

Agenda – Finance Committee

Meeting Venue:

Committee Room 4 – Tŷ Hywel

Meeting date: Wednesday, 11 January
2017

Meeting time: 09.00

For further information contact:

Bethan Davies

Committee Clerk

0300 200 6372

SeneddFinance@assembly.wales

1 Introductions, apologies, substitutions and declarations of interest

2 Paper(s) to note

(Pages 1 – 3)

**PTN1 – Assembly Commission Corporate Performance Report April 2016 –
September 2016 – 14 December 2016**

(Pages 4 – 19)

**PTN2 – Letter from the Cabinet Secretary for Finance and Local Government – 4
January 2017**

(Pages 20 – 23)

3 Fiscal Framework: Ministerial Evidence Session

(9:00)

(Pages 24 – 58)

Mark Drakeford AM, Cabinet Secretary for Finance and Local Government

Andrew Jeffreys, Treasury Director, Welsh Government

Ed Sherriff, Head of Fiscal Strategy, Welsh Government

**Paper 1 – The agreement between the Welsh Government and the United Kingdom
Government on the Welsh Government’s fiscal framework – December 2016**



Cynulliad
Cenedlaethol
Cymru

National
Assembly for
Wales

10.00–10.15 Break

4 Landfill Disposals Tax (Wales) Bill: Evidence Session 2

(10:15)

(Pages 59 – 83)

Tim Peppin, Director of Regeneration and Sustainable Development – Welsh Local Government Association

Tara King, Assistant Director for Commercialisation and Collaboration – Cardiff Council

Paper 2– Welsh Local Government Association – Written evidence

5 Motion under Standing Order 17.42 to resolve to exclude the public from the remainder of the meeting

6 Landfill Disposals Tax (Wales) Bill: Informal Session

(11:30)

Daniel Greenberg – Barrister specialising in legislation

Concise Minutes – Finance Committee

Meeting Venue:

Committee Room 1 – Senedd

Meeting date: Thursday, 15 December
2016

Meeting time: 10.02 – 11.59

This meeting can be viewed

on [Senedd TV](#) at:

<http://senedd.tv/en/3873>

Attendance

Category	Names
Assembly Members:	Simon Thomas AM (Chair) Mike Hedges AM David Rees AM Steffan Lewis AM Nick Ramsay AM Mark Reckless AM
Witnesses:	Mark Drakeford AM, Cabinet Secretary for Finance and Local Government Sarah Tully, Welsh Government Emma Cordingley, Welsh Government
Committee Staff:	Bethan Davies (Clerk) Georgina Owen (Deputy Clerk) Martin Jennings (Researcher) Helen Jones (Researcher) Katie Wyatt (Legal Adviser)



1 Introductions, apologies, substitutions and declarations of interest

1.1 The Chair welcomed Members to the meeting.

1.2 Apologies were received from Eluned Morgan AM.

2 Paper(s) to note

2.1 The papers were noted.

3 Landfill Disposals Tax (Wales) Bill: Evidence session 1

3.1 The Committee took evidence from Mark Drakeford AM – Cabinet Secretary for Finance and Local Government; Emma Cordingley – Lawyer, Welsh Government; and Sarah Tully – Devolved Tax Policy Project Manager, Welsh Government on the Landfill Disposals Tax (Wales) Bill.

3.2 The Cabinet Secretary agreed to:

- provide details of the proportion of landfill tax paid by local authorities;
- provide a list of the current qualifying materials; and
- write to the Committee following the outcome of discussions regarding the extent to which the Bill reaches into opencast mining.

4 Motion under Standing Order 17.42 to resolve to exclude the public from the remainder of the meeting

4.1 The motion was agreed.

5 Landfill Disposals Tax (Wales) Bill: Consideration of evidence

5.1 The Committee considered the evidence received.

6 Wales Audit Office Report: Preparations for the implementation of fiscal devolution in Wales

6.1 The Committee noted the report and agreed to invite the Auditor General for Wales to provide oral evidence in the New Year.

7 Public Audit (Wales) Act 2013: The role of the Finance Committee

7.1 The Committee noted its obligations under the Public Audit (Wales) Act 2013.

8 Forward work programme

8.1 The Committee noted its forward work programme for the spring term.

Claire Clancy

Prif Weithredwr a Chlerc y Cynulliad
Chief Executive and Clerk of the Assembly

Simon Thomas AM
Chair of the Finance Committee
National Assembly of Wales
Tŷ Hywel
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CF99 1NA

14 December 2016

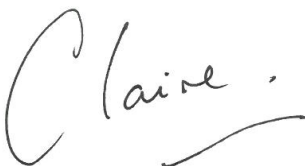
Dear Simon

I am pleased to provide the Finance Committee with the first Corporate Key Performance Indicator Report of the Assembly Commission for the Fifth Assembly. This covers the Commission's performance against our strategic goals for the period April to September 2016.

The report has been revised to ensure that it is useful and relevant for the Fifth Assembly. The indicator targets have been reviewed and a new baseline created to ensure we continue to be challenged and that we build on previous achievements. You will find a summary and highlights on pages three and four of the report.

I hope the Committee finds the report informative and helpful. Please do not hesitate to contact me if you have any queries or would like any further information. The report will now be published on the Commission's web pages.

Yours sincerely



Claire Clancy



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National Assembly for Wales **Corporate Key Performance Indicator Report**

April 2016 - September 2016



National Assembly for Wales
Assembly Commission

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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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www.assembly.wales

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National Assembly for Wales **Corporate Key Performance Indicator Report**

April 2016 - September 2016



National Assembly for Wales
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Introduction

The corporate body for the National Assembly for Wales is known as the Assembly Commission. The Commission serves the National Assembly for Wales to help make it a strong, accessible and forward looking democratic institution and legislature that delivers effectively for the people of Wales.

The Commission consists of Elin Jones AM, the Presiding Officer, and four other Assembly Members from different party groups represented in the Assembly: Suzy Davies AM, Caroline Jones AM, Adam Price AM and Joyce Watson AM. The Commission is responsible for the strategic direction of Assembly services and is accountable to the Assembly. Day-to-day management and delivery is delegated to the **Chief Executive and Clerk**, Claire Clancy.

The **Assembly Commission Strategy 2016-2021** sets out our goals for the Fifth Assembly. Our strategic goals are to:

- provide outstanding parliamentary support;
- engage with all the people of Wales and champion the Assembly; and
- use resources wisely.

Performance Reporting

The strategic goals of the Fifth Assembly set the framework for an ambitious set of priorities and build on the investment and momentum that has been achieved in the Fourth Assembly.

The report consists of a number of headline indicators, allocated under the strategic goals, which are then broken down into more detailed indicators. A 'traffic light' system is used to show performance against the indicator targets:

Key for Red/Amber/Green (RAG) status:



Red: There are significant issues impacting the achievement of business objectives. To achieve delivery, changes must be made to timing, costs and/or scope.



Amber: There are issues or risks which must be addressed. However, successful delivery is achievable without major impacts to budget, service standards or target dates.



Green: Work is meeting agreed standards or is proceeding to plan. All known risks are being managed.

This is the first corporate performance report of the Fifth Assembly and looks at how the Assembly Commission performed against its strategic goals for the period April to September 2016.

We have reviewed the report and the range of indicators to ensure that they continue to meet our performance reporting needs and are useful and relevant for the Fifth Assembly. The indicator targets have been reviewed and a new baseline for the Fifth Assembly created to ensure we continue to challenge and build on previous achievements.

The Assembly Commission also publishes an **Annual Report and Statement of Accounts**, which examines how the Commission is achieving against its strategic goals and priorities and what has been delivered for the financial year.

This report should be read in conjunction with the Annual Report and Statement of Accounts to obtain a full picture of the Commission's performance and achievement.









Access to Information











The Commission is happy to provide further information if you would like to learn more about our work:

- You can contact us here: www.assembly.wales/contact
- Guidance on **access to information** is available on the Assembly website.






