



# Landfill Disposals Tax (Wales) Act 2017

## 2017 anaw 3

### PART 3

#### TAXABLE DISPOSALS MADE AT AUTHORISED LANDFILL SITES

#### CHAPTER 2

#### TAX CHARGEABLE ON TAXABLE DISPOSALS

##### *Calculation of tax chargeable*

#### **14 Calculation of tax chargeable on taxable disposal**

- (1) This section applies to a taxable disposal of material made at an authorised landfill site.
- (2) The amount of tax chargeable on the disposal is to be calculated by multiplying the taxable weight of the material in tonnes by the standard rate.
- (3) The standard rate is the rate per tonne prescribed for the purposes of subsection (2) in regulations.
- (4) Subsection (2) does not apply to the disposal if the material disposed of—
  - (a) consists entirely of one or more qualifying materials (see section 15), or
  - (b) is a qualifying mixture of materials (see section 16).
- (5) The amount of tax chargeable on a disposal of that description is instead to be calculated by multiplying the taxable weight of the material in tonnes by the lower rate.
- (6) The lower rate is the rate per tonne prescribed for the purposes of subsection (5) in regulations.
- (7) Regulations under subsection (3) or (6) may prescribe different rates for different descriptions of material.

*Changes to legislation: There are currently no known outstanding effects for the Landfill Disposals Tax (Wales) Act 2017, CHAPTER 2. (See end of Document for details)*

- (8) See section 18 for provision about how the taxable weight of the material in a taxable disposal is to be calculated.

**Commencement Information**

- I1** S. 14(1)(2)(4)(5)(7)(8) in force at 1.4.2018 by S.I. 2018/35, art. 3  
**I2** S. 14(3)(6) in force at 18.10.2017 for specified purposes by S.I. 2017/955, art. 2(a)  
**I3** S. 14(3)(6) in force at 1.4.2018 in so far as not already in force by S.I. 2018/35, art. 3

*Qualifying materials and qualifying mixtures of materials*

**15 Qualifying material**

- (1) Qualifying material is material in respect of which the following requirements are met.

*Requirement 1* The material is specified in the Table in Schedule 1.

*Requirement 2* Each condition in the Table in Schedule 1 that applies in respect of the material is met (if any).

*Requirement 3* There is—

- (a) if a written description of the material is required by virtue of section 34(1)(c)(ii) of the Environmental Protection Act 1990 (c. 43), a written description of the kind required, or
- (b) if no written description of the material is required by virtue of that section, other evidence,

from which it can be determined that requirements 1 and 2 are met.

- (2) Regulations may amend Schedule 1.

**Commencement Information**

- I4** S. 15 in force at 1.4.2018 by S.I. 2018/35, art. 3

**16 Qualifying mixtures of materials**

- (1) A qualifying mixture of materials is a mixture in respect of which the following requirements are met.

*Requirement 1* The mixture consists of—

- (a) one or more qualifying materials, and
- (b) a small amount of one or more non-qualifying materials that is incidental to the qualifying materials.

*Requirement 2* There is—

- (a) if a written description of the mixture is required by virtue of section 34(1)(c)(ii) of the Environmental Protection Act 1990 (c. 43), a written description of the kind required, or
- (b) if no written description of the mixture is required by virtue of that section, other evidence,

from which it can be determined that requirement 1 is met.

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**Requirement 3** The non-qualifying materials have not been mixed with the qualifying materials deliberately for the purposes of—

- (a) disposal, or
- (b) matters preparatory to disposal.

**Requirement 4** The non-qualifying materials do not include any material prescribed as material that must not be included in a qualifying mixture of materials.

**Requirement 5** The mixture is not hazardous waste within the meaning of Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste.

**Requirement 6** No arrangements have been made in respect of the mixture that have, as their main purpose, or as one of their main purposes, the avoidance of liability to the tax.

**Requirement 7** If the mixture consists entirely of fines, any requirement prescribed under section 17(1) (either in relation to mixtures generally or in relation to mixtures of that particular description) is met in respect of the mixture.

