

## **Explanatory Memorandum to**

### **The Landfill Disposals Tax (Wales) Act 2017 (Reliefs) (Miscellaneous Amendments) Regulations 2019**

This Explanatory Memorandum has been prepared by the Permanent Secretary's Group 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.

#### **Minister'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 (Reliefs) (Miscellaneous Amendments) Regulations 2019.

I am satisfied that the benefits justify the likely costs.

Rebecca Evans AM

**Minister for Finance and Trefnydd**

25 June 2019

## **1. Description**

- 1.1 The Landfill Disposals Tax (Wales) Act 2017 (Reliefs Miscellaneous Amendments) Regulations 2019 (“the Regulations”) make certain changes to the definition of “restoration work” and the operation of the refilling relief for open-cast mines and quarries.
- 1.2 Regulation 2 amends the definition of ‘restoration work’ at section 8(4) of the Landfill Disposals Tax (Wales) Act 2017 (“LDTA”) to make it clear that restoration work carried out at a landfill disposal area that has not been capped is capable of being treated as “restoration work” for the purposes of the LDTA.
- 1.3 Regulation 3(a) amends section 32(1)(a) of LDTA to extend the scope of the relief for refilling open-cast mines and quarries to make a qualifying mixture of materials (other than one consisting entirely of fines) eligible for relief. The amendment made by Regulation 3(b) ensures that a future disposal may be eligible for the relief under section 32 even if disposals of qualifying mixtures of material (other than those consisting entirely of fines) which would now be eligible for relief were made between 1 April 2018 and the date of these Regulations coming into force.

## **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 sections 8(5)(b), 33(1)(b) and 94(1) of the LDTA. In accordance with section 96(4) of the LDTA, the Regulations are subject to the affirmative resolution procedure.

## **4. Purpose & intended effect of the legislation**

### **Amendment to Section 8 of the LDTA**

- 4.1 Once a landfill site (or part of it) finishes accepting disposals, there is a phase of restoration work undertaken to restore the land to an acceptable state or further use. This restoration work is generally a requirement of the environmental permit or a condition of the planning permission relating to the site.
- 4.2 The starting point is that the use of material in restoration work will be treated as a taxable disposal, as stated at section 8(3)(j) LDTA. Section 8(4) LDTA supplements this provision with a definition of restoration work.

However, it is possible for a landfill site operator to apply for site restoration relief in relation to the material used in restoration work. The conditions for claiming site restoration relief are set out at section 29 LDTA, with additional provisions at sections 30 and 31 LDTA. One of the conditions in section 29(1) LDTA states that a disposal must “form part of restoration work” that is carried out in accordance with a WRA approval. This links back to the definition of restoration work at section 8(4) LDTA which, as originally drafted only captures work to restore a landfill disposal area “*if it is carried out after the area has been capped*”.

- 4.3 The Welsh Revenue Authority has become aware, through operational experience and discussions with Natural Resources Wales (NRW), that there may be landfill sites (or parts of sites) in Wales that are not required to apply a cap during restoration work. This is because of the low environmental risk that the disposals made there pose. It is understood that all hazardous and non-hazardous sites will be required to apply an engineered cap, but inert sites generally will not be subject to this requirement. The practical impact of this is that such inert sites would not be able to meet the current definition of ‘restoration work’ at section 8 LDTA and so would not be able to claim site restoration relief (as they would not meet the second condition of that relief at s.29(1)(b) LDTA) in relation to any disposals made there.
- 4.4 Consequently, the purpose of the amendment to the definition of restoration work at section 8(4) LDTA is to recognise that not all landfill sites will have a cap applied to a landfill disposal area. This amendment will ensure that the relief for site restoration work (section 29 LDTA) will still be available in appropriate cases where a cap is required, but will also be available to those inert landfill sites which do not require a cap.

#### **Amendment to Section 32 of the LDTA**

- 4.5 WRA’s operational experience and discussions with NRW suggests that it is possible that some or all of the landfill sites currently claiming relief under section 32 LDTA are permitted to accept and may have been accepting qualifying mixtures of materials (other than those consisting entirely of fines). These disposals currently fall out of the scope of the relief from tax provided by section 32 LDTA, and due to the restriction imposed by section 32(1)(d) LDTA, operators would be prevented from claiming relief for all future disposals at those sites.
- 4.6 The amendments made to section 32 of the LDTA are designed to ensure that the initial policy intention to provide a relief from tax for disposals of material presenting low environmental risk and being used where necessary to refill an open-cast mine or quarry is being effectively delivered.
- 4.7 Consequently, the purpose of the amendment to section 32(1)(a) LDTA (relief from tax for using material in refilling open-cast mines or quarries) is to

expand the scope of the relief so that disposals of qualifying mixtures of material, other than mixtures consisting entirely of fines (section 16 LDTA) will also fall within the scope of the relief. The intended effect of this amendment is to enable authorised landfill sites that were once open-cast mines or quarries to benefit from the section 32 relief when refilling these voids with qualifying materials or qualifying mixtures of material (other than fines), provided that all of the conditions set out at section 32 LDTA are met.

4.8 A related amendment is made to section 32(1)(d) LDTA. This amendment ensures that where there has been a disposal of qualifying mixtures of material (other than fines) since 1 April 2018 but before these Regulations come into force that would be relieved from tax under section 32 if it were made after these Regulations come into force, it will still be possible to establish an entitlement to the section 32 relief.

4.9 The amendments provide a practical amount of flexibility for landfill site operators, whilst still fitting comfortably with the environmental regulation regime, where an incidental amount of non-qualifying material would generally not be considered a cause for concern. The amendments would also bring LDTA in line with the HMRC approach in this area, a regime that most operators have moved from. The amendment has been deliberately designed to exclude qualifying mixtures of materials consisting entirely of fines from the scope of the relief, which is consistent with the HMRC approach and reflects the environmental concerns with bringing qualifying mixtures of material consisting entirely of fines into the scope of the relief.

## **5. Consultation**

5.1 No formal consultation has been undertaken, however, the views of key stakeholders (*primarily NRW*) have been sought and they agree that, in the case of section 8, inert sites that do not require an engineered cap before commencing site restoration work should be able to benefit from the relief from tax for that work. In the case of section 32, incidental amounts of non-qualifying materials would not cause disproportionate environmental concerns.

## **6. Regulatory Impact Assessment**

6.1 A Regulatory Impact Assessment, (RIA) was undertaken on the Landfill Disposals Tax (Wales) Act 2017 and given these regulations are designed to ensure the original policy intention is realised in practice, no RIA is proposed.