

**EXPLANATORY MEMORANDUM TO**  
**THE CORPORATION TAX (LAND REMEDIATION RELIEF) ORDER**

**2009 No. 2037**

1. This explanatory memorandum has been prepared by Her Majesty's Revenue & Customs (HMRC) 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**

- 2.1 This Treasury Order forms part of the changes to Part 14 of Corporation Tax Act 2009, which is commonly referred to as Land Remediation Relief.
- 2.2 Land Remediation Relief is intended to address problems caused by contamination from past industrial activity. Section 1145 gives the Treasury powers to extend the relief to living organisms and naturally occurring substances. This Order extends the relief to cover expenditure on remediating land affected by Japanese knotweed, radon and naturally occurring arsenic or arsenical compounds as these can act as a significant deterrent to re-developing sites.
- 2.3 Section 1146 allows expenditure on work carried out under specified legislation to be excluded from Land Remediation Relief. This is because there is already a legal obligation to carry out this work. This Order sets out the list of specified legislation. Land Remediation Relief will not be available where the expenditure is incurred as a result of being served with a notice under any of the specified legislation.
- 2.4 Section 1146 allows expenditure on specified methods of remediation to be excluded from Land Remediation Relief. This Order specifies that the clearance of Japanese knotweed by methods involving the removal of waste to landfill sites does not qualify for the relief.
- 2.5 Section 1146A allows the Treasury to set out in secondary legislation the types of expenditure on long term derelict land that qualify for Land Remediation Relief. This Order sets out the list of types of expenditure that is qualifying expenditure for the purposes of the relief.
- 2.6 Land Remediation Relief is normally only available where the land is contaminated at the time of acquisition. Sections 1147 and 1149 allow the Treasury to specify circumstances in which Land Remediation Relief will be available even though the contamination only occurred after the company, or a connected party, acquired the site. This Order extends Land Remediation Relief to include the expenditure on the removal of Japanese knotweed where

it has spread onto the land whilst it has been owned by the company, or a connected party. This is because Japanese knotweed has often been spread by fly-tipping.

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

3.1 None

### **4. Legislative Context**

4.1 Land Remediation Relief is the name given to the legislation in Part 14 of the Corporation Tax Act 2009 as amended by Schedule 7 to the Finance Act 2009.

4.2 As the re-development of brown-field land is an area where both the planning policy and the technology of remediation are developing, Schedule 7 to the Finance Act 2009 introduces powers that allow aspects of Land Remediation Relief to be set out in secondary legislation. This introduces a degree of flexibility to enable Land Remediation Relief to reflect changes elsewhere in the sector.

4.3 This is the first time that the powers have been used.

### **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 It was recognised that the cost of cleaning up the legacy of contamination caused by previous industrial activity was causing some brown-field sites to be left unused. As a result, the Government introduced Land Remediation Relief in 2001 to provide enhanced tax relief for expenditure on cleaning up contamination and so encourage the re-development of brown-field sites.

7.2 The 2004 Barker review of Housing Supply and the 2006 Barker review of Land Use and Planning recommended that Land Remediation Relief should be extended to derelict land. Following this, in 2007, the Treasury carried out a consultation on Tax incentives for development of brown-field land.

7.3 The changes to Land Remediation Relief made by Schedule 7 to the Finance Act 2009 and by this Order are intended to implement the decisions arising from the consultation process and to re-focus the existing relief on the legacy of previous industrial activity.

- 7.4 Land Remediation Relief is only one element of the wider Government approach to the question of brown-field land. The amendments are intended both to reflect wider policy, such as reducing the amount of material being sent to landfill, and also, by aligning with the work companies carry out to comply with planning guidelines, to give companies greater certainty as to which expenditure will qualify for relief at the time when they are deciding whether to proceed with the project.

## **8. Consultation outcome**

- 8.1 This Order has not been the subject of consultation.
- 8.2 The reforms to Land Remediation Relief, brought in by Section 26 to, and Schedule 7 of, the Finance Act 2009, which created the powers being exercised in this Order, were published on 24 November 2008 in the form of a technical note.
- 8.3 The technical note, which included draft legislation, explained how the Government's policy, as set out in its December 2007 response to the consultation on "Tax incentives for development of brownfield land", was to be implemented. The draft legislation contained provisions for taking the powers being exercised in this Order, and the technical note set out how it was proposed that these powers were going to be exercised. Further, on 31 March 2009 a draft of this Order was published for comment.

