

EXPLANATORY MEMORANDUM TO
THE LANDFILL TAX (AMENDMENT) REGULATIONS 2008

2008 No. 770

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

This memorandum contains information for the Select Committee on Statutory Instruments

- 2. Description**

The Regulations change the maximum credit that landfill site operators may claim against their annual landfill tax liability when making contributions in respect of the Landfill Communities Fund ("LCF") (previously known as the Landfill Tax Credit Scheme). They reduce some of the administrative obligations placed on environmental bodies. The Regulations also terminate the power of the regulatory body to revoke the approval of an environmental body that fails to comply with its obligations, and instead confer that power on the Commissioners.

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

3.1 It has been necessary to breach the "21 day rule". This is because the amendments made by the Regulations are a Budget measure. It was not possible to lay the instrument until after the changes were announced on Budget Day and a resolution was passed under section 1 of the Provisional Collection of Taxes Act 1968 on 18 March to provide power by regulations to give effect to the changes described in paragraph 3.4.

3.2 The amendment made by regulation 2 changes the maximum percentage of credit that landfill site operators may claim against their landfill tax liability during the contribution year from 6.6% to 6%. Paragraph 7. 2 explains how this change increases the maximum value of the fund by £5 million in 2008/09 to give the credit claimable a potential value of £70 million. The contribution year is a standard period for all landfill site operators which runs from 1st April to 31st March each year. It is necessary for the amendment made by regulation 2 to come into force on 1 April to coincide with the start of the contribution year.

3.3 The amendments made by regulation 3(2) and (4) extend the period that environmental bodies will have for providing details relating to contributions received and expenditure incurred. The period is extended from 14 to 28 days following the end of the standard accounting year on 31st March.

3.4 Whilst the regulatory body will continue to have power to approve environmental bodies for the purposes of LCF and regulate their activities, the amendments made by regulation 4(2) and 5(4) serve to transfer from the regulatory body to the Commissioners the power to revoke the approval of an environmental body that breaches any of the requirements of regulation 33A(1) of the Landfill Tax Regulations 1996 ("the principal

Regulations”). The transfer of the revocation power from the regulatory body to the Commissioners is intended to take effect from the start of the regulatory body’s financial year, 1st April. This revocation power is conferred on the Commissioners by new regulation 35(1)(h) of the principal Regulations. It is based on a power in section 53(4)(d) of the Finance Act 1996. This provision has statutory effect under section 1 of the Provisional Collection of Taxes Act 1968 as the result of a resolution passed by the House of Commons under that provision on 18th March 2008.

3.5 Taken together, it is desirable to introduce these changes as a package.

4. Legislative Background

4.1 Landfill Tax (“LFT”) was established by section 39 of the Finance Act 1996 (“FA 1996”) and is chargeable on the disposal of waste made by way of landfill at a landfill site. Section 51 FA 1996 provides a regulation making power whereby persons liable to pay LFT are entitled to credit against their LFT liability. Credit is established in accordance with prescribed rules. Section 53(1) provides for regulations to be made for securing an entitlement to credit if those persons pay sums to an environmental body and other prescribed conditions are fulfilled.

4.2 Under section 53(2) regulations may be made requiring environmental bodies, to which sums are paid, to be approved by a regulatory body, and for the regulatory body to be approved by the Commissioners.

4.3 The Landfill Tax Regulations 1996 (SI 1996/1527), the principal Regulations, were made under various powers in FA 1996 including sections 51 and 53.

4.4 Paragraphs 3.2 to 3.4 describe the amendments that are made to the principal Regulations.

5. Territorial Extent and Application

This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 The LCF redresses some of the environmental costs of landfill by improving the environment in the vicinity of landfill sites. Projects benefiting from LCF funding include those that are involved with the reclaiming of land, improvements to local community facilities, repairs to places of worship and habitat creation in support of biodiversity.

7.2 The Government recognises the important contribution made by the LCF. The amendment by regulation 2 increases the maximum value of the fund by £5 million in 2008-09 to give a potential value of £70 million credit claimable. The fund is growing in value, although the capping percentage figure is decreasing

from 6.6% to 6.0%, because of the increase in landfill revenue expected as a result of the increase in rates of landfill tax from 1 April 2008.

8. Impact

8.1 An Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

8.2 The impact on the public sector is negligible.

9. Contact

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