Achievement against Strategic Goals

Summary overview of the more detailed key performance indicator (KPI) information that follows:





Provide outstanding parliamentary support	April 2015 - Sept 2015	April 2016 - Sept 2016
KPI 1: All parliamentary business has taken place as planned A consistently high performance on timeliness of issuing committee papers, briefings and Record of Proceedings. No Assembly proceedings were affected by a failure to deliver Commission services.	 Green	 Green
KPI 2: Providing effective Professional Development Take up of continuous professional development activities has increased substantially in the period following the Assembly Election in May 2016. The creation of a new Language Skills team has seen a refreshed interest in people wishing to learn Welsh.	 Amber	 Green
Engage with all the people of Wales and champion the Assembly	April 2015 - Sept 2015	April 2016 - Sept 2016
KPI 3: Help build an understanding about the role and work of the Assembly Visitor satisfaction levels remain high and there has been an increase in the number of tours. As expected, the number of events organised on the estate decreased during the period of dissolution prior to the Assembly Election in May 2016. Following the Election the take-up of Assembly Member (AM) sponsored events has been slower than the corresponding period last year. There was also a decrease in visitor numbers to the Pierhead when compared to the same period last year. This was due to a popular exhibition being held July – September 2015 which attracted an increased number of visitors and the Pierhead being shut for maintenance for a week during May 2016.	 Amber	 Green
KPI 4: Champion the work of the Assembly The Election campaign running April to May created high levels of social media which increased traffic numbers. There was also a big increase in YouTube views for this period. This is in part due to the Election, but in addition a strategic decision has been taken to create more video content delivered via YouTube.	 Green	 Green

Use resources wisely	April 2015 - Sept 2015	April 2016 - Sept 2016
KPI 5: Expenditure to target We are on track to achieve the forecast underspend and Value for Money targets. Renegotiated contracts will realise £362,000 savings over the next 5 years. Payments to suppliers and Assembly Members continue to be well within target.	 Green	 Green
KPI 6: Staff resource requirements and expectations are being met Absence rates for a 12 month average have shown a slight decrease over the six month period, partly due to seasonal factors and partly due to a decrease in cases of long term sickness. There was an increase in the completion of staff performance reviews. There was a slight decrease in the number of people who completed the annual staff survey compared to the previous period but the response rate still remains higher than the Civil Service Median.	 Amber	 Green
KPI 7: ICT services are being delivered as planned Despite an increased workload post-election, working with AMs and their staff to set-up their offices, a high standard of service was maintained.	 Amber	 Green
KPI 8: Freedom of Information (FOI) requests are being processed as required A high number of FOI requests were received. Three FOI requests exceeded the statutory deadline as they requested the disclosure of sensitive personal information, about which the Commission was obliged to consult with the data subjects.	 Green	 Amber
KPI 9: Environmental targets are being delivered as planned Good progress continues to be made against the reduction in total energy emissions and diversion from landfill targets. The Assembly Commission has achieved a 13% reduction in total energy emissions compared to the 2012-13 baseline and is on course to achieve the target of a 30% reduction by 2021.	 Amber	 Green

Strategic Goal: Provide outstanding parliamentary support








	Target	April 2015 – Sept 2015	April 2016 – Sept 2016	
KPI 1: All parliamentary business has taken place as planned		Green	Green	
Percentage of committee papers issued by deadline agreed with each committee	100%	97.0%	95.0%	
Plenary Record of Proceedings published within deadline	100%	100%	100%	
Committee Record of Proceedings published within 5 working days	100%	98.0%	100%	
Percentage of Assembly proceedings (committee/Plenary meetings) affected by failure to deliver Commission services	0%	0.6% (1 out of 158)	0.0%	
Research Service enquiries answered within agreed deadline	100%	98.9%	98.7%	

Note: Data is shown as an average for the reporting period.














	Target	April 2015 – Sept 2015	April 2016 – Sept 2016	
KPI 2: Providing effective Professional Development		Amber	Green	
Following the Election, the number of New Assembly Members (AMs) to complete the induction programme	80%	-	100%	
Number of delegate spaces filled by AMs on a Continuous Professional Development (CPD) programme	90	85	198	
Number of delegate spaces filled by Assembly Member Support Staff (AMSS) on a CPD programme	175	202	315	
The extent to which AMs and AMSS anticipate the provided training will have a positive impact on their work	70% positive impact	-	99.0%	
Number of Welsh learners receiving tuition	-	32	91	-

Note: Data is shown as at the end of September.

Strategic Goal: Engage with all the people of Wales and champion the Assembly





	Target	April 2015 – Sept 2015	April 2016 – Sept 2016	
KPI 3: Help build an understanding about the role and work of the Assembly		Amber	Green	
Number of visitors to the: ¹				
- Senedd	Maintain each period	41,040	45,168	
- Pierhead		52,507	47,276	
Number of visitors on tour ¹	Maintain each period	9,447	15,252	
Customer rated good/very good overall experience of taking a tour on the estate ²	80%	-	100%	
Number of events organised on the estate ¹	Increase on previous period	129	77	
Customer rated good/very good overall experience of organising an event on the estate ²	80%	-	100%	
Number of face to face general awareness raising sessions held with young people ¹	Maintain each period	-	381	

Note: ¹ Data is shown as a total for the reporting period. ² Data is shown as an average for the reporting period.

	Target	April 2015 – Sept 2015	April 2016 – Sept 2016	
KPI 4: Champion the work of the Assembly		Green	Green	
Web Traffic: ³				
- Visitors	Maintain each period	39,179	40,463	
- Visits		77,266	76,812	
- Page views		267,267	266,613	
Facebook – Average Reach ³				
	Maintain each period	-	15,247	
Facebook – Likes ⁴				
	Maintain each period	4,056	7,833	
Twitter Impressions (the number of people who saw the content) ⁴				
	Maintain each period	-	528,900	
Twitter: ⁴				
- Followers (main corporate account)	Maintain each period	30,852	41,868	
- Followers (other accounts)		16,789	23,259	
YouTube: ⁵				
- Views	Maintain each period	8,933	90,766	
- Minutes watched		18,094	59,340	
Use of Senedd.tv: ⁵				
- Views	Maintain each period	121,132	145,968	
- Users		20,911	25,200	
Research Service Blog views (English and Welsh) ⁵				
	Maintain each period	39,793	63,411	






Note: ³ Data is shown as an average for the reporting period. ⁴ Data is shown as at the end of September. ⁵ Data is shown as a total for the reporting period.

Strategic Goal: Use resources wisely



	Target	April 2015 – Sept 2015	April 2016 – Sept 2016	
KPI 5: Expenditure to target		Green	Green	
Per cent underspend forecast at year end ⁶	<0.5%	2.0%	0.0%	
Achieving value for money target ⁶	£500,000	£136,000	£362,000	
Average days taken to pay suppliers ⁷	<10 days	6.9	6.0	
Average days taken to pay AMs ⁷	<5 days	2.1	2.1	

Note: ⁶ Data is shown as at the end of September. ⁷ Data is shown as an average for the reporting period.


For more information on the Assembly Commission's budget strategy please refer to the [Budget](#) and the [Annual Report and Statement of Accounts](#).

	Target	April 2015 – Sept 2015	April 2016 – Sept 2016	
KPI 6: Staff resource requirements and expectations are being met		Amber	Green	
Sickness absence - % rolling 12 month average ⁸	<3%	3.6%	3.5%	
Sickness absence - % monthly average	<3%	2.6%	2.7%	
Completion of staff performance reviews (twice annually – April and October)	100%	86.0%	94.4%	
Employee response rate to the annual staff survey	Civil Service Median – currently 65%	93.0%	85.0%	
Employee engagement level against the 5 core questions in the annual staff survey	Civil Service Median – currently 58%	72.0%	72.0%	
Number of staff: ⁸				
- Headcount	-	427	442	-
- Full Time Equivalents (FTEs)	-	406	423.7	-



Note: ⁸ Data is shown as at the end of September.

	Target	April 2015 – Sept 2015	April 2016 – Sept 2016	
KPI 7: ICT services are being delivered as planned		Amber	Green	
Achievements against Service Level Agreement (SLA) targets for all incidents	100%	87.7%	90.7%	
Customer satisfaction score for incident handling (out of 9)	8	8.7	8.9	

Note: Data is shown as an average for the reporting period.

	Target	April 2015 – Sept 2015	April 2016 – Sept 2016	
KPI 8: Freedom of Information (FOI) requests being processed as required		Green	Amber	
Number of FOI requests answered	-	23	41	-
Per cent of FOI requests answered to statutory deadline	100%	100%	92.7%	

Note: Data is shown as a total for the reporting period.

