

LANDFILL DISPOSALS TAX (WALES) ACT 2017

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 5 - Supplementary Provision

Chapter 1 – Tax Credits

Section 54 – Power to make provision for tax credits

98. *Section 54* gives the Welsh Ministers the power to make regulations setting out circumstances in which a person will be entitled to a tax credit in relation to LDT, subject to any specified conditions and procedures being met and followed.
99. It is envisaged that this power will be used, for example, to establish an entitlement to credit in situations where a landfill site operator:
- has properly invoiced a customer in relation to a taxable disposal that has been made;
 - has meanwhile accounted for and paid LDT on that disposal to WRA; and
 - has then discovered that the customer has become insolvent and that the debt cannot be recovered.
100. In the example outlined above, regulations might set out the conditions that the landfill site operator would be required to meet in order to be eligible to apply for a credit, including details of the records or supporting evidence needed. Further, the regulations might explain how the landfill site operator would go about claiming the credit: this might be through deducting the amount from the overall tax owed in an existing or future LDT return.
101. Regulations may also set out the circumstances in which WRA may refuse a claim for a tax credit and the way in which a person can challenge a decision taken by WRA about a tax credit. Regulations can set penalties that could apply if a credit were claimed contrary to the requirements set out in the regulations.

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.

Chapter 3 – Investigation and Information

Section 59 - Powers of inspection

115. **Section 59** makes amendments to Part 4, Chapter 4 (Investigatory Powers of WRA: Inspections of Premises and Other Property) of TCMA for the purposes of LDT. This section of the Act and these notes should be read in conjunction with Part 4, Chapter 4 of TCMA and the explanatory notes (paragraphs 117 to 142) which accompany TCMA.
116. Section 103A of TCMA (as inserted by this Act) provides that WRA can enter and inspect a business premises (including business assets and relevant business documents that are on the premises) of a third party to check a landfill site operator's liability to LDT. Business premises are defined in section 111 of TCMA. WRA may only inspect documents which relate to matters relevant to the landfill site operator's liability to LDT. These powers can be exercised only if WRA has reason to believe that:
- a. A person has been involved in any capacity with a taxable disposal (this may include a waste transfer station or a waste carrier); and
 - b. The inspection is required in order to help WRA to check the position of another person's liability to LDT.
117. Failure to permit WRA to inspect under this power can give rise to a penalty under section 146 of TCMA.
118. It is envisaged that this power will be used by WRA where they have reason to believe that a landfill site operator has provided a self-assessment that is not a true reflection of their liability to tax, and where inspecting the third party's business premises would assist any connected investigation. It is anticipated that most third parties will cooperate voluntarily in such investigations without WRA needing to invoke this power.
119. Section 103B of TCMA (as inserted by this Act) provides that where WRA is investigating an unauthorised disposal (i.e. is a taxable disposal made other than at an authorised landfill site - see Part 4), WRA can enter property, including non-business premises, and carry out an inspection (including an inspection of assets and documents that are on the premises) if WRA has reason to believe that:
- a. A disposal has occurred at the premises; or
 - b. The occupier meets or may meet the charging condition (see section 47) in relation to LDT on the disposal that is being investigated.
120. This power will enable WRA to investigate unauthorised disposals in order to decide whether to issue a preliminary notice or charging notice under Part 4, Chapter 2 of the Act. Again, failure to permit WRA to inspect under this power can give rise to a penalty under section 146 of TCMA.
121. There are a number of safeguards within Chapter 4 of TCMA which apply to WRA's use of its inspection powers in relation to LDT. For example, section 103(2) of TCMA states that WRA may only exercise its inspection powers with the agreement of the occupier of the premises or the approval of the Tribunal. Schedule 4 of this Act amends section 108(4) of TCMA to ensure that the tribunal may approve the inspection of premises:
- a. Only where WRA can satisfy the tribunal that the applicable requirement in section 108(4A) of TCMA is met; and

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

- b. In a case where WRA has applied for the tribunal's approval without giving notice of the application to the taxpayer or occupier of the premises, only where WRA can also satisfy the tribunal that giving the taxpayer prior notice of the application might hinder the assessment and collection of tax.
122. This section also makes a number of minor and consequential amendments to TCMA for the purposes of LDT.

