

# LANDFILL DISPOSALS TAX (WALES) ACT 2017

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## EXPLANATORY NOTES

### INTRODUCTION

1. These Explanatory Notes are for the Landfill Disposals Tax (Wales) Act 2017 (“the Act”) which was passed by the National Assembly for Wales on 27 June 2017 and received Royal Assent on 7 September 2017.
2. They have been prepared by the Office of the First Minister and Cabinet Office of the Welsh Government in order to assist the reader of the Act. The Explanatory Notes should be read in conjunction with the Act but are not part of it. Where a section or part of a section is self-explanatory and does not seem to require any further explanation or comment, none is provided.
3. The National Assembly for Wales has the power to make this Act by virtue of the provisions contained in Parts 4 and 4A of, and paragraph 16A of Schedule 7 to, the Government of Wales Act 2006 (“GoWA 2006”), as amended by the Wales Act 2014. These provisions give the National Assembly for Wales the legislative competence to make provision in relation to devolved taxes (which include a tax charged on disposals to landfill made in Wales).

### SUMMARY AND BACKGROUND

4. This is the third of three related items of legislation. The Tax Collection and Management (Wales) Act 2016 (TCMA) was the first of these pieces of legislation and sets the legal framework necessary for the devolved tax regime in Wales, covering the arrangements for the collection and management of tax, including the establishment of the Welsh Revenue Authority (WRA), whose main function will be to collect and manage devolved Welsh taxes. TCMA also includes provision about:
  - a. steps that can be taken in relation to tax returns, including amendments, enquiries and assessments;
  - b. record keeping duties of persons making a tax return;
  - c. the investigatory powers of WRA;
  - d. penalties and interest;
  - e. payment and enforcement;
  - f. reviews and appeals; and
  - g. powers relating to the investigation of criminal offences.

5. The second item of tax legislation is the Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017 (LTTA). The LTTA Act provides for Land Transaction Tax to replace Stamp Duty Land Tax in Wales and is the first of the devolved taxes to fall under WRA's remit. LTTA also makes amendments to TCMA, including amendments relevant to this Act. These include amendments in the areas of postponement of recovery of devolved taxes; late payment penalties and interest; and the introduction of a General Anti Avoidance Rule in relation to all devolved taxes.
6. This Act provides for the establishment of a Landfill Disposals Tax (LDT), which it is anticipated will replace Landfill Tax (LFT) in Wales from April 2018. The context and background to this Act was set out in Chapter 1 of the Welsh Government's consultation on *Developing a Landfill Disposals Tax*, published on 24 February 2015<sup>1</sup>.
7. In summary the Act makes provision for a Welsh tax to be charged on disposals to landfill in Wales. Further, it:
  - a. establishes LDT and sets out when a taxable disposal is made;
  - b. provides the statutory framework for the responsibilities on taxpayers to make tax returns and calculate their tax liabilities;
  - c. sets out the reliefs and exemptions from the charge to tax that are available and empowers the Welsh Ministers to create tax credits through regulations;
  - d. sets out the details of the materials and mixtures of materials that may qualify for the lower rate of tax if specified conditions are met;
  - e. sets out penalties for non-compliance;
  - f. establishes that LDT may be chargeable on a disposal of material as waste made at a place other than at an authorised landfill site if an environmental permit would have been required for the disposal in question (an "unauthorised disposal");
  - g. empowers named bodies to share information with WRA to assist with the exercise of its functions and
  - h. expands the investigatory powers given to WRA by TCMA so that WRA can carry out the kinds of investigations that may be necessary in order to collect LDT;
  - i. places a duty on the Welsh Ministers, when exercising their powers or duties under the Act, to have regard to the objective of reducing landfill disposals in Wales; and
  - j. places a duty on the Welsh Ministers to prepare and publish a Landfill Disposals Tax Communities Scheme.

