



# 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.

[<sup>F1</sup>(5) 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 comprises material falling within subsection (1) or (3) and other material which has been added to that material for the purpose of securing that it is not liquid waste.]

#### Textual Amendments

**F1** S. 43(5) inserted (30.10.2007) by [The Landfill Tax \(Material Removed from Water\) Order 2007 \(S.I. 2007/2909\)](#), arts. 1, 2

#### <sup>F2</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 —
- 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;
  - 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;
  - it is a disposal in relation to which any conditions to which the certificate was made subject are satisfied; and
  - 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 —
- in the case of a reclamation which qualified under section 43B(7)(a) below, where the object involves the construction of —
    - a building; or
    - a civil engineering work,
 when the construction commences;
  - 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
  - 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 works notice served under section 46A of the Control of Pollution Act 1974;  
<sup>F3</sup>,
  - an enforcement notice served under section 13 of the Environmental Protection Act 1990;  
<sup>F4</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>F5</sup>,
  - (f) an enforcement notice served under section 90B of the Water Resources Act 1991;<sup>F6</sup> . . .
  - (g) a works notice served under section 161A of the Water Resources Act 1991.<sup>F7</sup>
  - [<sup>F8</sup>(h) an enforcement notice served under regulation 36 of [<sup>F9</sup>the Environmental Permitting (England and Wales) Regulations 2010];
  - (j) a suspension notice served under regulation 37 of those Regulations; or
  - (k) an order under regulation 44 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;
  - <sup>F10</sup>(e) . . . . .
  - (f) Scottish Enterprise;
  - (g) Highlands and Islands Enterprise;
  - <sup>F11</sup>(h) . . . . .
- (6) In this section —
- “development corporation” means —
- (a) <sup>F12</sup>in England and Wales, a corporation established under section 135 of the Local Government, Planning and Land Act 1980;
  - (b) <sup>F13</sup>in Scotland, a corporation established under section 2 of the New Towns (Scotland) Act 1968;
- <sup>F14</sup> . . . . .
- <sup>F15</sup>“Highlands and Islands Enterprise” means the body established by section 1(b) of the Enterprise and New Towns (Scotland) Act 1990;
- “land” includes land covered by water;
- <sup>F16</sup>“Scottish Enterprise” means the corporation established by section 1(a) of the Enterprise and New Towns (Scotland) Act 1990;
- <sup>F17</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

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### Textual Amendments

- F2** Ss. 43A, 43B inserted (1.10.1996 with effect as mentioned in 1996 c. 8, s. 57) by S.I. 1996/1529, **art. 3**
- F3** 1974 c.40; section 46A was inserted by section 120 of, and Schedule 22 to, the Environment Act 1995 (c.25).
- F4** 1990 c.43.
- F5** 1990 c.43; section 78E was inserted by section 57 of the Environment Act 1995.
- F6** Word in s. 43A(4)(f) omitted (1.8.2000) by virtue of S.I. 2000/1973, reg. 39, **Sch. 10 para. 21(a)**
- F7** 1991 c.57; section 161A was inserted by section 120 of, and Schedule 22 to, the Environment Act 1995.
- F8** S. 43A(4)(h)(j)(k) substituted (E.W.) (6.4.2008) by The Environmental Permitting (England and Wales) Regulations 2007 (S.I. 2007/3538), reg. 1(1)(b), **Sch. 21 para. 25(2)** (with reg. 72, Sch. 4)
- F9** Words in s. 43A(4)(h) substituted (E.W.) (6.4.2010) by The Environmental Permitting (England and Wales) Regulations 2010 (S.I. 2010/675), reg. 1(1)(b), **Sch. 26 Pt. 1 para. 14** (with reg. 1(2), Sch. 4)
- F10** S. 43A(5)(e) repealed (1.12.2008) by Housing and Regeneration Act 2008 (c. 17), s. 325(1), Sch. 8 para. 64(2), **Sch. 16**; S.I. 2008/3068, arts. 2(1)(w)(3), 5 (with arts. 6-13)
- F11** Words in s. 43A(5)(h) omitted (1.4.2006) by virtue of The Welsh Development Agency (Transfer of Functions to the National Assembly for Wales and Abolition) Order 2005 (S.I. 2005/3226), arts. 1(2), 7, **Sch. 2 Pt. 1 para. 10(1)** (with art. 3(1))
- F12** 1980 c.65.
- F13** 1968 c.16.
- F14** Words in s. 43A(6) repealed (1.12.2008) by Housing and Regeneration Act 2008 (c. 17), s. 325(1), Sch. 8 para. 64(3), **Sch. 16**; S.I. 2008/3068, arts. 2(1)(w)(3), 5 (with arts. 6-13)
- F15** 1990 c.35.
- F16** 1990 c.35.
- F17** Words in s. 43A(6) omitted (1.4.2006) by virtue of The Welsh Development Agency (Transfer of Functions to the National Assembly for Wales and Abolition) Order 2005 (S.I. 2005/3226), arts. 1(2), 7, **Sch. 2 Pt. 1 para. 10(2)** (with art. 3(1))

