



# Finance Act 1996

## 1996 CHAPTER 8

### PART III

#### LANDFILL TAX

##### **Modifications etc. (not altering text)**

- C1** Pt. III (ss. 39-71 applied (29.4.1996) by 1986 c. 45, Sch. 6 paras. 3B, 8B (as inserted (29.4.1996) by 1996 c. 8, s. 60, Sch. 5 Pt. III para. 12)  
Pt. III (ss. 39-71) applied (31.7.1998) by 1998 c. 36, s. 148(4)

##### *The basic provisions*

#### **39 Landfill tax.**

- (1) A tax, to be known as landfill tax, shall be charged in accordance with this Part.
- (2) The tax shall be under the care and management of the Commissioners of Customs and Excise.

#### **40 Charge to tax.**

- (1) Tax shall be charged on a taxable disposal.
- (2) A disposal is a taxable disposal if—
  - (a) it is a disposal of material as waste,
  - (b) it is made by way of landfill,
  - (c) it is made at a landfill site, and
  - (d) it is made on or after 1st October 1996.
- (3) For this purpose a disposal is made at a landfill site if the land on or under which it is made constitutes or falls within land which is a landfill site at the time of the disposal.

*Status: Point in time view as at 07/04/2005.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 1996, Part III. (See end of Document for details)*

#### **41 Liability to pay tax.**

- (1) The person liable to pay tax charged on a taxable disposal is the landfill site operator.
- (2) The reference here to the landfill site operator is to the person who is at the time of the disposal the operator of the landfill site which constitutes or contains the land on or under which the disposal is made.

#### **42 Amount of tax.**

- (1) The amount of tax charged on a taxable disposal shall be found by taking—
  - (a) [<sup>F1</sup>£18] for each whole tonne disposed of and a proportionately reduced sum for any additional part of a tonne, or
  - (b) a proportionately reduced sum if less than a tonne is disposed of.
- (2) Where the material disposed of consists entirely of qualifying material this section applies as if the reference to [<sup>F2</sup>£18] were to £2.
- (3) Qualifying material is material for the time being listed for the purposes of this section in an order.
- (4) The Treasury must have regard to the object of securing that material is listed if it is of a kind commonly described as inactive or inert.

#### **Textual Amendments**

- F1** Word in s. 42(1)(a) substituted (with effect in accordance with s. 99(2) of the amending Act) by [Finance Act 2005 \(c. 7\), s. 99\(1\)](#)
- F2** Word in s. 42(2) substituted (with effect in accordance with s. 99(2) of the amending Act) by [Finance Act 2005 \(c. 7\), s. 99\(1\)](#)

#### *Exemptions*

#### **43 Material removed from water.**

- (1) A disposal is not a taxable disposal for the purposes of this Part if it is shown to the satisfaction of the Commissioners that the disposal is of material all of which—
  - (a) has been removed (by dredging or otherwise) from water falling within subsection (2) below, and
  - (b) formed part of or projected from the bed of the water concerned before its removal.
- (2) Water falls within this subsection if it is—
  - (a) a river, canal or watercourse (whether natural or artificial), or
  - (b) a dock or harbour (whether natural or artificial).
- (3) A disposal is not a taxable disposal for the purposes of this Part if it is shown to the satisfaction of the Commissioners that the disposal is of material all of which—
  - (a) has been removed (by dredging or otherwise) from water falling within the approaches to a harbour (whether natural or artificial),
  - (b) has been removed in the interests of navigation, and

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- (c) formed part of or projected from the bed of the water concerned before its removal.
- (4) A disposal is not a taxable disposal for the purposes of this Part if it is shown to the satisfaction of the Commissioners that the disposal is of material all of which—
  - (a) consists of naturally occurring mineral material, and
  - (b) has been removed (by dredging or otherwise) from the sea in the course of commercial operations carried out to obtain substances such as sand or gravel from the seabed.

### **[<sup>F3</sup>43A Contaminated land. E+W**

- (1) A disposal is not a taxable disposal for the purposes of this Part if it is a disposal within subsection (2) below.
- (2) A disposal is within this subsection if—
  - (a) it is of material all of which has been removed from land in relation to which a certificate issued under section 43B below was in force at the time of the removal;
  - (b) none of that material has been removed from a part of the land in relation to which, as at the time of the removal, the qualifying period has expired;
  - (c) it is a disposal in relation to which any conditions to which the certificate was made subject are satisfied; and
  - (d) it is not a disposal within subsection (4) below.
- (3) For the purpose of subsection (2)(b) above the qualifying period expires, in relation to the part of the land in question—
  - (a) in the case of a reclamation which qualified under section 43B(7)(a) below, where the object involves the construction of—
    - (i) a building; or
    - (ii) a civil engineering work,when the construction commences;
  - (b) in any other case of a reclamation which qualified under section 43B(7)(a) below, when pollutants have been cleared to the extent that they no longer prevent the object from being fulfilled; or
  - (c) in the case of a reclamation which qualified under section 43B(7)(b) below, when pollutants have been cleared to the extent that the potential for harm has been removed.
- (4) Subject to subsection (5) below, a disposal is within this subsection if it is of material the removal of any of which is required in order to comply with—
  - (a) a works notice served under section 46A of the Control of Pollution Act 1974;<sup>F4</sup>,
  - (b) an enforcement notice served under section 13 of the Environmental Protection Act 1990;<sup>F5</sup>
  - (c) a prohibition notice served under section 14 of the Environmental Protection Act 1990;
  - (d) an order under section 26 of the Environmental Protection Act 1990;
  - (e) a remediation notice served under section 78E of the Environmental Protection Act 1990<sup>F6</sup>,

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- (f) an enforcement notice served under section 90B of the Water Resources Act 1991;<sup>F7</sup> . . .
- (g) a works notice served under section 161A of the Water Resources Act 1991.<sup>F8</sup>
- [ an enforcement notice served under regulation 24 of the Pollution Prevention  
<sup>F9</sup>(h) and Control (England and Wales) Regulations 2000;
- (j) a suspension notice served under regulation 25 of those Regulations; or
- (k) an order under regulation 35 of those Regulations.]]
- (5) A disposal shall not be regarded as falling within subsection (4) above where the removal of the material has been carried out by or on behalf of any of the following bodies:
- (a) a local authority;
- (b) a development corporation;
- (c) the Environment Agency;
- (d) the Scottish Environment Protection Agency;
- (e) English Partnerships;
- (f) Scottish Enterprise;
- (g) Highlands and Islands Enterprise;
- (h) the Welsh Development Agency.
- (6) In this section —
- “development corporation” means —
- (a) in England and Wales, a corporation established under section 135 of the Local Government, Planning and Land Act 1980;<sup>F10</sup>
- (b) in Scotland, a corporation established under section 2 of the New Towns (Scotland) Act 1968;<sup>F11</sup>
- “English Partnerships” means the Urban Regeneration Agency established by section 158 of the Leasehold Reform, Housing and Urban Development Act 1993;<sup>F12</sup>
- “Highlands and Islands Enterprise” means the body established by section 1(b) of the Enterprise and New Towns (Scotland) Act 1990;<sup>F13</sup>
- “land” includes land covered by water;
- “Scottish Enterprise” means the corporation established by section 1(a) of the Enterprise and New Towns (Scotland) Act 1990;<sup>F14</sup>
- “the Welsh Development Agency” means the body established by section 1 of the Welsh Development Agency Act 1975.<sup>F15</sup>
- (7) For the purposes of this section —
- (a) the removal of material includes its removal from one part of the land for disposal on another part of the same land;
- (b) the clearing of pollutants includes their being cleared from one part of the land for disposal on another part of the same land.

