

The background of the page features a close-up, shallow depth-of-field photograph of a calculator on the left and several stacks of coins on the right. The calculator's buttons are dark with light-colored numbers, and the coins are metallic and stacked in a way that creates a sense of depth and texture. The overall color palette is muted, with greys, blacks, and metallic tones, which is partially overlaid by a dark red banner.

Research Briefing **Tax Collection and Management (Wales) Act 2016**

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Date: **July 2016**



National Assembly for Wales
Research Service

The National Assembly for Wales is the democratically elected body that represents the interests of Wales and its people, makes laws for Wales, agrees Welsh taxes and holds the Welsh Government to account.

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Research Briefing

Tax Collection and Management (Wales) Act 2016

The Tax Collection and Management (Wales) Act 2016 ('the Act') provides the legal framework for the future collection and management of devolved taxes in Wales and establishes the Welsh Revenue Authority (WRA), the body responsible for collecting and managing devolved taxes.



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01.Introduction

The **Tax Collection and Management (Wales) Act 2016** ('the Act') provides the legal framework for the future collection and management of devolved taxes in Wales and establishes the Welsh Revenue Authority (WRA), the body responsible for collecting and managing devolved taxes.

In addition to establishing the WRA, the Act focuses on:

Appropriate powers and duties on the WRA (and duties and rights on taxpayers and others) relating to the submission of tax returns and the carrying out of enquiries and assessments.

- Investigation and enforcement powers of the WRA.
- Duties on taxpayers to pay penalties.
- Duties on the WRA and taxpayers to pay interest in certain circumstances.
- Rights for taxpayers to request reviews of certain WRA decisions.
- Conferral of criminal enforcement powers on WRA.

02. Background to the Act

Tax Devolution

The **Wales Act 2014** devolved new tax powers to Wales. It provided the structure within which the Welsh Government can legislate in respect of areas to which Stamp Duty Land Tax (SDLT) and Landfill Tax (LT) currently apply, which the UK Government intends to devolve to Wales on 1 April 2018.

The Welsh Government argued that not developing successor taxes would mean a material reduction in the block grant available and without tax raising legislation, there would be no ability to borrow (as provided for in the Wales Act 2014).

Therefore, the Welsh Government has announced its intention to replace UK stamp duty and landfill tax by introducing two Bills to establish new Welsh taxes - land transaction tax (LTT) and landfill disposals tax (LDT).

The **Command Paper (pdf 322KB)** published by the UK Government, setting out details on the implementation and operation of the Assembly's new tax and borrowing powers, further mentions the devolution of the aggregates levy to Wales, which is currently subject to the resolution of legal challenges in the European court.

In its **2015 Autumn Statement and Spending Review**, the UK Government announced it would also repeal the need for a referendum to partially devolve income tax to Wales. This will represent the largest source of tax revenue to be controlled by the Welsh Government.

What the Act does

The Act has 10 Parts which consist of 195 sections.

Part 1 (Section 1) provides an overview of the main provisions of the Act.

Part 2 (s2-36) forms the WRA including its functions, members and taxpayers' Charter. The Act establishes the WRA as a separate corporate entity operating independently from the Welsh Ministers with policy and strategic decision-making on taxation retained by the Welsh Government.

Part 3 (s37-81) sets out a number of duties on taxpayers by making provisions for keeping records and filing tax returns through to making claims. It also sets out the WRA arrangements for establishing a taxpayer's liability to devolved tax and provides for an enquiry, a determination or an assessment by the WRA.

Part 4 (s82-116) establishes the investigatory powers of the WRA. It gives the WRA powers to obtain information and documents and inspect premises when informal arrangements have not resulted in the required information being provided.

Part 5 (s117-156) makes provision for penalties relating to devolved taxes. The Act provides for the WRA to be responsible for determining and operating a sufficiently robust enforcement regime in respect of the collection and management of devolved taxes, through the exercise of investigatory powers and use of appropriate criminal sanctions where necessary.

