

**EXPLANATORY MEMORANDUM TO
THE LANDFILL TAX (MATERIAL FROM CONTAMINATED LAND) (PHASING OUT OF
EXEMPTION) ORDER**

2008 No. 2669

1. This explanatory memorandum has been prepared by Her Majesty's Revenue and Customs and is laid before the House of Commons by Command of Her Majesty.

2. Description

This Order amends sections 43A, 43B and 54(1) of the Finance Act 1996 (c. 8) in order to phase out the exemption from landfill tax on the disposal at landfill sites of material from the clean-up of contaminated land (the "Exemption").

3. Matters of special interest to the Select Committee on Statutory Instruments

None

4. Legislative Background

4.1 Sections 43A and 43B of the Finance Act 1996 provide that a disposal of material at landfill sites is not chargeable with landfill tax if the material has come from contaminated land in respect of which a certificate under section 43B has been issued.

4.2 Subject to certain conditions in section 43B, the Commissioners for Her Majesty's Revenue and Customs must issue a certificate under that section where an applicant is intending to reclaim contaminated land and the application is made at least 30 days before it is to take effect.

5. Extent

This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

The Exchequer Secretary to the Treasury, Angela Eagle, has made the following statement regarding Human Rights:

In my view the provisions of the Landfill Tax (Material from Contaminated Land) (Phasing out of Exemption) Order 2008 are compatible with the Convention rights.

7. Policy background

7.1 This Order is made in the context of the Government's commitment to encourage the clean up of contaminated land, and also to reduce environmental detriment from the landfilling of waste. The Exemption is out of step with the objective to encourage non-landfill waste management options. In relation to contaminated land, approaches involving decontaminating the waste on site are now preferred.

7.2 The Government has concluded that the above objectives would be better served by extending land remediation relief (a relief from corporation tax), and has therefore decided to phase out the Exemption.

8. Impact

8.1 A full and final Impact Assessment is attached to this memorandum.

8.2 The impact on the public sector is detailed from page 4 of the attached Impact Assessment.

9. Contact

Katherine Mansfield at Her Majesty's Revenue and Customs Tel: 0207 147 0116 or e-mail: katherine.mansfield@hmrc.gsi.gov.uk can answer any queries regarding the instrument.

Summary: Intervention & Options

Department /Agency: HM Revenue & Customs	Title: Impact Assessment of removing the landfill tax exemption for the landfilling of waste from contaminated land clean up	
Stage: Final Proposal Stage	Version: 1	Date: 23 September 2008
Related Publications: Tax Incentives for development of brownfield land: a consultation (HM Treasury, March 2007) and consultation response (HM Treasury, December 2007)		

Available to view or download at:

<http://www.hmrc.gov.uk/better-regulation/ia.htm>

Contact for enquiries: Katherine Mansfield

Telephone: 020 7147 0116

What is the problem under consideration? Why is government intervention necessary?

Waste disposed of to landfill following the cleaning up of contaminated land has been exempt from landfill tax since the inception of the tax in 1996. This has served as a method of incentivising the cleaning up of contaminated land. However, the arrangement has also represented a market distortion in favour of landfilling the waste in question. This needs to be reconsidered because technological advances mean that decontaminating the waste onsite, with the possibility that the resulting material might then be put to a practical use, is often considered to be best practice.

What are the policy objectives and the intended effects?

The Government has policy objectives both to: provide long-term help for the clean up of contaminated land; and, reduce environmental detriment from the landfilling of waste. The landfill tax exemption for waste from the clean up of contaminated land is out of step with the latter objective. The Government has concluded that both objectives would be better served by extending land remediation relief, a relief from corporation tax, so as to remove barriers to development of derelict land. The extension of this relief is not covered by this assessment.

What policy options have been considered? Please justify any preferred option.

Having considered the mismatch between the landfill tax exemption and its policy objectives, the Government believes that the "do nothing" option would not be appropriate. The options for removing the exemption are: total removal from a specified date, or; phasing out over a period of time. The Government prefers the latter option because it would minimise the impact on projects already in train which have been costed to be economically viable on the basis of the exemption being in place. The Government has said that the exemption will be brought to an end by 1 April 2012.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects? We intend to review the policy to establish the actual costs and benefits and achievements of the desired effects within 3 years.

Ministerial Sign-off For final proposal/implementation stage Impact Assessments:

I have read the Impact Assessment and I am satisfied that (a) it represents a reasonable view of the likely cost, benefits and impact of the policy and (b) that the benefits justify the costs

Signed by the responsible Minister:

Angela Eagle.....26th September 2008

Summary: Analysis & Evidence

Policy Option:	Description:
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COSTS	ANNUAL COSTS		Description and scale of key monetised costs by 'main affected groups' Businesses will incur additional admin burdens from bringing forward projects to meet deadlines for obtaining the exemption set out in the transitional arrangements.
	One-off (Transition)	Yrs	
	£ 3,000	3	
	Average Annual Cost (excluding one-off)		
	£ 0		Total Cost (PV) £ 7,000
Other key non-monetised costs by 'main affected groups' There may be slightly increased carbon emissions during the transitional period due to increased transportation of waste to landfill.			