#### Extent Information

- E1** This version of this provision extends to England and Wales only; a separate version has been created for Scotland and Northern Ireland only

#### Textual Amendments

- F3** Ss. 43A, 43B inserted (1.10.1996 with effect as mentioned in 1996 c. 8, s. 57) by S.I. 1996/1529, art. 3

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*Changes to legislation: There are currently no known outstanding effects for the Finance Act 1996, Part III. (See end of Document for details)*

- F4** 1974 c.40; section 46A was inserted by section 120 of, and Schedule 22 to, the Environment Act 1995 (c.25).
- F5** 1990 c.43.
- F6** 1990 c.43; section 78E was inserted by section 57 of the Environment Act 1995.
- F7** Word in s. 43A(4)(f) omitted (1.8.2000) by virtue of S.I. 2000/1973, reg. 39, Sch. 10 para. 21(a)
- F8** 1991 c.57; section 161A was inserted by section 120 of, and Schedule 22 to, the Environment Act 1995.
- F9** S. 43A(4)(h)(j)(k) inserted (1.8.2000) by virtue of S.I. 2000/1973, reg. 39, Sch. 10 para. 21(b)
- F10** 1980 c.65.
- F11** 1968 c.16.
- F12** 1993 c.28.
- F13** 1990 c.35.
- F14** 1990 c.35.
- F15** 1975 c.70.

[<sup>F39</sup> **43A Contaminated land. S+N.I.**

- (1) A disposal is not a taxable disposal for the purposes of this Part if it is a disposal within subsection (2) below.
- (2) A disposal is within this subsection if —
  - (a) it is of material all of which has been removed from land in relation to which a certificate issued under section 43B below was in force at the time of the removal;
  - (b) none of that material has been removed from a part of the land in relation to which, as at the time of the removal, the qualifying period has expired;
  - (c) it is a disposal in relation to which any conditions to which the certificate was made subject are satisfied; and
  - (d) it is not a disposal within subsection (4) below.
- (3) For the purpose of subsection (2)(b) above the qualifying period expires, in relation to the part of the land in question —
  - (a) in the case of a reclamation which qualified under section 43B(7)(a) below, where the object involves the construction of —
    - (i) a building; or
    - (ii) a civil engineering work,when the construction commences;
  - (b) in any other case of a reclamation which qualified under section 43B(7)(a) below, when pollutants have been cleared to the extent that they no longer prevent the object from being fulfilled; or
  - (c) in the case of a reclamation which qualified under section 43B(7)(b) below, when pollutants have been cleared to the extent that the potential for harm has been removed.
- (4) Subject to subsection (5) below, a disposal is within this subsection if it is of material the removal of any of which is required in order to comply with —
  - (a) a works notice served under section 46A of the Control of Pollution Act 1974;<sup>F40</sup>
  - (b) an enforcement notice served under section 13 of the Environmental Protection Act 1990;<sup>F41</sup>

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- (c) a prohibition notice served under section 14 of the Environmental Protection Act 1990;
  - (d) an order under section 26 of the Environmental Protection Act 1990;
  - (e) a remediation notice served under section 78E of the Environmental Protection Act 1990<sup>F42</sup>,
  - (f) an enforcement notice served under section 90B of the Water Resources Act 1991;<sup>F43</sup> . . .
  - (g) a works notice served under section 161A of the Water Resources Act 1991.<sup>F44</sup>
  - [<sup>F45</sup>(h) an enforcement notice served under regulation 19 of the Pollution Prevention and Control (Scotland) Regulations 2000;
  - (j) a suspension notice served under regulation 20 of those Regulations; or
  - (k) an order under regulation 33 of those Regulations.]]
- (5) A disposal shall not be regarded as falling within subsection (4) above where the removal of the material has been carried out by or on behalf of any of the following bodies:
- (a) a local authority;
  - (b) a development corporation;
  - (c) the Environment Agency;
  - (d) the Scottish Environment Protection Agency;
  - (e) English Partnerships;
  - (f) Scottish Enterprise;
  - (g) Highlands and Islands Enterprise;
  - (h) the Welsh Development Agency.
- (6) In this section —
- “development corporation” means —
- (a) in England and Wales, a corporation established under section 135 of the Local Government, Planning and Land Act 1980;<sup>F46</sup>
  - (b) in Scotland, a corporation established under section 2 of the New Towns (Scotland) Act 1968;<sup>F47</sup>
- “English Partnerships” means the Urban Regeneration Agency established by section 158 of the Leasehold Reform, Housing and Urban Development Act 1993;<sup>F48</sup>
- “Highlands and Islands Enterprise” means the body established by section 1(b) of the Enterprise and New Towns (Scotland) Act 1990;<sup>F49</sup>
- “land” includes land covered by water;
- “Scottish Enterprise” means the corporation established by section 1(a) of the Enterprise and New Towns (Scotland) Act 1990;<sup>F50</sup>
- “the Welsh Development Agency” means the body established by section 1 of the Welsh Development Agency Act 1975.<sup>F51</sup>
- (7) For the purposes of this section —
- (a) the removal of material includes its removal from one part of the land for disposal on another part of the same land;
  - (b) the clearing of pollutants includes their being cleared from one part of the land for disposal on another part of the same land.

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#### Extent Information

- E2** This version of this provision extends to Scotland and Northern Ireland only; a separate version has been created for England and Wales only

#### Textual Amendments

- F39** Ss. 43A, 43B inserted (1.8.1996) by [S.I. 1996/1529](#), [art. 3](#)
- F40** [1974 c.40](#); [section 46A](#) was inserted by section 120 of, and Schedule 22 to, the [Environment Act 1995](#) (c.25).
- F41** [1990 c.43](#).
- F42** [1990 c.43](#); [section 78E](#) was inserted by section 57 of the Environment Act 1995.
- F43** Word in s. 43A(4)(f) omitted (S.) (28.9.2000) by virtue of [S.S.I. 2000/323](#), [regs. 1\(1\)](#), 36, [Sch. 10 para. 6\(2\)\(a\)](#)
- F44** [1991 c.57](#); [section 161A](#) was inserted by section 120 of, and Schedule 22 to, the Environment Act 1995.
- F45** S. 43A(4)(h)(j)(k) inserted (S.) (28.9.2000) by [S.S.I. 2000/323](#), [regs. 1\(1\)](#), 36, [Sch. 10 para. 6\(2\)\(b\)](#)
- F46** [1980 c.65](#).
- F47** [1968 c.16](#).
- F48** [1993 c.28](#).
- F49** [1990 c.35](#).
- F50** [1990 c.35](#).
- F51** [1975 c.70](#).

#### **43B** <sup>F16</sup> **Contaminated land: certificates.**

- (1) Subject to subsection (2) below, the Commissioners shall issue a certificate in relation to any land where —
- an application in writing is made by a person carrying out, or intending to carry out, a reclamation of that land (the applicant);
  - the applicant provides to them such information as they may direct, whether generally or as regards that particular case;
  - the application is made not less than 30 days before the date from which the certificate is to take effect; and
  - the reclamation qualifies under subsection (7) below.
- (2) The Commissioners shall not refuse an application for a certificate in a case where the conditions specified in subsection (1)(a) to (d) above are satisfied unless it appears to them —
- necessary to do so for the protection of the revenue; or
  - except where the applicant is one of the bodies mentioned in subsection (5) of section 43A above, that all or part of the reclamation of land to which the application relates is required in order to comply with a notice or order mentioned in subsection (4) of that section.
- (3) The Commissioners may make a certificate subject to such conditions set out in the certificate as they think fit, including (but not restricted to) conditions —
- that the certificate is to be in force only in relation to a particular quantity of material;
  - that the certificate is to be in force only in relation to disposals made at a particular landfill site or sites;