Section 60 – Disclosure of information to WRA

123. **Section 60** allows information acquired by local authorities in Wales or Natural Resources Wales (NRW) to be disclosed to WRA to help WRA collect and manage LDT, and to investigate liability to tax where necessary.
124. **Section 60** does not authorise the disclosure of information to WRA if the disclosure would contravene the Data Protection Act 1998 or is prohibited by relevant sections of the Investigatory Powers Act 2016.
125. It is envisaged that this power of disclosure may be used where, as part of their day-to-day functions, a local authority or NRW identifies any activity, such as an unauthorised disposal, which could give rise to a liability to LDT. This power allows these bodies to pass on information relating to the activity and any associated potential liability to WRA so that it can be used in a tax investigation or tax enforcement action.
126. The Welsh Ministers may by regulations specify other individuals or organisations that are allowed to share information with WRA under this section. These could, for example, include public bodies such as National Park Authorities.
127. It is not envisaged that local authorities and NRW will routinely share information with WRA about authorised landfill sites and their operators. These operators should already be providing WRA with all of the information it needs through the tax registration system and their regular tax returns. However, where local authorities or NRW believe that information may be of interest to WRA in relation to the collection or management of the tax, it may be possible for this information to be shared with WRA, and this may lead to a tax investigation.
128. The use and disclosure of information held by WRA is dealt with in Part 2 of TCMA, which includes special provision to safeguard the disclosure of protected taxpayer information. These rules allow for sensitive tax payer information held by WRA to be disclosed to other persons or organisations in specified circumstances only. These circumstances include those in which the disclosure is made for the purposes of a criminal investigation or criminal proceedings, or to prevent or detect crime, or to assist in civil proceedings.

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.

Chapter 5 - Additional penalties under the Tax Collection and Management (Wales) Act 2016

Sections 74 to 76 - penalties for multiple failures to make tax returns; failure to pay tax on time and; multiple failures to pay tax on time

143. These sections of the Act and these notes should be read in conjunction with Part 5 of TCMA and the explanatory notes (paragraphs 147 to 151), which accompany TCMA.
144. **Section 74** amends TCMA and provides for the imposition of higher penalties where a person who has failed to make an LDT return on time then fails to make other LDT returns on time within the penalty period. The penalty period begins with the day after the filing date for the first late tax return and, unless extended under subsection (2)(b), ends 12 months later.
145. **Section 75** amends TCMA to provide that the penalty amount in respect of a failure to pay LDT on time is 1% of the amount of unpaid tax.
146. **Section 76** amends TCMA and provides for the imposition of higher penalties where a person who has failed to pay LDT on time then fails to pay further amounts of LDT on time within the penalty period. The penalty period begins with the day after the penalty date for the first amount of unpaid tax (see Table A1 in section 122 of TCMA) and, unless extended under section (2)(b), ends 12 months later.

Chapter 6 – Special Cases

Corporate groups

Sections 77 and 78 Designation of group of companies and Conditions for designation as member of group

147. **Section 77** allows WRA to designate two or more bodies corporate as a group for the purposes of the tax. The effect of a group designation is that the representative member of the group is treated for the purposes of the tax as the landfill site operator of the sites that are operated by the members of the group. Accordingly, an amount of tax, penalty or interest that a member of the group would otherwise be required to pay as a result of anything done or omitted to be done while it is a member of the group must instead be paid by the representative member. This section makes further provision in relation to the joint and several liability of group members.
148. To be designated as a group, an application needs to be made to WRA. WRA must be satisfied that the application is made with the agreement of every proposed group member. A group designation may only be made where all members of the group carry out taxable operations or intend to do so. All members of the group must be under the control of the same body corporate, individual or individuals. If WRA refuses a group application, it must issue notice of the refusal.

Section 79 – Variation or cancellation of designation

149. Where a group designation has been made, WRA may vary the designation by adding or removing a member of the group or by changing the representative member. WRA also has the power to cancel a group designation. WRA can vary or cancel a group designation on its own initiative or following an application by the representative member. An application to vary a group designation may also be made by any member of the group where that application relates to that member wishing to be removed from the group designation.
150. WRA must vary or cancel the group designation if it is satisfied that the conditions for designation are no longer met.
151. A variation or cancellation by WRA is made by issuing a notice to each member of the group, including those that are being added or removed from the group. If WRA refuses to vary or cancel the group designation it must issue notice of the refusal.

Section 80 – Reviews and appeals relating to designation of groups of companies

152. [Section 80](#) 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 designation of a group for the purposes of LDT.

Partnerships and unincorporated bodies

Sections 82 to 84 – Registration and changes in membership of, duties and liabilities of and power to make further provision about partnerships and unincorporated bodies

153. [Section 82](#) provides that where two or more persons carry on a landfill business in partnership or as an unincorporated body, WRA may register the persons in their own names or in the name of the partnership or body. If the registration is completed in the name of the partnership or body and its membership changes, in order for the registration to remain valid at least one of the members must have been a member of the partnership or body before the change.
154. In accordance with section 36 of the Act, WRA must be informed of any changes to the membership of a partnership or unincorporated body and the effect of section 82(4) is that a person is treated as continuing to be a member of a partnership or body until WRA is notified otherwise.
155. [Section 83](#) provides that where anything is required or permitted to be done by or in relation to persons in a partnership or unincorporated body under this Act or TCMA, it must be done by or in relation to every person who is a partner in the partnership or a managing member of the body at the time when it is done or required to be done. However, anything required or permitted to be done by every partner or managing member may instead be done by any one of them.
156. A liability to pay an amount of tax, penalty or interest as a result of anything done or omitted to be done by persons carrying on business in a partnership or unincorporated body is a joint and several liability of every person who is a partner in the partnership or a member of the body at the time when the thing is done or omitted.
157. [Section 84](#) provides the Welsh Ministers with the power to make regulations which may add to, repeal or amend provision about cases where persons carry on business in partnership or as an unincorporated body.

