

**EXPLANATORY MEMORANDUM TO**  
**THE LANDFILL TAX (AMENDMENT) REGULATIONS 2009**

**2009 No. 1930**

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

2. **Purpose of the instrument**

The Landfill Tax (Amendment) Regulations 2009 (the "Amendment Regulations") remove provisions from the Landfill Tax Regulations 1996 relating to designated temporary disposal or "tax-free" areas which are redundant following the Court of Appeal judgement in *Commissioners for Her Majesty's Revenue and Customs v Waste Recycling Group Limited* [2008] EWCA Civ 849 ("the WRG judgement"). The Amendment Regulations also provide for HMRC's continued access to the information regarding activities at a landfill site that would have been provided in respect of tax-free areas.

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

None

4. **Legislative Context**

4.1 The Amendment Regulations amend the Landfill Tax Regulations 1996 following the WRG judgement. It was held in that case that where material is received on a landfill site and put to use there is no liability to landfill tax.

4.2 The Amendment Regulations remove provisions relating to designated temporary disposal or "tax-free" areas which are redundant following the WRG judgement, because tax would not in any event be due on material placed in those areas. The Amendment Regulations introduce requirements to designate information areas, and also to provide information and keep records with respect to information areas where the Commissioners, or an officer of theirs, direct that material be placed in such an area. The information is the same as that that would have been provided in respect of tax-free areas.

4.3 The Amendment Regulations also remove the landfill tax return form from the Schedule to the Landfill Tax Regulations 1996. From 1 September 2009, this will be prescribed in a public notice.

4.4 A related instrument, the Landfill Tax (Prescribed Landfill Site Activities) Order 2009 ("the Prescribed Activities Order"), which, like the Amendment Regulations, comes into force on 1 September 2009, prescribes seven uses of material on a landfill site which will be subject to landfill tax. It also provides that material is taxable if certain requirements relating to notification, information, records and

designation of information areas, including those provided for by the Amendment Regulations, are not complied with.

4.5 Finally, the Amendment Regulations provide for landfill tax to be re-credited when material is used in one of three ways listed in the Prescribed Activities Order and is subsequently used to restore a landfill site.

## **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**

- *What is being done and why*

7.1 Landfill tax is an environmental tax which seeks to ensure that the full environmental cost of waste disposal to landfill is reflected in business decision-making. As explained in section 4 above, the WRG judgment means that where waste is put to use on a landfill site it is not subject to tax.

7.2 Paragraph 4.2 above explains that, following the WRG judgment, “tax-free areas” are redundant. These Amendment Regulations therefore remove the provisions related to tax-free areas as a matter of good practice to avoid confusion. Instead, requirements to provide the Commissioners with information with respect to information areas are made. This is so that officers of HMRC will have access to the information they need to determine whether a taxable disposal has or has not taken place.

7.3 Paragraph 4.3 above explains that the Amendment Regulations remove the landfill tax return form from the Schedule to the Landfill Tax Regulations 1996. From 1 September 2009, the form will be prescribed in a public notice. This is a matter of administrative convenience which will enable HMRC to make any necessary changes to the form quickly and brings landfill tax into line with the other environmental taxes. There will be no impact on taxpayers.

7.4 Paragraph 4.5 above explains that the Amendment Regulations provide for landfill tax to be re-credited when material is used in one of three ways listed in the Prescribed Activities Order and is subsequently used to restore a landfill site. This is a means of incentivising reuse of waste where that waste has been subject to temporary disposal. In environmental terms, this is a preferable solution to permanent disposal.

- *Consolidation*

7.5 At Budget 2009, the Government published a consultation document – “Modernising Landfill Tax Legislation” – on proposals for wider changes to the

administrative and legislative framework underpinning landfill tax. HMRC will consider producing consolidated Landfill Tax Regulations alongside legislation to introduce changes resulting from the consultation.

## **8. Consultation outcome**

The Government views these Amendment Regulations as sitting with the Prescribed Activities Order to return landfill tax broadly to the position it was believed to be in prior to the WRG judgment. On this basis, consultation was not considered necessary.

## **9. Guidance**

HMRC sent all landfill site operators registered for landfill tax a letter alerting them to these Amendment Regulations. They will publish public guidance before the Amendment Regulations come into effect which will be sent to all registered landfill site operators and placed on the HMRC website.

## **10. Impact**

10.1 The impact on business, charities or voluntary bodies is negligible.

10.2 The impact on the public sector is negligible.

10.3 An Impact Assessment has not been prepared for this instrument.

## **11. Regulating small business**

11.1 The legislation does apply to small business.

11.2 No action has been taken to minimise the impact of the requirements on firms employing up to 20 people.

11.3 The basis for the final decision on what action to take to assist small business is that small businesses will have less complex systems for administering landfill tax and this will have the effect of reducing the impact of these requirements.

## **12. Monitoring & review**

These Amendment Regulations will be reviewed alongside responses to the consultation exercise described at paragraph 7.5 above.

## **13. Contact**

Katherine Mansfield at Her Majesty's Revenue and Customs Tel: 020 7147 0116 or email: [katherine.mansfield@hmrc.gsi.gov.uk](mailto:katherine.mansfield@hmrc.gsi.gov.uk) can answer any queries regarding the instrument.