

# LANDFILL DISPOSALS TAX (WALES) ACT 2017

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 5 - Supplementary Provision**

##### *Chapter 4 – Penalties under this Act*

129. The deadlines for assessing the majority of penalties under this Act are 12 months beginning with the day on which WRA first believed the person to have breached or failed to comply with the relevant requirement. In the case of daily default penalties in relation to registration, the penalty must be assessed within the period of 12 months beginning with the day to which the penalty relates.

##### *Sections 61 to 63 – Penalties relating to the calculation of taxable weight of material*

130. **Section 61** provides that a landfill site operator who fails to determine the weight of the material in a taxable disposal in accordance with section 20 is liable to a penalty not exceeding £500 in respect of each taxable disposal to which the failure relates.
131. **Section 62** provides that where a landfill site operator applies a discount without having approval to do so under section 21, or applies a discount which is greater than the discount approved under section 21, the landfill site operator is liable to a penalty not exceeding £500 in respect of each taxable disposal to which a discount is applied in either of those ways.
132. **Section 63** allows an assessment to a penalty to be combined with an assessment to tax and requires a penalty assessment to be made within 12 months of the time when WRA first believed the operator was liable to a penalty.
133. These penalties apply to operators of authorised landfill sites only.

##### *Sections 64 to 67 - Penalties relating to registration*

134. **Section 64** provides that a person who carries out taxable operations without being registered is liable to a penalty of £300 (the “registration penalty”). Where a person continues to carry out taxable operations, without being registered, 10 days after notice of the registration penalty is issued, that person will be liable to a further penalty or penalties not exceeding £60 for each day they continue to do so.
135. **Section 65** sets out an exception to these rules. It provides that where a person carries out taxable operations without being registered, in breach of section 35, that person will not be liable to a penalty under section 64 if they can satisfy WRA or (on appeal) the tribunal that there is a reasonable excuse for the breach.
136. **Section 66** provides that a person who fails to comply with any of the registration-related requirements set out in subsection (2) is liable to a penalty not exceeding £300 subject to subsection (2).

## **Penalties relating to non-disposal areas**

### ***Section 68 - Penalties relating to non-disposal areas***

137. This section provides that a landfill site operator who fails to comply with the terms of a notice designating a non-disposal area (as required by section 56) or who fails to keep and preserve records in relation to material deposited in the area (as required by section 57) will be liable to a penalty not exceeding £3000.
138. No penalty will be incurred in respect of a failure to keep or preserve records if the landfill site operator provides other evidence which proves to the satisfaction of WRA any facts that it reasonably requires to be proved.
139. Separate provision is made at section 8(2)(g) for cases in which material is kept in a non-disposal area for longer than permitted. In such a case, a taxable disposal will be deemed to have occurred and so the landfill site operator may be required to pay tax on the disposal, as well as being liable to a penalty under section 68.

### ***Section 69 – Assessment of penalties under section 68***

140. This section enables an assessment of a penalty under section 68 to be combined with an assessment to tax. For example, if the landfill site operator fails to comply with the terms of a notice designating a non-disposal area, particularly where the failure relates to the placement of material, WRA may determine that a taxable disposal has taken place and issue an assessment to tax under TCMA at the same time that it assesses a penalty under section 68 in respect of that same failure.

## **General**

### ***Sections 72 – Liability of personal representatives***

141. Where a landfill site operator has died, section 72 allows any penalty that could have been assessed on the operator to be assessed on the personal representatives of the operator.

### ***Section 73 – Power to make regulations about penalties***

142. [Section 73](#) gives the Welsh Ministers a power to make further or different provision in regulations about the procedure for assessing penalties and the amounts of penalties under this Chapter of Part 5 of the Act.