	Target	April 2015 – Sept 2015	April 2016 – Sept 2016	
KPI 9: Environmental targets are being delivered as planned		Amber	Green	
Combined energy footprint (Cardiff Bay Estate)	30% reduction in total energy emissions by 2021	3.4%	13.0%	
Diversion of waste from landfill	100% by 2021	95.0%	96.4%	

Note: Data is shown as at the end of September.

For more information on environmental issues please refer to the [Annual Environmental report](#).



Llywodraeth Cymru
Welsh Government

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

4 January 2016

Dear Simon,

At the Finance Committee's Stage 1 scrutiny of the Landfill Disposals Tax (Wales) Bill, I committed to provide further information in relation to:

- 1) Details of the list of materials currently on the Landfill Tax (Qualifying Material) Order 2011;
- 2) The amount/share of landfill tax (LFT) currently being paid by local authorities here in Wales; and
- 3) The application of the relief at section 31 to refilling former open cast mines.

Landfill Tax (Qualifying Material) Order 2011

The list of qualifying materials (and any conditions) will be set in regulations which will be subject to the affirmative procedure. The specification of qualifying materials by secondary legislation is consistent with the position in UK and Scotland. The UK position is set out in the Landfill Tax (Qualifying Material) Order 2011 and is available at: <http://www.legislation.gov.uk/uksi/2011/1017/contents/made>. The Scottish position is set out in the Scottish Landfill Tax (Qualifying Material) Order 2015 and is available at: <http://www.legislation.gov.uk/ssi/2015/45/made>.

Amount/share of LFT paid by local authorities in Wales

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

From 2002-03 to 2015-16, there has been an 81% reduction in waste sent to landfill by local authorities in Wales; a reduction from 1,546,847 to 288,820 tonnes. We do not have any information on the split between standard and lower rate waste. However, if we assume that all local authority waste is standard rate (as local authorities are likely to have exhausted most other waste treatment options before sending it to landfill, due to the high cost), this would mean that over the last five years, where we have seen significant reduction in waste going to landfill, the landfill tax revenues from local authority waste would have gone down from £39.8m to £23.9m (2011-12 to 2015-16) if all the waste was sent to landfill in Wales.

We do not have any precise figures in relation to the proportion of LfT being paid by local authorities in Wales, however, based on the assumptions above and the data from HMRC and the Office for Budget Responsibility¹ on the amounts of LfT, we can estimate that the share of LfT being paid by local authorities in Wales has dropped from around 80-90% at the beginning of this decade to around 60-70% now.

	Tonnes sent to landfill by local authorities
2002-03	1,546,847
2003-04	1,497,156
2004-05	1,509,338
2005-06	1,389,029
2006-07	1,259,233
2007-08	1,165,155
2008-09	1,034,507
2009-10	931,428
2010-11	826,416
2011-12	710,361
2012-13	640,904
2013-14	587,390
2014-15	453,497
2015-16	288,820

Source: WasteDataFlow²

Relief from tax – Refilling former quarries

The Committee has also asked for further information regarding the application of the relief at section 31 to refilling former open cast mines. I am in the process of considering this issue and will provide an update to the Committee ahead of my next appearance at Finance Committee to discuss the Bill on 2 February.

In addition, I thought it may be helpful to clarify the technical points which were discussed in relation to the WRA delegation for enforcement and compliance.

Welsh Revenue Authority (WRA) Delegated functions to Natural Resources Wales (NRW)

¹ Devolved Tax Forecast, Office for Budget Responsibility -

<http://budgetresponsibility.org.uk/topics/scotland-wales-and-northern-ireland/welsh-tax-forecasts/>

² <https://stats.wales.gov.wales/Catalogue/Environment-and-Countryside/Waste-Management/Local-Authority-Municipal-Waste/Annual>

Under section 12 of the Tax Collection and Management Act 2016 (TCMA), WRA will be legally responsible for the collection and management of devolved taxes, including landfill disposals tax. WRA may, under section 14 TCMA, delegate any of its functions to a person prescribed in regulations made by the Welsh Ministers. I have identified NRW as the preferred delegated partner for delivery of WRA's compliance and enforcement functions in relation to landfill disposals tax. NRW have the requisite skills, expertise and direct site-based relationships with landfill site operators to undertake cost-effective and efficient compliance activity.

The Welsh Ministers will bring forward secondary legislation under section 14 TCMA in the next 9-12 months to enable WRA to delegate functions to NRW. WRA must subsequently publish information about any delegations it has made. We would expect the detail of the scale and scope of this delegation to be set out in this publication, and would expect it to be clear and transparent. The delegation of functions to NRW does not affect WRA's legal responsibility for the exercise of those functions.

Finally, I would also like to draw your attention to the changes announced by HMRC in their draft Finance Bill 2017, published on 5 December. Clause 47 of those draft provisions amends Part 3 of the Finance Act 1996, which relates to landfill tax. The detail of their proposals will be set out in secondary legislation which is yet to be published. It is possible HMRC may make changes to the UK landfill tax legislation which would be relevant to landfill site operators in Wales. I have written to the Financial Secretary to the Treasury and enclose a copy of that letter for your information. I will share my analysis with the Committee once HMRC has published its secondary legislation setting out the detail.

Yours sincerely



Mark Drakeford AM/AC

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

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



Llywodraeth Cymru
Welsh Government

Eich cyf/Your ref
Ein cyf/Our ref

Jane Ellison MP
Financial Secretary to the Treasury
HM Treasury
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14 December 2016

Dear Jane,

Changes to landfill tax introduced by the Finance Bill 2017

The Landfill Disposals Tax (Wales) Bill was introduced into the National Assembly on 28 November; it is introduced as a consequence of the UK Government's Wales Act 2014, devolving specific taxes to Wales including landfill tax. This Bill will introduce landfill disposals tax (LDT) in Wales from April 2018 and is largely consistent with the current approach to landfill tax in the UK, though it addresses the key areas under the current UK framework which have given rise to litigation.

I have seen the draft provisions for the Finance Bill 2017, published on 5 December 2016. Clause 47 of those draft provisions amends Part 3 of the Finance Act 1996, which relates to landfill tax. I understand that the detail of the proposals will be contained within secondary legislation which is yet to be published. It is clear, however, that the draft provisions contained within clause 47 will alter the basis on which landfill tax is imposed, by removing the test of whether a landfill site operator intends to discard of material as waste, and by introducing a presumption of liability to tax, unless there is an exemption (to be set out in regulations).

The transition from the existing UK landfill tax to LDT in April 2018 will in all cases create some changes for landfill site operators, and we are working with HMRC to manage the impact of this. I am concerned that your introduction of an additional change to the tax prior to April 2018 will create an additional administrative burden and level of complexity for Welsh landfill site operators.

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

I am disappointed that the Summary of Impacts makes no reference to the devolution timetable and the impact on operators in Wales of potentially having to administer three different tax regimes in a period of less than six months.

The answer seems relatively simple; to agree to delay the introduction of this change until after April 2018.

All best wishes,

Mark.

Mark Drakeford AM/AC

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

Agenda Item 3



HM Government



Llywodraeth Cymru
Welsh Government

The agreement between the Welsh Government and the United Kingdom Government on the Welsh Government's fiscal framework



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Foreword

This agreement represents a significant milestone for Wales. Following the recommendations of the Commission on Devolution in Wales (Silk Commission), the Wales Act 2014 provided the legislative framework to devolve tax and borrowing powers to the National Assembly for Wales and the Welsh Government. These powers provide the Welsh Government with further tools to grow the Welsh economy and to vary the level of tax and spending in Wales, thereby increasing its accountability to the people of Wales.

This agreement will enable the powers in the Wales Act 2014 – and any further powers devolved under the current Wales Bill – to be implemented. In particular, it will support the devolution of stamp duty land tax and landfill tax, and the creation of Welsh rates of income tax (subject to the enactment of the Wales Bill currently before Parliament).

Building on the joint funding announcement in 2012 and the funding floor implemented at the 2015 Spending Review, this agreement puts in place fair, sustainable and coherent funding arrangements across all the Welsh Government's tax and spending responsibilities. It also provides the Welsh Government with additional capital borrowing powers and a new Wales Reserve to help manage its budget.