- (2) For the purposes of requirement 1—
  - (a) both the weight and the volume of the non-qualifying materials must be taken into account in determining whether the amount of those materials is to be treated as a small amount;
  - (b) the potential that the non-qualifying materials have to cause harm must be taken into account in determining whether those materials are to be treated as incidental to the qualifying materials.
- (3) Regulations may provide that an amount of non-qualifying materials is not to be treated as a small amount for the purposes of requirement 1 if it constitutes more than a prescribed percentage of the mixture of materials (by weight or volume or both).
- (4) Regulations may amend this section to—
  - (a) add a further requirement to subsection (1),
  - (b) modify an existing requirement,
  - (c) remove a requirement, or
  - (d) make further provision about matters that must or may be taken into account for the purposes of determining whether a requirement is met, or modify or remove existing provision about those matters.

- (5) In this section—

“arrangement” (“*trefniant*”) has the meaning given in section 81B(3) of TCMA;

“fines” (“*gronynnau mân*”) has the meaning given in section 17(6);

“non-qualifying material” (“*deunydd anghymwys*”) means a material that is not a qualifying material;

“prescribed” (“*rhagnodedig*”) means prescribed in regulations.

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**Commencement Information**

**I5** S. 16 in force at 1.4.2018 by S.I. 2018/35, art. 3

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## 17 Qualifying mixture of materials: fines

- (1) Regulations may prescribe requirements that must be met (in addition to requirements 1 to 6 in section 16) in order for a mixture of materials consisting entirely of fines to be treated as a qualifying mixture of materials.
- (2) The regulations may provide (among other things)—
  - (a) that the mixture must originate in a prescribed way (for example, by means of a prescribed waste treatment process);
  - (b) that there must be prescribed evidence regarding the nature of the fines in the mixture;
  - (c) that prescribed steps must have been taken in relation to the mixture (either by the operator of an authorised landfill site or by any other person);
  - (d) that there must be prescribed evidence regarding the taking of those steps;
  - (e) that the mixture must give a prescribed result if subjected to a prescribed test.
- (3) Where regulations are made under subsection (2)(e), regulations may also make connected provision, including (among other things) provision—
  - (a) requiring the operator of an authorised landfill site to carry out the prescribed test (“the test”) on prescribed mixtures of fines;
  - (b) specifying when the operator must do so;
  - (c) enabling WRA—
    - (i) to direct the operator to carry out the test on all mixtures of fines brought onto the site, or on particular descriptions of those mixtures of fines;
    - (ii) to carry out the test itself on any mixture of fines brought onto the site;
  - (d) requiring the operator and WRA—
    - (i) to keep prescribed evidence in connection with the test, and
    - (ii) to preserve it for a prescribed period;
  - (e) requiring the operator to provide prescribed information to WRA in connection with the test—
    - (i) at prescribed intervals;
    - (ii) in the prescribed form and manner;
  - (f) requiring or permitting the operator to take prescribed steps if a mixture of fines fails the test;
  - (g) prohibiting prescribed mixtures of fines from being treated as qualifying mixtures of materials in prescribed circumstances.
- (4) Regulations under subsection (3) may make provision for—
  - (a) penalties, or
  - (b) reviews and appeals,
 in connection with any provision made under that subsection; and where they do so, they may amend or apply (with or without modifications) any enactment relating to the tax.
- (5) Any regulations under this section, other than regulations conferring powers or imposing duties on WRA, may make provision by reference to things specified in a notice published by WRA (and not withdrawn by a subsequent published notice).
- (6) In this section—

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“fines” (“*gronynnau mân*”) means particles produced by a waste treatment process that involves mechanical treatment;

“prescribed” (“*rhagnodedig*”) means prescribed in regulations.

**Commencement Information**

**I6** S. 17 in force at 18.10.2017 by S.I. 2017/955, art. 2(b)

*Taxable weight of material*

**18 Taxable weight of material in taxable disposal**

- (1) The taxable weight of the material in a taxable disposal made at an authorised landfill site—
  - (a) must be calculated by the operator of the site at which the taxable disposal is made;
  - (b) may be calculated by WRA if it thinks it appropriate to do so.
- (2) The calculation is to be made—
  - (a) in accordance with section 19, if made by the operator;
  - (b) in accordance with section 22, if made by WRA.
- (3) Where—
  - (a) no tax return has been made in respect of the disposal, and
  - (b) WRA—
    - (i) calculates the taxable weight of the material, and
    - (ii) applies the result in issuing a notice to the operator in respect of the disposal,the taxable weight of the material for the purposes of section 14(2) and (5) is the taxable weight calculated by WRA, unless the operator subsequently takes the steps set out in subsection (4).
- (4) Where the operator—
  - (a) calculates the taxable weight of the material, and
  - (b) applies the result in making or amending a tax return in respect of the disposal, the taxable weight of the material for the purposes of section 14(2) and (5) is the taxable weight calculated by the operator, unless WRA subsequently takes the steps set out in subsection (5).
- (5) Where WRA—
  - (a) calculates the taxable weight of the material after a tax return has been made in respect of the disposal, and
  - (b) applies the result in issuing a notice to the operator in respect of the disposal, the taxable weight of the material for the purposes of section 14(2) and (5) is the taxable weight calculated by WRA, unless the operator subsequently takes the steps set out in subsection (4).