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- (c) that the certificate is to be in force in relation to part only of the land to which the application relates.
- (4) A certificate issued under this section —
- (a) shall have effect from the date it is issued to the applicant or such later date as the Commissioners may specify in the certificate; and
  - (b) shall cease to have effect on such date as the Commissioners may set out in the certificate, but in any event no later than the day on which the person to whom the certificate was issued ceases to have the intention to carry out any activity involving reclamation of the land in relation to which the certificate was issued.
- (5) Where a certificate has been issued to a person, the Commissioners —
- (a) may vary it by issuing a further certificate to that person; or
  - (b) may withdraw it by giving notice in writing to that person; but this is subject to subsection (6) below.
- (6) The Commissioners shall not withdraw a certificate unless it appears to them —
- (a) necessary to do so for the protection of the revenue;
  - (b) that the reclamation did not in fact qualify under subsection (7) below or no longer so qualifies;
  - (c) that there will not be any or any more disposals within section 43A(2) above of material from the land to which the certificate relates; or
  - (d) except where the person to whom the certificate was issued is one of the bodies mentioned in subsection (5) of section 43A above, that the removal of material from the land to which the certificate relates is required in order to comply with a notice or order mentioned in subsection (4) of that section.
- (7) A reclamation qualifies under this subsection if —
- (a) it is, or is to be, carried out with the object of facilitating development, conservation, the provision of a public park or other amenity, or the use of the land for agriculture or forestry; or
  - (b) in a case other than one within paragraph (a) above, it is, or is to be, carried out with the object of reducing or removing the potential of pollutants to cause harm,
- and, in either case, the conditions specified in subsection (8) below are satisfied.
- (8) The conditions mentioned in subsection (7) above are —
- (a) that the reclamation constitutes or includes clearing the land of pollutants which are causing harm or have the potential for causing harm;
  - (b) that, in a case within subsection (7)(a) above, those pollutants would (unless cleared) prevent the object concerned being fulfilled; and
  - (c) that all relevant activities have ceased or have ceased to give rise to any pollutants in relation to that land.
- (9) For the purposes of subsection (8) above the clearing of pollutants —
- (a) need not be such that all pollutants are removed;
  - (b) need not be such that pollutants are removed from every part of the land in which they are present;
  - (c) may involve their being cleared from one part of the land and disposed of on another part of the same land.



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- (10) For the purposes of subsection (8)(c) above an activity is relevant if —
- (a) it has at any time resulted in the presence of pollutants in, on or under the land in question otherwise than —
    - (i) without the consent of the person who was the occupier of the land at the time, or
    - (ii) by allowing pollutants to be carried onto the land by air or water, and
  - (b) at that time it was carried out —
    - (i) by the applicant or a person connected with him, or
    - (ii) by any person on the land in question.
- (11) For the purposes of subsection (10) above —
- (a) any question whether a person is connected with another shall be determined in accordance with section 839 of the Taxes Act 1988;<sup>F17</sup>
  - (b) the occupier of land that is not in fact occupied is the person entitled to occupy it.
- (12) In this section “land” has the meaning given by section 43A(6) above.

#### Textual Amendments

**F16** Ss. 43A, 43B, inserted (1.8.1996) by [S.I. 1996/1529](#), [art. 3](#)

**F17** [Section 204](#) of the [Finance Act 1996 \(c.8\)](#) defines “the Taxes Act 1988” as meaning the [Income and Corporation Taxes Act 1988 \(c.1\)](#); [section 839](#) was amended by paragraph 20 of Schedule 17 to the [Finance Act 1995 \(c.4\)](#).

#### [<sup>F18</sup>43C Site restoration.

- (1) A disposal is not a taxable disposal for the purposes of this Part if—
- (a) the disposal is of material all of which is treated for the purposes of section 42 above as qualifying material,
  - (b) before the disposal the operator of the landfill site notifies the Commissioners in writing that he is commencing the restoration of all or a part of the site and provides such other written information as the Commissioners may require generally or in the particular case, and
  - (c) the material is deposited on and used in the restoration of the site or part specified in the notification under paragraph (b) above.
- (2) In this section “restoration” means work, other than capping waste, which is required by a relevant instrument to be carried out to restore a landfill site to use on completion of waste disposal operations.
- (3) The following are relevant instruments—
- (a) a planning consent;
  - (b) a waste management licence;
  - (c) resolution authorising the disposal of waste on or in land];
  - [<sup>F19</sup>(d) a permit authorising the disposal of waste on or in land.]

#### Textual Amendments

**F18** S. 43C inserted (1.10.1999) by [S.I. 1999/2075](#), [art. 2\(a\)](#)

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**F19** S. 43C(3)(d) inserted (6.4.2005) by [The Landfill Tax \(Site Restoration, Quarries and Pet Cemeteries\) Order 2005 \(S.I. 2005/725\)](#), arts. 1, 3

#### **44 Mining and quarrying.**

- (1) A disposal is not a taxable disposal for the purposes of this Part if it is shown to the satisfaction of the Commissioners that the disposal is of material all of which fulfils each of the conditions set out in subsections (2) to (4) below.
- (2) The material must result from commercial mining operations (whether the mining is deep or open-cast) or from commercial quarrying operations.
- (3) The material must be naturally occurring material extracted from the earth in the course of the operations.
- (4) The material must not have been subjected to, or result from, a non-qualifying process carried out at any stage between the extraction and the disposal.
- (5) A non-qualifying process is—
  - (a) a process separate from the mining or quarrying operations, or
  - (b) a process forming part of those operations and permanently altering the material's chemical composition.

#### **[<sup>F20</sup>44A Quarries.**

- (1) A disposal is not a taxable disposal for the purposes of this Part if it is—
  - (a) of material all of which is treated for the purposes of section 42 above as qualifying material,
  - (b) made at a qualifying landfill site, and
  - (c) made, or treated as made, on or after 1st October 1999.
- (2) A landfill site is a qualifying landfill site for the purposes of this section if at the time of the disposal—
  - (a) the landfill site is or was a quarry,
  - (b) subject to subsection (3) below, it is a requirement of planning consent in respect of the land in which the quarry or former quarry is situated that it be wholly or partially refilled, and
  - (c) subject to subsection (4) below, the licence [<sup>F21</sup>, permit] or, as the case may require, resolution authorising disposals on or in the land comprising the site permits only the disposal of material which comprises qualifying material.
- (3) Where a quarry—
  - (a) was in existence before 1st October 1999, and
  - (b) quarrying operations ceased before that date,
 the requirement referred to in subsection (2)(b) must have been imposed on or before that date.
- (4) Where a licence [<sup>F22</sup> or permit] authorising disposals on or in the land does not (apart from the application of this subsection) meet the requirements of subsection (2)(c) above and an application has been made to vary the licence [<sup>F22</sup> or permit] in order to meet them, it shall be deemed to meet them for the period before—
  - (a) the application is disposed of, or

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- (b) the second anniversary of the making of the application if it occurs before the application is disposed of.
- (5) For the purposes of subsection (4) an application is disposed of if—
- (a) it is granted,
  - (b) it is withdrawn,
  - (c) it is refused and there is no right of appeal against the refusal,
  - (d) a time limit for appeal against refusal expires without an appeal having been commenced, or
  - (e) an appeal against refusal is dismissed or withdrawn and there is no further right of appeal.]

#### Textual Amendments

- F20** S. 44A inserted (1.10.1999) by [S.I. 1999/2075, art. 2\(b\)](#)
- F21** Word in s. 44A(2)(c) inserted (6.4.2005) by [The Landfill Tax \(Site Restoration, Quarries and Pet Cemeteries\) Order 2005 \(S.I. 2005/725\), arts. 1, 4\(a\)](#)
- F22** Words in s. 44A(4) inserted (6.4.2005) by [The Landfill Tax \(Site Restoration, Quarries and Pet Cemeteries\) Order 2005 \(S.I. 2005/725\), arts. 1, 4\(b\)](#)

#### 45 Pet cemeteries.

- (1) A disposal is not a taxable disposal for the purposes of this Part if—
- (a) the disposal is of material consisting entirely of the remains of dead domestic pets, and
  - (b) the landfill site at which the disposal is made fulfils the test set out in subsection (2) below.
- (2) The test is that during the relevant period—
- (a) no landfill disposal was made at the site, or
  - (b) the only landfill disposals made at the site were of material consisting entirely of the remains of dead domestic pets.
- (3) For the purposes of subsection (2) above the relevant period—
- (a) begins with 1st October 1996 or (if later) with the coming into force in relation to the site of the licence [<sup>F23</sup>, resolution or permit] mentioned in section 66 below, and
  - (b) ends immediately before the disposal mentioned in subsection (1) above.

