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WELSH STATUTORY INSTRUMENTS

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**2018 No. 101**

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

PART 1

PRELIMINARY

**Title and commencement**

1.—(1) The title of these Regulations is the Landfill Disposals Tax (Administration) (Wales) Regulations 2018.

(2) These Regulations come into force on the day on which section 2 of the Landfill Disposals Tax (Wales) Act 2017 comes into force.

**Interpretation**

2. In these Regulations, “LDTA” means the Landfill Disposals Tax (Wales) Act 2017.

PART 2

MIXTURES OF MATERIALS CONSISTING ENTIRELY OF FINES

*General*

**Interpretation of this Part**

3. In this Part—

“direction” (“*cyfarwyddyd*”) means a direction issued by WRA under regulation 6 that has not been withdrawn;

“LOI percentage” (“*y ganran colled wrth danio*”) means the amount of non-qualifying material contained in a mixture of materials consisting entirely of fines, as indicated by the percentage of the mass of those fines lost on ignition;

“LOI test” (“*prawf colled wrth danio*”) means a test to determine the LOI percentage of a mixture of materials consisting entirely of fines;

“non-qualifying material” (“*deunydd anghymwys*”) means material that is not qualifying material;

“the WRA notice” (“*yr hysbysiad ACC*”) means a notice published by WRA under section 17(5) of LDTA that has not been withdrawn by a subsequent published notice.

### **Requirements in respect of mixture of materials consisting entirely of fines**

4.—(1) The following requirements must be met (in addition to requirements 1 to 6 in section 16 of LDTA) in order for a mixture of materials consisting entirely of fines to be treated as a qualifying mixture of materials.

#### *Requirement 1*

The operator of the authorised landfill site at which a taxable disposal of the mixture is made must have taken the steps specified in the WRA notice.

#### *Requirement 2*

The operator must hold the evidence specified in the WRA notice regarding the taking of those steps.

#### *Requirement 3*

If a LOI test has been carried out on a sample of the taxable disposal, the LOI percentage indicated by the test must not have exceeded 10% (but see paragraph (3)).

#### *Requirement 4*

The mixture contained in the taxable disposal must not be prohibited from being treated as a qualifying mixture of materials by virtue of regulation 5(3).

(2) WRA may determine that requirement 2 is to be treated as having been met if it is satisfied that any facts that it reasonably requires to be proved, and which would have been proved by the evidence if that requirement had been met, are proved by other documentary evidence provided to it.

(3) The WRA notice may specify circumstances in which a LOI test which indicates that the LOI percentage exceeds 10% may be ignored.

### **General requirements in respect of LOI testing**

5.—(1) The operator of an authorised landfill site must comply with the following requirements in order for mixtures of materials consisting entirely of fines to be treated as qualifying mixtures of materials when they are disposed of at the site.

#### *Requirement 1*

The operator must carry out a LOI test on the mixtures—

- (a) at the times and intervals specified in the WRA notice, unless the operator is directed to do otherwise under regulation 6, or
- (b) if the operator is so directed, at the times and intervals specified in the direction.

#### *Requirement 2*

The operator must, in carrying out each LOI test—

- (a) heat a sample of the mixture that is being tested to a temperature of 440°C for a minimum of 5 hours, and
- (b) comply with any other requirement in the WRA notice that relates to the carrying out of the test.

#### *Requirement 3*

Where—

- (a) a LOI test is carried out on a sample of a mixture, and
- (b) the LOI percentage indicated by the test exceeds 10%,

the operator must take the steps specified in the WRA notice.

#### *Requirement 4*

The operator must—

- (a) keep the evidence specified in the WRA notice in relation to each LOI test carried out by the operator, and
- (b) preserve it for the period specified in the notice.

(2) WRA may determine that the operator is to be treated as having complied with requirement 4 if it is satisfied that any facts that it reasonably requires to be proved, and which would have been proved by the evidence if the operator had complied with the requirements, are proved by other documentary evidence provided to it.

(3) Where the operator fails to comply with a requirement mentioned in paragraph (1), mixtures of fines contained in taxable disposals of a description specified in the WRA notice are prohibited from being treated as qualifying mixtures of materials.