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<sup>1</sup> <http://gov.wales/consultations/finance/landfill-disposals-tax/?status=closed&lang=en>

## **APPLICATION OF THE ACT**

8. The Act establishes a tax on disposals to landfill in Wales. The WRA is responsible for the collection and management of the tax. Landfill site operators in Wales will be responsible for registering with WRA, notifying and paying tax on all relevant disposals made at their landfill site(s). This will involve submitting a self-assessed quarterly tax return and paying any tax due by the last working day of the following month. The tax liability is calculated by reference to the taxable weight of the material being disposed of as waste by way of landfill in Wales. A lower tax rate will be applied to qualifying materials or qualifying mixtures of material and a standard rate will be applied to all other materials. There are some exemptions which, if applicable, will mean that there is no liability to tax, and some reliefs that may affect whether and how much tax is chargeable. The Act also extends the scope of LDT to disposals made other than at an authorised landfill site (“unauthorised disposals”) and provides for there to be an unauthorised disposals rate of tax. All LDT tax rates will be set through regulations.
9. At its most basic, landfill site operators in Wales are responsible for registering for, accounting for and paying tax on all taxable disposals made at authorised landfill sites in Wales. Where an unauthorised disposal occurs, WRA have power to issue a notice charging LDT on a person for the disposal. A person to whom a charging notice is issued will be required to pay that tax.

## **GENERAL OVERVIEW OF THE ACT**

10. The Act comprises ninety eight sections and four Schedules and is divided into six Parts as follows:

### **Part 1 – Overview**

This Part sets out how the Act is structured.

### **Part 2 – The Tax and Taxable Disposals**

This Part establishes LDT and sets out the fundamental concepts that underpin the operation of the tax.

### **Part 3 – Taxable Disposals Made at Authorised Landfill Sites**

This Part sets out who is liable to pay tax on a taxable disposal made at an authorised landfill site; how the amount of tax will be calculated ; the two tax rates that may apply to a disposal of this kind (the standard rate and the lower rate); the reliefs from tax that may be claimed; the registration and accounting procedures; the payment requirements; and provisions for the recovery of tax. This Part also introduces Schedule 1, which sets out which materials may qualify for the lower rate of tax and any related conditions that those materials must meet; Schedule 2, which sets out the contents of the register of landfill site operators; and Schedule 3, which sets out the contents of a landfill invoice.

## **Part 4 – Taxable Disposals Made at Places Other than Authorised Landfill Sites**

This Part provides that a disposal can also be subject to LDT if it is made at a place other than an authorised landfill site and is a disposal for which an environmental permit is required. A disposal of this kind is referred to as an “unauthorised disposal”. This Part sets out who may be liable to tax on unauthorised disposals; how tax liability will be notified; the tax rate that will apply to a disposal of this kind (the unauthorised disposals rate); and the payment requirements. It also makes provision to require late payment interest to be paid on unpaid tax.

## **Part 5 – Supplementary Provision**

This Part makes supplementary provision connected with the tax. This provision includes a power to provide for tax credits, provision for the creation and regulation of non-disposal areas within an authorised landfill site, provision for additional inspection powers, and provision about information sharing and penalties. This Part sets out how the Act’s provisions will apply in special cases, such as those in which authorised landfill sites are operated by corporate groups or partnerships. This Part requires the Welsh Ministers to have regard to the objective of reducing landfill disposals in Wales when exercising functions under the Act and requires the Welsh Ministers to prepare and publish a Landfill Disposals Tax Communities Scheme. This Part also introduces Schedule 4 which sets out the amendments that this Act makes to TCMA.

## **Part 6 – Final Provisions**

This Part contains provisions on subordinate legislation procedures, transitional, consequential etc. powers, commencement, interpretation and other final and ancillary provisions.

## **COMMENTARY ON SECTIONS**

### **Part 1 – Overview**

11. This Part sets out how the Act is arranged and provides a brief summary of each of the Parts.

### **Part 2 – The Tax and Taxable Disposals**

#### **Chapter 1 – Landfill Disposals Tax**

12. Section 2 establishes a tax, called landfill disposals tax. The tax is charged on taxable disposals and WRA is responsible for collecting and managing the tax.