Part 6 (s157-163) provides for the payment of interest and for the rate of interest to be paid to be specified by the Welsh Ministers. The charging of interest is to compensate the WRA or taxpayer for the loss of use of money. The Act provides for the payment on interest on sums payable to and by the WRA.

Part 7 (s164-170) establishes arrangements to support compliance in order to act as a deterrent in tax evasion.

Part 8 (s171-184) provides for a settlement process that may occur in lieu of an internal review. In essence, the WRA and taxpayer can conclude an agreement between themselves. In cases where a dispute does arise, the aim will be to resolve matters as informally and cost effectively as possible, whilst recognising that a more formal decision may be necessary to resolve matters.

Part 9 (s185-187) confers powers onto the WRA to investigate criminal offences. The Act will allow the WRA to use extensive powers to investigate criminal offences such as issuing orders requiring the production of certain information and surveillance. It will also have the ability to recover assets acquired through criminal conduct in certain circumstances.

Part 10 (s188-195) makes final provisions detailing how the WRA notices may be issued; the requirements for giving notices and documents to the WRA; interpretation; and a list of expressions defined or otherwise explained in the Bill.

03. Estimated costs of implementing the Act

The **revised Explanatory Memorandum (pdf 1.07MB)** (as amended after Stage 2) included a Regulatory Impact Assessment (RIA) outlining the costs and benefits of establishing the WRA. Two options were provided:

Option 1 – Do nothing

There would be no direct additional cost as the tax collection and management regime would not be established. However, if the Welsh Government did not replace the taxes or establish the means to collect and manage them then Wales would lose out on SDLT revenue given the reduction of the Welsh block grant to compensate for the devolution of this tax.

Option 2 – Establish a tax collection and management regime

The Welsh Government will bare all costs for this option but it acknowledged further work was required to assess and quantify detailed costs.

It stated that the WRA intended to appoint an Implementation Director in Summer 2016 responsible for the operational establishment of the WRA. The salary and related costs associated with this appointment are expected to be £90,500 for 2016-17 (based on a start date of August) and £136,000 for 2017-18 onwards.

The Explanatory Memorandum also outlined best initial estimates for the set-up and annual operating costs for the WRA.

Table 1: Estimated set-up costs for the period 2016/17 to 2018/19

Estimated set-up cost for the period 2016-17-2018/19	£000s	
	Low	High
Welsh Government – Staff (Gross staff cost incl. salaries & overhead)	1,700	2,000
Welsh Government – Non-Staff (Board, Audit, ICT, accommodation, etc)	550	1,200
HM Revenue and Customs – Staff and Non-Staff (incl. ICT development & project implementation)	2,500	2,970
Natural Resources Wales – Staff and Non-Staff (incl. ICT development & project implementation)	100	180
Total	4,850	6,350

Table 2: Estimated annual operating costs of WRA from 2018/19 onwards

Estimated Annual Running Costs from 2018/19	£000s	
	Low	High
Welsh Revenue Authority – Staff (Gross staff cost incl. salaries & overhead)	1,400	1,800
Welsh Government – Non-Staff (Board, Audit, ICT, accommodation, etc)	400	840
HM Revenue and Customs – Staff and Non-Staff (LTT processing, ICT provision & Welsh Taxes Team)	840	1,000
Natural Resources Wales – Staff and Non-Staff (LDT Compliance & Enforcement Team)	200	315
Total	2,840	3,955

The Cabinet Secretary for Finance and Local Government confirmed the expected set-up and operating costs to be within the range previously published by the former Finance Minister.

04. Tax Collection and Management

On 30 June 2015, the former Minister **issued a written statement** announcing the Welsh Government's preferred providers to collect and manage devolved taxes. It was confirmed the preferred approach was for the WRA to work with HM Revenue and Customs (HMRC) to collect and manage Land Transaction Tax (LTT).

The Cabinet Secretary has since **delivered a statement** confirming the WRA will have sole responsibility for the collection and management of LTT with HMRC acting only in an advisory capacity.

