

EXPLANATORY MEMORANDUM TO
THE LANDFILL TAX (AMENDMENT) (NO. 2) REGULATIONS 2015

2015 No. 846

1. This explanatory memorandum has been prepared by HM Revenue & Customs ("HMRC") and is laid before the House of Commons by Command of Her Majesty.

2. Purpose of the instrument

These Regulations, which come into force on 1 April 2015, make provisions for information to be provided to HMRC about waste fines that are to be disposed of by means of landfill to support decisions about liability to landfill tax of waste fines. These are the smaller fractions of waste produced by any waste treatment process that includes an element of mechanical treatment.

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

It will be necessary for these Regulations to come into effect fewer than 21 days after they have been laid. The government announced at Autumn Statement that the new system of testing of waste fines would be introduced with effect from 1 April 2015 and there is considerable pressure in the industry for this to happen. These changes require primary legislation to amend the Finance Act 1996. The Government is obliged to bring this measure into force as soon as practicable after the coming into force of the primary legislation in Finance Act 2015. The Act received Royal Assent on 26th March 2015. These Regulations are therefore being laid at the earliest opportunity after the powers necessary to make and lay these Regulations have come into force.

It is essential that these Regulations should come into force at the same time as the Landfill Tax (Qualifying Fines) Order 2015 (S.I. 2015/845), made (and laid) at the same time as these Regulations under a 28-day 'made' affirmative procedure specified by s. 71(4) Finance Act 1996. That Order would not be properly supported without these Regulations being in force because the new system for waste fines requires, for its proper functioning, administrative provisions to be in place for information to be retained by landfill operators. This is to ensure that there is proper oversight of how the arrangements are being implemented.

A draft of these Regulations has been exposed for public consultation between 17 February 2015 and 10 March 2015, and there has been wide public consultation on the primary legislation and the policy more generally prior to these dates.

The main reasons why implementation of the policy on 1 April 2015 is regarded as essential are:

- prolonging the issue of mis-description of waste fines for landfill tax purposes which is making it increasingly difficult for compliant businesses to compete on a level playing field;
- some operators have already incurred costs preparing for implementation on 1 April in line with the previous announcement;
- the need to avoid confusion as some operators are applying the new testing system on a voluntary basis; and
- there is a growing backlog of waste stored at waste transfer stations pending clarification of liability, with the associated environmental risks.

4. Legislative Context

4.1 The primary legislation for landfill tax is contained in sections 39-71 of, and Schedule 5 to, the Finance Act 1996. These Regulations are made under section 71(9) and various paragraphs in the schedule.

4.2 These Regulations are ancillary to the Landfill Tax (Qualifying Fines) Order 2015 (S.I. 2015/845) ('the Order'), which sets out what fines are qualifying fines and conditions that must be met for treating fines as qualifying fines.

5. Territorial Extent and Application

This instrument applies to England, Wales and Northern Ireland.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 The government announced in the Autumn Statement 2014 that the UK would introduce a Loss on Ignition test in respect of waste fines that are sent to landfill.

7.2 The new test will help landfill site operators who are responsible for accounting for landfill tax to identify the correct tax liability of waste fines.

8. Consultation outcome

Formal consultation was carried out during summer 2014 on the proposals for how the testing regime will operate, including processes for the testing of samples and record-keeping requirements. The proposals set out in the consultation paper were refined through further discussion with a government-industry working group and the government issued its response to the comments made alongside the Autumn Statement

2014, along with a summary of the responses received. Draft primary legislation was published shortly after Autumn Statement 2014 and draft secondary legislation was published in February 2015 along with draft HMRC guidance.

9. Guidance

HMRC guidance will be updated to include details of the new reporting requirements in respect of the new test.

10. Impact

10.1 The changes will have limited impact on business and no impact is foreseen on charities or voluntary bodies.

10.2 The changes will have limited impact on the public sector.

11. Regulating small business

The legislation will apply to a very small number of small businesses.

12. Monitoring & review

HMRC will monitor the impact of the change through information collected from the joint industry-government working group, made up of waste industry representatives.

13. Contact

Phil Sears at HMRC Tel: 03000 585502 or email: phil.sears@hmrc.gsi.gov.uk can answer any queries regarding the instrument.