## **Chapter 2 – Taxable Disposals**

### **Sections 3 to 5 - Taxable disposals; disposal of material by way of landfill; and authorised landfill sites and environmental permits**

13. These sections set out what a taxable disposal is. A taxable disposal takes place when all of the following conditions are met:
  - a. Material is disposed of by way of landfill (which section 4 defines as being when it is deposited on or under the surface of land);
  - b. The land where the material is deposited:
    - is an authorised landfill site (as defined in section 5(1)), or
    - is not or does not form part of an authorised landfill site, but the disposal requires an environmental permit (as defined in section 5(2));
  - c. The material is disposed of as waste (as defined in sections 6 and 7); and
  - d. The disposal takes place in Wales.
14. Regulations may modify the meaning of a disposal of material by way of landfill as set out in section 4.

### **Section 6 – Disposal of material as waste**

15. The effect of this section is that a disposal of material is a disposal of waste if the person responsible for the disposal intends to discard the material. An intention to discard may be inferred from the circumstances of the disposal and in particular from the deposit of material into a landfill disposal area, such as a void, that is generally used for landfill disposals on a site. An intention to discard (whether inferred or not) is only one of the four conditions that must be met for a tax liability to arise (see section 3).
16. The fact that a person makes a temporary or incidental use of material deposited in a landfill disposals area, or derives a benefit from it (or anything, such as gas, emitted by it), does not necessarily prevent that person from intending to discard the material. Subsection (3) clarifies that a person may intend to discard material, even though it is being used. Where that is the case (and the other conditions in section 3 are met), the tax is chargeable on the disposal of that material.
17. Regulations may modify the meaning of a disposal of material as waste as set out in section 6.

### **Section 7 - Disposal of material as waste: person responsible for disposal**

18. This section identifies the person responsible for a disposal for the purposes of section 6. It is this person's intention that is relevant in determining whether a disposal is a disposal of material as waste.

19. The section provides that where a disposal is made at an authorised landfill site, the landfill site operator is normally the person responsible for the disposal. If the operator intends to discard the material and the disposal is made with the operator's permission, the disposal will be a disposal of material as waste. However, where a disposal is made at the site without the permission of the landfill site operator, the person responsible for the disposal is the person who disposes of the material. If that person intends to discard the material, the disposal will be a disposal of material as waste, regardless of the operator's intention. Section 13 (persons chargeable to tax) makes it clear that a landfill site operator will be liable for tax on a disposal made at the site, even if another person made the disposal. So if a disposal is made out of hours, without the permission of the landfill site operator, by a person who intended to discard the material, the landfill site operator will be liable to pay tax on the disposal .
20. Where a disposal is an unauthorised disposal (i.e. is a taxable disposal made other than at an authorised landfill site - see section 3) the person responsible for the disposal is the person who disposes of the material. Part 4 sets out the procedure for imposing a charge to tax in relation to unauthorised disposals.

### **Section 8 - Landfill site activities to be treated as taxable disposals**

21. This section lists landfill site activities (as defined in section 96) that are to be categorised as specified landfill site activities and therefore treated as taxable disposals. If an activity is a specified landfill site activity as listed in 8(3)(a) to (i) and takes place in Wales, then it is treated as a taxable disposal regardless of whether the disposal would have otherwise have met the conditions as set out at section 3. This section also provides that the disposal is to be treated as taking place when material is first used in relation to a specified activity. So, for example, the point at which material was used to create a temporary road would trigger a taxable disposal and if further material was subsequently used to maintain or repair that road, that material would be the subject of a taxable disposal on the date on which it was used.
22. Section 8(3)(e) refers to using material to cover a landfill disposal area during a temporary cessation in landfill disposals. This is often commonly known as daily cover and is used to prevent litter and pests.
23. The Welsh Ministers may, by regulations, add, modify or remove a specified landfill site activity. While the current list at section 8(3) consists of activities carried out at authorised landfill sites, regulations could provide for activities carried out at unauthorised sites to be specified landfill site activities too. This provides additional flexibility to address any attempts to avoid paying tax by those liable for unauthorised disposals of waste.

