
STATUTORY INSTRUMENTS

1996 No. 1529

The Landfill Tax (Contaminated Land) Order 1996

3. After section 43 there shall be inserted the following:

“Contaminated land.

43A.—(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;⁽¹⁾
- (b) an enforcement notice served under section 13 of the Environmental Protection Act 1990;⁽²⁾
- (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;

(1) 1974 c. 40; section 46A was inserted by section 120 of, and Schedule 22 to, the Environment Act 1995 (c. 25).

(2) 1990 c. 43.

- (e) a remediation notice served under section 78E of the Environmental Protection Act 1990⁽³⁾,
 - (f) an enforcement notice served under section 90B of the Water Resources Act 1991;⁽⁴⁾ or
 - (g) a works notice served under section 161A of the Water Resources Act 1991.⁽⁵⁾
- (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;⁽⁶⁾
 - (b) in Scotland, a corporation established under section 2 of the New Towns (Scotland) Act 1968;⁽⁷⁾
- “English Partnerships” means the Urban Regeneration Agency established by section 158 of the Leasehold Reform, Housing and Urban Development Act 1993;⁽⁸⁾
- “Highlands and Islands Enterprise” means the body established by section 1(b) of the Enterprise and New Towns (Scotland) Act 1990;⁽⁹⁾
- “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;⁽¹⁰⁾
- “the Welsh Development Agency” means the body established by section 1 of the Welsh Development Agency Act 1975.⁽¹¹⁾
- (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.

⁽³⁾ 1990 c. 43; section 78E was inserted by section 57 of the Environment Act 1995.

⁽⁴⁾ 1991 c. 57; section 90B was inserted by section 120 of, and Schedule 22 to, the Environment Act 1995.

⁽⁵⁾ 1991 c. 57; section 161A was inserted by section 120 of, and Schedule 22 to, the Environment Act 1995.

⁽⁶⁾ 1980 c. 65.

⁽⁷⁾ 1968 c. 16.

⁽⁸⁾ 1993 c. 28.

⁽⁹⁾ 1990 c. 35.

⁽¹⁰⁾ 1990 c. 35.

⁽¹¹⁾ 1975 c. 70.

Contaminated land: certificates.

43B.—(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.

(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;**(12)**
 - (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.”.

(12) 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).