

Explanatory Memorandum to the Landfill Disposals Tax (Tax Rates) (Wales) (Amendment) (No.2) Regulations 2020

This Explanatory Memorandum has been prepared by Welsh Treasury: Tax Policy, Strategy and Engagement Division and is laid before the Senedd Cymru in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Landfill Disposals Tax (Tax Rates) (Wales) (Amendment) Regulations 2020 and I am satisfied that the benefits justify the likely costs.

Rebecca Evans MS
Minister for Finance and Trefnydd
Y Gweinidog Cyllid a'r Trefnydd
21 December 2020

PART 1 – EXPLANATORY MEMORANDUM

1. Description

- 1.1. The Landfill Disposals Tax (Tax Rates) (Wales) (Amendment) Regulations 2020 (“the regulations”) are being made under the Landfill Disposals Tax (Wales) Act 2017 (“LDT Act”)¹. The LDT Act establishes and sets out the framework and operational arrangements for landfill disposals tax which replaced UK landfill tax in Wales when it was devolved in April 2018.
- 1.2. The regulations will amend the standard rate, lower rate and unauthorised disposals rate for landfill disposals tax which will apply to taxable disposals made on or after 1 April 2021 in Wales. Taxable disposals made on or after 1 April 2020 but before 1 April 2021 will remain subject to rates set by the Landfill Disposals Tax (Tax Rates) (Wales) (Amendment) Regulations 2020 as a result of the amendment made by regulation 4 of these regulations.
- 1.3. Subject to the will of the Senedd, the regulations will come into force on 1 April 2021.

2. Matters of special interest to the Legislation, Justice and Constitution Committee (LJCC)

- 2.1. None

3. Legislative background

- 3.1. The regulations are being made pursuant to sections 14 and 46 of the LDT Act:
 - Section 14 gives the Welsh Ministers powers to make regulations to prescribe the standard rate and the lower rate; and
 - Section 46 gives the Welsh Ministers powers to make regulations to prescribe the unauthorised disposals rate.
- 3.2. Section 95 of LDT Act requires the regulations varying the rates of landfill disposals tax to be (i) laid before the Senedd, and (ii) must be approved by the Senedd within 28 days of being laid, not counting any period during which the Senedd is dissolved or in recess for more than 4 days. This is known as the “provisional” or “made” affirmative procedure.

¹ <http://www.legislation.gov.uk/anaw/2017/3/contents/enacted>

4. Purpose and intended effect of the regulation

Summary

- 4.1. The regulations will amend the standard rate, lower rate and unauthorised disposals rate for landfill disposals tax which will apply to taxable disposals made on or after 1 April 2021 in Wales. Taxable disposals made on or after 1 April 2020 but before 1 April 2021 will remain subject to rates set by the Landfill Disposals Tax (Tax Rates) (Wales) (Amendment) Regulations 2020.

Policy aims and tax principles

- 4.2. In developing landfill disposals tax for Wales, including the regulations, the Welsh Government has applied its five principles for the development of devolved tax policy and legislation to:
 - raise revenue to support public services as fairly as possible;
 - help deliver wider fiscal and policy objectives, including jobs and economic growth;
 - be simple, clear and stable;
 - engage with taxpayers and wider stakeholders;
 - contribute directly to the Well-being of Future Generations (Wales) Act 2015 goal of creating a more equal Wales.
- 4.3. In September 2017, the Welsh Government published its national strategy *Prosperity for All*². One of its four key themes is 'Prosperous and Secure'; a key objective of which is to drive sustainable growth and combat climate change.
- 4.4. The supporting Economic Action Plan³ puts decarbonisation as a central pillar for future prosperity and highlights the Welsh Government's continued drive to deliver policies for reducing waste and moving towards a circular economy. It includes reference to Wales' new fiscal responsibilities and how these will be used to deliver on wider policy objectives in line with the Tax Policy Framework.
- 4.5. In March 2019, the Welsh Government published its plan "Prosperity for All: A Low Carbon Wales"⁴. It set out the Welsh Government's approach to cut emissions and increase efficiency in a way that maximises wider benefits for Wales, ensuring a fairer and healthier society.
- 4.6. The Welsh Government "Beyond Recycling – Making the Circular

