

LANDFILL DISPOSALS TAX (WALES) ACT 2017

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 5 - Supplementary Provision

Chapter 2 - Non-Disposal Areas

Section 55 – Designation of Non-Disposal Area

102. A non-disposal area will be created on an authorised landfill site either because the landfill site operator makes an application for a non-disposal area to be created or because WRA requires the creation of such an area.
103. This section allows WRA to designate a part of an authorised landfill site as a non-disposal area by issuing a notice to the operator of the site. This is intended to enable WRA to distinguish between those activities on a landfill site which constitute taxable disposals and those which are non-taxable uses of waste. This is important to determine the correct tax liability.
104. Subsection (3) sets out the information WRA may or must specify in the designation notice to enable the landfill site operator to manage the non-disposal area. Amongst other things, WRA must state what material has to be placed in an area and may also state what material must not be placed in an area; for example, WRA could issue a notice stating that standard rate material must not be placed in a non-disposal area in which qualifying material is being stored.
105. Subsection (4) provides that the notice may include conditions or exceptions and may make different provision for different cases. A condition could for example, require the landfill site operator to act in a way that is acceptable under the terms of its environmental permit. This provision provides flexibility to enable WRA to adapt a non-disposal area designation on a case by case basis, recognising that every landfill site is different.
106. Subsections (5) to (7) give WRA power to vary or cancel a designation notice and sets out the process for doing so. As with the original designation of a non-disposal area, a variation or cancellation can arise as a result of an application from the landfill site operator or can be instigated by WRA.
107. Applications to make, vary or cancel a non-disposal area designation notice must be made in writing and WRA may specify the form, content and manner of delivery of such a notice (under section 191 of TCMA). Subsection (9) requires WRA to issue a notice to the landfill site operator if it refuses an application to make, vary or cancel a non-disposal area designation.
108. Regulations may amend this section to make further or different provision about the contents of a notice issued under this section.

Section 56 – Duties of operator in relation to non-disposal area

109. Subsection (1) puts a duty on landfill site operators to comply with the terms of a non-disposal area designation notice. Subsections (2) to(4) set out the circumstances in which this duty will not apply. This includes cases where material is disposed of elsewhere on the site, as set out at subsection (2), and where material brought onto the site is being immediately disposed of or removed from the landfill site (for example, because it is a split load), as set out at subsection (3). Subsection (4) provides WRA with the flexibility to agree to material being treated in a way that is outside of the terms of the designation in particular cases. This could, for example, include a situation where a burning load arrives at the landfill site and needs to be immediately treated.
110. Subsection (5) allows an agreement by WRA under subsection (4) to be unconditional or subject to conditions. Subsection (5)(b) specifically contemplates that such an agreement may relate to the issue of storage of large amounts of similar material (often referred to as bulk waste), and enables WRA to agree to treat removals from the area as movements of earlier stored waste.

Section 57 - Duty to keep and preserve records

111. Subsections (1) and (2) require the landfill site operator to keep appropriate records of material in a non-disposal area to evidence that the non-disposal area is being operated in accordance with the designation notice made under 55(3). WRA can specify the form and contents of such records.
112. Records must be preserved until the end of the period of 6 years beginning with the date on which the material is removed from the non-disposal area, or ceases to be material of a description that must be deposited in the area, whichever is earlier. An agreement under section 56(4)(a) may specify a different date from which the period of 6 years begins, which could, for example, be used in cases involving the storage of bulk waste.
113. There are penalties associated with the non-disposal area requirements in sections 56 and 57. These are set out in sections 68 and 69 of the Act.

Section 58 – Reviews and appeals relating to non-disposal areas

114. This section inserts a decision relating to the designation of a non-disposal area (including in relation to its variation or cancellation) into the list of decisions that can be reviewed and/or appealed in accordance with the provisions in Part 8 of TCMA.