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**Commencement Information**

**I7** S. 18 in force at 1.4.2018 by S.I. 2018/35, art. 3

**19 Calculation of taxable weight of material by operator**

- (1) The operator of an authorised landfill site must calculate the taxable weight of the material in a taxable disposal in the following way.
- (2) The operator must determine the weight of the material in tonnes in accordance with section 20.
- (3) If the operator has approval under section 21 to apply a discount in relation to the disposal, the operator may apply the discount (or a lesser discount) to the weight determined under subsection (2), subject to the conditions of the approval (if any).
- (4) The result is the taxable weight of the material in the taxable disposal.

**Commencement Information**

**I8** S. 19 in force at 1.4.2018 by S.I. 2018/35, art. 3

**20 Determination of weight of material by operator**

- (1) The operator of an authorised landfill site must determine the weight of the material in a taxable disposal by using a weighbridge.
- (2) The operator must ensure, for the purposes of subsection (1)—
  - (a) that the material is weighed on the weighbridge before the disposal is made, and
  - (b) that the weighbridge meets each requirement in weights and measures legislation that applies to the weighbridge (if any).
- (3) The operator of an authorised landfill site may make an application to WRA for approval to use an alternative method to determine the weight of the material in a taxable disposal.
- (4) An application must—
  - (a) be made in such manner,
  - (b) contain such information, and
  - (c) be accompanied by such documents,
 as may be specified by WRA (either generally or in a particular case).
- (5) Where the operator makes an application for approval—
  - (a) WRA must issue a notice to the operator of its decision on the application, and
  - (b) if WRA gives approval, the notice must set out the details of the approval.
- (6) An approval—
  - (a) may relate to all the taxable disposals in respect of which the application is made, or to particular descriptions of those taxable disposals only;
  - (b) may be unconditional or subject to conditions;

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- (c) may be given for a fixed period or an unlimited period;
  - (d) may be varied or revoked at any time by issuing a notice to the operator.
- (7) If WRA gives the operator approval to use an alternative method to determine the weight of the material in a taxable disposal, the operator—
- (a) must use that method in relation to the disposal (instead of the method described in subsection (1)), and
  - (b) must do so in accordance with any condition to which the approval is subject.
- (8) In this section, “weights and measures legislation” means the Weights and Measures Act 1985 (c. 72) and regulations made (in whole or in part) under that Act.

#### Commencement Information

**I9** S. 20(1)(2)(7)(8) in force at 1.4.2018 by S.I. 2018/35, art. 3

**I10** S. 20(3)-(6) in force at 25.1.2018 by S.I. 2018/35, art. 2(b)

## 21 Discount in respect of water content of material

- (1) The operator of an authorised landfill site may make an application to WRA for approval to apply a discount in respect of water present in material when calculating the taxable weight of the material in a taxable disposal.
- (2) An application for approval must be made in writing.
- (3) Where the operator makes an application for approval—
- (a) WRA must issue a notice to the operator of its decision on the application, and
  - (b) if WRA gives approval, the notice must set out the details of the approval.
- (4) WRA may give the operator approval to apply a discount in respect of water present in material only if—
- (a) the water is present because—
    - (i) it had to be added to enable the material to be transported for disposal,
    - (ii) it had to be used to extract a mineral,
    - (iii) it had to be added in the course of an industrial process, or
    - (iv) it arose as a necessary consequence of an industrial process, or
  - (b) the material is a residue from the treatment of effluent or sewage at a water treatment works.
- (5) An approval—
- (a) may relate to all taxable disposals in respect of which the application is made, or to particular descriptions of those taxable disposals only;
  - (b) may specify different discounts for different descriptions of taxable disposals;
  - (c) may be unconditional or subject to conditions (for example, a condition requiring payment in respect of tests on material);
  - (d) may be given for a fixed period or an unlimited period;
  - (e) may be varied or revoked at any time by issuing a notice to the operator.
- (6) The operator of an authorised landfill site must keep a record of each taxable disposal in relation to which a discount is applied in respect of water present in material (a “water discount record”).

