with the transfer stations. It's your scheme. The landfill operators are effectively out of it now, so if you want to include them, fine, crack on and do it. And what you're doing does make sense, because obviously there's going to be a diminishing fund of tax as time goes by, and so you can't afford to have all these various little trusts that we currently have around. So, what you're doing makes sense. I would just give it a go and see what happens, and then change it if you want to.

[397] **Mike Hedges:** Thank you.

[398] **Simon Thomas:** Mark Reckless.

[399] **Mark Reckless:** You say that obviously there's going to be a diminishing fund over time—

[400] **Ms Doyle:** Yes, you've identified that yourselves.

[401] **Mark Reckless:** Certainly, in everything I've been doing with this scrutiny so far, that has been the underlying presumption and policy intention. Can I just ask: is it certain that the take from landfill tax is going to be on a significantly declining trend?

[402] **Ms Doyle:** Well, it depends on your political decision on waste tourism, really, doesn't it? It might go up in Wales if you decide to change your landfill tax rates, for whatever reason.

[403] **Mark Reckless:** Say on a UK basis, is that assumption robust?

[404] **Ms Doyle:** Yes, but then it will reach a level that it will just stick at for a while. It will just stick at a base, won't it? It won't disappear altogether. I think that's not going to happen. Landfill will be around for a long time yet, but just with inputs at a diminishing level to a base unknown, I guess, as yet.

[405] **Ms Doone:** And the composition of the materials is changing. So, even eight, five years ago, it would be predominantly standard-rated material, whereas that has flipped and it's predominantly the low-rate material coming in and not the standard rate, because there are other avenues for the standard-rated material. The classic is RDF, refuse-derived fuel. It goes to the continent; so, we ship it all to Europe, and that is far cheaper than landfilling.

[406] **Ms Doyle:** I'm not too sure about that anymore, Jacqui.

[407] **Ms Doone:** Well, it certainly is on the other side of the UK.

[408] **Mark Reckless:** What has the impact been on your commercial rates of a regulatory regime, which, through this tax and regulation more generally, has borne down the amount of waste going to landfill? Has that tended to reduce the rates you charge commercially because there's less supply of the materials?

[409] **Ms Doone:** No, because what you've got are both macro and micro markets. So, very broad brush, you can charge one gate fee in the north of the country that's lower, and, in the south, it's a higher gate fee.

[410] **Mark Reckless:** Of Wales, or the UK?

[411] **Ms Doone:** In the UK as a whole. And that's predominantly just because in the south of the UK there are fewer landfill sites than in the north, so you've got those sorts of market forces in place. As landfill sites close, they also dictate what your gate fee can be. But, at the end of the day, each operator has spent a huge amount of money engineering their site, so we all

know what our absolute minimum gate fee can be, and we will all charge that because we've got to, to make it profitable.

12:00

[412] **Simon Thomas:** Just a final point on the community scheme—you're fairly sanguine about the fact that the amount is reducing, so it makes sense perhaps to co-ordinate this in a more national scheme for Wales. But we will lose the connection between the local landfill operator and the community scheme. Do you feel there'll be any consequences of that for you as operators, in that people will perhaps feel that you're no longer interested in their local community in some way or—?

[413] **Ms Doone:** I can only talk from our side, in that it does mean—. There is quite a connection between the landfill operator and the local community and the projects that come through, because they live in the area, they know the projects generally, they can often go along to the opening of projects—so, if we can't get somebody from Biffa Award there, we'll ask the local site if somebody there can go. So, there will be a slight disconnect from them, because the local population do want to know—you know, 'I've applied for new nets from my cricket team; do you know what's happening, has that gone forward, have you seen anything?' Whereas now they'll be saying, 'Sorry, I don't know.' So, on that angle, it is a shame that that connection will be lost, but—.

[414] **Simon Thomas:** But you see the advantages of having a more streamlined scheme.

[415] **Ms Doone:** Oh, yes, absolutely.

[416] **Ms Doyle:** It makes sense. At sites, as well, we do usually have liaison groups between the site operators and the local folks. So, there is a connection there anyway, but, like Jacqui says, it's just not quite so material and so influential, if you like, as it would have been in the past. But I think that's the price you pay for having a reducing fund, really.

[417] **Simon Thomas:** Indeed. Thank you very much, again, for your evidence and for coming in to assist the committee this morning. We'll send you a transcript so you can check it for accuracy. So, with that, thank you very much. Diolch yn fawr iawn.

[418] **Ms Doyle:** Thank you very much. Thanks for inviting us.

**Cynnig o dan Reol Sefydlog 17.42 i Benderfynu Gwahardd y Cyhoedd o
Weddill y Cyfarfod**

**Motion under Standing Order 17.42 to Resolve to Exclude the Public
from the Remainder of the Meeting**

Cynnig:

Motion:

*bod y pwyllgor yn penderfynu that the committee resolves to
gwahardd y cyhoedd o weddill y exclude the public from the
cyfarfod yn unol â Rheol Sefydlog remainder of the meeting in
17.42(vi).*

*accordance with Standing Order
17.42(vi).*

Cynigiwyd y cynnig.

Motion moved.

[419] **Simon Thomas:** A ydy'r **Simon Thomas:** Is the committee
pwyllgor yn hapus ein bod ni'n content that we move to a private
symud i gyfarfod preifat yn ôl Rheol session under Standing Order 17.42?
Sefydlog 17.42?

[420] Pawb yn hapus, felly cyfarfod
preifat. Diolch yn fawr.

Everyone's content, therefore we go
into private session. Thank you.

Derbyniwyd y cynnig.

Motion agreed.

Daeth rhan gyhoeddus y cyfarfod i ben am 12:03.

The public part of the meeting ended at 12:03.