

Plan or pay the penalty:

How changes to Landfill Tax now impact the construction industry

Changes to landfill tax rules, introduced in England, Northern Ireland and Wales from 1 April 2018, have extended the scope of landfill tax to impact on the property development and construction sector.

Initially, the changes were aimed at discouraging illegal waste disposal activity. However, they now have the potential to deal with the unauthorised reuse of excavated materials on construction sites. Landfill tax can now be imposed wherever 'waste' is improperly deposited. Putting an appropriate Materials Management Plan (MMP), exemption, or permit in place is the only way to avoid the potential imposition of landfill tax in such cases.

A revised and strengthened 'Definition of Waste: Development Industry Code of Practice' (DoWCoP), is set to be introduced in 2019 by CL:AIRE (Contaminated Land: Applications in Real Environments), the organisation that manages the DoWCoP scheme on behalf of the Environment Agency. The publication of Version 3 of the DoWCoP will bring this little-known issue into the spotlight.

The DoWCoP has been in place since 2008 and its application enables developers to demonstrate that materials reused within a construction project are not waste. The use of MMPs is now commonplace, but they are not being used on every project, partly due to the perception that the scheme is voluntary. The tax rules introduced in April 2018 make a range of persons including developers, contractors and consultants potentially liable for tax payments to HMRC if they do not follow the DoWCoP protocols.

So, in short, the scope of Landfill Tax has been extended to cover sites that are reusing materials without an appropriate environmental permit, exemption or MMP in place, and HMRC can recover tax at the Standard Rate (and also impose fines) on the deposited materials. The Environment Agency will be working with HMRC in a joint approach to enforce the new rules.

Read the legislation in full*

**Link: <https://www.gov.uk/government/publications/landfill-tax-disposals-not-made-at-landfill-sites/landfill-tax-disposals-not-made-at-landfill-sites>*



How does this affect you?

At Hydrock, we have identified **nine key areas** that you need to look out for, relating to groundworks, earthworks and remediation, and we have highlighted below the **main actions you should take**.

1

Where soils are naturally-occurring, uncontaminated, and are reused on the site they are excavated from (the 'site of origin'), they fall outside of the Waste Framework Directive (WFD) – i.e. they will not be classified as a waste. However, you will need to compile evidence to prove this. No DoWCoP declaration is required.

*We recommend that a **Materials Management Strategy is written** to compile evidence to show that the naturally occurring, uncontaminated soils are being reused and there is a need for their use on site in general accordance with the DoWCoP rules. In this instance, no DoWCoP declaration is required.*

2

Where naturally occurring, uncontaminated soils, are moved to another construction site, they may be classified as a waste unless a Materials Management Plan (MMP) is in place at the receiving site. The donor site will need to compile evidence, supported by stockpile test data, that the soil is clean and naturally occurring and there is a need for them at the receiving site.

*We recommend that a **MMP is written** for the transfer of naturally occurring, uncontaminated soils between sites to comply with the DoWCoP rules.*

3

On sites where Made Ground or other contaminated soils are reused without treatment, they will automatically be classified as a waste, and landfill tax could be charged unless the work is carried out in accordance with an MMP or there is an exemption in place. If materials are not managed in accordance with a MMP or an exemption, they may be deemed a waste and subject to Landfill Tax at the Standard Rate of £91.35 per tonne in England and at the Unauthorised Disposal rate of £137.00 per tonne in Wales / Northern Ireland (as of April 2019).

*To prevent the material being classified as a waste, we recommend that **excavation and reuse on the site of origin is undertaken** in accordance with a MMP prepared in accordance with the DoWCoP, approved by a Qualified Person (QP) and subject to Declaration via the CL:AIRE website. The MMP is not authorised for implementation until the Declaration is accepted by CL:AIRE and cannot be applied retrospectively.*

4

Where reuse on site is not possible, unless treatment renders the material suitable for use, an Environmental Permit is required for the treatment, as well as an MMP. Without the permit and the MMP, the reuse of these soils on the site of origin may be classed as a waste disposal activity and the tax penalties described above may apply.