The UK and Welsh governments have worked closely and constructively to reach an agreement that is fair for Wales and for the rest of the UK.

We will continue to work together to implement this agreement and the new powers it supports, which will bring benefits to Wales and to the United Kingdom as a whole.



MARK DRAKEFORD AM
CABINET SECRETARY FOR FINANCE
AND LOCAL GOVERNMENT



RT HON DAVID GAUKE MP
CHIEF SECRETARY TO
THE TREASURY

Context and scope

1. This agreement sets out the Welsh Government's funding arrangements to support its existing responsibilities, the implementation of Wales Act 2014, and any further powers devolved under the current Wales Bill.
2. The funding arrangements for areas that are currently within EU competence are outside the scope of this agreement.
3. Under the Wales Act 2014, the Welsh Government is taking on the following new tax powers:
 - Stamp duty land tax (SDLT) from 2018-19
 - Landfill tax from 2018-19
 - Welsh rates of income tax (WRIT) from 2019-20 (subject to the removal of the referendum requirement through the current Wales Bill and the Welsh Government setting out its intention to introduce Welsh rates of income tax to the National Assembly for Wales)
4. The Welsh Government's block grant funding is therefore being updated (subject to the enactment of the current Wales Bill and the implementation of Welsh rates of income tax in 2019-20) to reflect these new powers and to address longstanding concerns in Wales about fair funding.
5. Alongside these changes to block grant funding, this agreement also covers capital borrowing, budget management tools, treatment of policy spill-over effects and implementation arrangements.

Welsh Government block grant funding

6. As summarised in Box 1 and set out in further detail below, the Welsh Government's new block grant funding arrangements comprise two elements: a Barnett-based 'Holtham floor'¹ in relation to spending devolution and Comparable block grant adjustments for tax devolution.

Box 1: Summary of the agreed block grant funding arrangements

The key elements are:

- From 2018-19 a new **needs-based factor will be included in the Barnett Formula** to determine changes to Welsh Government block grant funding in relation to spending devolution
- This **needs-based factor will be set at 115%** based on the range suggested by the Holtham Commission and the SR15 funding floor
- While relative Welsh Government funding per head remains above 115%, a **transitional factor of 105%** will be set
- Changes to block grant funding in relation to tax devolution will be determined through the **Comparable model** (after an initial baseline deduction to reflect tax foregone by the UK government at the point of devolution)
- The Comparable model will be applied to **stamp duty land tax, landfill tax and each band of income tax**
- These arrangements will provide stability to the Welsh Government's funding in a way that is **fair to Wales and the rest of the UK**

Current arrangements and relative funding

7. Under the current arrangements, the Welsh Government is largely funded through a block grant from the UK government². Changes to the block grant are determined by the Barnett Formula. Under this formula, the block grant in any given financial year is equal to the block grant in the previous year plus a population share of changes in UK government spending on areas that are devolved to the Welsh Government.
8. The Welsh Government has, for some time, been concerned about the rate of convergence in relative funding per head towards the level in England. This was highlighted by the Independent Commission on Funding and Finance for Wales (the Holtham Commission), which was tasked by the Welsh Government to examine its funding arrangements and explore alternative funding mechanisms. The reports³, published in 2009 and 2010, suggested Wales had relative needs of 114% to 117% of English needs and expressed concern that relative funding in Wales might fall below this range. This issue of convergence was also recognised in a joint statement by both governments in 2012⁴.
9. Examining the Welsh Government's relative funding per head since 1999-00 shows that until 2009-10, there was a sustained period of convergence towards English

¹ As proposed by the Independent Commission on Funding and Finance for Wales (Holtham Commission)

² The Welsh Government also retains revenues from business rates

³ <http://gov.wales/docs/icffw/report/100705fundingsettlementsumen.pdf>

⁴ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/214844/2012-10-23-Joint-statement-on-funding-reform-ENGLISH1.pdf

funding levels. However, since 2009-10, relative Welsh Government funding per head has diverged from English levels and is expected to be around 120% during the 2015 Spending Review period. This is displayed in the graph below:

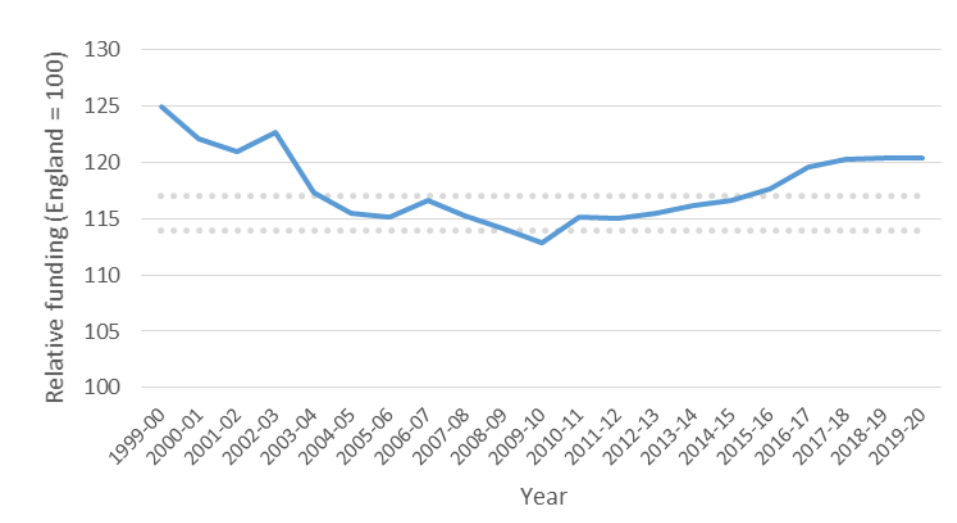


Figure 1: Welsh Government relative funding per-head, 1999 to 2020

10. There are two main causes of the convergence/divergence effect inherent in the Barnett Formula:

- **Spending growth** – Welsh Government funding per head converges towards English levels when UK government spending grows (in cash terms), all else being equal. Conversely, Welsh Government funding per head diverges when spending falls (again in cash terms), all else being equal.
- **Relative population growth** – Welsh Government funding per head converges towards English levels when population growth is faster in Wales than England, all else being equal. Conversely, Welsh Government funding per head diverges when population growth is slower in Wales, all else being equal.

11. Both of these drivers have been in evidence during the periods of convergence and divergence displayed in the graph above. During the first decade of devolution, rapid convergence was driven by growth in public spending. Thereafter, although public spending is growing in cash terms (and capital spending is growing in real terms) relative Welsh Government funding has actually diverged due to slower population growth. However, when growth in public spending returns to the long-term trend, convergence is expected to resume and relative Welsh Government funding will ultimately fall below the range suggested by the Holtham Commission.

Impact of tax devolution

12. The UK government established the Commission on Devolution in Wales (the Silk Commission) in 2011 to examine financial and constitutional arrangements in Wales, and recommend ways in which they might be improved. The Commission concluded the National Assembly for Wales should have stronger financial accountability to the people of Wales while retaining the security and stability of sharing resources as part of the UK.

13. In particular, while the National Assembly for Wales already had substantial responsibility for public spending in Wales, the Commission recommended it should have new tax powers. There are two key benefits of tax devolution in relation to accountability:

- The Welsh Government becomes responsible for funding more of its spending;

- There are more choices for the Welsh Government over the level of tax and spending in Wales.
14. This means the Welsh Government's funding arrangements need to change alongside tax devolution. Specifically, the Welsh Government's funding will ultimately comprise two separate funding streams:
- Revenues from business rates, devolved taxes (stamp duty land tax and landfill tax) and Welsh rates of income tax;
 - Adjusted block grant funding from the UK government.
15. The UK and Welsh governments have been considering how the Welsh Government's future block grant funding should be determined to deal with both tax devolution and longer-term concerns about the likely resumption of Barnett-based convergence.

