

LANDFILL DISPOSALS TAX (WALES) ACT 2017

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 3 - Taxable Disposals Made at Authorised Landfill Sites

Chapter 2 – Tax Chargeable on Taxable Disposals

Calculation of tax chargeable

Section 14 – Calculation of tax chargeable on taxable disposal

31. This section sets out how the amount of tax will be calculated for a taxable disposal at an authorised landfill site. It provides that there will be a standard rate of LDT and a lower rate of LDT, which will apply to qualifying materials (as defined in section 15) and qualifying mixtures of materials (as defined in section 16); and that the tax rates will be prescribed in regulations.
32. It is the responsibility of the landfill site operator to ensure the correct tax rate is applied and the right amount of tax is paid to WRA for each disposal at their site.

Qualifying materials and qualifying mixtures of materials

Section 15 – Qualifying material

33. This section sets out the circumstances in which material will qualify for the lower rate of tax. Firstly, the material needs to be listed in the Table in Schedule 1. Secondly, each applicable condition (if any) that is set out in the Table in Schedule 1 will need to be met. Thirdly, landfill site operators must hold a written description of the material, often referred to as a waste transfer note, if such a document is required by the Environmental Protection Act 1990 or, if it is not, other evidence which establishes that the material is in fact a qualifying material. Welsh Ministers may, by regulations, amend Schedule 1.

Section 16 – Qualifying mixtures of materials

34. This section sets out the tests that a mixture of materials must meet in order to qualify for the lower rate of LDT. Requirements 1-6 apply to all qualifying mixtures and requirement 7 provides for the possibility of there being additional requirements to be met when the mixture is made up of fines.
35. It should be noted that requirement 1 provides that the load must be made up of one or more qualifying materials and only a small amount of non-qualifying material which is incidental to the qualifying material. Subsection (2) sets out matters that must be taken into account in determining whether an amount of non-qualifying material is a small amount and whether it is incidental to the qualifying materials.
36. Requirement 3 states that the non-qualifying material must not have been mixed with the qualifying materials deliberately for the purposes of disposal or matters preparatory to disposal: for example, for transportation. This test will, for example, distinguish

between a case where there are fragments of non-qualifying material attached to qualifying material because the complete removal of it was not possible and a case where a non-qualifying material has been separately and deliberately added to the load. The latter would not satisfy requirement 3.

37. Requirement 4 allows for the Welsh Ministers to prescribe in regulations any materials which must not be included in a qualifying mixture of materials. If such regulations were made, the standard rate of tax (as defined in section 14) would apply to any mixture of materials containing prescribed material, regardless of whether the amount of prescribed material was small and incidental to the other material.
38. Requirement 6 states that no arrangements (this includes any actions or operations) should be made in respect of the mixture, that have, as the main purpose, or as one of the main purposes, the avoidance of tax liability. Such arrangements might include, for example, the blending of a mixture in a way that allows its composition to be disguised, such as deliberately crushing up or hiding standard rate material within a load of qualifying material so as to reduce the likelihood of it appearing to have more than a small and incidental amount of such material present in the load.

Section 17 – Qualifying mixtures of materials: fines

39. This section empowers the Welsh Ministers to make regulations in respect of fines (as defined at section 17(6)). The regulations may prescribe requirements that must be met (in addition to those set out for qualifying mixtures at section 16) in order for a mixture of fines to be eligible for the lower rate. Section 17(2) sets out a non-exhaustive list of matters those regulations may cover and includes the possibility of requiring that a mixture of fines gives a prescribed result if subjected to a prescribed test (17(2)(e)). If such a requirement is imposed under section 17(2)(e), section 17(3) sets out a non-exhaustive list of connected provision that can be made, such as a requirement that a landfill site operator carry out the prescribed test on prescribed mixtures of fines at a prescribed time. The effect of section 17(5) is that requirements in relation to mixtures of fines, other than those relating to WRA powers or duties, may be set out in a WRA notice, provided the regulations allow for this.

