

**EXPLANATORY MEMORANDUM TO
THE DEVOLUTION OF LANDFILL TAX (CONSEQUENTIAL, TRANSITIONAL AND
SAVING PROVISIONS) ORDER 2014**

2015 No. 599

- 1.** This explanatory memorandum has been prepared by HM Revenue and Customs on behalf of HM Treasury and is laid before the House of Commons by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 This instrument comes into force on 1 April 2015 following the devolution to Scotland of the power to introduce landfill tax. It provides for the closure of the Landfill Communities Fund in Scotland; arrangements relating to the two year transitional period during which environmental bodies may continue to spend funds on projects in Scotland; and UK landfill tax to apply to disposals up until 1 April 2015 even though, under special accounting provisions in the Finance Act 1996, it would normally be accounted for at a later date.

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

3.1 None

4. Legislative Context

4.1 Landfill tax was introduced 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 of FA 1996 provides a regulation-making power whereby persons liable to pay landfill tax are entitled to credit against their liability to the tax. Credit is established in accordance with prescribed rules. Section 53(1) of FA 1996 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. Regulation 30-36 of the Landfill Tax Regulations 1996 (SI1996/1527) were made pursuant to those powers and provide for the establishment and administration of the Landfill Communities Funds (LCF).

4.2 The LCF aims to address some of the impacts of landfill activity by improving the environment in the vicinity of landfill sites. The LCF is financed by contributions from landfill site operators who receive a credit for contributions they make to environmental bodies enrolled in the scheme. Sections 30 and 31 of the Scotland Act 2012 provide for,

firstly, the devolution of landfill tax to Scotland, and secondly, the disapplication of the existing UK landfill tax in Scotland. It is intended that those provisions will take effect from 1 April 2015. After that date landfill tax credits provided for under the existing landfill tax legislation will only be available to landfill operators registered for and paying landfill tax in England, Wales and Northern Ireland; with the eligibility of those landfill site operators subject to the devolved tax regime to further tax credit being determined in accordance with legislative provisions made by the Scottish administration.

4.3 This Order amends the scope of the existing LCF with effect from 1 April 2015 so that it corresponds with the revised territorial scope of the present landfill tax legislation so that landfill site operators who will remain subject to the existing landfill tax regime after devolution will only be eligible to receive tax credits in respect of contributions made to environmental bodies carrying out work in England, Wales, and Northern Ireland.

4.4 The Scotland Act Command Paper stated that there would be a 2 year transitional period for the application of the LCF in Scotland. When the tax is devolved, some environmental bodies may be holding unspent funds derived from contributions by landfill operators across the UK, including Scotland. Consequently this Order also establishes a transitional regime so that landfill operators who have previously made contributions to environmental bodies carrying out work in Scotland will remain eligible for a tax credit provided those contributions are spent within 2 years of the date upon which devolution of landfill tax takes place.

5. Territorial Extent and Application

5.1 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 will be devolved to Scotland on 1 April 2015.

7.2 The Scotland Act Command Paper stated that there would be a 2 year transitional period for the application of the LCF in Scotland.

7.3 The landfill tax regulations are amended in order that from 1 April 2015, when landfill tax is devolved to Scotland, only landfill operators registered in England, Wales and Northern Ireland will be eligible to claim landfill tax credit under the

existing legislation in respect of a contribution to an environmental body for approved projects sited in England, Wales and Northern Ireland.

- 7.4 The amendments allow for unspent funds held by environmental bodies on 31 March 2015 to continue to be spent on projects in Scotland for a two year transitional period up until 31 March 2017. Any funds remaining at the end of the transitional period which can no longer be spent compliantly, namely funds held by environmental bodies who fund only projects in Scotland, may be recovered from the landfill operator who claimed a tax credit for the original contribution.
- 7.5 Environmental bodies continuing to operate in England, Wales and Northern Ireland will be entitled to use a proportion of remaining funds to meet their running costs but only in proportion to costs attributable to the carrying out of approved projects in England, Wales and Northern Ireland.
- 7.6 Any unspent funds invested after the coming into force of the legislation will be considered as unspent funds at the end of the transitional period and may be recovered from the landfill operator who claimed a tax credit for the original contribution.
- 7.7 UK landfill tax will be paid on all disposals up until 1 April 2015 even if it would normally be accounted for at a later date, ensuring that the correct tax is paid to HM Revenue and Customs.

- Consolidation

7.8 None

8. Consultation outcome

8.1 The instrument was exposed on 28 November 2014 for a consultation period of 8 weeks. No comments were received.

9. Guidance

9.1 Revenue and Customs brief 45 (2014) 'Devolution of Landfill Tax to Scotland and the transitional period for the Landfill Communities Fund' was published at the same time as the draft legislation on the 28 November 2014 on the government website at <https://www.gov.uk/government/publications/revenue-and-customs-brief-45-2014>. A mailshot to all registered landfill operators on the 11 December 2014 included reference to the draft legislation.

10. Impact

- 10.1 The impact on business, charities or voluntary bodies is negligible.
- 10.2 There is no impact on the public sector.

10.3 A Tax Information and Impact Note was published on the Government website at <http://www.gov.uk/government/collections/tax-information-and-impact-notes-tiins>.

11. Regulating small business

11.1 The legislation applies to small businesses.

11.2 To minimise the impact of the requirements on firms employing up to 20 people, the approach taken is to keep to a minimum any new regulatory requirements as part of this change.

12. Monitoring & review

12.1 This will be monitored through the existing compliance programme for landfill tax and as part of the existing arrangements for monitoring the LCF.

13. Contact

Catherine Mawer at HM Revenue and Customs Tel: 03000 585946 or email: Catherine.mawer@hmrc.gsi.gov.uk can answer any queries regarding the instrument.