Block grant funding principles

16. The UK and Welsh governments have agreed a set of block grant funding principles designed to support the development of a robust and sustainable approach to funding:
- **Relatively simple to operate and understand** – the funding system should use straightforward and objective calculations rather than relying on complex statistical techniques or assumptions;
 - **Not subject to ongoing negotiation** – aside from periodic review, the funding system should operate mechanically (like the Barnett Formula);
 - **Fair funding for the long-term** – the Welsh Government should have a fair level of funding based on relative need, subject to appropriate risks in relation to tax devolution;
 - **Consistent treatment of risks and opportunities** – the Welsh Government should hold symmetric (and therefore off-setting) risks and opportunities across tax and spending, in particular through using the same population numbers for all elements of block grant funding.
17. The new funding agreement set out below meets all of these principles. In particular, it provides the Welsh Government with a long-term and sustainable fair funding guarantee that incorporates a consistent approach to risks and opportunities.

Barnett-based funding floor

18. At the 2015 Spending Review (SR15) the UK government implemented a funding floor in Wales. This provided a guarantee that the Welsh Government's block grant funding per head would not fall below 115% of equivalent funding per head in England. This guarantee was provided for the current Parliament, after which the floor would be reset.
19. The two governments have now agreed to implement a new funding floor mechanism from 2018-19, which was originally recommended by the Holtham Commission. Under this Holtham floor, all changes in the Welsh Government's block grant determined by the Barnett Formula will be multiplied by a new needs-based factor. While this retains almost all of the features of the Barnett Formula, there is one key difference – all else being equal, relative Welsh Government funding will converge towards this needs-based factor over time (rather than towards 100% as under the current arrangements). This therefore provides a more mechanical funding floor than the simple floor introduced at SR15.
20. The diagram below sets out the existing Barnett Formula and how this will be applied in Wales under this agreement.

Barnett Formula						
Change in UK department expenditure limit	x	Comparability factor	x	Population share	=	Change in Welsh Government block grant

Barnett Formula to be applied in Wales								
Change in UK department expenditure limit	x	Comparability factor ⁵	x	Population share	x	New needs-based factor	=	Change in Welsh Government block grant

21. The governments have agreed this needs-based factor will be set at 115%, based on the range recommended by the Holtham Commission and the funding floor implemented at the SR15. However, for a transitional period, while relative Welsh Government block grant funding per head remains above 115% of equivalent England funding per head, the factor will be set at 105%. From 2018-19 and for the remainder of the current spending review period, all uplifts to Welsh Government DEL above the level in 2017-18 will attract the 105% factor, while any reductions below the 2017-18 level will be applied without the additional factor.
22. Relative Welsh Government block grant funding is expected to converge slowly from around 120% into the range recommended as fair by the Holtham Commission (114% to 117%).
23. At the point that relative block grant funding reaches 115%, the transition period will end and the multiplier will be set at 115%.
24. The two governments have agreed a methodology for assessing relative funding and this will be used to determine when the multiplier needs to change from 105% to 115%. The two governments have further agreed that input and/or assurance can be sought from independent bodies. Further details on the process for moving to the longer-term post-transition arrangements are outlined in Annex A.

Comparable block grant adjustments for tax devolution

25. When further areas of spending are devolved, the changes to the Welsh Government's block grant funding comprise two elements:
- Initial baseline adjustment – this reflects UK government spending plans at the point of devolution
 - Subsequent block grant changes – these are based on changes in equivalent UK government spending in the rest of the UK (via the Barnett Formula)
26. For tax devolution, there are two similar elements:
- Initial baseline adjustment – this reflects tax foregone by the UK government at the point of devolution
 - Subsequent block grant changes – these are based on changes in equivalent UK government tax in the rest of the UK

⁵ The comparability factor reflects the proportion of spending by the relevant UK department on areas that are devolved.

27. The initial baseline adjustment for tax devolution is relatively straightforward – the approach that will be used to estimate Welsh taxes at the point of devolution is set out in Annex B. However, as has been widely explored in recent academic literature, there are a range of choices about how subsequent block grant changes are determined.

28. Based on the agreed principles, there are two key issues:

- **Impact of tax base growth** – the Welsh Government should have fair funding subject to “appropriate” tax risks.
- **Treatment of population change** – the same population numbers should be used to calculate changes in the block grant in relation to tax devolution and spending devolution.

29. Alongside the Barnett-based funding floor, the UK and Welsh governments have agreed these principles are satisfied by the application of the Comparable model to each of the devolved taxes (stamp duty land tax and landfill tax) and to each band of income tax.

30. The diagram below sets out how the Comparable model determines changes in the block grant (after the initial baseline adjustment).

Comparable model						
Change in equivalent UK government tax	x	Comparability factor	x	Population share	=	Change in Welsh Government block grant

31. It should be noted:

- An increase in equivalent UK government tax corresponds to a reduction in the Welsh Government block grant (and vice versa).
- The comparability factor reflects tax per head in Wales as a proportion of the corresponding UK government tax per head at the point of devolution. For example, based on HMRC’s 2015-16 estimates⁶, the comparability factor is 25% for stamp duty land tax and 87% for landfill tax.
- The Comparable model uses the same population share as the Barnett Formula.

32. There are two further key points:

- **Applying the Comparable adjustment to each band of income tax** – The UK government remains responsible for defining taxable income across the UK, which includes responsibility for all tax reliefs and the personal allowance. As the composition of the income tax base in Wales is significantly different from the UK average, the two governments have agreed that the Comparable model will be applied separately to each band of income tax (basic, higher and additional rate). This ensures the new funding arrangements will deal with any UK government decisions to change the UK-wide income tax base (for example changes to the personal allowance) entirely mechanically. It will ensure the Welsh Government’s tax revenues are broadly unaffected by UK government policy decisions⁷. For completeness, the Comparable adjustment will be applied to aggregate changes in the two fully devolved taxes.

⁶ <https://www.gov.uk/government/statistics/disaggregation-of-hmrc-tax-receipts>

⁷ There is more information on the treatment of other policy ‘spill-over’ effects later in the agreement

- **Consistent treatment of population change** – As noted, in a recent report by the Welsh Governance Centre and Institute for Fiscal Studies⁸, the agreed approach to block grant funding delivers a consistent approach to population change – the same population numbers will be used to calculate changes in the Welsh Government's block grant funding in relation to both tax and spending (so any impacts of differential growth will offset within the Welsh Government's funding). This will be the case even during the transitional period.

33. Annex B sets out more details on the interaction between these adjustments and the Welsh Government's tax revenue (in particular the timing of forecasts and reconciliation to actuals).

⁸ <http://sites.cardiff.ac.uk/wgc/files/2016/12/161209-WGC-IFS-2nd-Report-Barnett-Squeezed.pdf>

Policy 'spill-over' effects

34. As summarised in Box 2 and set out in further detail below, this section covers the treatment of spill-over effects.

Box 2: Summary of the treatment of spill-over effects

The key elements are:

- **Direct effects** – These will all be accounted for, either mechanically through the block grant adjustment or separately once identified.
- **Behavioural effects** – These will only be accounted for in exceptional circumstances, where the effects are material and demonstrable, and both governments agree that it is appropriate to do so.
- **Second round effects** – These will not be accounted for.

35. Policy 'spill-over' effects occur where a decision by one government has an impact on the tax or spending of another⁹. There are three main categories:

- **Direct effects** – these are the financial effects that will directly and mechanically exist as a result of a policy decision (before any associated change in behaviour). For example, if the UK government increases the personal allowance then the Welsh Government will receive less revenue from Welsh rates of income tax.
- **Behavioural effects** – these are the financial effects that result from people changing behaviour following a policy decision. For example, if the Welsh Government sets a different additional rate of income tax¹⁰, it may encourage people to move across the border thereby affecting the UK government's revenues.
- **Second round effects** – these are the wider economic impacts that may result more indirectly from policy decisions. For example, a change in income tax rates in Wales could affect economic activity and therefore the amount of VAT generated for the UK government in Wales.

36. Taking these in turn, the UK and Welsh governments have agreed **all direct effects will be accounted for**. As set out in the block grant funding section, applying the Comparable model to each income tax band separately will ensure UK government income tax policy decisions (such as changes to the personal allowance) will be dealt with entirely mechanically.

37. The UK and Welsh governments have also agreed **behavioural effects can be accounted for** in exceptional circumstances, where the effects are material and demonstrable, and both governments agree it is appropriate to do so.