Change in persons carrying on landfill business

Sections 85 and 86 – Death, incapacity and insolvency and Power to make further provision about death, incapacity and insolvency

158. **Sections 85 and 86** apply where a landfill site operator dies, becomes incapacitated or becomes subject to an insolvency procedure and another person carries on the landfill business of that operator. The provisions in section 85 require the person carrying on the landfill business to notify WRA before the end of 30 days beginning with the day on which the person began to carry on the landfill business. WRA may, once a notice is received or on their own initiative, treat the person carrying on the landfill business as if they are the landfill site operator for the purposes of the tax. This section also makes provision as to when such treatment must cease.
159. **Section 86** provides the Welsh Ministers with the power to make regulations which may add to, repeal or amend provision about cases where a person who has carried on a landfill business dies, becomes incapacitated or becomes subject to an insolvency procedure.

Section 87 – Power to make provisions about transfers of businesses as going concerns

160. **Section 87** provides the Welsh Ministers with the power to make provision in regulations about the application of the Act and TCMA in cases where a landfill business is transferred from one person to another as a going concern.

Chapter 7 - Miscellaneous

Further provision relating to the tax

Section 88 – Adjustment of contracts

161. **Section 88** provides that where:
- a. a taxable disposal is made at an authorised landfill site,
 - b. there is a contract in place that provides for a payment to be made for that disposal, and
 - c. the tax chargeable on that disposal changes as a result of an enactment relating to LDT,
- the payment under the contract for that disposal is to be adjusted to reflect the change in the tax chargeable on the disposal, unless the contract provides otherwise.

Section 89 – Power to impose secondary liability on controllers of authorised landfill sites

162. This section allows the Welsh Ministers to make regulations to require a controller of an authorised landfill site (or part of such a site) to pay the tax chargeable on disposals made at the site (or the part in question).. A controller is a person other than the operator of the authorised landfill site who is in control of decisions as to what can be disposed of on the site but is not making those decisions only as an employee or agent.

Section 90 - Minor and Consequential Amendments to the Tax Collection and Management (Wales) Act 2016

163. This section introduces Schedule 4, which sets out the minor and consequential amendments that this Act makes to TCMA.

Section 91 – Welsh Ministers’ exercise of powers and duties under this Act

164. Subsection (1)(a) requires the Welsh Ministers to have regard to the objective of reducing landfill disposals in Wales when exercising their duties and powers under this Act.
165. Subsection (1)(b) permits the Welsh Ministers to have regard, in addition, to such other matters as they think appropriate. These other matters could include commercial, fiscal, public health or other environmental factors. For example, the Welsh Ministers might consider it appropriate to encourage certain disposals to landfill in order to reduce potential environmental harm.
166. The effect of subsection (2) is that the Welsh Ministers are not required to have regard to the objective of reducing landfill disposals when exercising their powers and duties under section 92 in relation to the LDT Communities Scheme.

Landfill Disposals Tax Communities Scheme

Section 92 – Landfill Disposals Tax Communities Scheme

167. [Section 92](#) places a duty on the Welsh Ministers to prepare and publish a Landfill Disposals Tax Communities Scheme, which will make provision for grant funding for the benefit of communities affected by landfill disposals or activities preparatory to landfill, such as activities at waste transfer stations. The Scheme may provide for the grants to be allocated by reference to specified criteria and to be subject to conditions set out in the Scheme or by the Welsh Ministers in the grant offers. It is envisaged that the criteria specified may include reference to biodiversity, waste minimisation and other social or environmental community enhancements, among other things. Details of how the Scheme will operate will be published separately at the time LDT becomes operational in April 2018 or beforehand.
168. [Section 92\(4\)](#) requires Welsh Ministers to review the Scheme at least once in the period of four years after it is first published and for there to be further reviews at intervals of no more than four years after the first review. It also requires the Welsh Ministers to consult with appropriate persons when reviewing the Scheme.
169. [Section 92\(5\)](#) allows the Welsh Ministers to revise or revoke the Scheme following a review but the scheme cannot be revoked within the first four years. [Section 92\(6\)](#) requires the Welsh Ministers to publish any revised Scheme.
170. [Section 92\(7\)](#) requires the Welsh Ministers to lay the Scheme, and any later revised versions of it, before the National Assembly for Wales.