

Explanatory Memorandum to

The Landfill Disposals Tax (Wales) Act 2017 (Site Restoration Relief) (Amendment) Regulations 2018

This Explanatory Memorandum has been prepared by the Office of the First Minister and Cabinet Office of the Welsh Government and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Cabinet Secretary's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Landfill Disposals Tax (Wales) Act 2017 (Site Restoration Relief) (Amendment) Regulations 2018.

I am satisfied that the benefits justify the likely costs.

Mark Drakeford AM – Cabinet Secretary for Finance
20 July 2018

1. Description

- 1.1 These Regulations will amend section 29(1)(a) of the Landfill Disposals (Wales) Act 2017 (“the Act”) to extend the scope of the relief from tax for site restoration to include disposals of material consisting entirely of top-soil when used to restore an authorised landfill site (or part of it) for another use when carried out in accordance with an approval given by WRA.

2. Matters of special interest to the Constitutional and Legislative Affairs Committee

- 2.1 None.

3. Legislative background

- 3.1 The Regulations are made pursuant to section 33 of the Act (power to modify reliefs). The Regulations are subject to the affirmative procedure.

4. Purpose & intended effect of the legislation

- 4.1 The purpose of the Regulations is to amend section 29 of the Act to extend the scope of the relief from tax in respect of disposals made as part of approved site restoration activity. The amendment made by these Regulations will extend the scope of the relief to include the disposal of material consisting entirely of top-soil.
- 4.2 The effect of the Regulations is to ensure material required by an environmental permit or planning condition for site restoration at an authorised landfill site is relieved from tax. A relief from tax should apply to both qualifying material and top-soil where that material is reasonably required to be used in site restoration; this is commensurate with the initial policy intention which, was to provide a relief from tax for disposals of material necessary to restore a site for [future] use other than making landfill disposals (s.8(4) of the Act).
- 4.3 Section 29 of the Act specifies that site restoration is a taxable disposal and is only relieved from tax if the material consists “entirely of qualifying material”. However, the environmental permitting regime administered by Natural Resources Wales and the planning conditions administered by the Local Planning Authorities in Wales, require site restoration to be completed to restore the land for future use, which generally includes the spreading of an even layer of soil on top of the landfill to provide a growing medium for plants/trees etc. This soil requires a certain element of organic material and is commonly referred to as top-soil.
- 4.4 In terms of applying site restoration relief, the WRA cannot currently grant relief under section 29 of the Act as top-soil is not a qualifying material listed in Schedule 1 to the Act.

5. Consultation

- 5.1 The WRA, working with landfill site operators to approve site restoration relief applications, identified an operational disparity between the requirements in s.29 of the Act and the requirements for landfill site restorations in terms of planning conditions and environmental permitting.
- 5.2 No formal consultation has been undertaken, however, the views of key stakeholders have been sought and they agree that for land to be restored for future use, there is a need to place top-soil on the site to provide a growing medium for grass or other plants and trees.

6. Regulatory Impact Assessment

- 6.1 A primary aim of the Regulations is to ensure the correct liabilities to tax arise and that no taxpayer is unfairly disadvantaged.

Option 1: Do Nothing

- 6.2 As top-soil is not a qualifying material, when it is required to be used in site restoration (to comply with the environmental permit and planning conditions) it would not be subject to the relief and therefore, landfill site operators would be required to pay the standard rate of tax (currently £88.95 per tonne).
- 6.3 Based on seven site restoration applications received for work commencing in 2018, applying the standard rate of landfill disposals tax to top-soil used in site restoration is estimated to generate between £2.9million and £6.7million in additional tax revenue. This assumes site operators do not reduce their use of top-soil in response to the tax being applied. The amount of tax revenue in future years will depend upon the site restoration projects brought forward in those years.
- 6.4 In England and Scotland landfill sites are not required to pay tax on any material used in site restoration and this would be an additional financial burden on businesses in Wales

Option 2: Provide for the Welsh Ministers to amend section 29 to the Landfill Disposals Tax (Wales) Act 2017

- 6.5 The amendment to section 29 to modify the relief from tax for using material in approved site restoration to include top-soil will ensure that landfill site operators are not required to pay tax in respect of top-soil used as part of an approved site restoration. The original policy intent was not to charge tax on material required to be used in site restoration to allow sites to be used for future use. So, while the revenue identified in paragraph 6.3 would not be collected under this option, it was never anticipated that the charge would be applied and it has not been included in any projections of tax revenue.
- 6.6 By extending the scope of the relief to top-soil, this will remove the incentive to use no or minimal top-soil and encourage good site management. This will help to deliver the social, economic and environmental benefits associated with proper site restoration.
- 6.7 This will ensure that Welsh landfill site operators are not disproportionately disadvantaged compared to those in England and Scotland yet still aligned with the Welsh approach to a transparent and open tax system whereby activities that are taxable disposals are fully accounted for and monitored by the WRA.
- 6.8 This is the preferred option.

Competition Assessment

- 6.9 At present there are 27 firms in the market with four firms having more than 10% market share. There are no firms having a market share greater than 20% or the largest three firms together having at least 50% market share.
- 6.10 The competition filter test has been applied, only question one was answered Yes with the other eight questions being No.
- 6.11 With only one question being answered Yes, these Regulations are not expected to adversely affect levels of competition in Wales or the competitiveness of Welsh firms.

7. Post Implementation review

- 7.1 The WRA and NRW will continue to monitor landfill site operators site restoration activity to ensure they are paying the correct amount of tax, and that landfill site operators can provide evidence that the site restoration is required by an environmental permit or planning permission relating to the site and only the amount of material required to comply with the permit or permission will benefit from the relief.