
STATUTORY INSTRUMENTS

1996 No. 1529

LANDFILL TAX

The Landfill Tax (Contaminated Land) Order 1996

Made - - - - 12th June 1996
Laid before the House of
Commons - - - - 12th June 1996
Coming into force in
accordance with article 1

The Treasury, in exercise of the powers conferred on them by section 46 of the Finance Act 1996⁽¹⁾ and of all other powers enabling them in that behalf, hereby make the following Order:

1. This Order may be cited as the Landfill Tax (Contaminated Land) Order 1996 and shall come into force on 1st August 1996, except that article 4 shall come into force on the same day as section 54 of the Finance Act 1996 comes into force.
2. The Finance Act 1996 shall be amended in accordance with the following provisions of this Order.
3. After section 43 there shall be inserted the following:

“Contaminated land.

43A.—(1) A disposal is not a taxable disposal for the purposes of this Part if it is a disposal within subsection (2) below.

(2) A disposal is within this subsection if —

- (a) it is of material all of which has been removed from land in relation to which a certificate issued under section 43B below was in force at the time of the removal;
- (b) none of that material has been removed from a part of the land in relation to which, as at the time of the removal, the qualifying period has expired;
- (c) it is a disposal in relation to which any conditions to which the certificate was made subject are satisfied; and
- (d) it is not a disposal within subsection (4) below.

(3) For the purpose of subsection (2)(b) above the qualifying period expires, in relation to the part of the land in question —

- (a) in the case of a reclamation which qualified under section 43B(7)(a) below, where the object involves the construction of —
 - (i) a building; or
 - (ii) a civil engineering work,
 when the construction commences;
 - (b) in any other case of a reclamation which qualified under section 43B(7)(a) below, when pollutants have been cleared to the extent that they no longer prevent the object from being fulfilled; or
 - (c) in the case of a reclamation which qualified under section 43B(7)(b) below, when pollutants have been cleared to the extent that the potential for harm has been removed.
- (4) Subject to subsection (5) below, a disposal is within this subsection if it is of material the removal of any of which is required in order to comply with —
- (a) a works notice served under section 46A of the Control of Pollution Act 1974;⁽²⁾
 - (b) an enforcement notice served under section 13 of the Environmental Protection Act 1990;⁽³⁾
 - (c) a prohibition notice served under section 14 of the Environmental Protection Act 1990;
 - (d) an order under section 26 of the Environmental Protection Act 1990;
 - (e) a remediation notice served under section 78E of the Environmental Protection Act 1990⁽⁴⁾,
 - (f) an enforcement notice served under section 90B of the Water Resources Act 1991;⁽⁵⁾ or
 - (g) a works notice served under section 161A of the Water Resources Act 1991.⁽⁶⁾
- (5) A disposal shall not be regarded as falling within subsection (4) above where the removal of the material has been carried out by or on behalf of any of the following bodies:
- (a) a local authority;
 - (b) a development corporation;
 - (c) the Environment Agency;
 - (d) the Scottish Environment Protection Agency;
 - (e) English Partnerships;
 - (f) Scottish Enterprise;
 - (g) Highlands and Islands Enterprise;
 - (h) the Welsh Development Agency.
- (6) In this section —
- “development corporation” means —
- (a) in England and Wales, a corporation established under section 135 of the Local Government, Planning and Land Act 1980;⁽⁷⁾

(2) 1974 c. 40; section 46A was inserted by section 120 of, and Schedule 22 to, the Environment Act 1995 (c. 25).

(3) 1990 c. 43.

(4) 1990 c. 43; section 78E was inserted by section 57 of the Environment Act 1995.

(5) 1991 c. 57; section 90B was inserted by section 120 of, and Schedule 22 to, the Environment Act 1995.

(6) 1991 c. 57; section 161A was inserted by section 120 of, and Schedule 22 to, the Environment Act 1995.

(7) 1980 c. 65.