BENEFITS	ANNUAL BENEFITS		Description and scale of key monetised benefits by 'main affected groups' Once the exemption has been fully phased out there will be small admin burden savings to business, and more significant savings resulting from reduced staff costs for HMRC.
	One-off	Yrs	
	£ 0		
	Average Annual Benefit (excluding one-off)		
	£ 120,000		Total Benefit (PV) £ 210,000
Other key non-monetised benefits by 'main affected groups' The change will lead to a reduction in the need for landfill space and reduced CO2 emissions from the transportation of waste from contaminated land to landfill sites. There may also be wider compliance cost savings for business that are not covered by the estimates for admin burden savings.			

Key Assumptions/Sensitivities/Risks There is significant uncertainty around the reduction in waste being sent to landfill as a result of this change. The costs of landfill and of alternative treatments are assumed to be roughly equal, based on limited information. This reform is expected to increase tax yield by around £40m once fully phased out.

Price Base Year 2008	Time Period Years 5	Net Benefit Range (NPV) £ 175,000 - 225,000	NET BENEFIT (NPV Best estimate) £ 200,000
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What is the geographic coverage of the policy/option?	UK				
On what date will the policy be implemented?	From 1/12/08				
Which organisation(s) will enforce the policy?	HMRC				
What is the total annual cost of enforcement for these organisations?	£ -115,000				
Does enforcement comply with Hampton principles?	Yes				
Will implementation go beyond minimum EU requirements?	No				
What is the value of the proposed offsetting measure per year?	£				
What is the value of changes in greenhouse gas emissions?	£				
Will the proposal have a significant impact on competition?	No				
Annual cost (£-£) per organisation (excluding one-off)	<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 25%; background-color: #ffff00;">Micro</td> <td style="width: 25%; background-color: #ffff00;">Small</td> <td style="width: 25%; background-color: #ffff00;">Medium</td> <td style="width: 25%; background-color: #ffff00;">Large</td> </tr> </table>	Micro	Small	Medium	Large
Micro	Small	Medium	Large		
Are any of these organisations exempt?	<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 25%; text-align: center;">No</td> <td style="width: 25%; text-align: center;">No</td> <td style="width: 25%; text-align: center;">N/A</td> <td style="width: 25%; text-align: center;">N/A</td> </tr> </table>	No	No	N/A	N/A
No	No	N/A	N/A		

Impact on Admin Burdens Baseline (2005 Prices)		(Increase - Decrease)
Increase of £ 0	Decrease of £ 7,200	Net Impact £ -7,200

Key: Annual costs and benefits: Constant Prices (Net) Present Value

Evidence Base (for summary sh

[Use this space (with a recommended maximum of 30 pages) to set out the evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Ensure that the information is organised in such a way as to explain clearly the summary information on the preceding pages of this form.]

Explanation of Measure

Landfill tax is a tax on the disposal of waste to landfill. As such, it encourages the use of non-landfill waste management options which might include recycling, composting and more environmentally friendly methods.

The disposal to landfill of waste from the clean up of contaminated land is exempt from landfill tax subject to certain restrictions and provided a certificate is in place. Certificates are issued by HMRC in respect of qualifying applications.

At Budget 2008 the Chancellor announced the timetable for the phase out of the exemption, which is:

- Applications for exemption certificates must be made by 1 December 2008
- Certificates (those in existence and those now issued following an application made before 1 December 2008) will cease to be valid on 1 April 2012
- The exemption will be completely withdrawn from 1 April 2012

We circulated a draft statutory instrument to interested parties in summer 2008. The statutory instrument will be laid in Parliament in autumn 2008.

This measure forms a package with the extension of land remediation relief (LRR). As part of the commitment to return brownfield sites to use in a sustainable way, the Government will recycle the additional revenue available from ending this exemption from landfill tax, to extend LRR to expenditure on derelict land and to the removal of Japanese knotweed by treatment from 1 April 2009. There is a separate Impact Assessment on LRR

Policy rationale

The aim of this proposal is to encourage greater use of alternative treatments for waste from the clean up of contaminated land. The exemption was initially introduced to ensure that development of contaminated sites was not deterred by the additional costs of landfill, but since then technological developments now mean that alternative treatment methods to landfill are now much more viable (and, indeed, in many cases may be considered best practice). The Government is therefore keen to encourage the remediation of contaminated soil and other materials in preference to their disposal to landfill in order to:

- reduce the amount of waste sent to landfill, decreasing demand for landfill space;
- reduce the environmental impact of transporting the waste to an approved landfill site; and
- increase the recycling of materials.

