

SL(5)161 - The Landfill Disposals Tax (Administration) (Wales) Regulations 2018

Background and Purpose

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

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

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 testing and/or confer the powers necessary to enable a Welsh Revenue Authority (WRA) notice to do so.

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

Affirmative.

Technical Scrutiny

No points are identified for reporting under Standing Order 21.2 in respect of this instrument.

Merits Scrutiny

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

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.

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

Implications arising from exiting the European Union

None.

Government Response

The 'Merits Scrutiny' element of the report makes two points. The Welsh Government's view is that the expressions referred to in the report do not, as a matter of law, need to be defined in the instrument. Section 11 of the Interpretation Act 1978, which applies to subordinate legislation made in England and Wales, provides that "Where an Act confers power to make subordinate legislation, expressions used in that legislation have, unless the contrary intention appears, the meaning which they bear in an Act". Since the expressions referred to in the report are defined in the parent Act, the Interpretation Act 1978 automatically carries those definitions forward into the instrument. We believe that this effect is securely and straightforwardly achieved, without the need for additional explanation.



Indeed, it is possible that the adoption of the approach proposed in the report could introduce a degree of legal uncertainty. These Regulations are subordinate to the parent Act and there are many expressions used in this instrument that are derived from the Act: to seek to define some but not others in this instrument could create uncertainty in relation to the meaning of other expressions used both in the instrument and in the parent Act that are not re-defined. The expressions referred to in the report are accessible and understandable, both in the context of the instrument itself (a footnote referencing the Tax Collection and Management (Wales) Act 2016 is included at Regulation 26 and the full title of the legislation is given in the heading to Regulation 27; and the Welsh Revenue Authority is referred to by its full name in the accompanying Explanatory Note) and, importantly when read alongside the parent Act, as envisaged by the Interpretation Act 1978.

Committee Consideration

The Committee considered the instrument along with the Government response at its meeting on 15 January 2018. The Committee reports to the Assembly in line with the merits points above.