Taxable weight of material

Sections 18 to 20 – Calculation of taxable weight of material, Calculation of taxable weight of material by operator and Determination of weight of material by operator

40. LDT is charged on a taxable disposal by multiplying the taxable weight of the material by the tax rate applicable, as set out at section 14. Therefore an accurate calculation of the taxable weight of the material being disposed of is important.
41. **Section 18** provides that the taxable weight of the material in a taxable disposal (made at an authorised landfill site) must be calculated by the landfill site operator and may be calculated by WRA if it thinks it appropriate to do so. This section also specifies the taxable weight that applies for the purposes of section 14(2) and (5) of the Act.
42. **Section 19** sets out how an operator must calculate the taxable weight of the material in a taxable disposal. The landfill site operator must determine the weight of the material in tonnes in accordance with section 20. Where a landfill site operator has approval to apply a discount in respect of water present in material, the landfill site operator may apply the discount (or a lesser discount) to the weight determined, subject to the conditions of the approval (if any).
43. **Section 20** requires the landfill site operator to determine the weight of the material in a taxable disposal by using a weighbridge. For this purpose, the landfill site operator must ensure that the material is weighed on the weighbridge before the disposal is made, and that the weighbridge meets the requirements set out in applicable weights and measures legislation.

*These notes refer to the Landfill Disposals Tax (Wales) Act 2017 (c.3)
which received Royal Assent on 7 September 2017*

44. There may however be circumstances where it is not possible for a landfill site operator to use a weighbridge. For example, a landfill site may not have a weighbridge or a weighbridge may have broken down. Section 20(3) therefore makes provision for a landfill site operator to make an application to WRA for approval to use an alternative method to determine the weight of material in a taxable disposal. For example, an alternative method may include a calculation based on the maximum permitted weight of a container.
45. [Section 20](#) also makes provision for WRA to specify the manner in which an application for an alternative method is to be made and the information it must contain. This section makes further provision about the powers of WRA in relation to an approval for an alternative method. For example, WRA may give approval in relation to all taxable disposals or to particular descriptions of taxable disposals. WRA may give approval unconditionally or subject to conditions. Further, WRA may vary or revoke an agreement; this may occur if WRA consider the alternative method is not giving an accurate indication of the weight or is not being fully observed and there is a risk to the tax revenue.
46. There is a penalty for failing to determine the weight of the material in a taxable disposal in accordance with section 20. This is set out in section 61 of the Act.

Section 21 – Discount in respect of water content of material

47. [Section 21\(1\)](#) and [\(2\)](#) provide that a landfill site operator may apply in writing to WRA for approval to apply a discount in respect of water present in material when calculating the taxable weight of the material. [Section 21\(4\)](#) sets out the conditions that must be met in order for WRA to give approval for a water discount.
48. This section makes further provision about the powers of WRA in relation to an approval to discount water. For example, approval may be subject to conditions or may be given for a fixed period.
49. The provisions also require a landfill site operator to keep a water discount record in relation to each taxable disposal to which a discount is applied. The record is to be treated as being a record required to be kept and preserved in accordance with section 38 of TCMA, which sets out the relevant time period for retaining records.
50. There is a penalty for applying water discount incorrectly. This is set out in section 62 of the Act.

Sections 22 and 23 – Calculation of taxable weight of material by WRA including in cases of non-compliance

51. [Section 22](#) details how WRA is to calculate the taxable weight of material where it thinks it is appropriate to do so.
52. [Section 23](#) provides that in cases of non-compliance as set out in this section, WRA may ignore or reduce the water discount when calculating the taxable weight of material.

Section 24 – Reviews and appeals relating to method for determining weight of material

53. [Section 24](#) amends section 172 of TCMA so that the review and appeals procedures in Part 8 of that Act apply to decisions under section 20 of this Act.

Section 25 – Power to modify provision relating to taxable weight of material

54. [Section 25](#) allows the Welsh Ministers by regulations to add to, repeal or otherwise amend any provision in the Act relating to the taxable weight of material (including provision relating to water discount).