38. Finally, it has been agreed **second round effects will not be accounted for** due to the significant uncertainty surrounding the causality and scale of any financial impact.

39. For all spill-over effects, assessment of causality and scale of financial impacts will be based on a shared understanding of the evidence. Any transfer relating to a spill-over effect must be jointly agreed by both governments. Without a joint agreement, no

⁹ Note this doesn't include decisions by the UK government that affect block grant funding, as this is the fundamental basis of the Barnett Formula (and associated arrangements for tax devolution).

¹⁰ The design of Welsh rates of income tax means that the Welsh Government determines whether there are differential rates of income tax between Wales and England (as UK rates are paid by English taxpayers while 'UK rates less 10p' are paid by Welsh taxpayers)

transfer will be made. Issues relating to spill-overs will first be discussed by officials in both governments. Where officials are unable to reach an agreement this will be discussed by Ministers meeting as the Joint Exchequer Committee (Wales). These discussions may be informed by seeking the view of independent bodies. Where the governments are unable to reach agreement at official or ministerial level a dispute can be raised through the usual channels (see later section on dispute resolution).

Capital borrowing

40. As summarised in Box 3 and set out in further detail below, this section covers the changes to the Welsh Government's capital borrowing powers.

Box 3: Summary of the changes to the Welsh Government's capital borrowing powers

The key elements are:

- The Welsh Government's **overall capital borrowing cap will be increased to £1bn**
- From April 2019 the Welsh Government's **annual capital borrowing limit will be increased to £150m** (15% of the overall cap)

41. The Welsh Government's existing capital borrowing limits (set out in the Wales Act 2014) are being increased.
42. Under the Wales Act 2014, the Welsh Government can borrow up to £125m per year from 2018-19 within an overall cap of £500m. Within these parameters, the Welsh Government can borrow for any purpose within its devolved responsibilities. In addition, the UK government agreed the Welsh Government could have limited early access to borrowing (in 2016-17 and 2017-18) to take forward improvements to the M4. Amounts borrowed through this early access facility require consent from HM Treasury.
43. The Welsh Government can borrow from the National Loans Fund (via the Secretary of State for Wales) or through a commercial loan (directly from a bank or other lender). Following the implementation of the UK government's St David's Day announcement, the Welsh Government will also be able to issue bonds. Borrowing for capital expenditure will be in pounds Sterling.
44. The governments have now agreed the statutory limit on borrowing for capital expenditure will be increased to £1bn. The UK government will therefore amend the Wales Bill accordingly. The annual limit on the amount of borrowing for capital expenditure will also be increased. Alongside the introduction of Welsh rates of income tax, the annual limit will be set at 15% of the overall borrowing cap, which is equivalent to £150m a year. There remain no restrictions about how the Welsh Government can use its borrowing powers to deliver its devolved responsibilities.
45. The Welsh Government will notify the Treasury monthly about planned capital borrowing, outstanding debt and repayment profile. The repayment arrangements are to remain consistent with the Wales Act 2014. Under these arrangements, the term of any loan would normally be for 10 years but this can be altered to reflect the expected lives of the assets being purchased through the loan.

Budget management tools

46. As summarised in Box 4 and set out in further detail below, this section covers the changes to the Welsh Government's budget management tools.

Box 4: Summary of the changes to the Welsh Government's budget management tools

The key elements are:

- The Welsh Government's cash reserve and access to the Budget Exchange facility are being combined into a **new Wales Reserve** from April 2018
- There will be **no annual limit for payments in** to the Wales Reserve
- The Wales Reserve **can hold up to £350m in aggregate**
- There will be an **annual drawdown limit of £125m for resource and £50m for capital**
- The Welsh Government's **resource borrowing powers will remain as set out in Wales Act 2014**

47. The Welsh Government's budget management tools are being extended and rationalised. At the moment they comprise:

- **Resource borrowing** – the Welsh Government can borrow up to £200m each year (within an overall £500m cap) if tax revenues are lower than forecast. Repayments must be within four years.
- **Budget exchange** – this facility enables the Welsh Government to carry forward up to 0.6% of its resource DEL budget and 1.5% of its capital DEL budget into the next financial year.
- **Cash reserve** – the Welsh Government can save surplus revenues into a cash reserve (once any resource borrowing is repaid), which can be drawn down as required in future years. The reserve must be held within the UK government rather than with a commercial bank

48. The two governments have agreed the cash reserve and access to the Budget Exchange facility will be replaced with a new Wales Reserve from April 2018. This timing will allow the Welsh Government to save any 2017-18 underspends in the new Reserve to support the devolution of stamp duty land tax and landfill tax and the introduction of their successor taxes in Wales – land transaction tax and landfill disposals tax, respectively, in April 2018. The Reserve will also include £98.5m as agreed as part of the arrangements for the full financial devolution of non-domestic rates in Wales.

49. The Wales Reserve will be held within the UK government and will be separated between resource and capital. Resource funding (including resource block grant and tax receipts) can be paid into the resource reserve. Funds in the resource reserve may be drawn down to fund resource or capital spending. Capital funding (including capital block grant and capital borrowing) can be paid into the capital reserve. Funds in the capital reserve may be drawn down to fund capital spending only.

50. The Wales Reserve will be capped in aggregate at £350m. There are no annual limits for payments into the Wales Reserve. Annual drawdowns will be limited to £125m for resource and £50m for capital. The detailed operational arrangements will be agreed between the governments. In line with existing arrangements, Welsh Ministers may request additional flexibility with the consent of Treasury Ministers in exceptional circumstances.
51. The governments have also agreed the resource borrowing powers set out in Wales Act 2014 remain unchanged as they already reflect the expected volatility from full implementation of the Welsh Government's new tax powers, including Welsh rates of income tax).

Implementation arrangements

52. While the two governments will need to work through the detailed governance and operational arrangements, they have reached high-level agreement in a number of key areas:

- **Governance** – the implementation of this agreement will continue to be overseen by the Joint Exchequer Committee (Wales), with most of the new funding arrangements implemented during 2017 to begin in 2018-19. The Joint Exchequer Committee (Wales) (Officials) will oversee this work at official level. Memoranda of Understanding will be agreed between the bodies that will perform the duties outlined in this agreement or relating to the operation of the new tax powers, and will then be published.
- **Reporting to the UK Parliament and National Assembly for Wales** – the two governments recognise accountability to the UK Parliament and National Assembly for Wales is crucial and welcome detailed scrutiny of this agreement. Progress on the implementation and operation of the funding arrangements will continue to be reported to the UK Parliament and the National Assembly for Wales through annual Wales Act 2014 implementation reports.
- **Data and information sharing** – the two governments have agreed a shared objective to ensure all parties have access to the necessary technical, operational and policy information (including data) to discharge their duties. Sharing will be as full and open as possible subject to statutory, commercial and confidentiality restrictions. In particular, the UK government will initially provide information about income tax via the Public Use Tape, but will work with the Welsh Government (as with the Scottish Government) to ensure access to data that supports robust policy development and the production of forecasts of a comparable quality to those produced by the Office for Budget Responsibility (OBR). Data must be provided in sufficient time to support the production of forecasts in advance of the Welsh Government's draft Budget. The UK government will also require access to information about fully-devolved taxes in order to undertake wider compliance activities.
- **Forecasting responsibilities** – the OBR will continue to produce all UK-wide economic and fiscal forecasts for the UK government (which includes revenues from taxes devolved in Wales. The Welsh Government will be able to decide whether to use the OBR's forecasts or to put in place alternative independent forecasting arrangements. For a short period the Welsh Government may produce its own forecasts, while putting in place independent forecasting arrangements. The Welsh Government's own forecasts would be subject to independent scrutiny. The OBR will also produce all forecasts of relevant UK government taxes that are required to operate the Comparable model for stamp duty land tax, landfill tax and each band of income tax.
- **Financial reporting** – building on existing reporting arrangements, the Welsh Government will provide regular financial information to the UK government, Office for National Statistics and OBR setting out its tax, borrowing and spending plans. This will include planned capital borrowing for the whole of the Spending Review period (updated in advance of each financial year), planned drawdown of funding from the Wales Reserve in advance of each financial year, monthly in-year funding/spending data and five-year tax forecasts.