*Changes to legislation: There are currently no known outstanding effects for the Landfill Disposals Tax (Wales) Act 2017, CHAPTER 2. (See end of Document for details)*

- (7) WRA may specify—
- (a) the form in which a water discount record must be kept;
  - (b) the information that must be contained in it.
- (8) The record is to be treated for the purposes of TCMA as being a record required to be kept and preserved under section 38(1) of TCMA for the purpose of demonstrating that the tax return that the operator is required to make, in respect of the accounting period in respect of which tax is chargeable on the disposal, is correct and complete.

**Commencement Information**

- I11** S. 21(1)-(5)(7) in force at 25.1.2018 by [S.I. 2018/35, art. 2\(c\)](#)  
**I12** S. 21(6)(8) in force at 1.4.2018 by [S.I. 2018/35, art. 3](#)

**22 Calculation of taxable weight of material by WRA**

- (1) Where WRA calculates the taxable weight of the material in a taxable disposal, it must do so by—
- (a) determining the weight of the material in tonnes using any method it thinks appropriate, and
  - (b) where there is approval under section 21 to apply a discount in relation to the disposal, applying the discount to the weight determined under paragraph (a), subject to the conditions of the approval (if any).
- (2) But if WRA is satisfied that a failure or breach mentioned in section 23 has occurred in relation to the taxable disposal, it may, in making its calculation, take the steps set out in that section in respect of the failure or breach.
- (3) The result is the taxable weight of the material in the taxable disposal.

**Commencement Information**

- I13** S. 22 in force at 1.4.2018 by [S.I. 2018/35, art. 3](#)

**23 Calculation of taxable weight of material by WRA: cases of non-compliance**

- (1) This section applies where WRA calculates the taxable weight of the material in a taxable disposal.
- (2) Where WRA is satisfied that the operator of the site at which a taxable disposal is made has failed to make a tax return in relation to the disposal, WRA may ignore section 22(1)(b).
- (3) Where WRA is satisfied that the operator of the site at which a taxable disposal is made has failed to determine the weight of the material in the disposal in accordance with section 20, WRA may—
- (a) ignore section 22(1)(b), or
  - (b) reduce the discount to be applied under section 22(1)(b) as it thinks appropriate.



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- (4) Where WRA is satisfied that the operator of the site at which a taxable disposal is made—
- (a) has approval under section 21 to apply a discount in relation to the disposal, but
  - (b) is in breach of a condition of the approval,
- WRA may take the steps set out in subsection (5).
- (5) WRA may—
- (a) ignore section 22(1)(b), or
  - (b) reduce the discount to be applied under section 22(1)(b) as it thinks appropriate.
- (6) Where WRA is satisfied that there is no water discount record in respect of a taxable disposal, WRA may ignore section 22(1)(b).
- (7) Where WRA is satisfied that the water discount record in respect of a taxable disposal does not meet a requirement specified under section 21(7), WRA may—
- (a) ignore section 22(1)(b), or
  - (b) reduce the discount to be applied under section 22(1)(b) as it thinks appropriate.
- (8) In this section, “water discount record” has the meaning given by section 21(6).

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**Commencement Information**

**I14** S. 23 in force at 1.4.2018 by S.I. 2018/35, art. 3

## **24 Reviews and appeals relating to method for determining weight of material**

In section 172 of TCMA (appealable decisions), in subsection (2), after paragraph (g) (inserted by paragraph 62 of Schedule 23 to LTTA) insert—

- “(h) a decision relating to the method to be used by the operator of an authorised landfill site to determine the weight of material for the purposes of landfill disposals tax;”.

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**Commencement Information**

**I15** S. 24 in force at 25.1.2018 by S.I. 2018/35, art. 2(d)

## **25 Power to modify provision relating to taxable weight of material**

Regulations may add to, repeal or otherwise amend any provision in this Act relating to the taxable weight of the material in a taxable disposal made at an authorised landfill site (including provision relating to the application of a discount in respect of water present in the material).

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**Commencement Information**

**I16** S. 25 in force at 25.1.2018 by S.I. 2018/35, art. 2(d)

**Changes to legislation:**

There are currently no known outstanding effects for the Landfill Disposals Tax (Wales) Act 2017, CHAPTER 2.