Removing the landfill tax exemption for waste from the clean up of contaminated land will give developers an additional incentive to find alternatives to landfill, bringing it into line with other types of waste.

At the same time, the Government's objectives with regards to encouraging the development of contaminated sites can be more efficiently targeted by using the revenue raised from removing the landfill tax exemption to enhance land remediation relief. This Impact Assessment will not cover this aspect as the enhancements to land remediation relief will be the subject of separate legislation.

Assessment of potential impacts

All monetary figures in this section refer to 2008 prices.

Number of claims and amount of waste affected

For the years 2005-06 to 2007-08 there has been an average of around 850 applications for exemption certificates each year, which have sought permission for the exemption from landfill tax of over 2 million tonnes of waste from contaminated land on average per annum. Not all applications are successful; for example, in 2007-08 there were 855 applications against 815 exemption certifications issued.

Exchequer impact

The Exchequer impacts of the change are set out in table A.2 and A.11 of Budget 2008 (http://www.hm-treasury.gov.uk/media/2/5/bud08_chaptera.pdf) The change to the landfill tax exemption should be considered with the extension to the land remediation relief also announced in Budget 2008. The increase in landfill tax revenues is not included in the calculations of net benefit as they are a transfer between businesses and Government rather than a net cost.

Estimates of effects on HMRC staff costs

Administering the exemption for waste from the clean up of contaminated land is relatively resource intensive for HMRC, as significant work is required to ensure that the rules on qualification are correctly applied. Experience has shown that frequently applications for exemption often initially include incorrect (or overstated) claims and so have to be sent back to the applicant, with staff often spending time discussing with the business what can and cannot qualify. Removing the exemption is therefore estimated to save HMRC £115,000 per annum in staff costs.

Estimates of effects on administrative burdens

This “administration burden” is assessed through the “Standard Cost Model” (SCM), an activity-based costing methodology which considers the activities that businesses need to do to comply with their legal obligations, and estimates the cost of such activity for a normally efficient business (in practice, some businesses may face higher costs if not operating fully efficiently). The SCM estimates the annual administration burden of applying for an exemption certificate at roughly £8. This implies an admin burden saving of around £7,700 per annum when the exemption has been fully removed, as businesses will no longer have to fill in the roughly 850 forms that they currently have been filling in each year to gain access to the exemption.

This savings figure is likely to underestimate the overall compliance costs savings to business, as it captures only the savings from not having to fill out the exemption form. For example, it does not capture the additional time that businesses often also have to spend discussing with HMRC what waste can qualify where they have initially made incorrect claims. Nor does it capture the costs associated with commissioning and assembling the evidence required by HMRC in support of the application. However, no robust evidence is available to inform estimates of the scale of any such costs so the £7,700 is retained as a conservative admin burden savings figure.

Additional costs to business of treating waste from contaminated land

It is expected that, once the exemption has been fully phased out, the amount of waste from contaminated land being sent to landfill will fall by between 0.4 – 0.6 million tonnes, with a central estimate of 0.5 million tonnes. To the extent that the alternative treatments employed for this waste are more expensive than sending contaminated waste to landfill then this will imply higher costs for business.

A Mintel November 2007 report on contaminated land treatment suggests that the costs of excavating and landfilling waste from the clean up of contaminated land can

vary widely, depending on site conditions and location, with substantial differences from region to region due largely to the availability of appropriately licensed landfill space. They quote a range of around £25 to £55 per tonne including excavation costs, plus transport costs of around £1 per tonne per mile. Since 2003 the EU's Landfill Directive has resulted in a significant reduction in the number of hazardous landfill sites operated on a commercial basis, meaning that increasingly waste from the clearance of contaminated land has to travel substantial distances to reach an appropriately licensed site. As a result, transport costs are often a substantial cost element of disposal, so that the total costs of sending waste from contaminated land to landfill are likely to be in the region of £50-120 per tonne.

The Mintel report also provides rough estimates for the cost of alternative treatments for contaminated waste. There is significant uncertainty underlying these estimates, and not all will be a suitable substitute for excavation and disposal in every case, but it suggests that other treatments can be (at least) as cost effective as landfilling. For example, the report suggests that soil washing can cost around £20-25 per tonne, bioremediation (a process that uses microorganisms or their enzymes to return the environment altered by contaminants to its original condition) can cost on average around £45 per tonne and vacuum extraction can cost in excess of £50 per tonne. This suggests that removing the landfill tax exemption will not necessarily force businesses to undertake more expensive alternative treatment methods, and in fact that other methods may in fact prove to be more cost effective. However, due to the uncertainties here, it is assumed that businesses will face no cost change as a result of the exemption removal.

