

LANDFILL DISPOSALS TAX (WALES) ACT 2017

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 3 - Taxable Disposals Made at Authorised Landfill Sites

Chapter 1 – Persons Chargeable to Tax

29. **Section 13** explains that for disposals made at authorised landfill sites, the person liable for paying the tax is the landfill site operator at the time the relevant disposal takes place.
30. If there are two or more persons liable, then WRA will be able to take steps to recover any outstanding LDT from all or any of them. As an example, if a landfill site is operated by persons carrying on business in partnership, then all partners at the time of the relevant disposal are jointly and severally liable to pay LDT (i.e. if any of the partners do not have enough money or assets to cover an equal share then the other partners must make up the difference) (see section 83).

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.

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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.
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).

Chapter 3 – Relief from Tax

Section 26 – Reliefs: general

55. This section introduces the chapter on reliefs and sets out the following general rules: reliefs apply only in relation to disposals at authorised landfill sites (so do not apply in relation to unauthorised disposals); where a relief applies, tax is not chargeable; and a relief will not apply unless it is claimed in a tax return. WRA may specify the form of the return and the information that must be contained in it (under section 191 of TCMA) and the landfill site operator will be required to keep and preserve any records relevant to the claim, in accordance with section 38 of TCMA (6 years from making the return or the completion of an enquiry).

Section 27 – Material removed from bed of river, sea or other water

56. This relief applies to the disposal of:
- a. material removed from the bed of certain waterways; and
 - b. naturally occurring material removed from the sea bed as part of the process of obtaining materials such as sand and gravel.
57. The relief may apply to material removed for any purpose, including removal in the interests of navigation or for flood prevention.
58. The relief also covers such qualifying material added to the dredged material as is necessary for the purposes of securing that the dredged material is not in liquid form (and so to allow its disposal to landfill). It is anticipated that the qualifying material which is added would have dehydrating properties or bind the excess moisture content within the waste.

Section 28 – Material resulting from mining and quarrying

59. This relief applies to disposals of naturally occurring material extracted from the earth as a result of mining or quarrying operations. The disposal of such material is relieved if the material has not been subject to any separate process, or has not been chemically altered, between its extraction and disposal.

Sections 29 to 31 – Using material in approved site restoration work, Site restoration work: procedure on application for approval and Site restoration work: variation of approval

60. The use of material in site restoration is a specified landfill site activity, and so is to be treated as a taxable disposal (see section 8(3)(i)). These provisions provide for the disposal to be relieved from tax if the material consists of qualifying material and is used to restore an authorised landfill site (or part of it) to another use. However, they require landfill site operators to seek approval for the restoration work beforehand in order to be able to claim the relief. The use of material for site restoration without WRA approval will not benefit from the relief. It is anticipated that these provisions

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will enable WRA to fully assess material used for site restoration and to ensure that the relief is not open to abuse.

61. **Section 29** provides that WRA may approve the carrying out of restoration work at an authorised landfill site.; However, before doing so, WRA will need to be satisfied that the site restoration is required by an environmental permit or planning permission relating to the site. Only the amount of material required to comply with the permit or permission will benefit from the relief.
62. Whilst the landfill site operator must apply to WRA for approval before the restoration work begins, the operator need not wait for WRA's approval before beginning site restoration. A landfill site operator might decide, for example, to proceed without approval in order to take advantage of good weather conditions or the availability of suitable material. However, the landfill site operator would be doing so at the operator's own risk, as there would be no guarantee that WRA would approve the application for approval, so as to enable site restoration relief to be claimed.
63. **Section 30** provides for occasions when WRA requires further information in order to make a decision on whether to approve an application to carry out site restoration and sets out the parameters of how this will work in practice. The WRA and landfill site operator may agree to extend a period of time specified by this section.
64. **Section 31** recognises that the requirements of the site restoration in the environmental permit or planning permission may change and allows WRA to vary the site restoration approval. A variation may be made as a result of an application by a landfill site operator or may be initiated by WRA. If WRA varies the site restoration approval on its own initiative, it must issue a notice setting out the details of that variation to the landfill site operator. A variation to the site restoration approval does not affect the landfill site operator's ability to claim relief for restoration work that was carried out in accordance with the approval before it was varied.

Section 32 - Refilling open-cast mines and quarries

65. This section provides relief for a disposal of qualifying material at a landfill site (or part of it) when:
 - a. the landfill site (or the part of it at which the disposal is made) was formerly an open cast mine or quarry;
 - b. it is a requirement of the planning permission that the site (or the part in question) must be wholly or partially refilled following the open-cast mining or quarrying operations; and
 - c. no other taxable disposals have been made at the site (or part of it), other than disposals qualifying for a relief under section 28 or 32.

Section 33 – Power to modify reliefs

66. This section allows the Welsh Ministers, by regulations, to create, modify or remove a relief; and to provide for a relief to be subject to conditions.

Chapter 4 – Tax Collection and Management

Sections 34 to 38 – Registration

67. To enable WRA to effectively collect and manage LDT, it is important that it is aware of who the taxpayers are. Section 34 places a duty on WRA to keep a register of those persons who operate authorised landfill sites at which taxable disposals are made. Such persons are considered to be carrying out "taxable operations" for the purposes of this Act. A person's entry in the register must contain the information specified in Schedule 2. WRA may wish to publish any information that is contained in the

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register so that, among other things, businesses can ensure they are sending their waste to authorised landfill sites.