² <https://gov.wales/prosperity-all-national-strategy>

³ <https://gov.wales/sites/default/files/publications/2019-02/prosperity-for-all-economic-action-plan.pdf>

⁴ https://gov.wales/sites/default/files/publications/2019-06/low-carbon-delivery-plan_1.pdf

Economy a Reality in Wales” consultation⁵ closed earlier this year and a summary of responses⁶ was published in September 2020. A circular economy is one where resources are valued and kept in use and waste avoided - a key strategic aim of which will be to reduce the amount of materials sent to landfill and incineration. Other proposed actions include phasing out single use plastic and in doing this, making Wales among the first countries to send zero plastic to landfill. This consultation sits alongside other environmental policies and reforms such as introducing Extended Producer Responsibility for packaging, a Deposit Return Scheme for drinks containers, applying bans or restrictions to phase out the use of unnecessary, highly littered, single use plastic.

- 4.7. At Budget 2018, the UK Government announced that from April 2022, it will introduce a plastic packaging tax⁷. The tax will encourage the use of recycled rather than new plastic within plastic packaging. It will create greater demand for recycled plastic, and in turn stimulate increased levels of recycling and collection of plastic waste, diverting it away from landfill or incineration.
- 4.8. New resource efficiency and circular economy legislation mandating business recycling⁸ in Wales is being developed - the primary aim of which is to increase recycling and collect valuable resources from non-domestic premises such as businesses and the public sector in Wales.
- 4.9. The introduction of landfill disposals tax legislation, including these regulations, contributes towards these wider green objectives and the national well-being goals, in particular through actions to promote a low carbon economy and develop a more resource efficient economy. This builds on Wales’ success in recycling and reducing the environmental impacts of production and consumption.
- 4.10. Section 91 of the LDT Act places a duty on the Welsh Ministers to have regard, amongst other factors, to the objective of reducing landfill disposals in Wales when exercising their powers and duties under the LDT Act. In developing the regulations, consideration has been given to how the rates support the objective of reducing waste to landfill and the Welsh Government’s ambitions for a zero waste Wales.
- 4.11. In order to provide stability, the approach taken to setting the rates has been that the devolved tax rates should only diverge from those of the predecessor tax rates as much as is necessary to reflect Welsh circumstances and priorities.
- 4.12. The revenue from landfill disposals tax will be used to directly fund public services in Wales, replacing part of the funding the Welsh

⁵ https://gov.wales/sites/default/files/consultations/2020-03/consultation-circular-economy-strategy_1.pdf

⁶ https://gov.wales/sites/default/files/consultations/2020-09/beyond-recycling-summary-of-responses_1.pdf

⁷ <https://www.gov.uk/government/publications/introduction-of-plastic-packaging-tax/plastic-packaging-tax>

⁸ <https://gov.wales/increasing-recycling-businesses>

Government receives from the UK Government⁹. The principle that there should be no less revenue available to fund public services has also been applied.

Current position

- 4.13. There are two rates of UK landfill tax; a lower rate for materials specified in the list of qualifying materials (and meeting certain requirements) and a standard rate for all other materials. The UK Government does not have a separate rate for unauthorised disposals - the standard rate applies to all disposals made at an unauthorised sites. The standard rate has increased over time to incentivise diversion of waste from landfill towards prevention, re-use, recycling and recovery¹⁰.
- 4.14. Since 2014, the UK Government's approach has been to maintain the standard and lower tax rates in real terms (by the rate of inflation as measured by the Retail Price Index (RPI)). The UK Budget in March 2020 set out the UK Government's plans for the landfill tax rates for 2021-22 - to increase the standard and lower rates of landfill tax in line with RPI, rounded to the nearest 5 pence. The change will have effect on and after 1 April 2021¹¹.
- 4.15. To date, landfill disposals tax rates have matched UK landfill tax rates, delivering a commitment made by the First Minister in his previous position as Cabinet Secretary for Finance to match landfill tax rates for the first two years following landfill disposals tax going live in 2018 (2018-19 and 2019-20). The landfill disposals tax rates for 2020-21 were again set to match UK landfill tax rates and were approved by the Senedd in January 2020.

