

EXPLANATORY MEMORANDUM TO
THE LANDFILL TAX (DISPOSALS OF MATERIAL) ORDER 2018
2018 No. 442

1. Introduction

- 1.1 This explanatory memorandum has been prepared by HM Revenue and Customs (“HMRC”) on behalf of HM Treasury and is laid before the House of Commons by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 This Order gives effect to certain exemptions to Landfill Tax under amendments made to the Finance Act 1996 by the Finance Act 2018. It will implement a revised system for determining what is a 'taxable disposal' for the purposes of Landfill Tax and provides for certain material to be treated as disposed of at an authorised landfill site. An authorised landfill site is one where there is a permit or licence for disposal under environmental legislation.
- 2.2 The Order also makes provision ancillary to the extension of Landfill Tax by the Finance Act 2018 to disposals at unauthorised sites. It provides that the disposals of certain types of material (those that are prohibited from landfill sites by environmental legislation) be taxed at unauthorised sites.

3. Matters of special interest to Parliament

Matters of special interest to the Select Committee on Statutory Instruments

- 3.1 None.

Other matters of interest to the House of Commons

- 3.2 Disregarding minor or consequential changes, the territorial application of this instrument includes Northern Ireland and it is not a financial instrument that relates exclusively to England, Wales and Northern Ireland.

4. Legislative Context

- 4.1 The primary legislation for Landfill Tax is contained in section 39 -71 of, and Schedule 5 to, the Finance Act 1996, as amended by section 42 of, and Schedule 12 to, the Finance Act 2018.
- 4.2 The instrument is required to: (1) establish a simplified system for determining what is to be treated as a disposal in certain parts of an authorised landfill site; (2) to ensure that Landfill Tax is charged on disposals at unauthorised sites where environmental legislation prohibits those disposals.
- 4.3 This is one of three instruments required to support these changes, the other two are the Landfill Tax (Miscellaneous Provisions) Regulations 2018 (S.I. 2018/396) and the Aggregates Levy (General) (Amendment) Regulations 2018 (S.I. 2018/395). Both of these instruments have been made under the negative procedure.

5. Extent and Territorial Application

5.1 The extent of this instrument is England, Wales and Northern Ireland.

5.2 The instrument applies to England and Northern Ireland.

6. European Convention on Human Rights

6.1 The Exchequer Secretary to the Treasury, Robert Jenrick MP, has made the following statement regarding Human Rights:

“In my view the provisions of the Landfill Tax (Disposals of Material) Order 2018 are compatible with the Convention rights.”

7. Policy background

What is being done and why

7.1 Landfill Tax was introduced on 1 October 1996 as a tax on the disposal of waste at permitted or licenced landfill sites. Its aim is to encourage more sustainable ways of managing waste, and since the introduction of the tax in the UK, landfilling is down more than 60%.

7.2 In 2008, a ruling by the Court of Appeal challenged the interpretation of what is a taxable disposal. This was in the case of the Commissioners for Her Majesty’s Revenue and Customs v Waste Recycling Group Limited [2008] EWCA Civ 849. In this case, the Court of Appeal found that material put to use on a landfill site, for example to construct roads, was not taxable.

7.3 Initially legislative changes were introduced in The Landfill Tax (Prescribed Site Activities Order) 2009 that brought certain activities at a landfill site back into the scope of the tax.

7.4 Since then, some landfill operators have claimed for new uses not listed in the 2009 Order. This has created uncertainty over what constitutes a taxable disposal and has led to increased complexity for operators. In response to this, at Budget 2016 the government consulted on proposals to amend the definition of a taxable disposal to put the matter beyond doubt. The majority of respondents were supportive of the changes. Clause 42 and Schedule 12 of Finance Act 2018 implement these changes.

7.5 The Landfill Tax (Disposals of Material) Order 2018, supports these changes by specifying that everything placed within the landfill cell is taxable subject to a number of exceptions. The landfill cell is the structure within which the majority of the disposal activities take place. This structure is surrounded by an impermeable layer, which is not subject to the tax. The impermeable layer can be either man-made, or a natural geological feature (such as a quarry). The exceptions relate to a number of engineering uses of material within the cell, such as the pipes use to extract surplus gas. This is included so as not to extend the scope of the tax at these sites.

7.6 This Order also replicates a number of landfill site activities listed in the 2009 Order, which are subject to the tax. This is necessary because the powers to make the 2009 Order have been removed by Finance Act 2018. One of these activities is the construction of temporary haul roads, which are subsumed into the landfill site, and as such have been deemed liable for the tax since the 2009 Order came into force. This Order does not change the government’s position on any of these activities.

