

EXPLANATORY MEMORANDUM TO
THE LANDFILL TAX (AMENDMENT) REGULATIONS 2007

2007 No. 965

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

This memorandum contains information for the Select Committee on Statutory Instruments

2. **Description**

The Regulations change the maximum credit that landfill site operators may claim against their annual landfill tax liability when making contributions in respect of the Landfill Communities Fund ("LCF") (previously known as the Landfill Tax Credit Scheme). The Regulations simplify some of the administrative obligations placed on environmental bodies. They enable the regulatory body to attach conditions to its approval of an environmental body and the Commissioners to attach conditions to their approval of the regulatory body. They further limit the continuing application of certain environmental objects in respect of which qualifying contributions made before 1 April 2003 may be spent.

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

3.1 It has been necessary to breach the "21 day rule". This is because the amendments made by the regulations are a Budget measure. It was not possible to lay the instrument until the changes were announced on Budget Day on 21 March.

3.2 The amendment by regulation 2 changes the maximum credit that landfill site operators may claim against their landfill tax liability during the contribution year. The contribution year is a standard period for all landfill site operators which runs from 1 April to 31 March each year. It is necessary for the amendment made by regulation 2 to come into force on 1 April to coincide with the start of the contributions year.

3.3 The amendments by regulation 3 will introduce a standard accounting period for EBs which will run from 1 April to 31 March each year. 1 April therefore facilitates the introduction of this simplification measure.

3.4 The amendments made by regulation 5 enable the Commissioners to attach conditions to the approval of the regulatory body. The regulatory body currently operates to targets and performance measures, and this amendment gives the power to enforce these. It will enable the Commissioners to give binding effect to the performance targets and objectives contained in the regulatory body's corporate plan for 2007/2008. These are intended to be introduced from the start of the regulatory body's financial year, 1 April. The amendments are based on a power in new section 53(4)(ca) of the Finance Act 1996.

This provision has been given provisional statutory effect under section 5 of the Provisional Collection of Taxes Act 1968 on 22 March. It will cease to have effect if the resolution is not agreed to by a confirmatory resolution of the House of Commons passed within the next ten days on which the House sits after the resolution under section 5(1) was passed. If it is given a confirmatory resolution, the resolution has effect for a period ending on 5th August 2007 but will cease to have effect thereafter unless re-enacted in the Finance Act 2007.

3.3 The amendments made by regulation 4 will enable the regulatory body to attach conditions to the approval of environmental bodies. This will allow the regulatory body to impose conditions on EBs in line with prevailing best practice and the principles of better regulation. Like regulation 5, regulation 4 is based on the new power in section 53(4)(ca).

3.4 The amendments made by regulation 6 will restrict the spending of contributions on sustainable waste projects (known as objects c and cc) Funding on these types of project is no longer part of the future objectives of the LCF.

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

4. Legislative Background

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

4.2 Under section 53(2) regulations may be made requiring environmental bodies, to which sums are paid, to be approved by a regulatory body, and for the regulatory body to be approved by the Commissioners. Section 53(4)(c) enables provision to be made as to the matters by reference to which an environmental body and the regulatory body can be, and remain, approved including matters relating to the functions and activities of any such body.

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

4.4 Regulation 2 amends regulation 31(3) of the principal Regulations to change the maximum credit a landfill site operator may claim against their annual LFT liability from 6.7% to 6.6%.

4.5 Regulation 3 amends regulation 33A of the principal Regulations. New regulation 33A(1)(aa) requires an environmental body (“EB”) to comply with any conditions that the regulatory body may impose under regulation 34(1)(aa). The amendment to regulation 33A(1)(f) reduces the obligation on an EB to notify the regulatory body about details concerning the transfer of qualifying contributions. Only those contributions transferred by an EB have to be notified. Contributions transferred to it do not. New regulation

33A(1)(ha) requires an EB to provide the financial information specified there at any time during the relevant period specified in regulation 33A(2) when the regulatory body requests that information. New regulation 33A(1)(hb) enables the Commissioners to impose a similar requirement on an EB to provide financial information if the Commissioners are performing regulatory functions in place of the regulatory body. New regulation 33A(1)(i) reduces the obligation on an EB to provide accounts for its last financial year. Now it is only required to do so when the regulatory body requests it to do so. A request may not be made earlier than 10 months after the end of the EB's financial year. New regulation 33A(2) establishes the relevant period for the purposes of providing information under regulation 33A(1)(h),(ha) and (hb). This period is the 12 month period ending on 31 March each year but in an EB's first year it is the period between its approval and 31 March. New regulation 33A(3) specifies the last day for complying with a request mentioned in regulation 33A(1)(ha), (hb) and (i). New regulation 33A(4) relieves an environmental body of the obligation to provide financial information body under regulation 33A(1)(h) if that information has already been provided at the request of the regulatory body.

4.6 New regulation 34(1)(aa) and (ab) provides for the regulatory body to impose conditions in relation to the approval of an environmental body, and to vary or revoke those conditions. New regulation 34(1)(k) requires the regulatory body to comply with the conditions imposed by the Commissioners under regulation 35(1)(aa).

4.7 New regulation 35(1)(aa) and (ab) provides for the Commissioners to impose conditions in relation to the approval of the regulatory body, and to vary or revoke those conditions.

4.8 Regulation 6 revokes regulation 6 of the Landfill Tax (Amendment) Regulations 2003. It preserves the effect of regulation 6 in relation to qualifying contributions made before 1st April 2003 ("old contributions") but only if these old contributions are required to be spent by an environmental body on one or more of the objects specified in regulation 6(3) of these Regulations. This obligation must be contained in a written agreement made before 1 April 2007. The objects specified in regulation 6(3) are education, research and dissemination of information for the purposes of encouraging more sustainable waste management practices and recycling waste. These objects (known in LCF parlance as C & CC objects) ceased to be approved objects in respect of qualifying contributions made on or after 1 April 2003 ("new contributions") Therefore credit cannot be claimed in respect of any new contributions that were spent on those objects. However they remained approved objects in respect of old contributions. They will now only be approved objects for old contributions that are required to be spent on them pursuant to a written agreement made before 1 April 2007. Nothing in regulation 6 restricts an environmental body from using old contributions for approved objects currently specified in regulation 33(2) of the Regulations.

5. Territorial Extent and Application

This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

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

7. Policy background

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

7.2 The Government recognises the important contribution made by the LCF. The amendment by regulation 2 increases the value of the fund by £5million in 2007/08 to give as potential annual maximum value of £65million.

7.3 HM Revenue and Customs wrote to landfill site operators and environmental bodies on 1 February 2007 informing them of its intention to amend the Landfill Tax Regulations to preclude use of contributions on the C & CC objects described in paragraph 4.8 above. Nothing in the Regulations precludes contributions that are unspent and uncommitted on 1 April 2007 from being used for currently approved projects.

8. Impact

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

9. Contact

Bob Drummond-Murray at HM Revenue & Customs Tel: 0161 827 0336 or e-mail: robert.drummondmurray@hmrc.gsi.gov.uk can answer any queries regarding the instrument.