These uncertainties regarding the cost of landfill and the cost and substitutability of alternatives also contribute to considerable uncertainty underlying the estimate of the reduction in waste being sent to landfill as a result of the removal of the exemption.

Environmental impact

The reduction in waste from the clean up of contaminated land being sent to landfill will help reduce carbon emissions, principally because of reduced emissions from the transportation of the waste to landfill sites. Using Defra emissions factors (see Table A.28 at <http://www.defra.gov.uk/environment/waste/strategy/strategy07/pdf/waste07-annex-a.pdf>), it is estimated that avoiding the transportation emissions involved in waste being sent to landfill can lead to a reduction of 10kg CO₂ per tonne of waste treated. Given the central estimate that removing the exemption will lead to a reduction of 0.5 million tonnes in waste being sent to landfill, this suggests a reduction of 5,000 tonnes of CO₂ per annum as a result of reduced transportation.

There may be further greenhouse gas benefits if the waste from contaminated land is active waste, as the change would reduce the emission of methane that occurs as active waste decomposes in landfill. However, it seems most likely that the majority of waste from contaminated land will be inert (such as soils or aggregates), which do not release methane when landfilled, and so no such savings are factored in to the cost-benefit calculation.

Transition costs

The change includes a phase-out period which is intended to allow the exemption from landfill tax for waste from developments that have been planned with the expectation of the exemption still being available. As a result of these phase-out arrangements some businesses may incur additional costs in order to ensure that they meet the necessary deadlines. It is likely that any such costs will largely be bringing forward expenditure that they would otherwise have incurred at a later date,

but this does entail additional admin burdens that would not occur if the exemption were phased out with immediate effect. Definitive evidence is not available to suggest how many projects might be brought forward, so a conservative estimate of one year's worth of projects – i.e. £7,700 of additional admin burden – is assumed, and it is also assumed that these additional costs fall evenly across the three years of the transition.

In addition, the bringing forward of projects may entail increased transportation of waste from contaminated land to landfill in the three years of the transition. In line with the assumption on admin burdens, it is assumed that an additional one year's worth of waste is sent to landfill over the transition period, equating to an additional 1,700 tonnes of CO₂ in each year of the transition.

The bringing forward of projects is also expected to increase the workload for HMRC, but this is not expected to require additional staff, so there are no additional costs resulting from the transition arrangements for HMRC.

Specific Impact Tests

Competition Assessment

This change is not expected to have any adverse impacts on competition, as it should not:

- directly limit the number or range of suppliers;
- indirectly limit the number or range of suppliers;
- limit the ability of suppliers to compete; or
- reduce suppliers' incentives to compete vigorously.

In fact, this change may boost competition between different treatments for waste from contaminated land as it removes the exemption from landfill tax that until now has favoured sending contaminated waste to landfill, as it had allowed such waste to avoid the full social costs of sending the waste to landfill.

Sustainable Development Test

This change is expected to contribute to Government's commitment to sustainable development, which consists of five principles:

- living within environmental limits;
- ensuring a strong, healthy and just society;
- achieving a sustainable economy;
- promoting good governance; and
- using sound science responsibly.

Removing the exemption from landfill tax for waste from the clean up of contaminated land will encourage the use of alternative, normally on-site, treatments for such waste, some of which will allow the materials to be re-used, rather than using up limited landfill space.

Small Firms Impact Test

This change will impact on small businesses, but it is not expected that they will be disproportionately affected. This is a question of removing a burden entirely. As such there is no scope for shaping the policy in a way which would be to the benefit

of small businesses. Businesses, including small businesses, were consulted in March 2007.

Carbon Assessment and wider Environment Test

These are considered under the main assessment of potential impacts section. The measure falls below the de minimis threshold for reporting against the climate change policy cost effectiveness indicator.

Gender, race and disability tests

These changes affect businesses and other organisations that send waste from contaminated land to landfill, and so have no direct impact on individuals. As such it is expected that there will be no impact on gender, race or disability.

Human Rights Test

The removal of the exemption is compatible with the European Convention on Human Rights.

Rural proofing

It is not expected that there will be any significant difference to the impact of this change in rural areas. The benefits can also be expected to accrue in any rural areas where landfill sites are located, as less waste will be sent to landfill.

Legal aid and health impact tests

These changes represent the removal of an exemption from taxation and affect businesses and other organisations that send waste from contaminated land to landfill. There are no implications for legal aid or potential health impacts.

Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	Yes	No
Small Firms Impact Test	Yes	No
Legal Aid	Yes	No
Sustainable Development	Yes	No
Carbon Assessment	Yes	No
Other Environment	Yes	No
Health Impact Assessment	Yes	No
Race Equality	Yes	No
Disability Equality	Yes	No
Gender Equality	Yes	No
Human Rights	Yes	No
Rural Proofing	Yes	No