## **Chapter 3 - Exempt Disposals**

### **Sections 9 to 12 - Exemptions: general; multiple disposals of material at same site; pet cemeteries; and power to modify exemptions**

24. These sections exempt certain types of disposals from the tax. Where a disposal is exempt, there is no need for the landfill site operator to account for the disposal of material.
25. Section 10 provides an exemption for a disposal of material where the material has previously been included in a disposal on which LDT was chargeable and where the subsequent disposal is made at the same authorised landfill site. The effect of this provision is to ensure that multiple disposals of the same material at the same authorised site will only be chargeable to LDT once.
26. It is anticipated that this exemption could be applicable in the context of specified landfill site activities, where material that has been used in one specified landfill site activity could be removed and used in another specified landfill site activity and/or disposed of in a landfill disposal area, such as a void at the same site. In this situation, the exemption ensures that the material is only taxed once.
27. Section 11 provides an exemption for a disposal of material consisting entirely of the remains of dead pets and any container or material in which they are contained, provided that the disposal takes place on a landfill site where no other types of disposal take place (generally known as a pet cemetery). This exemption is designed to ensure that pet cemeteries that accept only disposals of dead pet carcasses or ashes (and any box or urn in which they are contained) will not be liable to pay LDT.
28. The exemptions set out at sections 10 and 11 apply only to disposals at authorised landfill sites. However, the Welsh Ministers may use the regulation making power under section 12 to add, modify or remove exemptions in relation to disposals at unauthorised sites, as well as disposals at authorised landfill sites. The Welsh Ministers may also use the regulation making power to place conditions on the application of an exemption.

## **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.
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 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 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.

## **Part 4 – Taxable Disposals Made at Places Other than Authorised Landfill Sites**

### **Chapter 1 - Tax Chargeable on Taxable Disposals**

#### **Section 46 – Calculation of tax chargeable on taxable disposal**

86. This section provides that the amount of tax chargeable on a disposal made at a place other than an authorised landfill site (see section 3 for the definition of a taxable disposal) will be calculated by multiplying the taxable weight of the material by the unauthorised disposals rate. The taxable weight is to be determined by WRA using any method it considers appropriate. The unauthorised disposals rate is to be prescribed by the Welsh Ministers in regulations. The tax only becomes payable following the issue of a charging notice under Chapter 2 of this Part.

### **Chapter 2 – Procedure for Charging Tax**

#### **Section 47 – The charging condition**

87. Subsection (1) sets out the circumstances in which a person will meet the charging condition, which is relevant to the issuing of a preliminary and charging notice. A person meets the charging condition where they made the disposal or knowingly caused or knowingly permitted the taxable disposal to be made.

88. Subsection (2) builds on subsection (1)(b) and provides that unless a person can satisfy WRA or (on appeal) the tribunal otherwise, they will be treated as having knowingly caused or permitted the disposal to have been made if, at the time of the disposal, that person:

- a. controlled, or was in a position to control, a motor vehicle or trailer from which the disposal was made; or
- b. was the owner, lessee or occupier of the land where the disposal was made

89. In considering whether a person has overturned the presumption that they meet the charging condition, it is anticipated that WRA or the tribunal may take account of whether the person:

- took reasonable efforts to prevent the waste from being dumped on their land (e.g. sturdy fencing);
- took reasonable efforts to have the waste removed (e.g. contacted a registered waste carrier regarding removal);
- actively assisted in any (potential) environmental action against the offenders (e.g. contacted the police, local authority or NRW about the waste and/or helped them in their investigations);
- had no knowledge of the waste, and couldn't reasonably have had knowledge (e.g. given where the waste was deposited, the size of estate etc.);
- was ill or otherwise incapacitated.

90. Subsection (3) confers a power on the Welsh Ministers, by regulations, to make further or different provision about the circumstances in which a person is (or is not) to be treated as meeting the charging condition, and matters that are to be taken into account in determining whether a person does (or does not) meet that condition.

#### **Section 48 – Power to issue preliminary notice**

91. WRA may issue a preliminary notice to a person where it appears to WRA that a taxable disposal has been made outside an authorised landfill site and that the person meets the charging condition in respect of that disposal (i.e. that the person knowingly caused or permitted the disposal to be made). The preliminary notice may relate to more than one taxable disposal. It must include the information listed in subsection (2) and inform the person of the matters listed in subsection (3). A preliminary notice may not be issued more than 4 years after WRA becomes aware of the taxable disposal and, in any case, not more than 20 years after WRA thinks that the taxable disposal was made.