68. [Section 35](#) requires a person who carries out taxable operations to be registered with WRA. A person who intends to carry out taxable operations must apply to WRA to be registered and the application must be made at least 14 days before the taxable operations begin.
69. It is important for the register to remain accurate and reflect the most up-to-date information available regarding landfill site operators. Therefore, section 36 requires a registered person, or a person who has applied for registration, to give notice to WRA of any changes or inaccuracies in the information they have provided and to do so in a way that complies with the requirements of that section.
70. [Section 37](#) requires a registered person who ceases to carry out taxable operations to apply to WRA for the cancellation of their registration no later than 30 days after taxable operations end.
71. There are penalties associated with the registration requirements in sections 35 and 36. These are set out in sections 64 to 67 of the Act.
72. [Section 38](#) amends section 172(2) of TCMA so that the review and appeals procedures in Part 8 of that Act apply to decisions relating to the registration of a person with WRA for the purposes of LDT.

Sections 39 to 41 – Accounting for tax

73. These sections of the Act and these notes should be read in conjunction with Part 3, Chapter 3 of TCMA and the relevant explanatory notes (paragraphs 46 and 47), which accompany TCMA.
74. [Section 39](#) places a duty on the operator of an authorised landfill site at which taxable disposals are made to make a tax return in respect of each accounting period. The return must contain an assessment of the amount of tax chargeable on the operator and a declaration that the information they have provided is correct and complete to the best of the operator's knowledge.
75. Tax returns must be submitted along with any payment of tax no later than the last working day of the month that follows the month in which the accounting period ends, unless this date is varied under section 40. For example, if an accounting period ends on the 30 June, a tax return must be submitted and payment of tax made by the last working day in July.
76. For registered landfill site operators, the first accounting period begins on the day on which they begin to carry out taxable operations (or, if later, the day on which they become registered) and ends on the day notified to them by WRA. From then on, their accounting periods will be each subsequent period of 3 months (unless those periods are varied under section 40).
77. For landfill site operators that have not registered, the first accounting period begins on the day on which they begin to carry out taxable operations and runs until the end of the calendar quarter in which they begin to do so (or, if sooner, the day before the day on which they become registered). From then on, the accounting periods will be every calendar quarter (a period of 3 months ending with 31 March, 30 June, 30 September or 31 December).
78. [Section 40](#) provides WRA with the power to vary the duration of an accounting period and the filing date for a tax return. Any such variation is to be made by issuing a notice to the landfill site operator.
79. [Section 41](#) provides that the tax chargeable on a taxable disposal made at an authorised landfill site is chargeable in respect of the accounting period in which the disposal is

made. There is one exception to this rule, however: if a landfill site operator issues a landfill invoice in respect of a disposal within 14 days beginning with the day the disposal is made, the tax then becomes chargeable in respect of the accounting period in which the invoice is issued. So, for example, where a landfill site operator's accounting periods are calendar quarters and a taxable disposal is made on 28 June for which a landfill invoice is issued on 1 July, the accounting period for the tax on that disposal will be the calendar quarter ending 30 September, rather than the calendar quarter ending 30 June. Schedule 3 sets out the information that needs to be contained in a landfill invoice. The Welsh Ministers have the power to make regulations to amend Schedule 3.

Payment, recovery and repayment of tax

Section 42 - Payment of tax

80. Subsection (1) states that the amount of tax assessed as being chargeable must be paid by the filing date for the tax return. Subsection (2) sets out the position where a tax return is amended under section 41 of TCMA and results in an additional amount of tax needing to be paid. In these circumstances, the tax must be paid no later than that filing date, if the amendment is made before the filing date, or, if the amendment is made later, the tax must be paid at the same time as the amendment is made.

Section 43 – Duty to maintain landfill disposals tax summary

81. **Section 43** requires a person who carries out taxable operations to keep a LDT summary in respect of each accounting period. This record must record the amount of tax chargeable on the person and the tax paid by that person in respect of each accounting period. WRA has the power to specify the form in which the LDT summary must be kept and the information that must be contained in it. This record is to be treated as a record required to be kept and preserved under section 38 of TCMA, which requires records to be kept for six years from the making of a return or notice of amendment, unless WRA specifies a shorter period.

Section 44 – Postponement of recovery

82. Sections 181A-181I of TCMA set out circumstances in which a person may request WRA postpone the recovery of devolved tax pending a review or appeal of a WRA decision, the process for making such a request and the effect of a postponement request being granted. Act.
83. **Section 44** amends section 181B of TCMA for the purposes of postponement requests relating to LDT. The effect of the amendments are to require WRA, when considering an LDT postponement request, to consider not only whether a person has reasonable grounds for stating that the amount of tax is excessive (as would be the case for other devolved taxes), but also whether recovery of the amount would cause financial hardship. A person's request for postponement must therefore address the reasons why that person thinks that recovery would cause them financial hardship, in addition to setting out the amount that they are seeking to postpone and why they think the amount of tax that WRA is seeking to recover is excessive.
84. A postponement request may be granted in full when the tests at section 181B(4) of TCMA, as amended by section 44(3), are met, or may be granted in relation to part of a disputed amount in accordance with section 181B(5) as amended by section 44(4)(b).

Section 45 - No requirement to discharge or repay tax unless all tax paid

85. **Section 45** amends section 67 of TCMA. This amendment ensures that WRA does not need to give effect to a claim for relief under section 63 of TCMA where an amount of landfill disposals tax that the claimant is required to pay has not been paid.