For Landfill Disposals Tax (LDT), the Cabinet Secretary indicated he will take forward the former Minister's recommendation for the WRA to undertake most of the collection and management functions with compliance and enforcement delegated to Natural Resources Wales (NRW).

05. Stakeholder views

Welsh Government Consultation

The Welsh Government delivered a consultation on the '**Collection and management of devolved taxes in Wales**' between 23 September and 15 December 2014, which sought views on how devolved taxes could be collected and managed by the Welsh Government.

The consultation **received 40 responses** from respondents in Wales, including Wales Branches of UK-wide organisations or UK-wide organisations with experience of tax arrangements in Wales.

Key areas covered by the consultation included:

- the establishment of the WRA along with governance and reporting
- which bodies should collect and manage devolved taxes
- obligations on taxpayers
- encouraging tax compliance
- addressing tax avoidance
- resolution of tax disputes.

The majority of respondents agreed with the proposal to establish the WRA and noted the importance of it being a non-ministerial department. They were also supportive of the proposed set of core duties, leadership and governance arrangements for establishing the WRA. The majority also agreed with establishing a Taxpayers' Charter but there was uncertainty over how effective a Charter would be.

According to respondents, the most important consideration for the WRA is the challenges in minimising cost whilst also providing a good coherent level of service for the taxpayer. It was considered that efficiency and simplicity would both be served by a single national body such as the WRA.

Overall support was given to HMRC having an ongoing role due to its expertise and economies of scale. NRW was also suggested to take on a role with the organisation previously expressing a preference for exploring options in relation to compliance and enforcement of LDT.

There was agreement that the proposed obligations on taxpayers were appropriate although more detail was required to ensure taxpayers understood what was expected of them. The intention to provide the WRA with powers to carry out investigations was also supported but the main focus of the WRA should be to help taxpayers pay the correct amount of tax on time.

The majority felt the WRA should be able to delegate functions, although there was concern regarding taxpayer confidentiality and how this would be handled when delegating to other bodies.

In terms of tax compliance, respondents would like to see financial incentives for compliance, clear and accessible guidance and support mechanisms such as telephone helplines and an online portal.

It was agreed that the WRA should be provided with the powers to levy penalties. However, penalties must remain proportional and flexible and should reflect the intent behind the action. It was felt that

the current tax system was complex and that the WRA should simplify the system so that taxpayers were more able to comply.

There was mixed reaction to establishing a tax disclosure regime with a range of reasons given for why the regime should not be established such as whether it was needed and the justification of additional costs when there are existing regulations such as the disclosure of tax avoidance schemes (DOTAS).

The majority felt there was a need for a General Anti-Abuse Rule (GAAR) which should follow the **UK GAAR**. This rule defines the tax arrangements that are abusive under UK law. Scotland has developed its own wider **General Anti-Avoidance Rule** for Scottish devolved taxes. Most respondents also suggested an independent panel should be established to provide more certainty for businesses when operating GAAR.

An Alternative Dispute Resolution mechanism to help seek the early resolution of tax disputes was welcomed. The mechanism most favoured was mediation, which was felt to be low-cost and the fairest option. Retaining the right to appeal to the tribunal was noted as important in ensuring confidence in the tax system.

The intention for the WRA to use the existing Ministry of Justice administered two-tier tribunal system was supported. It was argued that setting up a Welsh administrative justice system would be 'costly and unnecessary as the expertise was already in place in the UK system'.

Finance Committee Inquiries

Collection and Management of Devolved Taxes in Wales

In preparation for the introduction of the Bill, the Committee undertook an inquiry into the collection of devolved taxes with the aim of taking a view on which organisations were the most appropriate organisations to collect devolved taxes in the short and longer term.

The Committee conducted a public consultation between 23 March and 24 April 2015, which **received 7 responses** and took oral evidence from 11 witnesses to inform its work.