## **9. Guidance**

- 9.1 HMRC has published draft guidance on the amended Land Remediation Relief. This can be found at <http://www.hmrc.gov.uk/briefs/company-tax/brief2909.pdf>.

## **10. Impact**

- 10.1 The Treasury has published an Impact Assessment for the changes to Land Remediation Relief, of which this Order forms part.
- 10.2 The Impact Assessment can be found at <http://www.hmrc.gov.uk/ria/land-remediation-relief.pdf>

## **11. Regulating small business**

- 11.1 The legislation applies to small businesses liable to corporation tax.
- 11.2 To minimise the impact of the requirements of the relief, HMRC has published draft guidance on how companies can see whether or not they will qualify for the relief on the basis of the work that companies already have to carry out as part of the planning process.
- 11.3 In order to give greater assistance to business, HMRC has also invited business to raise issues not covered in the draft guidance, so that HMRC can provide more complete guidance on these issues.

## **12. Monitoring & review**

12.1 HMRC monitors the take-up and cost of Land Remediation Relief on an annual basis.

## **13. Contact**

Brian Stokes at Her Majesty's Revenue & Customs Tel: 020 7147 2546 or email: [brian.stokes@hmrc.gsi.gov.uk](mailto:brian.stokes@hmrc.gsi.gov.uk) can answer any queries regarding the instrument.

## Summary: Intervention & Options

<b>Department /Agency:</b> <b>HM Treasury</b>	<b>Title:</b> <b>Impact Assessment of changes to land remediation relief</b>	
<b>Stage:</b> Final	<b>Version:</b> 2	<b>Date:</b> March 2009
<b>Related Publications:</b> Consultation Partial Assessment. (Annex A of the Consultation Document.)		

Available to view or download at:

[http://www.hm-treasury.gov.uk/d/bud07\\_taxincentives\\_256.pdf](http://www.hm-treasury.gov.uk/d/bud07_taxincentives_256.pdf)

Contact for enquiries: Anna Silvester

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### What is the problem under consideration? Why is government intervention necessary?

High demand for housing, lack of supply and consequent problems of affordability have become an issue for many parts of the country, whilst some other areas have been affected by housing market failure. The Government aims to achieve a better balance between housing supply and demand through increasing the supply and addressing the market failures in housing. The Government has set out an ambition to increase housing supply by at least 240,000 net additional homes per year by 2016. At the same time, it is committed to maintaining a high proportion of development on brownfield sites (i.e. previously developed land).

### What are the policy objectives and the intended effects?

The principal change considered in the Impact Assessment extends land remediation relief to certain costs of clearing long-term derelict land (which may or may not also be contaminated). Derelict land is not in productive use because of previous development, and cannot be put into use without the removal of buildings or other structures. This is intended to support companies with the higher costs of developing sites with substantial dereliction, so returning that land to beneficial use and helping to maintain Government ambitions. There are also further changes in the same legislation to refocus existing elements of the relief on contamination of brownfield sites, for which no Impact Assessment would ordinarily be required, but which are referred to where appropriate in this assessment.

### What policy options have been considered? Please justify any preferred option.

1. Do nothing.
  2. Introduce the changes announced in the 2008 Budget and Pre Budget Report 2008 to extend land remediation relief to expenditure on long-term derelict land. The legislation also includes a number of changes to give companies greater certainty about what categories of expenditure qualify for relief, in particular the costs of eradicating Japanese Knotweed.
- The second option is preferred as it provides support for companies to clear up and develop contaminated and long-term derelict land and bring it back into productive use.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects? HMRC will conduct a post-implementation review within 3-5 years of introduction.

**Ministerial Sign-off** For final proposal/implementation stage Impact Assessments:

*I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) the benefits justify the costs.*

Signed by the responsible Minister:



Date: 27/03/09

## Summary: Analysis & Evidence

<b>Policy Option: 2</b>	<b>Description: Implement changes to land remediation relief</b>
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COSTS	ANNUAL COSTS		Description and scale of <b>key monetised costs</b> by ‘main affected groups’ The one-off cost arises from companies familiarising themselves with the changes and the annual ongoing cost reflects the small increase in administrative burdens from companies claiming the relief.	
	One-off (Transition)	Yrs		
	£ 15,000	5		
	Average Annual Cost (excluding one-off)			
	£ 17,000		Total Cost (PV)	£ 90,000
	Other <b>key non-monetised costs</b> by ‘main affected groups’			

BENEFITS	ANNUAL BENEFITS		Description and scale of <b>key monetised benefits</b> by ‘main affected groups’	
	One-off	Yrs		
	£ Not quantifiable	5		
	Average Annual Benefit (excluding one-off)		Total Benefit (PV)	
	£ Not quantifiable			
		£ 0		
Other <b>key non-monetised benefits</b> by ‘main affected groups’ The main expected benefit from the changes is the return of contaminated and derelict land to productive use, particularly brownfield sites.				

