

**EXPLANATORY MEMORANDUM TO THE  
LANDFILL TAX (AMENDMENT) REGULATIONS 2005**

**2005 No. 759**

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

**2. Description**

2.1. Regulation 4 of these Regulations comes into force on 1 April 2005 and makes an amendment to regulation 31 of the Landfill Tax Regulations 1996 (S.I. 1996/1527) ("the principal Regulations). Regulations 3 and 5 come into force on 6 April 2005 and make amendments to regulations 21 and 38 of the principal Regulations".

2.2. The amendments to regulations 21 and 38 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.

2.3 The amendment to regulation 31 reduces the maximum amount as a percentage of his tax liability that a site operator may claim when contributing through the Landfill Tax Credit Scheme (LTCS).

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

In relation to regulation 4 it has been necessary to breach the "21 day rule". This is because the amendment made by this regulation was a Budget measure and it was not possible to lay the Regulations until the measure was announced by the Chancellor of the Exchequer on 16 March. Also, it was necessary for the amendment to come into force on 1 April in order for it to coincide with the start of the contribution year relating to the LTCS.

**4. Legislative Background**

4.1. Landfill Tax and the LTCS were introduced on 1 October 1996 by the Finance Act 1996 ("FA96"). 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. Section 66 of the FA 96 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.

4.3. Regulation 21 of the principal Regulations provides that a registered person is entitled to a credit where he has accounted for and paid landfill tax and, in relation to

the disposal on which tax was charged, either the re-use condition has been satisfied or the enforced removal condition has been satisfied (as defined in regulations 21(2) and 21(4) respectively).

4.4. The amendment to regulation 21(4)(a) is required so that where a disposal of material is in breach of the terms of a permit by virtue of which the land constitutes a landfill site and the registered person is directed by a relevant authority (as defined in regulation 21(5)) to remove the material from his site to another site, this will satisfy the enforced removal condition for the purposes of an entitlement to a credit.

4.5. Regulation 38 of the principal Regulations 1996 provides for the temporary disposal of material without a charge to tax pending all of the material being put to a qualifying use. A qualifying use includes use of the material for site restoration purposes at the landfill site at which the disposal was made.

4.6. By virtue of regulation 38(5)(ab) (which was inserted by the Landfill Tax (Amendment) Regulations 2002 (S.I. 2002/1), “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. Relevant instruments are specified in regulations 38(5)(ac). The amendment to regulation 38(5)(ac) is required so that a permit authorising the disposal of waste on or in land is a “relevant instrument” for the purposes of the definition of “restoration” in regulation 38(5)(ab).

4.7. The LTCS allows landfill site operators to claim a credit of landfill tax against contributions made to approved environmental bodies. The amount of credit is 90 per cent of any contribution, subject to a maximum percentage of their annual landfill tax liability, set out in regulation 31(3).

4.8. The amendment to regulation 31(3) reduces the maximum amount as a percentage of his tax liability that a site operator may claim when contributing through the LTCS.

## **5. Extent**

This instrument applies to all of the United Kingdom.

## **6. European Convention on Human Rights**

Statement not required

## **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. 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 4.2 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 96/61/EC of 24/09/1996 on Integrated Pollution Prevention and Control (IPPC)<sup>1</sup>

7.3. 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 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.

7.4. If a landfill site operator accepts waste that is not covered under the terms of the licence or resolution by virtue of which the land constitutes a landfill site, the environmental regulator, such as the EA in England and Wales, may direct that some or all of the waste be removed to another landfill site. Where landfill tax was paid on the original disposal and will be payable on the disposal at the second site, Regulation 21 allows for a credit to be claimed for the material removed. The amendment to regulation 21 ensures that it also applies in cases where the removal is required following a breach of the terms of a permit by virtue of which the land constitutes a landfill site.

7.5. There are currently around 540 landfill operators registered for the tax. All of them could be affected when permits take the place of their WMLs because there is always the potential for landfill sites to inadvertently accept waste that is not allowed under the terms of their permits. Failure to make the amendment could encourage unscrupulous site operators, who have accepted such waste, to say nothing about it to their environmental regulator and for the material to be landfilled. The long-term environmental consequences would depend on the nature of the material.

7.6. 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(S.I.1999/2075), which came into force on 1 October 1999, amended the FA 96 to provide these two exemptions.

7.7. A landfill site that needs to be restored at the end of each waste disposal phase will need to store suitable material, usually soils, in advance. Regulation 38, as amended by the Landfill Tax (Amendment) Regulations 2002 (S.I.2002/1) allows, material to be stored temporarily, without a charge to tax arising, pending, inter alia, its use for site restoration. The amendment to regulation 38 allows material that is to be used for restoration that is required by a permit to benefit from the temporary

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<sup>1</sup> OJ L257, 10/10/1996, p.0026-0040

disposal provisions in the same way that material that is to be used for restoration that is required by a licence or resolution benefits.

7.8. Inability to store material for site restoration purposes without a charge to tax arising will run contrary to the environmental aims of the introduction of the exemptions, as it could result in shortages of materials at times when they are needed. 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.

7.9. The LTCS redresses some of the environmental costs of landfill by improving the environment in the vicinity of landfill sites. Projects benefiting from LTCS funding include the reclaiming of land, improvements to local community facilities, repairs to places of worship and habitat creation projects in support of biodiversity.

7.10. The Government recognises the important contribution made by the LTCS. Although this amendment reduces the maximum amount as a percentage of his tax liability that a site operator may claim when contributing through the LTCS, because of an increase in the standard rate of LFT, the overall effect is an increase in the value of the scheme in line with inflation from £48.3 million in 2004-05 to £49.7 million in 2005-06.

## **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](mailto:john.durkan@hmce.gsi.gov.uk) can answer any queries regarding the instrument.