Finance Committee

The Landfill Disposals Tax (Administration) (Wales) Regulations 2018

This Statutory Instrument is being considered by the Finance Committee under Standing Order 27.8A.

Background and Purpose

01. The Landfill Disposals Tax (Wales) Act 2017 (the Act) establishes a new tax to be known as landfill disposals tax (LDT). The tax is to be charged on taxable disposals (as defined in the Act).

02. The Regulations make provision in connection with the administration of the tax.

03. The Regulations set out additional requirements intended to assist landfill site operators to determine the correct tax liability of waste fines, including loss on ignition (LOI) testing and/or confer the powers necessary to enable a Welsh Revenue Authority (WRA) notice to do so.

04. The Regulations also establish a customer insolvency credit which a landfill site operator may claim in circumstances where their customer becomes insolvent before having paid the landfill site operator for carrying out a taxable disposal.

Procedure

05. Affirmative

Merits Scrutiny

06. Two points are identified for reporting under Standing Order 21.3 (ii) (that it is of political or legal important or gives rise to issues of public policy likely to be of interest to the Assembly) in respect of this instrument.

07. There is no definition of ‘ACC’ in Welsh (or ‘WRA’ in English). The same applies to ‘DCRhT’ in Welsh (or ‘TCMA’ in English). Both definitions should be included in Regulation 2.

08. Although these definitions are included in section 96 of the Act, they should be included in the Regulations.
Policy objectives

Statement of policy intent

09. To support the Committee’s scrutiny of the Landfill Disposals Tax (Wales) Bill, the Welsh Government provided information on the policy intent for the delegated powers within the Bill.

Part 1

10. This Part provides that the Regulations come into force on the day LDT will begin to be charged on taxable disposals.

Part 2

11. This makes provisions about mixtures of materials that consist of fines (particles produced by a waste treatment process that involves an element of mechanical treatment).

12. All regulations tabled in this Part are in accordance with related policies in the statement.

Regulation 3


Regulation 4

14. Sets out requirements to be met in order for materials consisting entirely of fines to be treated as a qualifying mixture for the lower rate of tax.

Regulations 5–7

15. Establishes requirements for loss on ignition testing and provides the Welsh Revenue Authority with powers to direct operators to carry out LOI tests or collect samples and carry out LOI tests itself.

Regulations 8–11

16. These set out the conditions for a penalty relating to record-keeping when qualifying materials consisting entirely of fines and timescales for assessing these penalties. The regulations also stipulate the timescales for when a penalty should be paid and makes supplementary provisions for WRA notices and directions.

Part 3
17. This Part makes provisions for a tax credit for LDT. The statement noted regulations would give the Welsh Ministers the powers to:

- Create a tax credit and set out the persons eligible to claim a credit.
- Make provisions for circumstances in which a person will be entitled to claim a tax credit.
- Establish procedures for claiming tax credit.

18. In May 2017, the Cabinet Secretary for Finance and Local Government provided the Finance Committee with a statement of policy intent, which focused on regulatory powers to create tax credits in relation to bad debts. This outlined the government’s intention to insert an additional section into the Bill relating to ‘powers to make provision for tax credits’ (Section 54 of the Landfill Disposals (Wales) Act 2017).

19. All regulations tabled in this Part are in accordance with related policies in the statement and Section 54 of the Act.

Regulation 12

20. Introduces a tax credit known as a customer insolvency credit.

Regulation 13

21. Defines certain terminology used in Part 3 of the Regulations.

Regulations 14–17

22. Establishes the requirements to be met to claim a tax credit and defines how the debt relating to the tax credit is calculated.

Regulation 18

23. Makes provisions for calculating the amount of credit due.

Regulations 19–21

24. Establishes the procedures for claiming tax credit by registered landfill operators and those no longer registered.

Regulations 22–23

25. Stipulates the evidence required to be submitted when making a claim.
26. Makes provisions for recovering the payment of a tax credit resulting from subsequent payment of tax by the customer or failure to keep appropriate records / other evidence.

Regulation 26

27. Introduces a Schedule making amendments to LDTA and the Tax Collection and Management Act (TCMA) relating to tax credits.

Regulation 27

28. Modifies the TCMA to establish procedures for those no longer registered as a landfill operator but have made a taxable disposal for a customer to claim a tax credit.

Finance Committee Stage 1 scrutiny

29. No comments were made relating to the tabled regulations at Stage 1 scrutiny.

Consultation responses

Assembly consultation

30. Tata Steel in its consultation response asked whether requirements for LOI tests set out in the Regulations would be the same as LOI testing under UK legislation.

Welsh Government consultation

31. A recurrent theme relating to LOI tests was the importance of maintaining ‘cross–border consistency’ to avoid waste tourism. It was noted:

...consistency with the UK would “ease compliance” for businesses operating in more than one part of the UK, and prevent any issues arising from “cross border transportation of waste”.

32. In terms of customer insolvency credit for landfill site operators set out in the regulations, a small number of respondents made reference and gave support to the Scottish Government model, which had narrowed the circumstances in which landfill site operators could claim bad debt relief.

33. A handful of respondents also commented that the Welsh Government might want to ‘mirror the existing model for VAT bad debt relief around the time elapsed
before a claim could be made. In UK legislation, bad debt relief can be claimed after a period of 12 months, yet VAT bad debt relief can be claimed after 6 months’.

**Scottish Regulations**

34. **No notable differences** between regulations relating to mixtures of materials consisting entirely of fines or tax credits introduced by Welsh Government and Scottish Government.


**UK Regulations**

36. **No notable differences** between regulations introduced by Welsh Government and UK Government.

37. The [Landfill Tax (Qualifying Fines) (No 2) Order 2015](https://www.gov.uk/government/publications/landfill-tax-regulations-2015-qualifying-fines-no-2-order-2015) legislates for materials consisting of fines and loss on ignition (LOI) tests for such materials, whilst the procedures for the test and HMRC powers to carry out the test are defined in [HMRC’s Notice LFT1](https://www.gov.uk/government/publications/hmrcs-notice-lft1).

38. Sections 51–53 of the [UK Finance Act 1996](https://www.gov.uk/government/publications/finance-act-1996) makes provisions for a tax credit for bad debts. Regulations relating to such tax credits and how they should be calculated were made through the [Landfill Tax Regulations 1996](https://www.gov.uk/government/publications/landfill-tax-regulations-1996). HMRC’s notice LFT1 also provides guidance on entitlement to credit, the evidence required to claim credit and examples for calculating credit.

**Government Response**

39. The Welsh Government notes the points made in this report at paragraphs 1–36. As a point of clarification, paragraph 12 is correct that regulation 4 sets out requirements to be met in order for materials consisting entirely of fines to be treated as a qualifying mixture for the lower rate. However, please note that this regulation provides that the requirements set out within that regulation are in addition to those already set out in section 16 of the LDT Act.

**Committee View**

40. The Committee noted the regulations.