#### **Sections 49 and 50 – Power to issue charging notice after issuing preliminary notice and without issuing preliminary notice**

92. After a period of at least 45 days has passed from issuing a preliminary notice in relation to a disposal, and after considering any written representations made by the recipient of the preliminary notice, WRA must issue either:
- a. a charging notice to the person in relation to the disposal; or
  - b. a notice to the person stating that it does not intend to issue a charging notice in relation to the disposal.
93. WRA may only issue a charging notice where it is satisfied that a taxable disposal has been made outside an authorised landfill site and that that the person meets the charging condition in relation to the disposal. A charging notice must include the matters listed in 49(5).
94. WRA may issue a charging notice without having issued a preliminary notice where, in addition to being satisfied about the matters referred to above, it thinks that there is likely to be a loss of tax if WRA issues a preliminary notice (because, for example, the person may enter into administration). In these circumstances, the notice must also include WRA's reasons for issuing a charging notice without having issued a preliminary notice.

#### **Section 51 – Payment of tax**

95. This section imposes an obligation on the recipient of a charging notice to pay the tax charged by that notice within a period of 30 days. Where charging notices are issued to more than one person in respect of the same taxable disposal, all of those persons are jointly and severally liable (i.e. WRA will be able to recover tax from all or any of them).

### **Section 52 – Power to make further provision**

96. Regulations may make further or different provision (including by amending an enactment) about the procedures for issuing preliminary notices and charging notices; the payment of an amount of tax charged by a charging notice and; any other matters relating to or arising from the charging or payment of an amount of tax under this chapter.

### **Section 53 - Late payment interest**

97. This section amends section 157 of TCMA so as to ensure that late payment interest can be charged where tax owed under a charging notice, issued under section 49 or 50, has not been paid.

## **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 co-operate 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
  - 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.

## **Part 6 – Final Provisions**

### **Section 93 Power to make consequential and transitional etc. provision**

171. Section 93 provides that the Welsh Ministers may, by regulations, make such incidental, consequential, supplemental, transitional, transitory or saving provision as they think appropriate for the purpose of, or in connection with, or for giving full effect to, any provision made by or under this Act.
172. Regulations made under section 93 are subject to the negative procedure, provided that the Welsh Ministers are satisfied that the regulations do not make provision that may create or increase a charge to tax. If regulations could result in tax becoming chargeable where that would not otherwise have been the case, or could increase the amount of tax chargeable, the regulations will be subject to the affirmative procedure. This is set out at section 94.
173. Given that regulations can only be made by the negative procedure under section 93 if Welsh Ministers are satisfied that they do not have the potential to affect a person's liability to tax, this procedure is likely to be used in limited circumstances only: for example, where a consequential amendment needs to be made to the information required on a landfill invoice. Conversely, regulations under section 93 will be made using the affirmative procedure if any provision within those regulations has the potential to create or increase a person's tax liability, for example, provision that could affect a person's entitlement to one of the reliefs or exemptions.

### **Sections 94 to 98 – Regulations under this Act: general; Regulations changing tax rates; Interpretation; Coming into force and; Short title**

174. Sections 94 and 95 set out the procedures that apply to the exercise of the various regulation-making powers conferred by the Act. Section 96 gives the meaning of various terms used in the Act. The position in relation to the commencement of the Act's provisions is provided for at section 97 and section 98 establishes the Act's short title as the Landfill Disposals Tax (Wales) Act 2017.

## RECORD OF PROCEEDINGS IN NATIONAL ASSEMBLY FOR WALES

175. The following table sets out the dates for each stage of the Act's passage through the National Assembly for Wales. The Record of Proceedings and further information on the passage of this Act can be found on the National Assembly for Wales' website at: <http://www.senedd.assembly.wales/mgIssueHistoryHome.aspx?IId=15874>

<b>Stage</b>	<b>Date</b>
Introduced	28 November 2016
Stage 1      Debate	21 March 2017
Stage 2      Scrutiny Committee - consideration of amendments	11 May 2017
Stage 3      Plenary - consideration of amendments	20 June 2017
Stage 4      Approved by the Assembly	27 June 2017
Royal Assent	7 September 2017

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