(b) in Scotland, a corporation established under section 2 of the New Towns (Scotland) Act 1968;(8)

“English Partnerships” means the Urban Regeneration Agency established by section 158 of the Leasehold Reform, Housing and Urban Development Act 1993;(9)

“Highlands and Islands Enterprise” means the body established by section 1(b) of the Enterprise and New Towns (Scotland) Act 1990;(10)

“land” includes land covered by water;

“Scottish Enterprise” means the corporation established by section 1(a) of the Enterprise and New Towns (Scotland) Act 1990;(11)

“the Welsh Development Agency” means the body established by section 1 of the Welsh Development Agency Act 1975.(12)

(7) For the purposes of this section —

- (a) the removal of material includes its removal from one part of the land for disposal on another part of the same land;
- (b) the clearing of pollutants includes their being cleared from one part of the land for disposal on another part of the same land.

Contaminated land: certificates.

43B.—(1) Subject to subsection (2) below, the Commissioners shall issue a certificate in relation to any land where —

- (a) an application in writing is made by a person carrying out, or intending to carry out, a reclamation of that land (the applicant);
- (b) the applicant provides to them such information as they may direct, whether generally or as regards that particular case;
- (c) the application is made not less than 30 days before the date from which the certificate is to take effect; and
- (d) the reclamation qualifies under subsection (7) below.

(2) The Commissioners shall not refuse an application for a certificate in a case where the conditions specified in subsection (1)(a) to (d) above are satisfied unless it appears to them —

- (a) necessary to do so for the protection of the revenue; or
- (b) except where the applicant is one of the bodies mentioned in subsection (5) of section 43A above, that all or part of the reclamation of land to which the application relates is required in order to comply with a notice or order mentioned in subsection (4) of that section.

(3) The Commissioners may make a certificate subject to such conditions set out in the certificate as they think fit, including (but not restricted to) conditions —

- (a) that the certificate is to be in force only in relation to a particular quantity of material;
- (b) that the certificate is to be in force only in relation to disposals made at a particular landfill site or sites;

(8) 1968 c. 16.
(9) 1993 c. 28.
(10) 1990 c. 35.
(11) 1990 c. 35.
(12) 1975 c. 70.

- (c) that the certificate is to be in force in relation to part only of the land to which the application relates.
- (4) A certificate issued under this section —
 - (a) shall have effect from the date it is issued to the applicant or such later date as the Commissioners may specify in the certificate; and
 - (b) shall cease to have effect on such date as the Commissioners may set out in the certificate, but in any event no later than the day on which the person to whom the certificate was issued ceases to have the intention to carry out any activity involving reclamation of the land in relation to which the certificate was issued.
- (5) Where a certificate has been issued to a person, the Commissioners —
 - (a) may vary it by issuing a further certificate to that person; or
 - (b) may withdraw it by giving notice in writing to that person; but this is subject to subsection (6) below.
- (6) The Commissioners shall not withdraw a certificate unless it appears to them —
 - (a) necessary to do so for the protection of the revenue;
 - (b) that the reclamation did not in fact qualify under subsection (7) below or no longer so qualifies;
 - (c) that there will not be any or any more disposals within section 43A(2) above of material from the land to which the certificate relates; or
 - (d) except where the person to whom the certificate was issued is one of the bodies mentioned in subsection (5) of section 43A above, that the removal of material from the land to which the certificate relates is required in order to comply with a notice or order mentioned in subsection (4) of that section.
- (7) A reclamation qualifies under this subsection if —
 - (a) it is, or is to be, carried out with the object of facilitating development, conservation, the provision of a public park or other amenity, or the use of the land for agriculture or forestry; or
 - (b) in a case other than one within paragraph (a) above, it is, or is to be, carried out with the object of reducing or removing the potential of pollutants to cause harm,and, in either case, the conditions specified in subsection (8) below are satisfied.
- (8) The conditions mentioned in subsection (7) above are —
 - (a) that the reclamation constitutes or includes clearing the land of pollutants which are causing harm or have the potential for causing harm;
 - (b) that, in a case within subsection (7)(a) above, those pollutants would (unless cleared) prevent the object concerned being fulfilled; and
 - (c) that all relevant activities have ceased or have ceased to give rise to any pollutants in relation to that land.
- (9) For the purposes of subsection (8) above the clearing of pollutants —
 - (a) need not be such that all pollutants are removed;
 - (b) need not be such that pollutants are removed from every part of the land in which they are present;
 - (c) may involve their being cleared from one part of the land and disposed of on another part of the same land.
- (10) For the purposes of subsection (8)(c) above an activity is relevant if —