### <sup>F27</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;

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- (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>F28</sup>
  - (b) an enforcement notice served under section 13 of the Environmental Protection Act 1990;<sup>F29</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>F30</sup>,
  - (f) an enforcement notice served under section 90B of the Water Resources Act 1991;<sup>F31</sup> . . .
  - (g) a works notice served under section 161A of the Water Resources Act 1991.<sup>F32</sup>
  - <sup>F33</sup> [ 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; [<sup>F34</sup>or]
  - (k) an order under regulation 33 of those Regulations][<sup>F35</sup>; or
  - (l) a notice served under regulation 28(2) of the Water Environment (Controlled Activities) (Scotland) Regulations 2005.]]
- (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;
  - <sup>F10</sup>(e) . . . . .
  - (f) Scottish Enterprise;
  - (g) Highlands and Islands Enterprise;
  - <sup>F11</sup>(h) . . . . .
- (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>F36</sup>
  - (b) in Scotland, a corporation established under section 2 of the New Towns (Scotland) Act 1968;<sup>F37</sup>
- <sup>F14</sup> . . . . .
- “Highlands and Islands Enterprise” means the body established by section 1(b) of the Enterprise and New Towns (Scotland) Act 1990;<sup>F38</sup>

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“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>F39</sup>

<sup>F17</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

- 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

- F10** S. 43A(5)(e) repealed (1.12.2008) by [Housing and Regeneration Act 2008 \(c. 17\)](#), s. 325(1), Sch. 8 para. 64(2), **Sch. 16**; S.I. 2008/3068, arts. 2(1)(w)(3), 5 (with arts. 6-13)
- F11** Words in s. 43A(5)(h) omitted (1.4.2006) by virtue of [The Welsh Development Agency \(Transfer of Functions to the National Assembly for Wales and Abolition\) Order 2005 \(S.I. 2005/3226\)](#), arts. 1(2), 7, **Sch. 2 Pt. 1 para. 10(1)** (with art. 3(1))
- F14** Words in s. 43A(6) repealed (1.12.2008) by [Housing and Regeneration Act 2008 \(c. 17\)](#), s. 325(1), Sch. 8 para. 64(3), **Sch. 16**; S.I. 2008/3068, arts. 2(1)(w)(3), 5 (with arts. 6-13)
- F17** Words in s. 43A(6) omitted (1.4.2006) by virtue of [The Welsh Development Agency \(Transfer of Functions to the National Assembly for Wales and Abolition\) Order 2005 \(S.I. 2005/3226\)](#), arts. 1(2), 7, **Sch. 2 Pt. 1 para. 10(2)** (with art. 3(1))
- F27** Ss. 43A, 43B inserted (1.8.1996) by [S.I. 1996/1529](#), **art. 3**
- F28** 1974 c.40; section 46A was inserted by section 120 of, and Schedule 22 to, the [Environment Act 1995 \(c.25\)](#).
- F29** 1990 c.43.
- F30** 1990 c.43; section 78E was inserted by section 57 of the [Environment Act 1995](#).
- F31** 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)**
- F32** 1991 c.57; section 161A was inserted by section 120 of, and Schedule 22 to, the [Environment Act 1995](#).
- F33** 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)**
- F34** Word in s. 43A(4) omitted (S.) (1.4.2006) by virtue of [The Water Environment and Water Services \(Scotland\) Act 2003 \(Consequential Provisions and Modifications\) Order 2006 \(S.I. 2006/1054\)](#), art. 1(1), **Sch. 1 para. 2(a)**
- F35** S. 43A(4)(l) and word inserted (S.) (1.4.2006) by [The Water Environment and Water Services \(Scotland\) Act 2003 \(Consequential Provisions and Modifications\) Order 2006 \(S.I. 2006/1054\)](#), art. 1(1), **Sch. 1 para. 2(b)**
- F36** 1980 c.65.
- F37** 1968 c.16.
- F38** 1990 c.35.
- F39** 1990 c.35.

#### 43B <sup>F18</sup> Contaminated land: certificates.

<sup>F19</sup>(1) .....

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F19(2) .....

F19(3) .....

- (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>F20</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**

**F18** Ss. 43A, 43B, inserted (1.8.1996) by S.I. 1996/1529, **art. 3**

**F19** S. 43B(1)-(3) omitted (1.12.2008) by virtue of [The Landfill Tax \(Material from Contaminated Land\) \(Phasing out of Exemption\) Order 2008 \(S.I. 2008/2669\)](#), arts. 1(2)(b), **3(1)(a)** (with art. 3(2))

**F20** 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>F21</sup>**43C Site restoration.**

.....

**Textual Amendments**

**F21** S. 43C omitted (1.9.2009) by virtue of [Finance Act 2009 \(c. 10\)](#), **Sch. 60 paras. 10, 13(1)**

**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—



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- (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>F22</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>F23</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>F24</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>F24</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
  - (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

**F22** S. 44A inserted (1.10.1999) by [S.I. 1999/2075](#), [art. 2\(b\)](#)

**F23** 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\(a\)](#)

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**F24** 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>F25</sup>, resolution or permit] mentioned in section 66 below, and
  - (b) ends immediately before the disposal mentioned in subsection (1) above.

#### **Textual Amendments**

**F25** 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;
  - (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;
  - [<sup>F26</sup>(c) provide for reviews and appeals relating to decisions about certificates.]
- (3) Provision may be made under this section in such way as the Treasury think fit (whether by amending this Part or otherwise).

#### **Textual Amendments**

**F26** S. 46(2)(c) substituted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 233**

**Status:**

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**Changes to legislation:**

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