Purpose and intended effect of the regulation

- 4.16. Alongside the publication of the draft budget in December 2020, the Minister for Finance and Trefnydd announced the landfill disposals tax rates for 2021-22 will increase as follows:
- i. The standard rate will increase from £94.15 per tonne to **£96.70** per tonne;
 - ii. The lower rate will increase from £3.00 per tonne to **£3.10** per tonne; and
 - iii. The unauthorised rate would increase from £141.20 per tonne to **£145.05** per tonne.

⁹ <http://gov.wales/funding/?lang=en>

¹⁰ Since the introduction of UK landfill tax in 1996, the standard rate has risen from £7 to £21 per tonne in 2006, then to £72 in 2013 and £94.15 in 2020. In contrast, the lower rate has risen from £2 per tonne in 1996 to £2.50 in 2013 and £3 in 2020.

¹¹ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/872423/Overview_of_Tax_Legislation_and_Rates_2020.pdf

4.20 The approach to setting tax rates has been guided by the tax principles and the objective to reduce landfill disposals in Wales, as required by section 91 of the LDT Act. Delivering stability and certainty for taxpayers and the wider waste industry has also been a key factor in setting the rates. The approach for tax rates to only diverge from those of the predecessor tax rates as much as is necessary to reflect Welsh circumstances and priorities and the principle there should be no less revenue available to fund public services has also been applied.

4.21 On this basis, the proposed standard and lower rates of landfill disposal tax are consistent with UK landfill tax rates to provide stability and certainty to those stakeholders impacted by the tax. The unauthorised disposals rate, is set higher than the standard rate (standard rate + 150%), creating an additional financial deterrent for people seeking to avoid their environmental obligations and dispose of waste illegally. Setting the rate higher than the standard rate takes account of the increased negative impact on the environment of unauthorised disposals of waste. The rate also recognises that administrative costs incurred by legitimate operators will have been avoided and better reflects the enforcement costs of the Welsh Revenue Authority (WRA).

4.22 Regulation 3 provides the rates for 2021-22:

| Rate | 2021-22 |
|-----------------------------|-------------------|
| Standard rate | £96.70 per tonne |
| Lower rate | £3.10 per tonne |
| Unauthorised disposals rate | £145.05 per tonne |

5. Consultation

5.1. There is a no statutory duty to consult on these regulations and the proposed rates were announced by the Minister for Finance and Trefnydd alongside the publication of the Welsh Government's draft budget in December 2020. As other tax administrations, the Welsh Government does not consult formally on tax rate changes as this remains a decision for Ministers.

PART 2 – REGULATORY IMPACT ASSESSMENT

6. *Impact of the Landfill Disposals Tax (Tax Rates) (Wales) (Amendment) Regulations 2018*

Options

- 6.1. In relation to setting the **lower and standard rates**, two options have been considered; to:
- Option 1a) - be consistent with UK landfill tax rates
 - Option 1b) - set 'Welsh specific' rates which are different from the UK rates
- 6.2. In relation to the **unauthorised disposals rate**, two options have been considered; to:
- Option 2a) - maintain the unauthorised disposals rate at 150% of the new proposed standard rate
 - Option 2b) - change the unauthorised disposals rate as a % of the new proposed standard rate
- 6.3. A brief description of each option and their anticipated impact is outlined below followed by an analysis of the costs and benefits at section 7.

Lower and standard rates

Option 1a): be consistent with UK landfill tax rates

- 6.4. This option would introduce regulations which are consistent with UK landfill tax rates, with the standard and lower rate of landfill disposals tax increasing in line with inflation (as measured by the Retail Price Index, RPI) in April 2021.
- 6.5. On introducing landfill disposals tax, a clear message from stakeholders was the need for consistency, certainty and stability for businesses. Replicating the UK landfill tax rates could achieve this. Industry experts have also consistently highlighted concerns about waste tourism across the England-Wales border and a consistent rate with the UK landfill tax would address this possible risk.
- 6.6. Furthermore, stability over rates may benefit businesses given the current economic uncertainty generated by the pandemic and the UK's departure from the European Union.

