

**EXPLANATORY MEMORANDUM TO THE
LANDFILL TAX (SITE RESTORATION, QUARRIES AND PET CEMETERIES)
ORDER 2005**

2005 No.725

1. This explanatory memorandum has been prepared by Her Majesty's Treasury and is laid before the House of Commons by Command of Her Majesty.

2. Description

This Order comes into force on 6th April 2005 and makes amendments to sections 43C, 44A and 45 of the Finance Act 1996 ("the FA 96") relating to exemptions. These amendments are required following the amendment to section 66 of the Finance Act 1996 ("FA 1996") which added to the categories of landfill site land in relation to which a permit under regulations under section 2 of the Pollution Prevention and Control Act 1999 (c.24) or under regulations under Article 4 of the Environment (Northern Ireland) Order 2002 (S.I. 2002/3153 (N.I.7)) is in force.

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

None

4. Legislative Background

4.1. Landfill Tax was introduced on 1 October 1996 by the FA 1996. The tax is charged on a taxable disposal. A disposal is a taxable disposal if it is a disposal of material as waste, is made by way of landfill and is made at a landfill site. The amount of tax charged is calculated according to the weight of the material disposed of and whether it is active or inactive waste.

4.2. Sections 43C, 44A and 45 of the FA 1996 provide for exemptions for site restoration, the filling of quarries and the disposal of dead domestic pets in pet cemeteries. Section 46 of the FA 1996 provides that the Treasury may, by order, make provision to produce the result that a disposal which would otherwise be a taxable disposal is not a taxable and vice versa. Under this provision section 43C (site restoration) and section 44A(quarries) were added to the FA 1996 by the Landfill Tax (Site Restoration and Quarries) Order 1999 (S.I. 1999/2075).

4.3. Section 66 of the FA 1996 defines what land is a landfill site at a given time. This section was amended by the Pollution Prevention and Control Act 1999 and the Environment (Northern Ireland) Order 2002, which added to the list in section 66 land in relation to which a permit under regulations under section 2 of that Act or under Article 4 of that Order is in force.

4.4. The amendments made by this Order are required so that the exemptions relating to site restoration, quarries and pet cemeteries apply equally to cases where the landfill site is one in relation to which a permit is in force as they do to cases where the site is one in relation to which a licence or resolution is in force.

5. Extent

This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

The Economic Secretary to the Treasury has made the following statement under section 19(1)(a) of the Human Rights Act 1998:

In my view the provisions of the Landfill Tax (Site Restoration, Quarries and Pet Cemeteries) Order 2005 are compatible with the Convention rights.

7. Policy background

7.1. Landfill tax aims to encourage waste producers to produce less waste, recover more value from waste, and to use more environmentally friendly methods of waste disposal. It contributes to the Government's waste strategy targets through the diversion of waste away from landfill. It applies to waste disposed of at landfill sites where licences, resolutions or permits authorise the disposal of waste.

7.2. In 1998 a review of the operation and level of the landfill tax found that the tax had contributed to a shortfall in the availability of suitable inert material for the filling of working and old quarries and the restoration of landfill sites. The report recommended that inert wastes used to restore sites and to fill old and existing mineral workings should be exempted from landfill tax. At the time of the March 1999 Budget it was announced that an exemption would be introduced for inert waste used to restore landfill sites and to fill working or old quarries with a planning condition or obligation in existence to fill the quarry. The Landfill Tax (Site Restoration and Quarries) Order 1999, which came into force on 1 October 1999, amended the FA 96 to provide these two exemptions.

7.3. Section 66 of the FA96 defines which landfill sites fall within the scope of landfill tax. Its original scope included only sites that were covered by a waste management licence (WML) (or resolution - though these have been largely phased out) under environmental law. The amendments referred to in paragraph 4.3 above added a new category to this section - those sites covered by a permit under regulations under section 2 of the Pollution Prevention and Control Act 1999 or under regulations under Article 4 of the Environment (Northern Ireland) Order 2002, authorising disposals in or on the land. This was to provide a new pollution control system to meet the requirements of the European Council Directive on Integrated Pollution Prevention and Control (IPPC)¹.

7.4. WMLs and resolutions will ultimately be replaced by permits. The rolling programme under which this is being achieved began in June 2003 will take until 2007 to complete. The Environment Agency (EA), which deals with applications for permits in England and Wales, expects 600 landfill sites to apply for permits. To date, the EA has received 330 applications and had issued 67 permits. In Scotland, the

¹ OJ L257, 10/10/1996, p.0026-0040

Scottish Executive were not going to bring in permits until the beginning of 2007, but is now considering whether or not to bring landfill sites into the permit regime at an earlier date, as yet unspecified. For Northern Ireland, the intention is to issue the main block of permits early in 2007 but it is possible that some may be issued before then.

7.5. There are currently around 540 landfill operators registered for the tax. The majority of them could be affected when permits take the place of their WMLs, because most landfill sites require restoration. If the restoration is required under the terms of a planning consent rather than the permit (as is currently the case in the majority, if not all, sites covered by licences) the need for the change is not so pressing. However, there is still a need to amend the exemption provisions to take account of the introduction of permits.

7.6. Inability to claim the exemptions will run contrary to the environmental aims of their introduction. Delays in restoring landfill sites and in filling quarries carry environmental risks and costs. These include, for active waste sites, the production of more leachate (which can threaten potable water supplies). For quarries taking only inert wastes, the local disamenity effects, such as noise, unsightliness, and increased traffic extend over a longer period. In the case of active quarries and mineral workings, there is also the risk that lack of suitable materials for back-filling could lead to breaches of planning permission, causing the workings to have to slow production, with consequences for profitability and employment.

7.7. Pet cemeteries are potentially within the scope of the tax as they are licensed for waste disposal, but as all the disposals at such sites have up to now been covered by the exemption, none has had to register for and pay the tax.

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

John Durkan at HM Customs and Excise, telephone 0161 827 0906 or e-mail john.durkan@hmce.gsi.gov.uk can answer any queries regarding the instrument.