#### Textual Amendments

- F23** Words in s. 45(3)(a) substituted (6.4.2005) by [The Landfill Tax \(Site Restoration, Quarries and Pet Cemeteries\) Order 2005 \(S.I. 2005/725\), arts. 1, 5](#)

#### 46 Power to vary.

- (1) Provision may be made by order to produce the result that—
- (a) a disposal which would otherwise be a taxable disposal (by virtue of this Part as it applies for the time being) is not a taxable disposal;

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- (b) a disposal which would otherwise not be a taxable disposal (by virtue of this Part as it applies for the time being) is a taxable disposal.
- (2) Without prejudice to the generality of subsection (1) above, an order under this section may—
- (a) confer exemption by reference to certificates issued by the Commissioners and to conditions set out in certificates;
  - (b) allow the Commissioners to direct requirements to be met before certificates can be issued;
  - (c) provide for the review of decisions about certificates and for appeals relating to decisions on review.
- (3) Provision may be made under this section in such way as the Treasury think fit (whether by amending this Part or otherwise).

#### *Administration*

#### **47 Registration.**

- (1) The register kept under this section may contain such information as the Commissioners think is required for the purposes of the care and management of the tax.
- (2) A person who—
- (a) carries out taxable activities, and
  - (b) is not registered,
- is liable to be registered.
- (3) Where—
- (a) a person at any time forms the intention of carrying out taxable activities, and
  - (b) he is not registered,
- he shall notify the Commissioners of his intention.
- (4) A person who at any time ceases to have the intention of carrying out taxable activities shall notify the Commissioners of that fact.
- (5) Where a person is liable to be registered by virtue of subsection (2) above the Commissioners shall register him with effect from the time when he begins to carry out taxable activities; and this subsection applies whether or not he notifies the Commissioners under subsection (3) above.
- (6) Where the Commissioners are satisfied that a person has ceased to carry out taxable activities they may cancel his registration with effect from the earliest practicable time after he so ceased; and this subsection applies whether or not he notifies the Commissioners under subsection (4) above.
- (7) Where—
- (a) a person notifies the Commissioners under subsection (4) above,
  - (b) they are satisfied that he will not carry out taxable activities,
  - (c) they are satisfied that no tax which he is liable to pay is unpaid,
  - (d) they are satisfied that no credit to which he is entitled under regulations made under section 51 below is outstanding, and

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(e) subsection (8) below does not apply,  
the Commissioners shall cancel his registration with effect from the earliest practicable time after he ceases to carry out taxable activities.

(8) Where—

- (a) a person notifies the Commissioners under subsection (4) above, and
- (b) they are satisfied that he has not carried out, and will not carry out, taxable activities,

the Commissioners shall cancel his registration with effect from the time when he ceased to have the intention to carry out taxable activities.

(9) For the purposes of this section regulations may make provision—

- (a) as to the time within which a notification is to be made;
- (b) as to the form and manner in which any notification is to be made and as to the information to be contained in or provided with it;
- (c) requiring a person who has made a notification to notify the Commissioners if any information contained in or provided in connection with it is or becomes inaccurate;
- (d) as to the correction of entries in the register.

(10) References in this Part to a registrable person are to a person who—

- (a) is registered under this section, or
- (b) is liable to be registered under this section.

#### **48 Information required to keep register up to date.**

(1) Regulations may make provision requiring a registrable person to notify the Commissioners of particulars which—

- (a) are of changes in circumstances relating to the registrable person or any business carried on by him,
- (b) appear to the Commissioners to be required for the purpose of keeping the register kept under section 47 above up to date, and
- (c) are of a prescribed description.

(2) Regulations may make provision—

- (a) as to the time within which a notification is to be made;
- (b) as to the form and manner in which a notification is to be made;
- (c) requiring a person who has made a notification to notify the Commissioners if any information contained in it is inaccurate.

#### **49 Accounting for tax and time for payment.**

Regulations may provide that a registrable person shall—

- (a) account for tax by reference to such periods (accounting periods) as may be determined by or under the regulations;
- (b) make, in relation to accounting periods, returns in such form as may be prescribed and at such times as may be so determined;
- (c) pay tax at such times and in such manner as may be so determined.

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## **50 Power to assess.**

(1) Where—

- (a) a person has failed to make any returns required to be made under this Part,
- (b) a person has failed to keep any documents necessary to verify returns required to be made under this Part,
- (c) a person has failed to afford the facilities necessary to verify returns required to be made under this Part, or
- (d) it appears to the Commissioners that returns required to be made by a person under this Part are incomplete or incorrect,

the Commissioners may assess the amount of tax due from the person concerned to the best of their judgment and notify it to him.

(2) Where a person has for an accounting period been paid an amount to which he purports to be entitled under regulations made under section 51 below, then, to the extent that the amount ought not to have been paid or would not have been paid had the facts been known or been as they later turn out to be, the Commissioners may assess the amount as being tax due from him for that period and notify it to him accordingly.

(3) Where a person is assessed under subsections (1) and (2) above in respect of the same accounting period the assessments may be combined and notified to him as one assessment.

(4) Where the person failing to make a return, or making a return which appears to the Commissioners to be incomplete or incorrect, was required to make the return as a personal representative, trustee in bankruptcy, receiver, liquidator or person otherwise acting in a representative capacity in relation to another person, subsection (1) above shall apply as if the reference to tax due from him included a reference to tax due from that other person.

(5) An assessment under subsection (1) or (2) above of an amount of tax due for an accounting period shall not be made after the later of the following—

- (a) two years after the end of the accounting period;
- (b) one year after evidence of facts, sufficient in the Commissioners' opinion to justify the making of the assessment, comes to their knowledge;

but where further such evidence comes to their knowledge after the making of an assessment under subsection (1) or (2) above another assessment may be made under the subsection concerned in addition to any earlier assessment.

(6) Where—

- (a) as a result of a person's failure to make a return in relation to an accounting period the Commissioners have made an assessment under subsection (1) above for that period,
- (b) the tax assessed has been paid but no proper return has been made in relation to the period to which the assessment related, and
- (c) as a result of a failure to make a return in relation to a later accounting period, being a failure by the person referred to in paragraph (a) above or a person acting in a representative capacity in relation to him, as mentioned in subsection (4) above, the Commissioners find it necessary to make another assessment under subsection (1) above,

then, if the Commissioners think fit, having regard to the failure referred to in paragraph (a) above, they may specify in the assessment referred to in paragraph (c)

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above an amount of tax greater than that which they would otherwise have considered to be appropriate.

- (7) Where an amount has been assessed and notified to any person under subsection (1) or (2) above it shall be deemed to be an amount of tax due from him and may be recovered accordingly unless, or except to the extent that, the assessment has subsequently been withdrawn or reduced.
- (8) For the purposes of this section notification to—
- (a) a personal representative, trustee in bankruptcy, receiver or liquidator, or
  - (b) a person otherwise acting in a representative capacity in relation to another person,
- shall be treated as notification to the person in relation to whom the person mentioned in paragraph (a) above, or the first person mentioned in paragraph (b) above, acts.
- (9) Subsection (5) above has effect subject to paragraph 33 of Schedule 5 to this Act.
- (10) In this section “trustee in bankruptcy” means, as respects Scotland, an interim or permanent trustee (within the meaning of the <sup>M1</sup>Bankruptcy (Scotland) Act 1985) or a trustee acting under a trust deed (within the meaning of that Act).

#### Marginal Citations

M1 1985 c. 66.

### *Credit*

#### **51 Credit: general.**

- (1) Regulations may provide that where—
- (a) a person has paid or is liable to pay tax, and
  - (b) prescribed conditions are fulfilled,
- the person shall be entitled to credit of such an amount as is found in accordance with prescribed rules.
- (2) Regulations may make provision as to the manner in which a person is to benefit from credit, and in particular may make provision—
- (a) that a person shall be entitled to credit by reference to accounting periods;
  - (b) that a person shall be entitled to deduct an amount equal to his total credit for an accounting period from the total amount of tax due from him for the period;
  - (c) that if no tax is due from a person for an accounting period but he is entitled to credit for the period, the amount of the credit shall be paid to him by the Commissioners;
  - (d) that if the amount of credit to which a person is entitled for an accounting period exceeds the amount of tax due from him for the period, an amount equal to the excess shall be paid to him by the Commissioners;
  - (e) for the whole or part of any credit to be held over to be credited for a subsequent accounting period;
  - (f) as to the manner in which a person who has ceased to be registrable is to benefit from credit.