Option 1b): set 'Welsh specific' rates which are different from the UK rates

- 6.7. This option would introduce regulations that set the standard and/or lower rates specific to Wales at different rates from the UK rates. In one direction, this could help to support Welsh Government priorities and policies, including the ambitious goal of zero waste by encouraging greater recycling, recovery and re-use of waste and efforts to reduce carbon emissions and tackle climate change. An alternative approach could increase revenue to invest in public services in Wales.

Unauthorised disposals rate

Option 2a): maintain the unauthorised disposals rate at 150% of the new proposed standard rate

- 6.8 This option would maintain the unauthorised disposals rate at 150% of the new proposed standard rate of tax. This would ensure that those disposing of waste illegally pay a greater amount of tax compared to the amount they would have paid if they had taken it to an authorised landfill site.
- 6.9 As there is a proposal to increase the standard rate in line with inflation, this will therefore increase the unauthorised disposals rate from £141.20 to £145.05.

Option 2b): change the unauthorised disposals rate as a % of the new proposed standard rate

- 6.10 The unauthorised disposals rate is intended to create another deterrent for those seeking to avoid landfill disposals tax and their environmental duties by disposing of waste illegally. While the Covid-19 pandemic has impacted on the WRA's ability to begin testing its powers operationally, it has been working throughout with partners such as Natural Resources Wales to better understand the scale and nature of unauthorised disposals in Wales. This is informing how to make best use of tax and environmental powers, respectively, to tackle this activity. As the WRA continues to develop its approach, it does not yet have evidence to suggest varying the unauthorised disposals rate would lead to a further behavioural change.

7. Costs and Benefits

- 7.1. The costs and benefits associated with each option have been produced using the best available information at the time.
- 7.2. The preferred option is for the Welsh Government to be consistent with UK landfill tax for the standard and lower rate (option 1a) and to maintain the unauthorised disposals rate at 150% of the new proposed standard rate (option 2a).

- 7.3. The WRA has delegated compliance and enforcement functions (including tackling unauthorised disposals) to NRW, who have existing relationships with the landfill site operators and extensive knowledge of the waste industry. Compliance will be undertaken on a risk basis as is currently the case with UK landfill tax.

Lower and standard rate

Option 1a): be consistent with UK landfill rates

- 7.4. A key priority for the Welsh Government was a smooth transition to landfill disposals tax in 2018-19. Any changes to tax rates can be expected to have behavioural effects.
- 7.5. A reduction in landfill disposals tax rates may encourage greater landfill disposals in Wales, which is not consistent with the Welsh Government's wider waste policy agenda. An increase in waste being disposed of in Wales would also have wellbeing and environmental impacts for communities. For example, it would:
- Increase waste, including potentially hazardous waste, travelling further distances on major roads and through residential areas;
 - Increase disruption for residents near landfill sites and waste transfer stations;
 - Increase the carbon footprint of waste disposal;
 - Increase pressure on existing landfill capacity, with potential calls for new landfill sites to be developed.
- 7.6. Conversely, an increase in landfill disposals tax rates may encourage less waste to be disposed of to landfill in Wales than if landfill tax were to continue to apply, reducing the amount of revenue collected. This is inconsistent with our principle that there should be no less revenue available to fund public services. Further, an increase in landfill disposals tax rates may encourage unauthorised waste disposals in Wales.
- 7.7. Stakeholders have suggested that the standard rate has reached its optimum level where landfilling these materials is the most expensive, and therefore least attractive, means of waste disposal. Furthermore, adjusting the rates in line with inflation each year has created a big gap between where the lower and standard rates sit. If the rates are consistently raised in line with inflation, this could continue to grow the gap between the standard rate and lower rate, creating a higher tax gap, driving potentially more mis-descriptions (e.g. where companies mis-describe the waste to avoid higher rates of tax). When UK landfill

tax was first introduced, the difference between the lower and standard rates was much smaller¹².

- 7.8. Some stakeholders have also made the case for increasing the lower rate to encourage greater recycling, re-use and recovery of these materials but the majority wanted consistency with UK rates to minimise the risk of waste tourism, including, at least initially, for the lower rate.
- 7.9. By setting rates that are consistent with UK landfill tax, public services in Wales will continue to benefit from tax revenue, while ensuring the risk of the movement of waste across borders is reduced. Furthermore, stability over rates may benefit businesses given the current economic uncertainty generated by the pandemic and the UK's departure from the European Union.