In order to prevent treated soils being classified as waste, all material movements should be managed under a MMP prepared in accordance with the DoWCoP, as above, in association with an appropriate permit.

5

Under the DoWCoP, the following factors need to be proven to enable the soils to be excavated and reused under an MMP:

- » **Factor 1:** Protection of human health and the environment from the reuse of the commensurate with the volume of material required to achieve the levels agreed in the planning permission.

- » **Factor 2:** The excavated soils should be suitable for their intended use, without treatment.
- » **Factor 3:** Certainty of use: the reuse requirement must be embodied in the planning permission.
- » **Factor 4:** Fixed Quantity: the quantity of material excavated must be 'fixed', commensurate with the volume of material required to achieve the levels agreed in the planning permission.

It is essential that a MMP is in place before soils are excavated and reused. It is not possible to apply a MMP retrospectively. Sufficient time must be allowed for the MMP to be written, QP-approved, and Declared. The MMP must include a Verification Plan and state who will be responsible for verifying compliance with the MMP at the end of the construction activities, along with a predicted date for when this will be.

Under the DoWCoP, all soils scheduled for reuse must also be tested geotechnically and chemically during excavation and placement to prove they are 'suitable for use'.

Sufficient time and budget should be allowed to cover verification of the MMP requirements on completion of the works. Verification is normally required to discharge planning conditions associated with contamination.

6

Under the DoWCoP, soils that are suitable for use without treatment may be reused on site, but if any processing such as screening, treatment or improvement is needed, it will constitute a waste activity and will require an Environmental Permit in the form of a Mobile Plant Permit.

The CL:AIRE DoWCoP states that treatments carried out on uncontaminated soils solely for the purpose of improving geotechnical properties, e.g. lime / cement stabilisation, are not generally regarded as waste treatment operations and do not require a permit. However, there are many processes and activities which are used to improve soils from a geotechnical perspective which are not undertaken under a permit, when they should be. This may be as simple as removing oversize material by means ranging from using an excavator bucket, to using a riddle bucket to remove hardcore, to full mechanical screening. The EA could consider this to be a 'permitted' activity. If a permit is not in place, any soils placed from this illegal activity could be deemed to be a waste and subject to the landfill tax charge.

If any soil processing is to be undertaken you should ensure that the correct permit, and a MMP are in place for the activities undertaken prior to works commencing.

7

All recycled materials in Fill (Type 6F2 etc.) must be produced under the 2013 Aggregates Protocol, whether on site or off site. If it is not, then it will be deemed a waste and can only be used on site under a permit. Learn more [here*](#).

*We recommend that you **specify that all re-cycled materials (site-won or imported), are provided under the WRAP Protocol** and appropriate documentation and certification are provided. You should also ensure that the recycled materials are provided with accurate information about their source, composition and properties, and that they are suitable for their intended use without treatment.*

*Link: <https://www.gov.uk/government/publications/quality-protocol-production-of-aggregates-from-inert-waste>



The EA considers that bespoke permitting may apply to any former landfill site that is subject to remediation, even if the site is no longer licensed.

*We recommend that **permitting requirements are discussed and agreed with the EA prior to undertaking remediation works on former landfill sites.** Reuse of materials derived from unauthorised treatment processes may result in the deposited materials being regarded as a waste.*



The incorrect use of waste codes for materials to be disposed of, or for imported materials could result in HMRC deeming the activity to be an illegal deposit and hence subject to landfill tax.

*We recommend that you **ensure that the contractor disposing of your waste uses the correct waste codes and methodologies.***



SUMMARY

- » To avoid potentially significant landfill tax charges and fines from HMRC, the reuse of soils at sites must be considered during the planning and development process.
- » Anyone who knowingly facilitates an unauthorised disposal may be jointly and severally liable to any assessment of tax, and may be prosecuted and fined.
- » To avoid Landfill Tax being charged unnecessarily, and potential prosecutions or fines, Hydrock's advice is that a MMP is in place for any project where excavations are to be carried out, or earthworks are proposed.

Further information

To discuss this issue in more detail, for a CPD seminar on waste and MMPs, or for help in the production or verification of MMPs, please make contact with one of our experts:



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