#### **WRA power to direct operators to carry out LOI tests**

6.—(1) WRA may by notice direct the operator of an authorised landfill site to carry out a LOI test on any mixture of materials—

- (a) which appears to WRA to consist entirely of fines,
- (b) which is of a description specified in the direction, and
- (c) which is present at the site.

(2) A direction given under this regulation may be varied or withdrawn by notice at any time.

#### **WRA power to take samples and carry out LOI tests**

7.—(1) WRA may—

- (a) take a sample of any mixture of materials at an authorised landfill site which appears to WRA to consist entirely of fines, and
- (b) carry out a LOI test on the sample.

(2) Where WRA does so, it must—

- (a) carry out the test by heating a sub-sample of the sample to a temperature of 440°C for a minimum of 5 hours,
- (b) issue a notice of the LOI percentage determined by the test to the operator of the site,
- (c) retain—
  - (i) no less than 1kg of the sample, and
  - (ii) a record of the LOI test result,
- (d) preserve the retained portion of the sample for a period of 3 months beginning with the filing date for the relevant tax return, and
- (e) preserve the record of the LOI test result for the period that a person who is required to make a tax return would be required to keep the record under section 38 of TCMA (duty to keep and preserve records).

(3) In paragraph (2)(d), “the relevant tax return” is the tax return for the accounting period in which the tax chargeable on the disposal of the mixture is accounted for.

### *Penalties*

#### **Penalty for failure to comply with requirements relating to evidence**

8.—(1) An operator of an authorised landfill site who—

- (a) treats a mixture of materials consisting entirely of fines as a qualifying mixture of materials in accounting for the tax chargeable on a taxable disposal, but
- (b) fails to comply—
  - (i) with requirement 2 in regulation 4 (in relation to that disposal), or
  - (ii) with requirement 4 in regulation 5 (in relation to that mixture),

is liable to a penalty not exceeding £3,000.

(2) But the operator is not liable to a penalty under this regulation in respect of the failure if WRA is satisfied that any facts that it reasonably requires to be proved, and which would have been proved by the evidence if the operator had complied with those requirements, are proved by other documentary evidence provided to it.

### **Assessment and payment of penalties**

**9.**—(1) Where an operator of an authorised landfill site becomes liable to a penalty under regulation 8, WRA must—

- (a) assess the penalty, and
- (b) issue a notice to the operator of the penalty assessed.

(2) An assessment of a penalty may be combined with an assessment to tax.

(3) An assessment of a penalty under regulation 8 must be made within the period of 12 months beginning with the day on which WRA first believed that the operator was liable to the penalty.

(4) An operator of an authorised landfill site to whom notice of a penalty is issued under this regulation must pay the penalty before the end of the period of 30 days beginning with the day on which the notice of the penalty is issued (but see section 182 of TCMA (payment of penalties in the event of review or appeal)).

### **Supplementary provision about penalties**

**10.**—(1) A person is not liable to a penalty under regulation 8 in respect of anything if the person has been convicted of an offence in relation to it.

(2) If a person liable to a penalty under regulation 8 has died, any penalty that could have been assessed on the person may be assessed on the person's personal representatives.

(3) A penalty assessed in accordance with paragraph (2) is to be paid out of the person's estate.

### *Other supplementary provision*

### **Supplementary provision about WRA notices and directions**

**11.**—(1) WRA may make different provision for different purposes in—

- (a) the WRA notice, and
- (b) any direction given by WRA under regulation 6.

(2) The provision may include (among other things) transitional provision applicable to operators of authorised landfill sites who, immediately before the day on which section 2 of LDTA comes into force, were registered under section 47 of the Finance Act 1996.

## PART 3

### CUSTOMER INSOLVENCY CREDIT

#### *General*

#### **Customer insolvency credit**

- 12.—(1) This Part makes provision for a tax credit in respect of the tax.  
(2) The credit is to be known as customer insolvency credit.

#### **Interpretation of this Part**

- 13.—(1) In this Part—

“claim” (“*hawliad*”) means a claim in accordance with this Part for an amount of customer insolvency credit;

“claimant” (“*hawlydd*”) means a person who makes a claim;

“customer” (“*cwsmer*”), in relation to a taxable disposal, means the person for whom the disposal is made;

“landfill invoice” (“*anfoneb dirllenwi*”) has the meaning given in section 41(8) of LDTA.