- 7.7 Further to these changes, at Spring Budget 2017, the government announced it would consult on whether to extend the scope of Landfill Tax to disposals of material at sites operating without the appropriate environmental permit or licence, known as unauthorised sites.
- 7.8 These unauthorised sites operate outside the scope of the tax, which makes the activity attractive to those who wish to exploit the disparity of tax treatment to undercut legitimate operators. Previously, the government has invested an additional £20m in the Environment Agency ('EA') in response to the increase in criminal activity in the waste sector. This had helped the EA close down 824 illegal waste sites in England in 2016/17. In spite of this increased activity, during the same year a further 852 new illegal waste sites were identified. By the end of 2016/17, there were 601 known illegal waste sites still operating in England.
- 7.9 As such, there was strong public support for these proposals and on 13 September 2017, the government announced it would extend the scope of Landfill Tax to unauthorised sites. For disposals at unauthorised sites, the person making the disposal, or anybody who knowingly causes or knowingly facilitates the disposal may be liable for the tax. Clause 42 and Schedule 12 of Finance Act 2018 implement these changes.
- 7.10 The Landfill Tax (Disposals of Material) Order 2018 supports these changes by providing that certain materials, such as whole tires, that are banned from authorised landfill sites are liable for Landfill Tax where they are disposed of at unauthorised sites. This ensures that unauthorised sites are no longer an alternative to the proper re-use or recycling of these materials.
- 7.11 The OBR have forecast that these changes will raise £145m over the scorecard period by tackling those that dispose of waste at unauthorised sites. Alongside these changes, the government have provided both HMRC and the EA additional funds to tackle this activity.
- 7.12 Landfill Tax was devolved to Scotland in April 2015, and will be devolved to Wales from April 2018. Both the Scottish and Welsh governments have provisions in their respective legislation for a charge on material deposited at unauthorised sites.

8. Consultation outcome

- 8.1 A consultation paper was published in May 2016 setting out proposals to amend the criteria for determining when Landfill Tax is due. HMRC shared a list of proposed exemptions with key stakeholders during the consultation period and subsequently shared a simplified list which reflected the feedback received. A summary of responses to the consultation was published on gov.uk on 5 December 2016 and is available at <https://www.gov.uk/government/consultations/landfill-tax-improving-clarity-and-certainty-for-taxpayers>
- 8.2 The government published a further consultation paper in May 2017, which set out the reasons for extending the scope of Landfill Tax to unauthorised sites, and asked for responses on a number of areas including how to define an illegal waste site and who should be liable for the tax. Consultees were keen to ensure that genuinely innocent persons were not liable. The government committed that genuinely innocent persons would not be liable for the tax.

8.3 Following strong support from the industry to the proposed changes, the government confirmed its intention to legislate to extend the scope of Landfill Tax to illegal waste sites and published a summary of responses to the consultation on gov.uk on 13 September 2017 and is available at

<https://www.gov.uk/government/consultations/landfill-tax-extending-the-scope-to-illegal-disposals>

8.4 A draft of this Instrument was exposed for public consultation on 22 January 2018. Article 2 was previously exposed for public consultation on 20 March 2017, when the list of proposed exemptions was shared with stakeholders. Full consideration has been given to comments received.

8.5 In their responses, some stakeholders requested more detail on some of the definitions used. Where possible clarifications will be included in guidance, HMRC officials have also met with interested stakeholders to ensure they fully understand the changes.

9. Guidance

9.1 Landfill Tax guidance is published in Notice LFT1 on gov.uk. HMRC is working with industry to publicise the changes and to update the guidance ahead of the changes coming into force on 1 April 2018.

10. Impact

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

10.2 There is no impact on the public sector.

10.3 An Tax Information and Impact Note covering this instrument was published on 13th September 2017 and is available on the gov.uk website at <https://www.gov.uk/government/publications/landfill-tax-disposals-not-made-at-landfill-sites/landfill-tax-disposals-not-made-at-landfill-sites>.

10.4 The benefits were then revised at Autumn Budget 2017, with an update published in the policy costing document and is available on the gov.uk website at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/661428/Autumn_Budget_Policy_costings_document_web.pdf

11. Regulating small business

11.1 The legislation applies to activities that are undertaken by small businesses.

11.2 No specific action is proposed to minimise regulatory burdens on small businesses.

11.3 This legislation does not change the existing burdens on small businesses, or add any additional ones.

12. Monitoring & review

12.1 HMRC will monitor the changes through its compliance risk review processes. The implementation and impact will be measured within the internal governance and risk management process.

13. Contact

13.1 Helen Horton at HMRC. Telephone: 03000 574 475 or email: helen.horton@hmrc.gsi.gov.uk can answer any queries regarding the instrument.