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- (3) Regulations under subsection (2)(c) or (d) above may provide that where at the end of an accounting period an amount is due to a person who has failed to submit returns for an earlier period as required by this Part, the Commissioners may withhold payment of the amount until he has complied with that requirement.
- (4) Regulations under subsection (2)(e) above may provide for credit to be held over either on the person's application or in accordance with directions given by the Commissioners from time to time; and the regulations may allow directions to be given generally or with regard to particular cases.
- (5) Regulations may provide that—
  - (a) no benefit shall be conferred in respect of credit except on a claim made in such manner and at such time as may be determined by or under regulations;
  - (b) payment in respect of credit shall be made subject to such conditions (if any) as the Commissioners think fit to impose, including conditions as to repayment in specified circumstances;
  - (c) deduction in respect of credit shall be made subject to such conditions (if any) as the Commissioners think fit to impose, including conditions as to the payment to the Commissioners, in specified circumstances, of an amount representing the whole or part of the amount deducted.
- (6) Regulations may require a claim by a person to be made in a return required by provision made under section 49 above.
- (7) Nothing in section 52 or 53 below shall be taken to derogate from the power to make regulations under this section (whether with regard to bad debts, the environment or any other matter).

## **52 Bad debts.**

- (1) Regulations may be made under section 51 above with a view to securing that a person is entitled to credit if—
  - (a) he carries out a taxable activity as a result of which he becomes entitled to a debt which turns out to be bad (in whole or in part), and
  - (b) such other conditions as may be prescribed are fulfilled.
- (2) The regulations may include provision under section 51(5)(b) or (c) above requiring repayment or payment if it turns out that it was not justified to regard a debt as bad (or to regard it as bad to the extent that it was so regarded).
- (3) The regulations may include provision for determining whether, and to what extent, a debt is to be taken to be bad.

## **53 Bodies concerned with the environment.**

- (1) Regulations may be made under section 51 above with a view to securing that a person is entitled to credit if—
  - (a) he pays a sum to a body whose objects are or include the protection of the environment, and
  - (b) such other conditions as may be prescribed are fulfilled.
- (2) The regulations may in particular prescribe conditions—



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- (a) requiring bodies to which sums are paid (environmental bodies) to be approved by another body (the regulatory body);
  - (b) requiring the regulatory body to be approved by the Commissioners;
  - (c) requiring sums to be paid with the intention that they be expended on such matters connected with the protection of the environment as may be prescribed.
- (3) The regulations may include provision under section 51(5)(b) or (c) above requiring repayment or payment if—
- (a) a sum is not in fact expended on matters prescribed under subsection (2)(c) above, or
  - (b) a prescribed condition turns out not to have been fulfilled.
- (4) The regulations may include—
- (a) provision for determining the amount of credit (including provision for limiting it);
  - (b) provision that matters connected with the protection of the environment include such matters as overheads (including administration) of environmental bodies and the regulatory body;
  - (c) provision as to the matters by reference to which an environmental body or the regulatory body can be, and remain, approved (including matters relating to the functions and activities of any such body);
  - (d) provision allowing approval of an environmental body or the regulatory body to be withdrawn (whether prospectively or retrospectively);
  - (e) provision that, if approval of the regulatory body is withdrawn, another body may be approved in its place or its functions may be performed by the Commissioners;
  - (f) provision allowing the Commissioners to disclose to the regulatory body information which relates to the tax affairs of persons carrying out taxable activities and which is relevant to the credit scheme established by the regulations.

#### *Review and appeal*

### **54 Review of Commissioners' decisions.**

- (1) This section applies to the following decisions of the Commissioners—
- (a) a decision as to the registration or cancellation of registration of any person under this Part;
  - (b) a decision as to whether tax is chargeable in respect of a disposal or as to how much tax is chargeable;
  - [<sup>F24</sup>(ba) a decision to refuse an application for a certificate under section 43B above, or to withdraw such a certificate;
  - <sup>F24</sup>(bb) a decision to make a certificate issued under section 43B above subject to a condition that it is to be in force in relation to part only of the land to which the application for the certificate related;]
  - (c) a decision as to whether a person is entitled to credit by virtue of regulations under section 51 above or as to how much credit a person is entitled to or as to the manner in which he is to benefit from credit;

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- (d) a decision as to an assessment falling within subsection (2) below or as to the amount of such an assessment;
  - (e) a decision to refuse a request under section 58(3) below;
  - (f) a decision to refuse an application under section 59 below;
  - (g) a decision as to whether conditions set out in a specification under the authority of provision made under section 68(4)(b) below are met in relation to a disposal;
  - (h) a decision to give a direction under any provision contained in regulations by virtue of section 68(5) below;
  - (i) a decision as to a claim for the repayment of an amount under paragraph 14 of Schedule 5 to this Act;
  - (j) a decision as to liability to a penalty under Part V of that Schedule or as to the amount of such a penalty;
  - (k) a decision under paragraph 19 of that Schedule (as mentioned in paragraph 19(5));
  - (l) a decision as to any liability to pay interest under paragraph 26 or 27 of that Schedule or as to the amount of the interest payable;
  - (m) a decision as to any liability to pay interest under paragraph 29 of that Schedule or as to the amount of the interest payable;
  - (n) a decision to require any security under paragraph 31 of that Schedule or as to its amount;
  - (o) a decision as to the amount of any penalty or interest specified in an assessment under paragraph 32 of that Schedule.
- (2) An assessment falls within this subsection if it is an assessment under section 50 above in respect of an accounting period in relation to which a return required to be made by virtue of regulations under section 49 above has been made.
- (3) Any person who is or will be affected by any decision to which this section applies may by notice in writing to the Commissioners require them to review the decision.
- (4) The Commissioners shall not be required under this section to review any decision unless the notice requiring the review is given before the end of the period of 45 days beginning with the day on which written notification of the decision, or of the assessment containing the decision, was first given to the person requiring the review.
- (5) For the purposes of subsection (4) above it shall be the duty of the Commissioners to give written notification of any decision to which this section applies to any person who—
- (a) requests such a notification,
  - (b) has not previously been given written notification of that decision, and
  - (c) if given such a notification, will be entitled to require a review of the decision under this section.
- (6) A person shall be entitled to give a notice under this section requiring a decision to be reviewed for a second or subsequent time only if—
- (a) the grounds on which he requires the further review are that the Commissioners did not, on any previous review, have the opportunity to consider certain facts or other matters, and
  - (b) he does not, on the further review, require the Commissioners to consider any facts or matters which were considered on a previous review except in so far as they are relevant to any issue not previously considered.

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- (7) Where the Commissioners are required in accordance with this section to review any decision it shall be their duty to do so; and on the review they may withdraw, vary or confirm the decision.
- (8) Where—
- (a) it is the duty under this section of the Commissioners to review any decision, and
  - (b) they do not, within the period of 45 days beginning with the day on which the review was required, give notice to the person requiring it of their determination on the review,
- they shall be deemed for the purposes of this Part to have confirmed the decision.

#### **Textual Amendments**

**F24** S. 54(1)(ba)(bb) inserted (1.10.1996 with effect as mentioned in s. 57 of this Act) by S.I. 1996/1529, arts. 1, 4

#### **Modifications etc. (not altering text)**

**C2** Ss. 54-56 extended (19.3.1997) by 1997 c. 16, s. 50(1), Sch. 5 Pt. V para. 19(3)

#### **Commencement Information**

**I1** S. 54 in force by 1.10.1996 at the latest see s. 57

## **55 Appeals: general.**

- (1) Subject to the following provisions of this section, an appeal shall lie to an appeal tribunal with respect to any of the following decisions—
- (a) any decision by the Commissioners on a review under section 54 above (including a deemed confirmation under subsection (8) of that section);
  - (b) any decision by the Commissioners on such review of a decision referred to in section 54(1) above as the Commissioners have agreed to undertake in consequence of a request made after the end of the period mentioned in section 54(4) above.
- (2) Where an appeal is made under this section by a person who is required to make returns by virtue of regulations under section 49 above, the appeal shall not be entertained unless the appellant—
- (a) has made all the returns which he is required to make by virtue of those regulations, and
  - (b) has paid the amounts shown in those returns as payable by him.
- (3) Where an appeal is made under this section with respect to a decision falling within section 54(1)(b) or (d) above the appeal shall not be entertained unless—
- (a) the amount which the Commissioners have determined to be payable as tax has been paid or deposited with them, or
  - (b) on being satisfied that the appellant would otherwise suffer hardship the Commissioners agree or the tribunal decides that it should be entertained notwithstanding that that amount has not been so paid or deposited.