- (2) References in this Part to a payment from a customer include a payment from another person acting on behalf of the customer.

#### *Entitlement to credit*

#### **Circumstances giving rise to entitlement to credit**

- 14.—(1) A person (“the claimant”) is entitled to customer insolvency credit in respect of a taxable disposal if the following requirements are met.

##### *Requirement 1*

The disposal has been made at an authorised landfill site.

##### *Requirement 2*

The claimant—

- (a) was registered as the operator of the site at the time of the disposal, and
- (b) made the disposal or permitted the disposal to be made.

##### *Requirement 3*

The disposal was made for consideration in money for another person (“the customer”) to whom the claimant—

- (a) is not connected, and
- (b) was not connected at the time of the disposal.

##### *Requirement 4*

The claimant has issued a landfill invoice to the customer in respect of the taxable disposal—

- (a) within the period of 14 days beginning with the day on which the disposal was made, or
- (b) within any longer period specified in a notice issued to the claimant under section 41(6) of LDTA.

#### *Requirement 5*

The claimant—

- (a) has accounted for the amount of tax chargeable in respect of the disposal in a tax return, and
- (b) has paid the amount of tax payable under section 42(1) or (1A) of LDTA in respect of the return.

#### *Requirement 6*

The customer—

- (a) has become insolvent within the period of 12 months beginning with the date on which the landfill invoice was issued, and
- (b) has failed to pay the claimant the whole or part of the consideration due in respect of the disposal.

#### *Requirement 7*

The claimant has been unable to recover the unpaid consideration, despite having taken reasonable steps to do so.

#### *Requirement 8*

The claimant—

- (a) has set off against the amount of unpaid consideration any debt owed by the claimant to the customer which may be set off against that amount, and
- (b) has reduced the amount of unpaid consideration by the value of any enforceable security that the claimant holds in relation to the customer,

but an amount of consideration remains outstanding in respect of the disposal.

(2) Despite paragraph (1), a person is not entitled to customer insolvency credit in respect of a taxable disposal—

- (a) if the person has previously benefited from any amount of customer insolvency credit in respect of the disposal, or
- (b) if a landfill invoice has been issued in respect of the disposal after the end of the later of the periods mentioned in requirement 4.

(3) In this Part, references to outstanding consideration, in relation to a taxable disposal, are references to the amount of consideration mentioned at the end of requirement 8.

### **Supplementary provision relating to entitlement to credit**

**15.**—(1) This regulation makes supplementary provision for the purposes of regulation 14.

(2) Sections 1122 and 1123 of the Corporation Tax Act 2010<sup>(1)</sup> (connected persons) apply for the purpose of determining whether or not the claimant is connected with the customer as mentioned in requirement 3, and section 1122 of that Act has effect as if after subsection (8) there were inserted—

“(9) A person (“A”) is connected with any person who is an employee of A or by whom A is employed.

(10) For the purposes of this section, any director or other officer of a company is to be treated as employed by that company.”

(3) Where the customer has made a payment to the claimant, regulation 16 applies for the purpose of determining whether, and to what extent, the payment is to be treated as being allocated to pay the consideration due in respect of the disposal (and consequently whether the customer has failed to pay the whole or part of the consideration for the disposal as mentioned in requirement 6).

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(1) 2010 c.4.

(4) Regulation 17 applies for the purpose of determining whether the customer has become insolvent as mentioned in requirement 6.

(5) In requirement 8, “security” means—

- (a) in relation to Wales, England and Northern Ireland, any mortgage, charge, lien or other security;
- (b) in relation to Scotland, any security (whether heritable or moveable), any floating charge and any right of lien or preference and right of retention (other than a right of compensation or set-off);
- (c) in relation to any country or territory outside the United Kingdom, anything that has an effect corresponding to anything mentioned in sub-paragraph (a) or (b).

(6) Regulation 21(3) applies for the purpose of determining whether the claimant has previously benefited from an amount of customer insolvency credit in respect of the disposal as mentioned in regulation 14(2).