- **Implementation and running costs** – as set out in the Statement of Funding Policy, the Welsh Government will meet all the net costs of devolution including implementing and operating Welsh rates of income tax.
- **Periodic review** – the two governments have agreed that, although the agreement is expected to operate without regular renegotiation, it should be subject to periodic review. The first review will take place before the end of the block grant funding transitional period, and may include input from independent bodies. Either government can request a review but it is not intended that these arrangements will be reviewed more than once during an Assembly or Parliamentary term.
- **Dispute resolution** – the dispute resolution process set out here applies to all disputes relating to the implementation or operation of this agreement. These disputes will firstly be considered by officials, initially at working level and then by JEC (Wales) (Officials). Where officials are unable to reach an agreement this will be considered by Ministers at JEC (Wales). Discussions may be informed at any stage by seeking the view of independent bodies. If Ministers fail to reach agreement the dispute falls – there would be no specific outcome from the dispute and so no fiscal transfer between the governments. If either government wishes to pursue the dispute further, the processes outlined in the Memorandum of Understanding between the UK government and the devolved administrations provides that basis.

53. All remaining operational arrangements will be finalised prior to implementation.

Annex A – Relative funding methodology

This annex summarises the agreed relative funding methodology.

This is designed to compare Welsh Government block grant funding per head against equivalent UK government funding per head in England (UK government funding for England on areas that are devolved in Wales).

This methodology will be used at each Spending Review to determine when relative Welsh Government block grant funding per head reaches 115% of comparable UK government funding per head in England, at which point the needs-based factor of 115% will replace the transitional 105%. Specifically, the change will take place from the first year where relative Welsh Government funding is projected to be 115.0% to the nearest 0.1% (below 115.05%). Input may be sought from independent bodies to support this process.

The agreed methodology involves four steps:

- 1) **Welsh Government funding** is based on total DEL before any adjustments for tax devolution.
- 2) **Equivalent UK government funding for England** is calculated by multiplying each department's total DEL by the comparability factor used in the Barnett Formula¹¹ (where the comparability factor reflects the proportion of each department's spending on areas that are devolved in Wales).
- 3) **An adjustment is made to each of the above** to deal with the unique treatment of non-domestic rates (explained below).
- 4) **The ONS principal population projections** are used to calculate funding on a per head basis.

An adjustment is required in relation to non-domestic rates to compare relative Welsh Government funding against the range recommended by the Holtham Commission, which considered the position before tax devolution. While we can use Welsh Government total DEL before block grant adjustments to deal with stamp duty land tax, landfill tax and Welsh rates of income tax, a different approach is required for the devolution of non-domestic rates as this is uniquely dealt with within the Barnett-based block grant.

The agreed solution is to add non-domestic rates into the funding totals calculated in steps one and two above. To remove the effects of divergent policies, the assumption is made that non-domestic rate revenues in Wales would have grown at the same rate per head as in England in the absence of devolution. In addition to using English non-domestic rate revenues, the growth in these revenues is used to calculate the appropriate Welsh non-domestic rate numbers.

¹¹ The comparability factors used will be those in the most recent Statement of Funding Policy unless there are machinery of government or other changes that are not captured by those factors. Revisions to comparability factors for the purposes of measuring relative funding will need to be agreed by both governments.

Annex B – Further details on the operation of the tax block grant adjustments

This annex sets out for each tax:

- How the initial baseline block grant adjustments will be calculated
- When forecasts of corresponding UK government taxes will be made prior to the start of each financial year and whether they will be updated in-year
- When these forecasts will be reconciled to outturn

Stamp duty land tax

- **Baseline adjustment** – A provisional baseline for the adjustment will use the OBR's autumn 2017 forecast of receipts in Wales in 2017-18. This will be updated to use actual receipts in Wales in 2017-18 in HMRC's official statistics publication on stamp duties¹². The Comparable model will be applied to determine deductions for 2018-19 onwards.
- **Forecasting** – The Comparable model will use forecasts of UK government stamp duty land tax up to the autumn prior the start of each financial year in question. There will be a further in-year update using the autumn forecasts to ensure that the Welsh Government is shielded from UK-wide economic impacts¹³.
- **Reconciliation** – The forecasts will be reconciled to outturn once these are available around six months after the end of the financial year. The outcome of this reconciliation will be applied to the Welsh Government's funding for the following financial year.

Landfill tax

- **Baseline adjustment** – A provisional baseline for the adjustment will use the OBR's autumn 2017 forecast of receipts in Wales in 2017-18. This will be updated to use an estimate of outturn receipts in Wales based on official statistics. The Comparable model will be applied to determine deductions for 2018-19- onwards.
- **Forecasting** – The Comparable model will use forecasts of UK government landfill tax up to the autumn prior the start of each financial year in question. There will be a further in-year update using the autumn forecasts to ensure that the Welsh Government is shielded from UK-wide economic impacts¹³.
- **Reconciliation** – The forecasts will be reconciled to outturn once these are available around 6 months after the end of the financial year. The outcome of this reconciliation will be applied to the Welsh Government's funding for the following financial year.

Welsh rates of income tax

- **Baseline adjustment** – If the Welsh Government sets all three Welsh rates at 10% in 2019-20 (the earliest possible introduction date, subject to the enactment of the Wales Bill and the Welsh Government setting out its intention to introduce Welsh rates of income tax to the National Assembly for Wales) then the baseline adjustment will equal the receipts collected in that year. If the Welsh Government sets different rates then the baseline adjustment will equal an estimate of what would have been generated by 10%. In either scenario, this will provisionally use an

¹² <https://www.gov.uk/government/collections/stamp-duties-statistics>

¹³ In the case of in-year UK government tax policy changes, the Welsh Government will have the option to defer the impact on the block grant adjustment until the final reconciliation when outturn data is available.

OBR forecast and will be updated once actual receipts are available in the summer of 2021. The Comparable model will subsequently be applied to determine further deductions for 2020-21 onwards.

- **Forecasting** – The Comparable model will use forecasts of UK government income tax up to the autumn prior to the start of each financial year in question. The UK government will also transfer the Welsh Government's income tax revenues based on Welsh independent forecasts or the OBR autumn forecast until arrangements for Welsh independent forecasts are in place. As the Welsh Government does not therefore hold any in-year risk, there will not be an in-year update.
- **Reconciliation** – The forecasts will be reconciled to outturn once these are available around 15 months after the end of the financial year. The outcome of this reconciliation will be applied to the Welsh Government's funding for the following financial year.

Document is Restricted

Landfill Disposals Tax Bill

11th January 2017



WLGA • CLILC

INTRODUCTION

1. The Welsh Local Government Association (WLGA) represents the 22 local authorities in Wales. The three fire and rescue authorities and the three national park authorities are associate members.
2. It seeks to provide representation to local authorities within an emerging policy framework that satisfies the key priorities of our members and delivers a broad range of services that add value to Welsh Local Government and the communities they serve.
3. The WLGA welcomes the opportunity to comment on this consultation by the Finance Committee on the Landfill Tax Disposal (Wales) Bill.
4. Comments on the items for discussion listed in the terms of reference are provided below.

General principles of the Bill and the need for legislation

5. The WLGA supports the principles of the Bill and agrees there is a need for such legislation. Given that current Landfill Tax will be dis-applied in Wales from April 2018, the absence of such a tax could undermine the work undertaken to date to encourage more sustainable forms of waste treatment. Also, whilst there inevitably will be a downward trend in terms of tax yield as landfill tonnages continue to decrease, the tax income will still make a contribution towards the costs of public services. Since the Welsh Government's block grant will be reduced to reflect devolution of the tax, it is important that this potential income is not lost at a time when public services are under severe financial pressure.

Potential barriers to implementation of these provisions

6. The extensive documentation demonstrates that the provisions in the Bill have been considered and planned in-depth. Many of the potential barriers (e.g. relating to non-compliance, avoidance/evasion, public opposition) have been considered and addressed by measures already taken and/or included in the Bill (e.g. extensive consultation on the proposals, use of penalties, identification of cases where exemptions and relief are appropriate). The fact that the tax is in large part a continuation of a previous tax, as opposed to the introduction of a new one, should

also help to achieve a smooth roll out.