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- (4) On an appeal under this section against an assessment to a penalty under paragraph 18 of Schedule 5 to this Act, the burden of proof as to the matters specified in paragraphs (a) and (b) of sub-paragraph (1) of paragraph 18 shall lie upon the Commissioners.

**Modifications etc. (not altering text)**

**C3** Ss. 54-56 extended (19.3.1997) by 1997 c. 16, s. 50(1), **Sch. 5 Pt. V para. 19(3)**

**Commencement Information**

**I2** S. 55 in force by 1.10.1993 at the latest see s. 57.

**56 Appeals: other provisions.**

- (1) Subsection (2) below applies where the Commissioners make a decision falling within section 54(1)(d) above and on a review of it there is a further decision with respect to which an appeal is made under section 55 above; and the reference here to a further decision includes a reference to a deemed confirmation under section 54(8) above.
- (2) Where on the appeal—
- (a) it is found that the amount specified in the assessment is less than it ought to have been, and
  - (b) the tribunal gives a direction specifying the correct amount,
- the assessment shall have effect as an assessment of the amount specified in the direction and that amount shall be deemed to have been notified to the appellant.
- (3) Where on an appeal under section 55 above it is found that the whole or part of any amount paid or deposited in pursuance of section 55(3) above is not due, so much of that amount as is found not to be due shall be repaid with interest at such rate as the tribunal may determine.
- (4) Where on an appeal under section 55 above it is found that the whole or part of any amount due to the appellant by virtue of regulations under section 51(2)(c) or (d) or (f) above has not been paid, so much of that amount as is found not to have been paid shall be paid with interest at such rate as the tribunal may determine.
- (5) Where an appeal under section 55 above has been entertained notwithstanding that an amount determined by the Commissioners to be payable as tax has not been paid or deposited and it is found on the appeal that that amount is due the tribunal may, if it thinks fit, direct that that amount shall be paid with interest at such rate as may be specified in the direction.
- (6) Without prejudice to paragraph 25 of Schedule 5 to this Act, nothing in section 55 above shall be taken to confer on a tribunal any power to vary an amount assessed by way of penalty except in so far as it is necessary to reduce it to the amount which is appropriate under paragraphs 18 to 24 of that Schedule.
- (7) Without prejudice to paragraph 28 of Schedule 5 to this Act, nothing in section 55 above shall be taken to confer on a tribunal any power to vary an amount assessed by way of interest except in so far as it is necessary to reduce it to the amount which is appropriate under paragraph 26 or 27 of that Schedule.
- (8) Sections 85 and 87 of the <sup>M2</sup>Value Added Tax Act 1994 (settling of appeals by agreement and enforcement of certain decisions of tribunal) shall have effect as if—

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- (a) the references to section 83 of that Act included references to section 55 above, and
- (b) the references to value added tax included references to landfill tax.

**Modifications etc. (not altering text)**

C4 Ss. 54-56 extended (19.3.1997) by 1997 c. 16, s. 50(1), Sch. 5 Pt. V para. 19(3)

**Commencement Information**

I3 S. 56 in force by 1.10.1996 at the latest see s. 57.

**Marginal Citations**

M2 1994 c. 23.

**57 Review and appeal: commencement.**

Sections 54 to 56 above shall come into force on—

- (a) 1st October 1996, or
- (b) such earlier day as may be appointed by order.

*Miscellaneous*

**58 Partnership, bankruptcy, transfer of business, etc.**

- (1) As regards any case where a business is carried on in partnership or by another unincorporated body, regulations may make provision for determining by what persons anything required by this Part to be done by a person is to be done.
- (2) The registration under this Part of an unincorporated body other than a partnership may be in the name of the body concerned; and in determining whether taxable activities are carried out by such a body no account shall be taken of any change in its members.
- (3) The registration under this Part of a body corporate carrying on a business in several divisions may, if the body corporate so requests and the Commissioners see fit, be in the names of those divisions.
- (4) As regards any case where a person carries on a business of a person who has died or become bankrupt or incapacitated or whose estate has been sequestrated, or of a person which is in liquidation or receivership or [<sup>F25</sup>administration], regulations may—
  - (a) require the first-mentioned person to inform the Commissioners of the fact that he is carrying on the business and of the event that has led to his carrying it on;
  - (b) make provision allowing the person to be treated for a limited time as if he were the other person;
  - (c) make provision for securing continuity in the application of this Part where a person is so treated.
- (5) Regulations may make provision for securing continuity in the application of this Part in cases where a business carried on by a person is transferred to another person as a going concern.
- (6) Regulations under subsection (5) above may in particular—

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- (a) require the transferor to inform the Commissioners of the transfer;
  - (b) provide for liabilities and duties under this Part of the transferor to become, to such extent as may be provided by the regulations, liabilities and duties of the transferee;
  - (c) provide for any right of either of them to repayment or credit in respect of tax to be satisfied by making a repayment or allowing a credit to the other;
- but the regulations may provide that no such provision as is mentioned in paragraph (b) or (c) of this subsection shall have effect in relation to any transferor and transferee unless an application in that behalf has been made by them under the regulations.

#### Textual Amendments

**F25** Word in s. 58(4) substituted (15.9.2003) by [The Enterprise Act 2002 \(Insolvency\) Order 2003 \(S.I. 2003/2096\)](#), art. 1(1), [Sch. para. 28](#) (with art. 6)

#### 59 Groups of companies.

- (1) Where under the following provisions of this section any bodies corporate are treated as members of a group, for the purposes of this Part—
  - (a) any liability of a member of the group to pay tax shall be taken to be a liability of the representative member;
  - (b) the representative member shall be taken to carry out any taxable activities which a member of the group would carry out (apart from this section) by virtue of section 69 below;
  - (c) all members of the group shall be jointly and severally liable for any tax due from the representative member.
- (2) Two or more bodies corporate are eligible to be treated as members of a group if the condition mentioned in subsection (3) below is fulfilled and—
  - (a) one of them controls each of the others,
  - (b) one person (whether a body corporate or an individual) controls all of them, or
  - (c) two or more individuals carrying on a business in partnership control all of them.
- (3) The condition is that the prospective representative member has an established place of business in the United Kingdom.
- (4) Where an application to that effect is made to the Commissioners with respect to two or more bodies corporate eligible to be treated as members of a group, then—
  - (a) from the beginning of an accounting period they shall be so treated, and
  - (b) one of them shall be the representative member,
 unless the Commissioners refuse the application; and the Commissioners shall not refuse the application unless it appears to them necessary to do so for the protection of the revenue.
- (5) Where any bodies corporate are treated as members of a group and an application to that effect is made to the Commissioners, then, from the beginning of an accounting period—
  - (a) a further body eligible to be so treated shall be included among the bodies so treated,

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- (b) a body corporate shall be excluded from the bodies so treated,
  - (c) another member of the group shall be substituted as the representative member, or
  - (d) the bodies corporate shall no longer be treated as members of a group, unless the application is to the effect mentioned in paragraph (a) or (c) above and the Commissioners refuse the application.
- (6) The Commissioners may refuse an application under subsection (5)(a) or (c) above only if it appears to them necessary to do so for the protection of the revenue.
- (7) Where a body corporate is treated as a member of a group as being controlled by any person and it appears to the Commissioners that it has ceased to be so controlled, they shall, by notice given to that person, terminate that treatment from such date as may be specified in the notice.
- (8) An application under this section with respect to any bodies corporate must be made by one of those bodies or by the person controlling them and must be made not less than 90 days before the date from which it is to take effect, or at such later time as the Commissioners may allow.
- (9) For the purposes of this section a body corporate shall be taken to control another body corporate if it is empowered by statute to control that body's activities or if it is that body's holding company within the meaning of section 736 of the <sup>M3</sup>Companies Act 1985; and an individual or individuals shall be taken to control a body corporate if he or they, were he or they a company, would be that body's holding company within the meaning of that section.