### **Consideration for taxable disposal: allocation of payments**

16.—(1) Where—

- (a) a claimant receives a payment from a customer for whom a taxable disposal has been made, and
- (b) the customer owes a debt to the claimant in respect of the consideration for the disposal,

the payment is normally to be treated as being allocated to that debt.

(2) But where the customer also owes a debt to the claimant in respect of one or more matters (whether or not relating to taxable disposals) other than the consideration for the disposal, the payment is to be treated instead—

- (a) as being allocated to the debt that arose earliest; and
- (b) if the amount of the payment exceeds that debt, as being subsequently allocated to the other debts in the order of the dates in which they arose.

(3) Where the effect of paragraph (2) is to require a payment (or part of a payment) to be allocated to two or more debts arising on the same day, the amount of payment that is to be treated as being allocated to a particular debt arising on that day is to be calculated in accordance with the following formula—

$$\text{Allocation} = TP \times \frac{D}{TD}$$

where—

- (a) “Allocation” is the amount of the allocation;
- (b) TP is the total amount of payment to be allocated under paragraph (2) to the debts arising on that day;
- (c) D is the amount of the particular debt in question;
- (d) TD is the total amount of all of the debts which—
  - (i) arose on that day, and
  - (ii) are owed by the customer to the claimant.

(4) Where a landfill invoice has been issued in respect of more than one taxable disposal, each debt in respect of the consideration for each disposal is to be treated as arising on the same day (namely, the day after that by which the invoice must be paid); and paragraphs (2) and (3) apply accordingly.

## Customer insolvency

17.—(1) A customer becomes insolvent for the purposes of regulation 14 if—

- (a) a company voluntary arrangement takes effect in relation to the customer under Part 1 of the Insolvency Act 1986(2);
- (b) an administration order (within the meaning of Schedule B1 to that Act) is made, or a receiver or manager, or an administrative receiver, is appointed in relation to the customer;
- (c) a creditors' voluntary winding up (within the meaning of Part 4 of that Act), or a winding up by the court under Chapter 6 of Part 4 of that Act, is commenced in relation to the customer;
- (d) a debt relief order is made in relation to the customer under Part 7A of that Act;
- (e) an individual voluntary arrangement takes effect in relation to the customer under Part 8 of that Act;
- (f) a bankruptcy order (within the meaning of Part 9 of that Act) is made in relation to the customer;
- (g) any corresponding event occurs that has effect under or as a result of the law of Scotland or Northern Ireland or a country or territory outside the United Kingdom.

(2) In this Part, references to an insolvency event are references to an event described in paragraph (1)(a) to (g).

### *Amount of credit*

## Calculation of amount of customer insolvency credit

18.—(1) The amount of customer insolvency credit to which a person is entitled in respect of a taxable disposal is to be calculated in accordance with the following formula—

$$\text{Credit} = T \times \frac{OC}{C}$$

where—

- (a) “Credit” is the amount of the customer insolvency credit;
- (b) T is the amount of tax which the person has accounted for in respect of the disposal in a tax return, subject to paragraphs (2) and (3);
- (c) OC is the amount of the outstanding consideration in respect of the disposal (see regulation 14(3)), subject to paragraph (3);
- (d) C is the consideration for the disposal, subject to paragraph (3).

(2) Where the amount of tax accounted for in respect of the disposal is increased, the increase is to be ignored.

(3) Where the amount of tax chargeable on the disposal is less than the amount of tax accounted for in respect of the disposal (ignoring any increase)—

- (a) T is the amount of tax chargeable on the disposal;
- (b) C and OC are each to be reduced by an amount equal to the difference between the two amounts of tax.

### Claiming credit

#### Claims by persons carrying out taxable operations

**19.**—(1) A registered person who is entitled to customer insolvency credit in respect of a taxable disposal may claim the credit in a tax return made in respect of—

- (a) the first qualifying accounting period, or
- (b) any subsequent accounting period.

(2) The first qualifying accounting period is the accounting period in which the period of 6 months, beginning with the date of the relevant insolvency event, expires.

(3) The claim is to be made in the tax return—

- (a) by setting off the amount of the credit against the amount of tax that the person would otherwise be required to pay under section 42(1) of LDTA in respect of the relevant accounting period, and
- (b) if the amount of the credit exceeds that amount of tax, by stating the amount of the excess credit.