Costs

- 7.10. Under this option, the lower and standard landfill disposals tax rates would increase in line with inflation as measured by RPI. This means the standard rate of landfill disposals tax would be £96.70 per tonne and the lower rate would be £3.10 per tonne in 2021-22.
- 7.11. As the proposed tax rates are consistent with the UK landfill tax, there is not expected to be any significant change in the amount of waste landfilled compared with the rest of the UK. Table 1 shows that overall revenue generated from landfill disposals tax in 2020-21 and 2021-22 is forecast to be £27m and £32m respectively. The large reduction in 2020-21 occurs due to lockdowns in response to Covid-19. This also has an impact on revenues in 2021-22. Forecasts for the rest of the UK are similarly affected.
- 7.12. Despite the increase in tax rates, revenue is expected to fall slightly over the forecast period as an increasing amount of waste is diverted away from landfill. The forecasts in Table 1 do not include the tax revenue from unauthorised disposals.

Table 1: Landfill disposals tax revenues forecast (£ million)

| | 2019-20 | 2020-21 | 2021-22 | 2022-23 | 2023-24 | 2024-25 | 2025-26 |
|-----------------------------|---------|---------|---------|---------|---------|---------|---------|
| Landfill Disposals Tax (£m) | 37 | 27 | 32 | 33 | 33 | 33 | 32 |

Source – OBR November 2020 forecast¹³

¹² Since the introduction of Landfill Tax in 1996, the standard rate has risen from £7 per tonne to £21 per tonne in 2006, then to £72 per tonne in 2013 and £94.15 per tonne in 2020. In contrast, the lower rate has risen from £2 per tonne in 1996 to £2.50 per tonne in 2013 and £3 per tonne in 2020.

¹³ <https://obr.uk/efo/economic-and-fiscal-outlook-november-2020/>. An updated forecast will be published alongside the draft budget on 21st December

7.13. Further, as this option is to be consistent with UK landfill tax, there will not be any changes that incur an additional cost to landfill site operators, waste businesses or WRA.

Option 1b): set 'Welsh specific' rates which are different from the UK rates

7.14. Wales is at the forefront of waste policy and landfill disposals tax is a useful additional lever to support Welsh Government waste policies and achieve our ambitious goal of a zero waste Wales.

7.15. This option has the potential to increase the incentive to separate and sort waste for disposal in order to secure the lower rate of tax which can have added benefits of enabling more waste to be recovered, re-used and recycled and reduce the amount of waste going to landfill.

7.16. However, if the rates vary from UK rates, there is the possibility we will see some waste tourism – this was previously discussed in the Landfill Disposals Tax Explanatory Memorandum and Regulatory Impact Assessment¹⁴. Before landfill tax was devolved to Scotland, a study also was undertaken to understand the policy options for a Scottish specific landfill tax and this also discussed the potential for waste tourism¹⁵. Given that the landfill disposals tax rates have yet to be differentiated between the UK landfill tax rates, it is difficult to predict behaviour and would depend on the rate change. For example, even though there are examples of English waste being transported to Wales, there is no difference in the rates at present so it could be determined that this is not driving behaviour. The factors that could influence waste tourism would need to be carefully considered.

7.17. For example, an increase in landfill disposals tax rates may encourage less waste to be disposed of to landfill in Wales, reducing the amount of revenue collected. This approach may also increase levels of waste tourism from Wales to England. However, evidence¹⁶ suggests that a marginal difference in rates could be tolerated by the market without waste tourism in particular becoming a concern.

7.18. More detailed research is needed to establish the scale of impact setting different rates to the UK would have on waste tourism, unauthorised disposals, the rate of recycling and reuse and tax revenues.

7.19. Therefore, at this stage, the costs, benefits and risks of setting Welsh specific tax rates which are different to the UK rates are unknown.

