

Response of the Welsh Environmental Services Association

1. The Welsh Environmental Services Association (“WESA”) is an arm of Environmental Services Association (ESA): the trade association representing the UK’s waste and secondary resource industry, a sector with an annual UK turnover of around £11 billion. Driven by EU environmental law, WESA is a leading partner in Wales’s transformation from a disposal to a zero waste society. Our Members recover both value and energy from the Wales’s waste whilst protecting the environment and human health.

The general principles of the Bill and the need for legislation

2. The landfill tax has proved one of the principal policy drivers for effecting change in the waste and recycling sector. By increasing the costs of landfill in a uniform and predictable way, the landfill tax has made alternative treatment infrastructure more economically viable, thereby encouraging the industry to invest in a range of facilities designed to recycle and recover the value embedded in waste.
3. The waste and resources management industry requires as much certainty as possible to invest in waste management and recycling infrastructure, and to this extent the uniform and relatively predictable increases to landfill tax via the escalator have been helpful.

The definition of a ‘taxable disposal’ and ‘qualifying materials’

4. Modern landfill facilities are significant civil engineering projects and require a range of materials for construction and ongoing operation. Essential engineering materials should all be exempt from the tax. We are pleased that the legislation recognises that tax will only be applicable where the ‘intention is to discard’. The reuse of appropriate waste materials which are essential to the running of the facility and not waste being disposed should not therefore be taxable.
5. The list of materials under the existing Qualifying Materials Order remains fit for purpose and, we do not advocate change to the materials that are subject to the lower tax rate. Instead, the new Wales Landfill Disposals Tax regime should focus on the application and enforcement of the lower rate of tax to prevent deliberate misclassification of waste for the purposes of benefitting from the lower tax rate.
6. The ESAET Report ‘Waste Crime – Britain’s Dirty Secret’¹ calculated that at least £168m was being lost to the public purse in the UK, due to waste materials arising out of waste transfer stations and delivered to landfill sites being, deliberately or otherwise, misdescribed as ‘low rated’ in terms of landfill tax.
7. Landfill operators in Wales are put in an unenviable position, whereby the onus is on them to determine whether material is low rated, based solely on visual inspection and information

¹ http://www.esauk.org/esa_reports/ESAET_Waste_Crime_Tackling_Britains_Dirty_Secret_LIVE.pdf

provided to them by the waste producer/carrier. Yet, it is the landfill operator, not the waste producer, who is accountable if the Welsh revenue Authority disagrees with the decision. Of particular concern are 'fines' from trommelled wastes arising out of waste transfer stations and delivered to landfill sites. Due to the nature of this material it is impossible for landfill operators to detect from a visual inspection alone whether the material has been misdescribed by the producer or waste carrier.

8. The differential between low rate and standard rate landfill tax is now so significant that it is really no surprise that problems have arisen. ESA therefore urged the Government in England for many years to develop a more objective approach and we were pleased when the Loss on Ignition testing regime was implemented in England in April 2015. We think that it is providing an objective testing regime for waste fines arising from mechanical treatment facilities which we believe goes a long way to prevent the misclassification of waste which has been so costly to responsible operators and to the UK's economy. We would therefore advocate a similar LOI regime in Wales to help provide a level playing field for all operators – both those producing and those disposing of waste fines – and to prevent misclassification of waste fines either deliberately or otherwise.
9. It is also worth noting that the main purpose of landfill tax is to divert material away from landfill. Implementing an LOI regime would help to differentiate between wastes and therefore facilitate the beneficial reuse of essentially inert materials in, for example, construction projects and quarry restoration, rather than them ending up in landfill.

The proposed exemptions

10. WESA supports the proposed exemptions.

The implementation of tax rates and whether these retain the flexibility to deal with subsequent changes at a Wales and UK level;

11. It is important that Welsh Government maintains consistency with the UK Government and Scottish Government on Landfill Tax rates. We welcome the assurances received thus far from the Welsh Government that the new Wales Disposal Tax rates will be aligned with that operating across the rest of the UK. Price disparity might otherwise be exploited, leading to uncertainty on the market place and "waste tourism", where waste is transported to or from Wales to take advantage of the cheapest waste disposal option. Such an outcome would be contrary to the proximity principle.

The inclusion of unauthorised disposals of waste at places other than authorised landfill sites

12. WESA supports the proposal to allow recovery of avoided tax from illegal dump sites. Illegal waste management activity is a national problem requiring strong leadership and resources sufficient to create a climate where the fear of being caught is high. With the introduction of new, higher environmental standards and the increase in the landfill tax this has never been so important.
13. It is important that sufficient resources are provided and dedicated to robustly regulate and enforce this additional tax raising power. Tackling illegal waste management activity helps to

provide a high level of protection for communities and a level playing field for responsible waste management companies across the country.

Establishing the Landfill Communities Scheme as a grant scheme rather than a tax credit and developing it outside of the Bill.

14. The landfill communities fund has delivered significant benefit to the communities around the landfill sites operated in Wales, despite dwindling funds due to decreased inputs to landfill, so we are pleased that the fund is continuing via the proposed Landfill Communities Scheme. WESA considers that funding from new Landfill Communities Scheme should also be allocated to supporting compliance and minimising the impacts of waste crime. Waste crime blights communities and undercuts legitimate operators and supporting compliance ensures a level playing field for all operators.