

Explanatory Memorandum to

The Tax Collection and Management (Landfill Disposals Tax Records) (Wales) Regulations 2018

This Explanatory Memorandum has been prepared by Welsh Treasury, Tax Strategy, Policy and Engagement Division and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1

Cabinet Secretary Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of The Tax Collection and Management (Landfill Disposals Tax Records)(Wales) Regulations 2018 and I am satisfied that the benefits justify the likely costs.

Mark Drakeford AM
Cabinet Secretary for Finance
Ysgrifennydd y Cabinet dros Gyllid

7 March 2018

1. Description

- 1.1. The Tax Collection and Management (Landfill Disposals Tax Records) (Wales) Regulations 2018 (“the regulations”) are being made under the Tax Collection and Management Act (2016) (TCMA)¹. TCMA established the legal framework necessary for the collection and management of devolved taxes in Wales.
- 1.2. The regulations specify the Landfill Disposals Tax (LDT) records which must be kept and preserved as specified in the Landfill Disposals Tax (Wales) Act 2017 (“LDTA”)² and The Landfill Disposals Tax (Administration) (Wales) Regulations 2018.
- 1.3. The LDT Act sets out the operational arrangements for LDT which will replace UK landfill tax in Wales when it is devolved in April 2018. The LDT (Administration) (Wales) Regulations 2018 deals with administrative matters relating to LDT and set out arrangements for qualifying mixtures of materials of waste fines including loss on ignition testing and establish a customer insolvency credit.
- 1.4. Subject to the will of the Assembly, the regulations will come into force on 1 April 2018, the same date the Welsh Revenue Authority (WRA)³ will begin collecting and managing the tax.

2. Matters of special interest to the Constitutional and Legislative Affairs Committee

- 2.1. There are no matters of special interest to the Constitutional and Legislative Affairs Committee.

3. Legislative background

- 3.1. The regulations are being made pursuant to section 39A of the TCMA as inserted by the Land Transaction Tax and Anti-avoidance of Devolved Taxes Act (LTTA) and will specify the records which will be required to be kept and preserved for the purposes of section 38 TCMA.
 - Section 38 places a duty on the person who is required to make a tax return to keep and preserve records that may be needed to enable the person to make a correct and complete tax return.
 - Section 39A gives the Welsh Ministers powers to make regulations in respect of records and specify the LDT records which will be required to be kept and preserved for the purposes of section 38.
- 3.2. The regulations are subject to the negative procedure.

¹ <http://www.legislation.gov.uk/anaw/2016/6/contents>

² <http://www.legislation.gov.uk/anaw/2017/3/contents/enacted>

³ <https://beta.gov.wales/welsh-revenue-authority>

4. Purpose and intended effect of the legislation

Background and current position

- 4.1. In September 2017, the Welsh Government published its national strategy *Prosperity for All*⁴. One of its four key themes is 'Prosperous and Secure'; a key objective of which is to drive sustainable growth and combat climate change. The introduction of landfill disposals tax including these regulations will contribute towards this objective and the national well-being goals, in particular through actions to promote a low carbon economy and develop a more resource efficient economy, building on our success in recycling and reducing the environmental impacts of production and consumption.
- 4.2. In developing landfill disposals tax for Wales, including the regulations, the Welsh Government has applied its five principles for the development of devolved tax policy and legislation to:
 - raise revenue to support public services as fairly as possible
 - help deliver wider fiscal and policy objectives, including jobs and economic growth
 - be simple, clear and stable
 - to engage with taxpayers and wider stakeholders
 - contribute directly to the Wellbeing and Future Generations (Wales) Act 2015 goal of creating a more equal Wales.
- 4.3. The purpose of these regulations is to set out the records which must be kept in relation to LDT and loss on ignition testing.
- 4.4. Section 38 places a duty on the person who is required to make a tax return to keep and preserve records that may be needed to enable the person to make a correct and complete tax return.
- 4.5. Section 39A of the TCMA as inserted by the LTTA sets out the powers the Welsh Ministers have to make regulations in respect of records and specify the LDT records which will be required to be kept and preserved for the purposes of section 38.
- 4.6. The Landfill Tax (Scotland) Act 2014 and the Scottish Landfill Tax (Administration) Regulations 2015 follow UK landfill tax provisions for the purposes of Scottish Landfill Tax.

⁴ <http://gov.wales/docs/strategies/170919-prosperity-for-all-en.pdf>

Purpose and intended effect

- 4.7. The policy intent is to outline the records that a person who is required to make a LDT tax return must keep to enable the person to make a correct and complete tax return and to preserve those records for 6 years.
- 4.8. Record keeping requirements are outlined in the Tax Collection and Management Act (Wales) (2016) section 38 and specify that records should be kept for 6 years. To ensure consistency, this provision is identical to Part 2 of Schedule 10 to the Finance Act 2003 and Regulation 16(2) of The Landfill Tax Regulations 1996
- 4.9. The effect of the records is intended to demonstrate that the amount declared on a LDT return is the correct tax liability.
- 4.10. This evidence will also be used to support WRA compliance on LDT.

5. Consultation

- 5.1. The Welsh Government published a consultation *Landfill Disposals Tax*⁵ in February 2015. The consultation sought views on proposals to help inform the policy and structure of landfill disposals tax.
- 5.2. The consultation received 279 responses from a range of stakeholders: individuals and various organisations representing different sectors from across Wales and the UK including the waste industry, environmental bodies and the third sector as well as tax professionals. The consultation closed in May 2015 and a summary of the responses was published in September 2015.
- 5.3. The consultation responses and engagement events were particularly helpful in highlighting areas where it was important to maintain consistency with arrangements in the rest of the UK; and where there were opportunities for clarifying and updating the existing legislation and making changes to better reflect Welsh circumstances and needs.
- 5.4. In order to inform policy and legislative proposals a Technical Experts Group was established with representation from Natural Resources Wales, the Welsh Local Government Association, tax professionals and the waste industry. In addition, Welsh Government officials regularly meet with landfill site operators and have visited several landfill sites and met operators' finance teams to better understand how UK landfill tax is administered. As part of this engagement, landfill site operators were sent a questionnaire seeking more details and views on the

⁵ <http://gov.wales/betaconsultations/finance/landfill-disposals-tax/?lang=en>

existing record keeping arrangements. The result of this engagement has contributed to the design of record keeping for LDT.

6. Regulatory Impact Assessment

- 6.1. The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to the provisions in the Regulations.
- 6.2. A Regulatory Impact Assessment has not been prepared as the requirements will broadly align with current business activity in this area, and these provisions will not impose any new costs or burdens.

7. Post Implementation review

- 7.1. The effect of the LDT Act and these regulations will be assessed in a number of ways, an independent review of the LDT Act and regulations will be completed within 6 years of the tax being devolved to Wales.