(4) Where an amount of excess credit is stated in the tax return in accordance with paragraph (3) (b)—

- (a) WRA may set off that amount against any amount of tax that the person is required to pay but has not yet paid, and
- (b) if any amount of excess credit remains, WRA must pay the person an amount equal to that remaining amount.

(5) But WRA is not required to make a payment under paragraph (4)(b) unless and until each tax return that the person is required to make in respect of the tax has been made.

(6) In this regulation—

“the relevant insolvency event” (“*y digwyddiad ansolfedd perthnasol*”) means the insolvency event that gave rise to an entitlement to credit in respect of the taxable disposal;

“the relevant accounting period” (“*y cyfnod cyfrifyddu perthnasol*”) means the accounting period in respect of which the tax return containing the claim is made.

#### Claims by other persons

**20.**—(1) A person who—

- (a) is not registered, and
- (b) is entitled to customer insolvency credit in respect of a taxable disposal,

may claim the credit by making an application to WRA in writing.

(2) An application under paragraph (1) may not be made before the expiry of the period of six months beginning with the date of the relevant insolvency event.

(3) If WRA is satisfied that—

- (a) the person is not registered,
- (b) the person is entitled to an amount of customer insolvency credit, and
- (c) the entitlement to the credit has not been transferred to any other person,

WRA must pay the person an amount equal to the amount of the credit.

(4) In this regulation, “the relevant insolvency event” means the insolvency event that gave rise to an entitlement to credit in respect of the taxable disposal.

### **Supplementary provision relating to claims**

**21.**—(1) A claim for customer insolvency credit in respect of a taxable disposal must be for the entire amount (as opposed to only part of the amount) of the credit in respect of that disposal.

(2) Where a person is entitled to customer insolvency credit in respect of more than one taxable disposal, a claim may be in respect of each of those disposals, or in respect of only one or some of them.

(3) Where—

- (a) an amount of customer insolvency credit is set off, under regulation 19(3)(a) or (4)(a), against an amount of tax that a person would otherwise be required to pay, or
- (b) an amount equal to an amount of customer insolvency credit is paid to a person under regulation 19(4)(b) or 20(3),

the person is to be treated, for the purposes of this Part, as having benefited from that amount of credit.

### *Evidence and record keeping*

### **Evidence in support of claims**

**22.**—(1) A claimant must—

- (a) on the day the claim is made, hold the evidence specified in paragraph (2) in respect of each taxable disposal to which the claim relates, and
- (b) preserve that evidence for a period of 6 years beginning with that day.

(2) The evidence is—

- (a) a copy of the landfill invoice issued in respect of the disposal;
- (b) records or other documents showing that the claimant—
  - (i) has accounted for the disposal in a tax return, and
  - (ii) has paid the amount of tax payable under section 42(1) or (1A) of LDTA in respect of the return;
- (c) records or other documents relating to any payment made by the customer in respect of the consideration for the disposal;
- (d) records or other documents relating to—
  - (i) any debt owed by the claimant to the customer, or
  - (ii) any enforceable security held by the claimant in relation to the customer;
- (e) records or other documents relating to any steps taken to recover the outstanding consideration for the disposal.

### **Customer insolvency credit record**

**23.**—(1) A claimant must maintain an up-to-date record of the claim (a “customer insolvency credit record”) throughout the recording period.

(2) The recording period begins with the day on which the claim is made, and ends with the date that is the sixth anniversary of the later of—

- (a) the day on which the claim was made, and
- (b) the day on which the record of the claim was most recently updated.

(3) The record must contain the following information in respect of each taxable disposal to which the claim relates—

- (a) the amount of tax chargeable on the disposal;
- (b) the consideration for the disposal;
- (c) the tax return in which the disposal was accounted for, and the date on which any tax payable in respect of the return was paid;
- (d) the identifying number of the landfill invoice issued in respect of the disposal, and the date on which it was issued;
- (e) in the case of a disposal of material for which a written description is required by virtue of section 34(1)(c)(ii) of the Environmental Protection Act 1990(3), the written description;
- (f) the amount paid in respect of the consideration for the disposal, including any payment treated as being allocated to that debt by virtue of regulation 16 (whether before or after the making of the claim), and the amount of outstanding consideration;
- (g) any steps taken to recover the outstanding consideration for the disposal.