The **report was published (pdf 352KB)** on 27 May 2015 and the Minister **issued a written response (pdf 239KB)** on 1 July 2015. In the report the Committee made various recommendations, including:

- publishing the costs of administering the collection of taxes to allow decisions over which organisation should collect devolved taxes
- managing the tax system in an integrated way, with the Finance Minister taking overall responsibility for all Welsh taxes
- the approach to tax collection in Wales should not differ from that in the UK unless there are clear reasons for doing so
- the need for a decision on whether to create a Welsh Fiscal Commission to assist with forecasting tax receipts.

Between 15 July and 8 September 2015, the Committee conducted a consultation on the Tax Collection and Management (Wales) Bill. 16 responses were received and published on the **Assembly’s website**.

The **report was published (pdf 989KB)** in November 2015, detailing the Committee’s findings of the inquiry and making 29 recommendations.

The evidence from the consultation showed that key considerations for stakeholders in taking forward the collection and management of devolved taxes were consistency, stability and flexibility.

The Committee received positive feedback from stakeholders regarding the Welsh Government’s consultation indicating their views had been incorporated into the Bill. The Committee welcomed the approach to engagement taken by the Minister and believed this inclusive approach should be seen as best practice for future Welsh Government bills.

There was wide support for the general principles of the Bill with most respondents agreeing that a consistent approach to the UK tax system would be beneficial to taxpayers.

It was suggested that public awareness campaigns should target businesses and professionals in the first instance as the implementation of LTT and LDT will mainly affect these groups. However, the Finance Committee felt it was essential that Welsh taxpayers understood that responsibility for these taxes lies with the Welsh Government.

Most respondents supported the establishment of the WRA as a non-ministerial department separate from the Welsh Government and were content with the WRA membership consisting of executive and non-executive members. Although there were concerns about the process used for nominating staff members to the WRA board.

In its report, the Committee recommended changes to the nomination process and believed the Bill should be strengthened to reinforce the independence of the WRA.

The ability for the WRA to establish committees was welcomed by many as allowing it to supplement the skills and knowledge of the Board. However, there was concern that the Bill allowed the WRA to regulate its own procedures without input from non-executive members.

The Committee felt the Board’s quorum should maintain a majority of non-executive members and that decisions taken by committees should be made publicly available where appropriate.

The majority were satisfied that the Bill would not lead to additional compliance burdens whilst the General Anti-Abuse Rule (GAAR) – the UK Government’s approach to managing the risk of tax avoidance – was deemed not appropriate for the Bill and would be better included in specific tax legislation. The Finance Committee agreed with this view.

Respondents believed there were benefits from the WRA employing a ‘digital by default’ model but it was argued that this should not be a “one size fits all” approach as there is digital exclusion across parts of Wales.

Concern was also raised about the WRA’s ability to authorise the carrying out of its functions by an employee. This could potentially allow the WRA to adopt a ‘hands-off’ approach to its functions and would not be consistent with good governance.

It was recommended that certain functions such as approval of the Corporate Plan, Accounts and Tax Statement should be reserved to the WRA, which the Committee agreed with.

Most were content with the delegation of functions provided in the Bill. The Finance Committee believed that delegating functions to other bodies should be underpinned by formal service level agreements, including Welsh language provisions.

The ability for Welsh Ministers to give directions to the WRA was met with caution by the Committee. It felt the provision may be used by the Welsh Government to restrain the WRA's functions. It recommended the Bill should be amended to prevent this.

The inclusion of a statutory Charter was well received by respondents with the Committee advocating the first Charter to be published prior to the devolved taxes in April 2018.

Respondents identified the need for the Bill to consider the National Assembly's role in scrutinising the WRA. The Committee responded by recommending the Bill should enable the National Assembly for Wales to authorise a committee to scrutinise the WRA.

An issue raised during the consultation related to the charging of audits by the Wales Audit Office (WAO). In particular, the Tax Statement audit would need to be borne by the WAO and not the WRA. The Minister confirmed that this would be (and was) amended in Stage 2 of the process and give the WAO the power to charge for auditing the Tax Statement.