#### Marginal Citations

M3 1985 c. 6.

#### 60 [F26]Information, powers, penalties, secondary liability, etc.]

Schedule 5 to this Act (which contains provisions relating to information, powers, penalties [F27, secondary liability] and other matters) shall have effect.

#### Textual Amendments

F26 Sidenote to s. 60 substituted (28.7.2000) by virtue of 2000 c. 17, s. 142(2)

F27 Words in s. 60 inserted (28.7.2000) by 2000 c. 17, s. 142(1)

#### 61 Taxable disposals: special provisions.

- (1) Where—
- (a) a taxable disposal is in fact made on a particular day,
  - (b) within the period of 14 days beginning with that day the person liable to pay tax in respect of the disposal issues a landfill invoice in respect of the disposal, and
  - (c) he has not notified the Commissioners in writing that he elects not to avail himself of this subsection,

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for the purposes of this Part the disposal shall be treated as made at the time the invoice is issued.

- (2) The reference in subsection (1) above to a landfill invoice is to a document containing such particulars as regulations may prescribe for the purposes of that subsection.
- (3) The Commissioners may at the request of a person direct that subsection (1) above shall apply—
  - (a) in relation to disposals in respect of which he is liable to pay tax, or
  - (b) in relation to such of them as may be specified in the direction,
 as if for the period of 14 days there were substituted such longer period as may be specified in the direction.

## **62 Taxable disposals: regulations.**

- (1) For the purposes of this Part, regulations may make provision under this section in relation to a disposal which is a taxable disposal (or would be apart from the regulations).
- (2) The regulations may provide that if particular conditions are fulfilled—
  - (a) the disposal shall be treated as not being a taxable disposal, or
  - (b) the disposal shall, to the extent found in accordance with prescribed rules, be treated as not being a taxable disposal.
- (3) The regulations may provide that if particular conditions are fulfilled—
  - (a) the disposal shall be treated as made at a time which is found in accordance with prescribed rules and which falls after the time when it would be regarded as made apart from the regulations, or
  - (b) the disposal shall, to the extent found in accordance with prescribed rules, be treated as made at a time which is found in accordance with prescribed rules and which falls after the time when it would be regarded as made apart from the regulations.
- (4) In finding the time when the disposal would be regarded as made apart from the regulations, section 61(1) above and any direction under section 61(3) above shall be taken into account.
- (5) The regulations may be framed by reference to—
  - (a) conditions specified in the regulations or by the Commissioners or by an authorised person, or
  - (b) any combination of such conditions;
 and the regulations may specify conditions, or allow conditions to be specified, generally or with regard to particular cases.
- (6) The regulations may make provision under subsections (2)(b) and (3)(b) above in relation to the same disposal.
- (7) The regulations may only provide that a disposal is to be treated as not being a taxable disposal if or to the extent that—
  - <sup>F28</sup>(a) the material comprised in the disposal is held temporarily pending one or more of the following—
    - (i) the incineration or recycling of the material, or
    - (ii) the removal of the material for use elsewhere, or



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- (iii) the use of the material, if it is qualifying material within the meaning of section 42(3) above, for the restoration to use of the site at which the disposal takes place, or any part of that site, upon completion of waste disposal operations at the site, or as the case may be, that part of the site, or
- (iv) the sorting of the material with a view to its removal elsewhere or its eventual disposal, and]
- (b) [<sup>F29</sup>the material in question is held temporarily] in an area designated for the purpose by an authorised person.

#### Textual Amendments

**F28** S. 62(7)(a) substituted (28.7.2000) by 2000 c. 17, s. 141(2)

**F29** Words in s. 62(7)(b) substituted (28.7.2000) by 2000 c. 17, s. 141(3)

### 63 Qualifying material: special provisions.

- (1) This section applies for the purposes of section 42 above.
- (2) The Commissioners may direct that where material is disposed of it must be treated as qualifying material if it would in fact be such material but for a small quantity of non-qualifying material; and whether a quantity of non-qualifying material is small must be determined in accordance with the terms of the direction.
- (3) The Commissioners may at the request of a person direct that where there is a disposal in respect of which he is liable to pay tax the material disposed of must be treated as qualifying material if it would in fact be such material but for a small quantity of non-qualifying material, and—
  - (a) a direction may apply to all disposals in respect of which a person is liable to pay tax or to such of them as are identified in the direction;
  - (b) whether a quantity of non-qualifying material is small must be determined in accordance with the terms of the direction.
- (4) If a direction under subsection (3) above applies to a disposal any direction under subsection (2) above shall not apply to it.
- (5) An order may provide that material must not be treated as qualifying material unless prescribed conditions are met.
- (6) A condition may relate to any matter the Treasury think fit (such as the production of a document which includes a statement of the nature of the material).

#### *Interpretation*

### 64 Disposal of material as waste.

- (1) A disposal of material is a disposal of it as waste if the person making the disposal does so with the intention of discarding the material.
- (2) The fact that the person making the disposal or any other person could benefit from or make use of the material is irrelevant.

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- (3) Where a person makes a disposal on behalf of another person, for the purposes of subsections (1) and (2) above the person on whose behalf the disposal is made shall be treated as making the disposal.
- (4) The reference in subsection (3) above to a disposal on behalf of another person includes references to a disposal—
  - (a) at the request of another person;
  - (b) in pursuance of a contract with another person.

## **65 Disposal by way of landfill.**

- (1) There is a disposal of material by way of landfill if—
  - (a) it is deposited on the surface of land or on a structure set into the surface, or
  - (b) it is deposited under the surface of land.
- (2) Subsection (1) above applies whether or not the material is placed in a container before it is deposited.
- (3) Subsection (1)(b) above applies whether the material—
  - (a) is covered with earth after it is deposited, or
  - (b) is deposited in a cavity (such as a cavern or mine).
- (4) If material is deposited on the surface of land (or on a structure set into the surface) with a view to it being covered with earth the disposal must be treated as made when the material is deposited and not when it is covered.
- (5) An order may provide that the meaning of the disposal of material by way of landfill (as it applies for the time being) shall be varied.
- (6) An order under subsection (5) above may make provision in such way as the Treasury think fit, whether by amending any of subsections (1) to (4) above or otherwise.
- (7) In this section “land” includes land covered by water where the land is above the low water mark of ordinary spring tides.
- (8) In this section “earth” includes similar matter (such as sand or rocks).

## **66 Landfill sites.**

Land is a landfill site at a given time if at that time—

- (a) a licence which is a site licence for the purposes of Part II of the <sup>M4</sup>Environmental Protection Act 1990 (waste on land) is in force in relation to the land and authorises disposals in or on the land,
- (b) a resolution under section 54 of that Act (land occupied by waste disposal authorities in Scotland) is in force in relation to the land and authorises deposits or disposals in or on the land,
- <sup>F30</sup>(ba) a permit under regulations under section 2 of the Pollution Prevention and Control Act 1999 [<sup>F31</sup>or under regulations under Article 4 of the Environment (Northern Ireland) Order 2002] is in force in relation to the land and authorises deposits or disposals in or on the land,]
- (c) a disposal licence issued under Part II of the <sup>M5</sup>Pollution Control and Local Government (Northern Ireland) Order 1978 (waste on land) is in force in relation to the land and authorises deposits on the land,

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- (d) a resolution passed under Article 13 of that Order (land occupied by district councils in Northern Ireland) is in force in relation to the land and relates to deposits on the land, or
- (e) a licence under any provision for the time being having effect in Northern Ireland and corresponding to section 35 of the Environmental Protection Act 1990 (waste management licences) is in force in relation to the land and authorises disposals in or on the land.