(4) The record must also contain the following information—

- (a) the total amount of the claim;
- (b) the tax return in which the claim was made;
- (c) the total amount of outstanding consideration in respect of which the claim is made.

(5) Where a claimant makes more than one claim, the records that must be maintained under this regulation must be kept in a single account (to be known as “the customer insolvency credit summary”).

### *Recovery of credit*

#### **Recovery in the event of customer payment**

**24.**—(1) This regulation applies where a claimant—

- (a) has benefited from an amount of customer insolvency credit in respect of a taxable disposal (see regulation 21(3)), and
- (b) subsequently receives a payment from the customer which, by virtue of regulation 16, is treated as being allocated, in part or in whole, to the debt owed in respect of the consideration for the disposal.

(2) The claimant must pay WRA, before the end of 30 days beginning with the day on which the claimant receives the customer payment, an amount calculated in accordance with the formula in paragraph (3).

(3) The formula is—

$$\text{Payment} = RCredit \times \frac{P}{OC}$$

where—

- (a) “Payment” is the amount of the payment that must be made to WRA;
- (b) “RCredit” is the relevant amount of customer insolvency credit;

(3) 1990 c.43. Section 34(1) has been amended by S.I. 2000/1973, S.I. 2007/3538, S.I. 2010/675 and S.I. 2011/988. There are other amendments to section 34(1) which are not relevant to these Regulations.

- (c) P is the amount of payment that is treated as being allocated to the debt owed in respect of the consideration for the disposal, as described in paragraph (1)(b);
- (d) OC is—
  - (i) the amount treated as OC for the purposes of calculating the amount of credit in respect of the disposal under regulation 18(1), less
  - (ii) any amount received from the customer that has already been treated as P under this regulation.
- (4) The relevant amount of customer insolvency credit is—
  - (a) the amount of credit calculated in respect of the disposal under regulation 18(1), less
  - (b) any amount that the claimant has already been required to pay WRA in respect of the disposal under this regulation.

### **Recovery in the event of failure to keep records or other evidence**

- 25.**—(1) This regulation applies where a claimant—
- (a) has benefited from an amount of customer insolvency credit as a result of a claim (see regulation 21(3)), but
  - (b) has failed to comply with a requirement under regulation 22 or 23 in relation to the claim.
- (2) WRA must—
- (a) assess the amount of customer insolvency credit from which the claimant has benefited in respect of the claim, and
  - (b) issue a notice to the claimant—
    - (i) specifying the amount assessed, and
    - (ii) requiring the person to pay WRA an amount equal to that amount.
- (3) The claimant must pay WRA the amount specified in the notice before the end of the period of 30 days beginning with the day on which the notice is issued.
- (4) WRA is not required to issue a notice under paragraph (2) if it is satisfied that any facts that it reasonably requires to be proved, and which would have been proved by the records or other evidence required under regulation 22 or 23, are proved by other documentary evidence provided to it.
- (5) A claimant to whom a notice is issued under paragraph (2) is not required to pay WRA the amount specified in the notice if—
- (a) the claimant produces documentary evidence to WRA, within the period of 30 days beginning with the day on which the notice is issued, regarding the facts which would have been proved by the records or other evidence required under regulation 22 or 23, and
  - (b) WRA issues a further notice to the claimant stating that the evidence proves, to its satisfaction, the facts that it reasonably requires to be proved.

### *Amendments and modifications to primary legislation*

#### **Amendments to the Landfill Disposals Tax (Wales) Act 2017 and the Tax Collection and Management (Wales) Act 2016**

- 26.** The Schedule makes amendments to LDTA and TCMA(4).

### **Modifications to the Tax Collection and Management (Wales) Act 2016**

27. Sections 74 to 77 of TCMA (enquiries into claims) apply to claims under regulation 20 as to claims under section 62, 63 or 63A of that Act but as if—

- (a) in section 74, the references to an amendment of a claim were omitted,
- (b) in section 75, subsection (3) were omitted, and
- (c) in section 77(1)(b), the reference to the discharge or repayment of devolved tax were to the payment of an amount in respect of a tax credit.

24 January 2018

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Ministers