



# Finance Act 1996

## 1996 CHAPTER 8

### PART III

#### LANDFILL TAX

##### *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
  - (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

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- (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.

VALID FROM 01/08/1996

**[<sup>F1</sup>43A Contaminated land.**

- (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>F2</sup>
  - (b) an enforcement notice served under section 13 of the Environmental Protection Act 1990; <sup>F3</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>F4</sup>,
  - (f) an enforcement notice served under section 90B of the Water Resources Act 1991; <sup>F5</sup> or

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- (g) a works notice served under section 161A of the Water Resources Act 1991.<sup>F6</sup>
- (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>F7</sup>
  - (b) in Scotland, a corporation established under section 2 of the New Towns (Scotland) Act 1968;<sup>F8</sup>
- “English Partnerships” means the Urban Regeneration Agency established by section 158 of the Leasehold Reform, Housing and Urban Development Act 1993;<sup>F9</sup>
- “Highlands and Islands Enterprise” means the body established by section 1(b) of the Enterprise and New Towns (Scotland) Act 1990;<sup>F10</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>F11</sup>
- “the Welsh Development Agency” means the body established by section 1 of the Welsh Development Agency Act 1975.<sup>F12</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.]

#### Textual Amendments

- F1** Ss. 43A, 43B inserted (1.8.1996) by S.I. 1996/1529, art. 3
- F2** 1974 c.40; section 46A was inserted by section 120 of, and Schedule 22 to, the Environment Act 1995 (c.25).
- F3** 1990 c.43.
- F4** 1990 c.43; section 78E was inserted by section 57 of the Environment Act 1995.
- F5** 1991 c.57; section 90B was inserted by section 120 of, and Schedule 22 to, the Environment Act 1995.
- F6** 1991 c.57; section 161A was inserted by section 120 of, and Schedule 22 to, the Environment Act 1995.
- F7** 1980 c.65.
- F8** 1968 c.16.

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- F9** 1993 c.28.
- F10** 1990 c.35.
- F11** 1990 c.35.
- F12** 1975 c.70.

VALID FROM 01/08/1996

**43B** <sup>F13</sup> **Contaminated land: certificates.**

- (1) Subject to subsection (2) below, the Commissioners shall issue a certificate in relation to any land where —
  - (a) an application in writing is made by a person carrying out, or intending to carry out, a reclamation of that land (the applicant);
  - (b) the applicant provides to them such information as they may direct, whether generally or as regards that particular case;
  - (c) the application is made not less than 30 days before the date from which the certificate is to take effect; and
  - (d) 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 —
  - (a) necessary to do so for the protection of the revenue; or
  - (b) 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 —
  - (a) that the certificate is to be in force only in relation to a particular quantity of material;
  - (b) that the certificate is to be in force only in relation to disposals made at a particular landfill site or sites;
  - (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.

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- (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.
- (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>F14</sup>
  - (b) the occupier of land that is not in fact occupied is the person entitled to occupy it.

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(12) In this section “land” has the meaning given by section 43A(6) above.

#### Textual Amendments

- F13** Ss. 43A, 43B, inserted (1.8.1996) by S.I. 1996/1529, **art. 3**
- F14** 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).

VALID FROM 01/10/1999

#### [<sup>F15</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.]

#### Textual Amendments

- F15** S. 43C inserted (1.10.1999) by S.I. 1999/2075, **art. 2(a)**

#### 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.

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- (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.

VALID FROM 01/10/1999

#### **[<sup>F16</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 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 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 in order to meet them, it shall be deemed to meet them for the period before—
  - (a) the application is disposed of, or
  - (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

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- (e) an appeal against refusal is dismissed or withdrawn and there is no further right of appeal.]

#### Textual Amendments

**F16** S. 44A inserted (1.10.1999) by [S.I. 1999/2075](#), [art. 2\(b\)](#)

#### 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 or resolution mentioned in section 66 below, and
  - (b) ends immediately before the disposal mentioned in subsection (1) above.

#### 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;
  - (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).



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