**Key Assumptions/Sensitivities/Risks** The key assumptions are the number of companies affected by the changes and the scale of the average additional cost. The extension of relief is estimated to provide a benefit to business of around £30-£40 million of tax relief per year.

<b>Price Base</b> Year 2009	<b>Time Period</b> Years 5	<b>Net Benefit Range (NPV)</b> <b>£</b>	<b>NET BENEFIT (NPV Best estimate)</b> <b>£ 90,000 cost</b>
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What is the geographic coverage of the policy/option?	UK			
On what date will the policy be implemented?	1/04/2009			
Which organisation(s) will enforce the policy?	HMRC			
What is the total annual cost of enforcement for these organisations?	£ negligible			
Does enforcement comply with Hampton principles?	no			
Will implementation go beyond minimum EU requirements?	no			
What is the value of the proposed offsetting measure per year?	£ -			
What is the value of changes in greenhouse gas emissions?	£ -			
Will the proposal have a significant impact on competition?	No			
Annual cost (£-£) per organisation (excluding one-off)	Micro neg	Small neg	Medium neg	Large neg
Are any of these organisations exempt?	No	No	N/A	N/A

<b>Impact on Admin Burdens Baseline</b> (2005 Prices)			(Increase - Decrease)	
Increase of	£ 15,000	Decrease of	£ -	<b>Net Impact</b> £ 15,000 increase

Key: **Annual costs and benefits: Constant Prices** **(Net) Present Value**

### Background and objective

The Government aims to create prosperous, inclusive and sustainable communities. Everyone should have the opportunity of a decent home at a price they can afford, in a place in which they want to live now and in the future, that promotes opportunity and a better quality of life in a secure and attractive environment.

High demand for housing, lack of supply and consequent problems of affordability have become an issue for many parts of the country, whilst some other areas have been affected by housing market failure. The Government aims to achieve a better balance between housing supply and demand through increasing the supply of housing, both full market and affordable, and through a series of programmes to address market failure.

The Government is committed to a step change in housing supply. It has set out an ambition to increase housing supply by at least 240,000 net additional homes per year by 2016. (See for example [http://www.hm-treasury.gov.uk/d/bud08\\_chapter5.pdf](http://www.hm-treasury.gov.uk/d/bud08_chapter5.pdf) Page 85.) At the same time, it is committed to maintaining a high proportion of development on brownfield sites. Brownfield land is previously developed land.

(<http://www.communities.gov.uk/documents/planningandbuilding/pdf/planningpolicystatement3.pdf>)

The proposed changes are intended to return those brownfield sites, which are either long-term derelict or contaminated land to beneficial use helping to maintain Government ambitions.

Under the planning process any site has to be cleaned up so that it is in a fit state for its proposed use. Contaminated land is also subject to obligations under environmental protection legislation. Lord Rogers' Urban Task Force reported in 1999 and the Government responded with the Urban White Paper in 2000, recommending that additional tax relief should be given to help developers decontaminate contaminated land. Land Remediation Relief was introduced in 2001, providing a 150 per cent Corporation Tax relief for the costs of decontamination.

Kate Barker's 2004 Review of Housing Supply recommended that the relief should be extended to long-term derelict land, as long as the extra public money levered into the market would encourage genuine new investment in brownfield remediation, and not simply subsidise development that would take place anyway.

### Options and consultation

The Government published a Consultation Impact Assessment of Land Remediation Relief at Budget 2007. Six options were considered at that time, which was put out for consultation. The Response to Consultation was published in December 2007. It was announced at Budget 2008 that the Government had decided to go forward with option 2 to extend Land Remediation Relief to long-term derelict land.

The option to extend Land Remediation Relief to include certain costs of clearing long-term derelict land is preferred over the option to do nothing, as it will provide support for companies to clear and develop these sites, so bringing them back into productive use. This is in line with Government aims to maintain a high proportion of development on brownfield sites and ambitions to increase housing supply.

In addition, an option to end the exemption from landfill tax for waste from clearing contaminated land was also accepted and is the subject of a separate Impact Assessment published on 23 September 2008. <http://www.hmrc.gov.uk/ria/sub-order-annxc.pdf>

Consultations with stakeholders also suggested that

- more and better publicity for the relief was needed as many corporations carrying out land remediation work were not aware of their right to claim the relief; and
- more detailed guidance on the types of costs that qualified for the relief was also needed.