- (a) it has at any time resulted in the presence of pollutants in, on or under the land in question otherwise than —
 - (i) without the consent of the person who was the occupier of the land at the time, or
 - (ii) by allowing pollutants to be carried onto the land by air or water, and
- (b) at that time it was carried out —
 - (i) by the applicant or a person connected with him, or
 - (ii) by any person on the land in question.
- (11) For the purposes of subsection (10) above —
 - (a) any question whether a person is connected with another shall be determined in accordance with section 839 of the Taxes Act 1988;**(13)**
 - (b) the occupier of land that is not in fact occupied is the person entitled to occupy it.
- (12) In this section “land” has the meaning given by section 43A(6) above.”.
- 4. Section 54 shall be amended by inserting after paragraph (b) of subsection (1) the following —
 - “(ba) a decision to refuse an application for a certificate under section 43B above, or to withdraw such a certificate;
 - (bb) a decision to make a certificate issued under section 43B above subject to a condition that it is to be in force in relation to part only of the land to which the application for the certificate related;”.
- 5. Section 70(1) shall be amended as follows —
 - (a) after the definition of “conduct” there shall be inserted —
 - ““the Environment Agency” means the body established by section 1 of the Environment Act 1995;**(14)**
 - (b) after the definition of “registrable person” there shall be inserted —
 - ““the Scottish Environment Protection Agency” means the body established by section 20 of the Environment Act 1995;**(15)**
- 6. After subsection (2) of section 70 there shall be inserted the following —
 - “(2A) A local authority is —
 - (a) the council of a county, county borough, district, London borough, parish or group of parishes (or, in Wales, community or group of communities);
 - (b) the Common Council of the City of London;
 - (c) as respects the Temples, the Sub-Treasurer of the Inner Temple and the Under-Treasurer of the Middle Temple respectively;
 - (d) the council of the Isles of Scilly;
 - (e) any joint committee or joint board established by two or more of the foregoing;
 - (f) in relation to Scotland, a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994**(16)**, any two or more such councils and any

(13) Section 204 of the Finance Act 1996 (c. 8) defines “the Taxes Act 1988” as meaning the Income and Corporation Taxes Act 1988 (c. 1); section 839 was amended by paragraph 20 of Schedule 17 to the Finance Act 1995 (c. 4).

(14) 1995 c. 25.

(15) 1995 c. 25.

(16) 1994 c. 39.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

joint committee or joint board within the meaning of section 235(1) of the Local Government (Scotland) Act 1973.(17)

Derek Conway

Simon Burns

Two of the Lords Commissioners of Her Majesty's Treasury

12th June 1996

EXPLANATORY NOTE

(This note is not part of the Order)

This Order comes into force on 1 August 1996, except for article 4, which comes into force on the same day as section 54 of the Finance Act 1996 (review of Commissioners' decisions). The Order amends that Act in order to provide for an additional exemption from the new landfill tax, which Part III of that Act introduces. The exemption is in respect of disposals of waste material that has resulted from certain land reclamations.

Article 2 provides for the Finance Act 1996 (“the Act”) to be amended in accordance with the later articles of the Order.

Article 3 provides for the insertion in the Act of new sections 43A and 43B. The first of these provides an exemption from landfill tax for disposals of waste arising from land for which a certificate, issued by the Commissioners of Customs and Excise under section 43B, is in force. Certain other conditions must be fulfilled. Subsection (3) defines when the qualifying period expires, and this prevents the exemption from applying after, for example, the intended construction of a building has commenced. Subsection (4) prevents the exemption applying if the removal of the waste material is required by certain remediation notices, except where it is undertaken by the public bodies named in subsection (5).

Section 43B details the circumstances in which the Commissioners will issue, amend, withdraw or refuse to issue a certificate and lists examples of the conditions which may be attached to the issue of a certificate. Subsection (7) lists the reclamation processes that, subject to conditions listed in subsection (8), qualify for the issue of a certificate.

Article 4 adds to section 54(1) of the Act by making the refusal of an application for a certificate and the withdrawal of a certificate decisions which may be reviewed and, by virtue of section 55, appealed to the VAT and duties tribunal thereafter. The review procedure and tribunal jurisdiction are also extended to include decisions to limit certificates to only part of the land to which the application relates.

Article 5 adds two new definitions to section 70(1) of the Act and article 6 also inserts a new definition as section 70(2A).