The Bill makes provisions for powers which the WRA will have over tax collection and the various obligations on taxpayers. The Committee was generally content that these provisions were consistent with UK legislation. However, it believed the Minister should consider reviewing these powers once taxes have been established and in operation for a number of years.

The Finance Committee was disappointed with the lack of financial information that was available when the Bill was introduced, which meant it could not take informed evidence from respondents on the financial implications. Although, the Minister had since provided set-up and operating costs for the WRA (but no costs for delegated bodies undertaking work on behalf of the WRA), there was no rationale or justification provided for how these were calculated.

06. Passage through the Assembly

The **Tax Collection and Management (Wales) Act 2016 page** on the Assembly website outlines the Act's passage through the legislative process. This is summarised below.

Bill Introduction

The Bill was **introduced on 13 July 2015 (pdf 488KB)** by Jane Hutt AM, Minister for Finance and Government Business.

Stage 1

The Bill was scrutinised by the Finance Committee, which considered its general principles and need for legislation. The Finance Committee launched **its own public consultation** between 15 July 2015 and 8 September 2015 to inform its work.

A stakeholder event was also held by the Finance Committee on 23 September 2015 and 10 evidence sessions were conducted, which included 10 organisations and two sessions with the Minister for Finance and Government Business. The Committee **published its report (pdf 989KB)** in November 2015, making 29 recommendations.

The Research Service produced a **Bill Summary (pdf 886KB)** in September 2015 outlining the background to the Bill; its policy objectives; summary of legislation; costs and impacts of the Bill; and responses to the Bill.

Stage 2

Stage 2 commenced on 9 December 2015 and the Committee met to **consider and dispose of amendments** on 28 January 2016. The Research Service published the **Tax Collection and Management (Wales) Bill: Summary of changes at Stage 2 (pdf 168KB)** detailing proposed amendments to the Bill.

96 amendments were tabled with two being withdrawn. **All 36 amendments** tabled by the Finance Minister were agreed by the Committee. Only one of the 60 non-government amendments was passed. **Amendment 61A** requires the WRA to publish its Charter within 3 months of preparing it.

Stage 3

561 amendments were considered in **plenary on 1 March 2016**. **3 amendments** tabled by the Minister, making minor changes to the Bill, were agreed. The remaining **558 amendments** proposed by opposition parties were unsuccessful. The majority of amendments related to a change of name from the Welsh Revenue Authority (WRA) to Revenue Wales (RW).

Stage 4

The final Bill was approved by the Assembly following a debate in **plenary on 8 March 2016**.

Royal Assent

After a Bill has passed Stage 4, it undergoes a 'period of intimation' (pdf 339KB) which is a four week period during which the Bill can be challenged by the Attorney General, Counsel General or Secretary of State for Wales.

The Bill was not challenged and subsequently received Royal Assent on 25 April 2016. It was enacted into legislation as the Tax Collection and Management (Wales) Act 2016.

07.Impacts of Legislation

Given that legislation provides for the establishment of a corporate body, it is envisaged that there will be no major impact on most businesses or individuals. There may be minimal impacts relating to the operational activities of the WRA for individuals who are:

- Visually impaired
- Hearing impaired
- Physically disabled

The Welsh Government stated in the Explanatory Memorandum that WRA activities will be considered to mitigate the potential issues faced by these individuals.

The WRA will be subject to the Welsh language standards required by the Welsh Language Measure 2011.

08.Future Arrangements

The Act provides for the establishment of the WRA prior to the implementation of the first tranche of devolved taxes to Wales in April 2018. The Cabinet Secretary has outlined the timescales for setting up the WRA:

- Implementation Director of the WRA appointed in January 2016
- The process for appointing a WRA chair to begin in Autumn 2016
- The full WRA board in place six months before the authority starts collecting and managing devolved taxes in April 2018.

09. Implementation Review

It is anticipated that legislation will be reviewed after 3-5 years with a review of the tax collection and management structure to be implemented when the first tranche of taxes are devolved to Wales in 2018.