Unintended consequences

7. The provisions in Part 4 regarding the imposition of tax on unauthorised disposals are welcome but, as the Explanatory Memorandum make clear, the “provisions complement the existing environmental law and enforcement regime, they are not a substitute for it” (page 28). There is a risk that public expectations will be raised in relation to the impact the tax will have on fly-tipping. To have a deterrent effect there would need to be some high profile instances of offenders being identified and subjected to the tax. However, identification requires a commitment of resources to surveillance and examination of unauthorised disposals. Whilst this may be cost effective where large scale tipping is occurring it is harder to justify for minor instances. This could encourage fly tippers to seek to minimise their risk of being subjected to the tax by depositing in small quantities but in multiple locations, putting additional pressures and clean-up costs on local authorities¹.

Financial implications

8. The Regulatory Impact Assessment identifies that funding has been allocated to NRW to carry out delegated compliance and enforcement functions. This has been included in the operating cost figures.
9. Whilst the WRA is not formally delegating functions to local authorities in the same way there could be cost implications for them. The new Act could result in pressure from residents for local authorities to investigate the small scale instances of unauthorised disposals for which they, rather than NRW, are responsible. Should there be an increase in small scale tipping to minimise the risk of becoming liable for tax (as suggested in para. 7 above) this would create additional resource pressures on local authorities at a time when environmental services are already struggling to cope with reducing budgets.
10. Whilst this is hard to quantify as the scale of any such impact is impossible to gauge at this stage, it is an issue that should be monitored once the Act is implemented. It could require, in future, that some funding is made available to local authorities to

¹ Fly tipping is a criminal activity and offenders already risking being fined (up to £50,000 in a magistrates' court or an unlimited fine in Crown Court) or imprisoned (for 1 or 5 years). The additional threat of having to pay tax may not, therefore, have a major impact on behaviour.

support their enforcement activity.

Powers to make subordinate legislation

11. The proposals in relation to powers to make subordinate legislation provide flexibility to respond to experience and to changing circumstances. Individually each of them is understandable. It should be noted, though, that these powers are open-ended and, collectively, they give Welsh Ministers the ability to change the nature of the legislation substantially. Some of the changes could have major implications for local authorities (and other interested parties) – e.g. powers to change discount in relation to water content; relief in relation to dredging. Whilst the affirmative procedure has been prescribed in most cases to approve any such changes, consultation with stakeholders before exercising these powers should also be a requirement.

Whether the principles for devolved taxes have been followed

12. LDT rates will not be announced by the Welsh Government until autumn 2017, in readiness for implementation in April 2018. However, in the Explanatory Memorandum Welsh Government acknowledges the need for consistency. It would be unfair to businesses if there were to be sudden and significant differences between the tax rates between Wales and England. Extending the tax to unauthorised disposals also helps to 'level the playing field' for those who comply with the tax obligation and those who seek to avoid it.
13. There is also evidence of effort being made to simplify arrangements under the new tax, with clarification in areas such as the weighing of materials, the availability of exemptions and reliefs, application of a water discount and the ability to operate non-disposal areas within landfill sites. The Explanatory Memorandum is very helpful in setting out these matters.
14. The Landfill Tax forms an important part of wider efforts to move towards zero waste and to develop a circular economy. The latter has the potential to support sustainable forms of growth and jobs.
15. Therefore, the principles do appear to have informed the development of the tax. On the issue of stability and certainty a key consideration is the extent to which the subordinate powers will be used. As noted in para 12 above, these powers provide the opportunity for Welsh Ministers to revise elements of the legislation in substantial

ways. Clearly, were they to be used to any great extent they could destabilise arrangements and create uncertainty. Whilst some change may well be needed, to deal with issues that arise and with change over time, these should be kept to a minimum.

Definition of a 'taxable disposal' and 'qualifying materials'

16. The four conditions that have to be met in order for a disposal to be taxable are clear. There are also specified landfill site activities that are to be treated as taxable disposals whether or not the conditions are met.
17. The materials involved in some, at least, of these landfill activities should continue to be subject to the lower rate of tax. They provide important on-site benefits (e.g. bund formation; temporary road) representing a form of reuse. As the qualifying materials are to be listed in regulations, though, it is not possible to say at this stage what they will be. It is therefore difficult to comment on the definition of qualifying materials as they are, in effect, still to be defined.

How the tax will be calculated?

18. As above, until the regulations are produced it is difficult to comment on how the tax will be calculated. 14(7) of the Bill (page 7) states that the regulations "may prescribe different rates for different descriptions of material". Whilst the presumption is that there will be one higher rate and one lower rate the potential is there to specify multiple rates, which would be more complex.
19. 14(5) (on page 7 of the Bill) refers to: "The amount of tax chargeable on a disposal *of that description*" (emphasis added). 'That description' appears to relate to 14(4) (i.e. qualifying materials or a qualifying mixture of materials) but this could perhaps be clarified.
20. The provisions regarding calculation of the taxable weight (via weighbridges wherever possible) and water discount (encouraging landfill operators, where relevant, to have appropriate contract terms and processes in place with customers) are sensible.

Implementation of tax rates and flexibility to deal with change

21. The Explanatory Memorandum explains that tax rates for LDT will be set in secondary legislation and that a separate impact assessment will need to be completed. With

regards to the flexibility to change, the powers to make subordinate /secondary legislation provide scope to make a wide range of changes to rates. Clearly, it will be important for Welsh Ministers to be able to vary rates should these be changed elsewhere in the UK, not least to avoid potential 'waste tourism'.

22. Paragraph 3.54 of the Explanatory memorandum states: "*In exercising their powers to set LDT rates, the Welsh Ministers will be able to set different standard or lower rates for different descriptions of materials. This further flexibility will allow the Welsh Ministers to accommodate future circumstances and policy changes*" (p.20). Again, any use of this flexibility to introduce multiple rates would be likely to complicate arrangements and could encourage cross border movements of waste.

Proposed exemptions and reliefs

23. The proposed exemptions and reliefs – and their general consistency with the rest of the UK – are all sensible. The fact that they would not apply to unauthorised disposals makes is supported.

Inclusion of unauthorised disposals

24. WLGA welcomes the inclusion of unauthorised disposals at places other than authorised landfill sites. Whether the threat of being taxed will change behaviour is debatable, especially as there is already the possibility of being fined or imprisoned².
25. Their inclusion does, though, raise issues of enforcement. Whereas resources are being made available to NRW to assist them with compliance and enforcement activity no such provision is being made for local authorities, who deal with the smaller scale instances of fly tipping. This is an area that will need to be kept under review.

Inspection of premises to ascertain liability and sharing of information between, WRA, NRW and local authorities

26. Section 59 of the Bill will allow local authorities and NRW to pass information to the WRA for use in a tax investigation or enforcement action. This is likely to be primarily related to unauthorised disposals. In cases where it proves possible to identify persons responsible for the disposals inspection of premises could be a contentious issue

² See Footnote 1 on page 3.

requiring a multi-agency approach. The requirement to obtain prior consent “from the relevant person or authorisation from the Tax Tribunal” (page 95 of the Explanatory Memorandum) is likely to build in delays which would reduce the likelihood of being able to access relevant material that would assist in any enquiry.

Duties and penalties

27. The UK approach to the payment of tax has been broadly replicated so should be familiar to the relatively small number of those who will be required to make payments (principally the landfill operators).
28. The actual amounts of the various penalties proposed are stated in the Bill. These will obviously be subject to inflation, reducing their impact over time. However, the Bill does include powers for these to be changed using secondary/subordinate legislation.

Treatment of companies, partnerships and unincorporated bodies

29. No comment.

Landfill Communities Scheme

30. Given that revenue generated by the LDT is expected to reduce gradually over time as landfill tonnages continue to decline, the administration costs of a scheme based on tax credits would become increasingly disproportionate. In WLGA’s submission during the consultation in May 2015 we suggested that any funding should be used to support waste awareness activity, helping in the wider effort to encourage households to take part in efforts to reduce waste and recycle as much as possible of the waste they do create.
31. As a decision has been taken to operate a scheme, developing it outside of the Bill is a sensible way forward and will hopefully enable it to be kept as simple and flexible as possible. Consideration could be given to making the scheme available to communities that have suffered from repeated instances of unauthorised tipping if tax is successfully charged.

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