#### Textual Amendments

- F30** S. 66(ba) inserted (21.3.2000 for E.W.S.) by 1999 c. 24, ss. 6, 7(3), **Sch. 2 para. 19**; S.I. 2000/800, **art. 2** (as amended (17.7.2012) by Finance Act 2012 (c. 14), **s. 206(a)**)
- F31** Words in s. 66(ba) inserted (N.I.) (18.1.2003) by The Environment (Northern Ireland) Order 2002 (S.I. 2002/3153 (N.I. 7)), arts. 1(2)(3), 53(1), **Sch. 5 Pt. 1 para. 5**

#### Marginal Citations

- M4** 1990 c. 43.
- M5** S.I. 1978/1049 (N.I.19).

### 67 Operators of landfill sites.

The operator of a landfill site at a given time is—

- (a) the person who is at the time concerned the holder of the licence, where section 66(a) above applies;
- (b) the waste disposal authority which at the time concerned occupies the landfill site, where section 66(b) above applies;
- [<sup>F32</sup>(ba) the person who is at the time concerned the holder of the permit, where section 66(ba) above applies;]
- (c) the person who is at the time concerned the holder of the licence, where section 66(c) above applies;
- (d) the district council which passed the resolution, where section 66(d) above applies;
- (e) the person who is at the time concerned the holder of the licence, where section 66(e) above applies.

#### Textual Amendments

- F32** S. 67(ba) inserted (E.W.) (1.8.2000) by S.I. 2000/2973, reg. 39, **Sch. 10 para. 22** and (S.) (28.9.2000) by S.S.I. 2000/323, reg. 36, **Sch. 10 para. 6(3)**

### 68 Weight of material disposed of.

- (1) The weight of the material disposed of on a taxable disposal shall be determined in accordance with regulations.
- (2) The regulations may—
  - (a) prescribe rules for determining the weight;
  - (b) authorise rules for determining the weight to be specified by the Commissioners in a prescribed manner;

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- (c) authorise rules for determining the weight to be agreed by the person liable to pay the tax and an authorised person.
- (3) The regulations may in particular prescribe, or authorise the specification or agreement of, rules about—
- (a) the method by which the weight is to be determined;
  - (b) the time by reference to which the weight is to be determined;
  - (c) the discounting of constituents (such as water).
- (4) The regulations may include provision that a specification authorised under subsection (2)(b) above may provide—
- (a) that it is to have effect only in relation to disposals of such descriptions as may be set out in the specification;
  - (b) that it is not to have effect in relation to particular disposals unless the Commissioners are satisfied that such conditions as may be set out in the specification are met in relation to the disposals;
- and the conditions may be framed by reference to such factors as the Commissioners think fit (such as the consent of an authorised person to the specification having effect in relation to disposals).
- (5) The regulations may include provision that—
- (a) where rules are agreed as mentioned in subsection (2)(c) above, and
  - (b) the Commissioners believe that they should no longer be applied because they do not give an accurate indication of the weight or they are not being fully observed or for some other reason,
- the Commissioners may direct that the agreed rules shall no longer have effect.
- (6) The regulations shall be so framed that where in relation to a given disposal—
- (a) no specification of the Commissioners has effect, and
  - (b) no agreed rules have effect,
- the weight shall be determined in accordance with rules prescribed in the regulations.

## **69 Taxable activities.**

- (1) A person carries out a taxable activity if—
- (a) he makes a taxable disposal in respect of which he is liable to pay tax, or
  - (b) he permits another person to make a taxable disposal in respect of which he (the first-mentioned person) is liable to pay tax.
- (2) Where—
- (a) a taxable disposal is made, and
  - (b) it is made without the knowledge of the person who is liable to pay tax in respect of it,
- that person shall for the purposes of this section be taken to permit the disposal.

## **70 Interpretation: other provisions.**

- (1) Unless the context otherwise requires—
- “accounting period” shall be construed in accordance with section 49 above;
  - “appeal tribunal” means a VAT and duties tribunal;

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“authorised person” means any person acting under the authority of the Commissioners;

“the Commissioners” means the Commissioners of Customs and Excise;

“conduct” includes any act, omission or statement;

[<sup>F33</sup>“the Environment Agency” means the body established by section 1 of the Environment Act 1995; <sup>F34</sup>]

“material” means material of all kinds, including objects, substances and products of all kinds;

“prescribed” means prescribed by an order or regulations under this Part;

“registrable person” has the meaning given by section 47(10) above;

[<sup>F33</sup>“the Scottish Environment Protection Agency” means the body established by section 20 of the Environment Act 1995; <sup>F35</sup>]

“tax” means landfill tax;

“taxable disposal” has the meaning given by section 40 above.

(2) A landfill disposal is a disposal—

- (a) of material as waste, and
- (b) made by way of landfill.

[<sup>F36</sup>(2A) A local authority is —

- (a) the council of a county, county borough, district, London borough, parish or group of parishes (or, in Wales, community or group of communities);
- (b) the Common Council of the City of London;
- (c) as respects the Temples, the Sub-Treasurer of the Inner Temple and the Under-Treasurer of the Middle Temple respectively;
- (d) the council of the Isles of Scilly;
- (e) any joint committee or joint board established by two or more of the foregoing;
- (f) in relation to Scotland, a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 <sup>F37</sup>, any two or more such councils and any joint committee or joint board within the meaning of section 235(1) of the Local Government (Scotland) Act 1973. <sup>F38</sup>]

(3) A reference to this Part includes a reference to any order or regulations made under it and a reference to a provision of this Part includes a reference to any order or regulations made under the provision, unless otherwise required by the context or any order or regulations.

(4) This section and sections 64 to 69 above apply for the purposes of this Part.

#### Textual Amendments

**F33** S. 70(1): definitions of “the Environment Agency” and “the Scottish Environment Protection Agency” inserted (1.8.1996) by S.I. 1996/1529, art. 5(a)(b)

**F34** 1995 c.25.

**F35** 1995 c.25.

**F36** S. 70(2A) inserted (1.8.1996) by S.I. 1996/1529, art. 6

**F37** 1994 c.39.

**F38** 1973 c.65.

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### *Supplementary*

#### **71 Orders and regulations.**

- (1) The power to make an order under section 57 above shall be exercisable by the Commissioners, and the power to make an order under any other provision of this Part shall be exercisable by the Treasury.
- (2) Any power to make regulations under this Part shall be exercisable by the Commissioners.
- (3) Any power to make an order or regulations under this Part shall be exercisable by statutory instrument.
- (4) An order to which this subsection applies shall be laid before the House of Commons; and unless it is approved by that House before the expiration of a period of 28 days beginning with the date on which it was made it shall cease to have effect on the expiration of that period, but without prejudice to anything previously done under the order or to the making of a new order.
- (5) In reckoning any such period as is mentioned in subsection (4) above no account shall be taken of any time during which Parliament is dissolved or prorogued or during which the House of Commons is adjourned for more than four days.
- (6) A statutory instrument containing an order or regulations under this Part (other than an order under section 57 above or an order to which subsection (4) above applies) shall be subject to annulment in pursuance of a resolution of the House of Commons.
- (7) Subsection (4) above applies to—
  - (a) an order under section 42(3) above providing for material which would otherwise be qualifying material not to be qualifying material;
  - (b) an order under section 46 above which produces the result that a disposal which would otherwise not be a taxable disposal is a taxable disposal;
  - (c) an order under section 63(5) above other than one which provides only that an earlier order under section 63(5) is not to apply to material;
  - (d) an order under section 65(5) above providing for anything which would otherwise not be a disposal of material by way of landfill to be such a disposal.
- (8) Any power to make an order or regulations under this Part—
  - (a) may be exercised as regards prescribed cases or descriptions of case;
  - (b) may be exercised differently in relation to different cases or descriptions of case.
- (9) An order or regulations under this Part may include such supplementary, incidental, consequential or transitional provisions as appear to the Treasury or the Commissioners (as the case may be) to be necessary or expedient.
- (10) No specific provision of this Part about an order or regulations shall prejudice the generality of subsections (8) and (9) above.

**Status:**

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**Changes to legislation:**

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