¹⁴ <https://senedd.wales/laid%20documents/pri-ld10839-em-r/pri-ld10839-em-r-e.pdf>

¹⁵ <https://www.zerowastescotland.org.uk/sites/default/files/Scottish%20Landfill%20Tax%20Study%20Report.pdf>

¹⁶ <https://documents.hf.wales.gov.uk/id:A10928403/document/versions/published>

Option 2a): maintain the unauthorised disposals rate at 150% of the new proposed standard rate

- 7.20. Maintaining the unauthorised disposal rate at the 150% of the new proposed standard rate ensures a level of fairness, proportionality, and transparency. Setting the rate at this level acts as an additional deterrent for those seeking to avoid landfill disposals tax and their environmental duties by disposing of waste illegally. It also recognises the increased negative impact on the environment of unauthorised disposals of waste and that in normal circumstances registered landfill site operators incur administrative costs relating to registration, filing, paying and record-keeping and these would have been avoided along with penalties and interest, which would have been applied to a registered landfill site operator for failure to do these. Setting the rate at 150% of the new proposed standard rate keeps it in line with the standard rate increase which is in line with the retail price index and therefore helps to create a level playing field for legitimate waste businesses.
- 7.21. Consistent with the purpose of the tax as a lever to influence positive environmental behaviours this approach seeks to encourage individuals to make efforts to take up sustainable methods of waste disposal or, as a minimum, to take waste to a registered landfill site and pay a fair share of tax and thus protect revenue for investment in public services in Wales. Our approach further aims to bring benefit to the communities who are affected by unauthorised disposals by seeking to deter this activity in future.

Costs

- 7.22. The introduction of a separate tax rate for unauthorised disposals came into force in Wales on 1 April 2018 and was aimed primarily at deterring unauthorised disposals rather than raising tax revenue. The WRA are responsible for determining the level of compliance and enforcement activity it undertakes in relation to unauthorised disposals. It is expected that its approach will be proportionate and cost-effective and be considered in the context of the wider initiatives being taking forward by the Welsh Government, NRW and local authorities to ensure that those dumping waste bear the cost of their actions.
- 7.23. An industry report in 2015¹⁷ highlighted that every £1 spent on waste crime enforcement is expected to return between £3.60 and £5.60 to government. This clearly makes the enforcement of these powers a valuable tool and one which could be a worthwhile investment in the long term.
- 7.24. Tax collected from unauthorised disposals will support the delivery of public services in Wales, with some revenue allocated to NRW and

¹⁷http://www.esauk.org/esa_reports/ESAET_Waste_Crime_Tackling_Britains_Dirty_Secret_LIVE.pdf

local authorities where they have been instrumental in assisting the investigation and pursuit of tax and to incentivise future action.

Option 2b): change the unauthorised disposals rate as a % of the new proposed standard rate

7.25. As mentioned above in paragraph 6.10, there is no evidence available to suggest whether the rate should increase or decrease.

Summary of the preferred option

7.26. In view of the unprecedented circumstances presented by the Covid-19 pandemic, and the resulting impact on the waste sector, it is not considered timely or appropriate to undergo changes to existing processes at this stage. However, there is opportunity to review this approach as part of the established year on year review of the rates, or as part of the requirement to independently review the landfill disposals tax legislation by 2023, committed to during the passage of the Bill.

7.27. The preferred option is for the Welsh Government to be consistent with the options used to set the rates in 2020-21 being the same as the UK landfill tax for the lower and standard rate (option 1a) and to maintain the unauthorised disposals rate at 150% of the new proposed standard rate (option 2a).

7.28. The key benefit is to provide certainty and stability for the waste industry, by broadly enabling consistency with how landfilled waste is charged in England and Wales and the risk of cross border movement of waste is reduced. It also ensures that the benefit of the tax revenue can continue to be secured for investment in public services in Wales.

7.29. The standard rate in particular is widely considered by stakeholders to be set at a level which reflects its environmental cost and promotes a more sustainable approach to waste management. This will help deliver wider benefits including supporting the delivery of the Welsh Government's wider waste and environment policies. In particular, continuing to enable the development of the "Beyond Recycling – Making the Circular Economy a Reality in Wales" Strategy and helping to deliver the goals set out in the Environment (Wales) Act 2016¹⁸ and the *Climate Change Strategy for Wales*¹⁹.