The Government is also amending the existing regime to align the qualifying conditions more closely with the work that is done to obtain planning consent. The intention is that, as often as possible, companies will be able to tell whether they will qualify for the relief at the time they submit the planning application. This would mean that the relief is more likely to influence decisions as to which land to re-develop.

It is hoped that increased publicity will encourage more businesses to consider developing long-term derelict land to meet our needs for land rather than looking to develop on greenfield sites where land may be more expensive but does not require any work prior to development. Greenfield land includes sites which have not previously been developed, in contrast with brownfield land. The full definition of “brownfield” may be read via this hyperlink.

<http://www.communities.gov.uk/documents/planningandbuilding/pdf/planningpolicystatement3.pdf>) As land remediation is a niche market, publicity will be targeted through key stakeholders such as other Government departments, local authorities and industry bodies who have expressed a willingness to cascade information via planning and property development web sites. There have already been a number of articles in property and remediation magazines, although no formal press release has been issued.

The extension of Land Remediation Relief under the preferred option is estimated to cost the Exchequer around £30-£40 million a year over the next 5 – 10 years

### **Businesses affected**

The changes are likely to affect companies carrying out development on contaminated and long-term derelict land. Around 1,000 companies claimed Land Remediation Relief in 2005-06 (the latest year for which data is broadly complete) and the same companies will most probably be involved in clearing and developing long-term derelict sites as well. Therefore, it is assumed that up to around 1,000 companies will be affected by the changes to Land Remediation Relief.

### **Estimated benefits**

Government help through the tax system will be targeted more closely on developers allowing funds to be recycled into hard to remediate sites. It should encourage development on brownfield land, and so support Government housing ambitions for England through the National Brownfield Strategy and similar programmes in Scotland, Wales and Northern Ireland.

It is not possible to quantify these wider benefits with any degree of certainty.

### **Estimated costs**

#### *Administrative Burdens*

HMRC is subject to quantified targets to reduce one aspect of compliance costs in particular; the administrative burden on business of disclosing information to HMRC or to third parties. This burden is assessed through the ‘Standard Cost Model’, an activity-based costing model which identifies what activities a business has to do to comply with HMRC’s obligations, and which estimates the cost of these activities, including agent fees and software costs.

The extension of Land Remediation Relief to long-term derelict land was designed with the intention that companies are able to use existing databases to substantiate their claims, as far as possible. In particular, the changes are designed to enable companies to use the work that they already have to carry out as part of the planning process to substantiate their claims. The intention is to minimise any additional burden of claiming relief.

As companies claiming relief in relation to long-term derelict land will do so as part of their existing Land Remediation Relief claims, the additional burden will be relatively small. Therefore,



it is assumed that a company will spend an extra half hour on average to claim support. At an hourly wage of £25 (from the Standard Cost Model at 2005 prices), this gives an average additional burden of £12.50 per company. This average cost is expected to be higher where a company uses an agent to make the claim and it is assumed that the average cost is double that of companies not using an agent.

Three-quarters of the 1,000 companies estimated to be affected are assumed not to use external agents, suggesting a total additional burden of around £9,000. The remaining quarter of companies affected are assumed to use an agent, suggesting a total additional burden of around £6,000. Overall, this suggests a total ongoing additional burden of around £15,000 each year at 2005 prices, which converts to an annual burden of around £17,000 at current prices.

#### *Wider Compliance Costs*

All of the 1,000 companies will need to familiarise themselves with the extension of Land Remediation Relief to long-term derelict land. Companies are assumed to need half an hour on average to familiarise themselves with the changes, which, at an hourly wage of £27.50, gives a total one-off cost of around £15,000 (at current prices). External advisors and accountants may also require some familiarisation with the changes, but it is assumed that this cost will be passed onto companies in some form and so is not explicitly identified.

#### *Impact on HMRC*

The impact on operational costs for HMRC is expected to be negligible.

#### *Total estimated costs*

Overall, the changes are estimated to involve a one-off familiarisation cost of around £15,000, plus ongoing costs of around £17,000 a year (at current prices). Over a five-year period, the total estimated cost is £100,000, representing an average annual cost of around £20,000 (at current prices). In net present value terms (assuming a 3.5% discount rate), the estimated total cost converts to around £90,000 over five years, representing an average cost of around £18,000 a year (at current prices).

