
WELSH STATUTORY INSTRUMENTS

2018 No. 101

**The Landfill Disposals Tax
(Administration) (Wales) Regulations 2018**

PART 2

MIXTURES OF MATERIALS CONSISTING ENTIRELY OF FINES

General

Interpretation of this Part

3. In this Part—

“direction” (*“cyfarwyddyd”*) means a direction issued by WRA under regulation 6 that has not been withdrawn;

“LOI percentage” (*“y ganran colled wrth danio”*) means the amount of non-qualifying material contained in a mixture of materials consisting entirely of fines, as indicated by the percentage of the mass of those fines lost on ignition;

“LOI test” (*“prawf colled wrth danio”*) means a test to determine the LOI percentage of a mixture of materials consisting entirely of fines;

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

“the WRA notice” (*“yr hysbysiad ACC”*) means a notice published by WRA under section 17(5) of LDTA that has not been withdrawn by a subsequent published notice.

Requirements in respect of mixture of materials consisting entirely of fines

4.—(1) The following requirements must be met (in addition to requirements 1 to 6 in section 16 of LDTA) in order for a mixture of materials consisting entirely of fines to be treated as a qualifying mixture of materials.

Requirement 1

The operator of the authorised landfill site at which a taxable disposal of the mixture is made must have taken the steps specified in the WRA notice.

Requirement 2

The operator must hold the evidence specified in the WRA notice regarding the taking of those steps.

Requirement 3

If a LOI test has been carried out on a sample of the taxable disposal, the LOI percentage indicated by the test must not have exceeded 10% (but see paragraph (3)).

Requirement 4

The mixture contained in the taxable disposal must not be prohibited from being treated as a qualifying mixture of materials by virtue of regulation 5(3).

(2) WRA may determine that requirement 2 is to be treated as having been met if it is satisfied that any facts that it reasonably requires to be proved, and which would have been proved by the evidence if that requirement had been met, are proved by other documentary evidence provided to it.

(3) The WRA notice may specify circumstances in which a LOI test which indicates that the LOI percentage exceeds 10% may be ignored.

General requirements in respect of LOI testing

5.—(1) The operator of an authorised landfill site must comply with the following requirements in order for mixtures of materials consisting entirely of fines to be treated as qualifying mixtures of materials when they are disposed of at the site.

Requirement 1

The operator must carry out a LOI test on the mixtures—

- (a) at the times and intervals specified in the WRA notice, unless the operator is directed to do otherwise under regulation 6, or
- (b) if the operator is so directed, at the times and intervals specified in the direction.

Requirement 2

The operator must, in carrying out each LOI test—

- (a) heat a sample of the mixture that is being tested to a temperature of 440°C for a minimum of 5 hours, and
- (b) comply with any other requirement in the WRA notice that relates to the carrying out of the test.

Requirement 3

Where—

- (a) a LOI test is carried out on a sample of a mixture, and
- (b) the LOI percentage indicated by the test exceeds 10%,

the operator must take the steps specified in the WRA notice.

Requirement 4

The operator must—

- (a) keep the evidence specified in the WRA notice in relation to each LOI test carried out by the operator, and
- (b) preserve it for the period specified in the notice.

(2) WRA may determine that the operator is to be treated as having complied with requirement 4 if it is satisfied that any facts that it reasonably requires to be proved, and which would have been proved by the evidence if the operator had complied with the requirements, are proved by other documentary evidence provided to it.

(3) Where the operator fails to comply with a requirement mentioned in paragraph (1), mixtures of fines contained in taxable disposals of a description specified in the WRA notice are prohibited from being treated as qualifying mixtures of materials.

WRA power to direct operators to carry out LOI tests

6.—(1) WRA may by notice direct the operator of an authorised landfill site to carry out a LOI test on any mixture of materials—

- (a) which appears to WRA to consist entirely of fines,
 - (b) which is of a description specified in the direction, and
 - (c) which is present at the site.
- (2) A direction given under this regulation may be varied or withdrawn by notice at any time.

WRA power to take samples and carry out LOI tests

- 7.—(1) WRA may—
- (a) take a sample of any mixture of materials at an authorised landfill site which appears to WRA to consist entirely of fines, and
 - (b) carry out a LOI test on the sample.
- (2) Where WRA does so, it must—
- (a) carry out the test by heating a sub-sample of the sample to a temperature of 440°C for a minimum of 5 hours,
 - (b) issue a notice of the LOI percentage determined by the test to the operator of the site,
 - (c) retain—
 - (i) no less than 1kg of the sample, and
 - (ii) a record of the LOI test result,
 - (d) preserve the retained portion of the sample for a period of 3 months beginning with the filing date for the relevant tax return, and
 - (e) preserve the record of the LOI test result for the period that a person who is required to make a tax return would be required to keep the record under section 38 of TCMA (duty to keep and preserve records).
- (3) In paragraph (2)(d), “the relevant tax return” is the tax return for the accounting period in which the tax chargeable on the disposal of the mixture is accounted for.

Penalties

Penalty for failure to comply with requirements relating to evidence

- 8.—(1) An operator of an authorised landfill site who—
- (a) treats a mixture of materials consisting entirely of fines as a qualifying mixture of materials in accounting for the tax chargeable on a taxable disposal, but
 - (b) fails to comply—
 - (i) with requirement 2 in regulation 4 (in relation to that disposal), or
 - (ii) with requirement 4 in regulation 5 (in relation to that mixture),
- is liable to a penalty not exceeding £3,000.
- (2) But the operator is not liable to a penalty under this regulation in respect of the failure if WRA is satisfied that any facts that it reasonably requires to be proved, and which would have been proved by the evidence if the operator had complied with those requirements, are proved by other documentary evidence provided to it.

Assessment and payment of penalties

- 9.—(1) Where an operator of an authorised landfill site becomes liable to a penalty under regulation 8, WRA must—

- (a) assess the penalty, and
- (b) issue a notice to the operator of the penalty assessed.
- (2) An assessment of a penalty may be combined with an assessment to tax.
- (3) An assessment of a penalty under regulation 8 must be made within the period of 12 months beginning with the day on which WRA first believed that the operator was liable to the penalty.
- (4) An operator of an authorised landfill site to whom notice of a penalty is issued under this regulation must pay the penalty before the end of the period of 30 days beginning with the day on which the notice of the penalty is issued (but see section 182 of TCMA (payment of penalties in the event of review or appeal)).

Supplementary provision about penalties

- 10.**—(1) A person is not liable to a penalty under regulation 8 in respect of anything if the person has been convicted of an offence in relation to it.
- (2) If a person liable to a penalty under regulation 8 has died, any penalty that could have been assessed on the person may be assessed on the person's personal representatives.
- (3) A penalty assessed in accordance with paragraph (2) is to be paid out of the person's estate.

Other supplementary provision

Supplementary provision about WRA notices and directions

- 11.**—(1) WRA may make different provision for different purposes in—
- (a) the WRA notice, and
 - (b) any direction given by WRA under regulation 6.
- (2) The provision may include (among other things) transitional provision applicable to operators of authorised landfill sites who, immediately before the day on which section 2 of LDTA comes into force, were registered under section 47 of the Finance Act 1996.