7.30. The unauthorised disposals rate seeks to support our policy ambition to deter unauthorised disposals which blight our communities. It will ensure that the increased negative impact of unauthorised disposals is recognised, it will support the creation of a level playing field for

¹⁸ <https://gov.wales/environment-wales-act-2016-factsheets>

¹⁹ <https://gov.wales/sites/default/files/publications/2019-04/climate-change-research-emission-reduction-scenarios.pdf>

legitimate operators and it better reflects the enforcement costs of WRA. It is hoped the proposed rates will encourage illegal operators to manage their waste more sustainably and as a minimum take it to an authorised landfill site and pay a fair share of tax which supports public services in Wales.

8. Competition assessment

- 8.1. See **Appendix A**
- 8.2. At present there are 17 landfill site operators²⁰ covering 23 sites in the market.
- 8.3. These Regulations are not expected to adversely affect levels of competition in Wales or the competitiveness of Welsh firms, as a percentage uplift in rates will affect every operator similarly in percentage terms.

9. Post implementation review

- 9.1. The effect of the LDT Act and these regulations will be assessed in a number of ways, including:
 - A review of the LDT Act and regulations will be completed within six years of the tax being devolved to Wales (more information below at para 9.3);
 - Data will be collected as part of landfill disposals tax returns and these will provide an evidence base from which evaluation of a number of Welsh Government policies can be undertaken. The data will include information on landfill disposals tax revenue and the tax base directly, for example, the tonnage of standard and lower rate materials sent to landfill in Wales or the amount of tax raised at the unauthorised disposals tax rate.
 - A programme of monitoring activity will be developed to correspond with key activities including enforcement activity on unauthorised disposals.
- 9.2. Any post implementation assessment of more qualitative aspects of landfill disposals tax will require the collection of further data. For example, direct engagement with landfill site operators (meetings/surveys etc.). Assessing the impact of operational matters is the responsibility of WRA although there is potential for collaborative evaluation with the Welsh Government.

Review of Landfill Disposal Tax legislation in 2023

- 9.3. A commitment was made during the passage of the LDT Bill, by the then Cabinet Secretary for Finance, for an independent review of landfill disposals tax legislation to be carried out, alongside similar timings for a review of land transaction tax legislation. The Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act

²⁰ <https://beta.gov.wales/welsh-revenue-authority-list-landfill-site-operators>

2017 Act requires an independent review of land transaction tax to be published 6 years from the date after the day the Act received Royal Assent.

- 9.4. The requirement of independently reviewing the landfill disposals tax legislation provides an opportunity to take stock, to consider revenue and behavioural impacts to date and explore further data gathering opportunities.
- 9.5. There are many factors that could form part of the review. For example, an assessment of the range of options and instruments available to advance environmental objectives e.g. design of the tax (reliefs etc.), introducing different rates for different materials, assessing existing market conditions, assessing levels of criminal activity and alignment with wider environmental policies. Any assessment would also need to take into consideration waste levels in response to Covid-19, in recognition of the instability this has created for the sector as well as the uncertainty on longer term impact.
- 9.6. Any consideration of approaches that differ from usual processes would need to undergo extensive feasibility testing, impact assessment and consultation with key stakeholders.

APPENDIX A

The Competition Assessment

There are two stages to the Competition Assessment. The first is a quick filter that assesses whether there is a risk of a significant detrimental effect on competition. The results of the competition filter are presented in the table below:

| The competition filter test for landfill site operators | |
|--|---------------------|
| Question | Answer yes or no |
| Q1: In the market(s) affected by the new regulation, does any firm have more than 10% market share? | Yes |
| Q2: In the market(s) affected by the new regulation, does any firm have more than 20% market share? | Yes |
| Q3: In the market(s) affected by the new regulation, do the largest three firms together have at least 50% market share? | Yes |
| Q4: Would the costs of the regulation affect some firms substantially more than others? | No |
| Q5: Is the regulation likely to affect the market structure, changing the number or size of businesses/organisation? | No |
| Q6: Would the regulation lead to higher set-up costs for new or potential suppliers that existing suppliers do not have to meet? | No |
| Q7: Would the regulation lead to higher ongoing costs for new or potential suppliers that existing suppliers do not have to meet? | No |
| Q8: Is the sector characterised by rapid technological change? | No |
| Q9: Would the regulation restrict the ability of suppliers to choose the price, quality, range or | No |