### **Implementation plan, monitoring and evaluation**

These changes will be implemented for Budget 2009. Secondary legislation will also be published at the same time. HMRC will conduct a post-implementation review within 3-5 years of introduction.

### **Specific Impact Tests**

#### *Competition Assessment*

This change is not expected to have any adverse impacts on competition, as it should not:

- directly limit the number or range of suppliers;
- indirectly limit the number or range of suppliers;
- limit the ability of suppliers to compete<sup>1</sup>; nor
- reduce suppliers' incentives to compete vigorously.

Indeed, the extension to Land Remediation Relief may promote competition by attracting new suppliers into the market.

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<sup>1</sup> A small number of suppliers for Japanese Knotweed remediation who have previously offered removal to landfill may be disadvantaged. However, most are moving away from this method as there are increased restrictions and costs on landfill, and as a result are moving into other methods which will benefit from LRR.

### *Small Firms Impact Test*

Although the changes are likely to impact on small companies, they are not expected to be disproportionately affected. Indeed, excluding small companies from this relief would disadvantage them more than allowing them to claim, as they would be unable to claim tax relief for renovating long-term derelict land that would be available to larger companies.

Nothing specific was raised at the time of consultation on small businesses. The Federation of Small Businesses and the British Retail Association did not respond. The National Farmers' Union broadly supported the proposals. None of the small consultancy firms or remediation firms made mention of any particular issues for small businesses.

### *Legal Aid*

LRR is part of the Corporation Tax regime affecting land; it is not introducing criminal sanctions or civil penalties, so there are no Legal Aid implications.

### *Sustainable Development Test*

This change is expected to contribute to Government's commitment to sustainable development, which consists of five principles:

- living within environmental limits;
- ensuring a strong, healthy and just society;
- achieving a sustainable economy;
- promoting good governance; and
- using sound science responsibly.

Sustainable development is about making economic, social and environmental progress in a holistic way, so that we achieve "development that meets the needs of the present without compromising the ability of future generations to meet their own needs".

This reform is particularly focused on this commitment as it is focusing on the long-term benefits of utilising long-term derelict land rather than greenfield sites; by concentrating on the broader global perspective rather than the immediate impacts.

Including the remediation of long-term derelict land in the relief will mean that more brownfield areas are redeveloped for building rather than using greenfield areas. This option, which might not always have been cost effective without the relief, should benefit the environment and society as a whole.

### *Carbon Assessment*

LRR aims to encourage the re-use of previously developed land (brownfield land) as part of the Government's drive for sustainable development. Long-term derelict land and land contaminated with Japanese Knotweed are already being re-developed or treated outside of the relief system by Regional Development Agencies (RDAs), local authorities and others. The changes in the relief aim to encourage greater use of these types of site by corporate businesses. There should be no increase in carbon usage to develop these sites over that used already in the construction industry.

### *Other Environment*

The disposal of waste from contaminated land and from long-term derelict land is already regulated by a number of bodies depending on the substance. For example, the Environmental Agency already gives guidance on the management of Japanese Knotweed and the use of herbicides to eradicate it.

<http://www.environment-agency.gov.uk/homeandleisure/wildlife/>

### *Health Impact Assessment*

The disposal of waste from contaminated land and from long-term derelict land is already regulated by a number of bodies, depending on the substance involved. For example, the Health and Safety Executive already gives guidance on the safe handling of asbestos.

<http://www.hse.gov.uk/asbestos/essentials/>

#### *Gender, race and disability tests*

These changes affect a relief in the Corporate Tax system; it has no impact on individuals, and so there is no impact on gender, race and/or disability.

See Annex.

#### *Human Rights*

As LRR is part of the Corporation Tax regime, it does not impact on the human rights of individuals.

#### *Rural proofing*

This measure was analysed by the Commission for Rural Communities who said:

*“This relief is welcomed and should help encourage the development of sites, which have been derelict since 31 March 1998, regardless of location (subject to certain qualifying criteria). However, this relief is currently limited to companies only.”*

The National Farmers' Union broadly supported the proposals, as did the Campaign to Protect Rural England.

## Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

**Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.**

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	Yes	No
Small Firms Impact Test	Yes	No
Legal Aid	Yes	No
Sustainable Development	Yes	No
Carbon Assessment	Yes	No
Other Environment	Yes	No
Health Impact Assessment	Yes	No
Race Equality	Yes	no
Disability Equality	Yes	no
Gender Equality	Yes	no
Human Rights	Yes	No
Rural Proofing	Yes	No

## Annexes