

EXPLANATORY MEMORANDUM TO
THE LANDFILL TAX (AMENDMENT) REGULATIONS 2016

2016 No. 376

1. Introduction

- 1.1 This explanatory memorandum has been prepared by HM Revenue and Customs and is laid before the House of Commons by Command of Her Majesty.
- 1.2 This memorandum contains information for the Select Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 The regulations amend the Landfill Tax Regulations 1996 (SI 1996/1527) (the ‘Principal Regulations’). These regulations: change the maximum credit that landfill site operators may claim against their annual landfill tax liability when making contributions in respect of the Landfill Communities Fund (‘LCF’); simplify record keeping requirements; remove the provisions that allow landfill operators to stipulate that funds must be invested for the purpose of generating interest; and remove the provisions permitting administration services to be provided by one environmental body to another.

3. Matters of special interest to Parliament

Matters of special interest to the Select Committee on Statutory Instruments

- 3.1 The laying of the instrument before the House of Commons at Budget breaches the “21 day rule”. The Government's public response to the consultation on a draft of this instrument was made at Budget 2016 and in consequence, HM Revenue and Customs was not able to lay this instrument before Budget 2016.
- 3.2 The amendments made by this instrument need to have effect on 1 April 2016. These regulations amend, amongst others, regulation 31(3) of the Landfill Tax Regulations 1996 (SI 1996/1527) (‘LFTR’) which specifies the maximum amount of credit (expressed as a percentage of their total liability) which landfill site operators may claim against their landfill tax liability, in any “contribution year”. Regulation 31 LFTR further defines a contribution year as being a period of 12 months beginning on 1 April.
- 3.3 It is necessary for those amendments to come into force on 1 April 2016 to coincide with the start of the new contribution year. Therefore, it has not been possible for HM Revenue and Customs to observe the “21 day rule”.

Other matters of interest to the House of Commons

- 3.4 As this instrument is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

- 4.1 Landfill tax was introduced by section 39 of the Finance Act 1996 ('FA 1996') and is chargeable on the disposal of waste made by way of landfill at a landfill site. Section 51 of FA 1996 provides a regulation-making power whereby persons liable to pay landfill tax are entitled to credit against their liability to the tax. Credit is established in accordance with prescribed rules. Sections 51 and 53 of FA 1996 provide for regulations to be made for securing an entitlement to credit if those persons pay sums to an environmental body ('EB') and other prescribed conditions are fulfilled. Regulation 30-36 of the Principal Regulations were made pursuant to those powers and provide for the establishment and administration of the LCF.
- 4.2 The LCF aims to address some of the impacts of landfill activity by improving the environment in the vicinity of landfill sites. The LCF is financed by the contributions from landfill site operators, who receive a credit for contributions they make to environmental bodies enrolled in the scheme.
- 4.3 EBs had accumulated large amounts of unspent funds exceeding more than twice the annual value of the fund, money that was not reaching communities as intended. Following the failure of the sector to meet the government's challenge to reduce the value of unspent funds, a consultation titled 'Reform of the Landfill Communities Fund' was published in March 2015.

5. Extent and Territorial Application

- 5.1 The extent of this instrument is England, Wales and Northern Ireland.
- 5.2 The territorial application of this instrument is England, Wales and Northern Ireland.

6. European Convention on Human Rights

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

7. Policy background

What is being done and why

- 7.1 The consultation in March 2015 sought views on proposals developed by a government/industry working group, which aimed to improve the flow of funds to communities by removing barriers that prevent or delay funding reaching projects. As a tax credit scheme, the LCF reduces the government's tax revenues and the government has a responsibility to provide value for money for the taxpayer. The changes being made will improve the flow of funds to communities by removing barriers that prevent funds reaching projects and ensure value for money for the taxpayer.
- 7.2 The amendments remove the ability of landfill operators to make payments to approved bodies on condition that funds are invested for the purpose of generating interest. This will speed up the time that funds reach community projects.
- 7.3 The amendments remove the object that permits LCF funds to be used for administration services provided by one EB to another, ensuring an increase in funds that are spent on projects to the benefit of communities.

- 7.4 The amendment made by regulation 5 of the regulations amends the value of the fund in 2016-17 to a maximum tax credit claimable of £39.3 million as announced at Autumn Statement 2015. This maximum tax credit claimable is managed by adjusting the capping percentage figure in relation to expected landfill tax liability during the contribution year.
- 7.5 The introduction of a 6 year limit on the requirement for environmental bodies to retain certain records will ease their administration burden because records relating to contributions made on or after 1 April 2016 will no longer have to be retained in perpetuity.

Consolidation

- 7.6 None.

8. Consultation outcome

- 8.1 The consultation 'Reform of the Landfill Communities Fund' was published on 18 March 2015 and ran until 10 June 2015. The consultation was aimed primarily at landfill operators, EBs and community groups who apply for LCF funding. There were 728 replies. A summary of responses was published on 25 November 2015.
- 8.2 The overall support for the continuance of the LCF was evident. The government has not taken forward a number of proposals for which there was little or no support. The amendments to the regulations reflects the proposals to which there was no objection, address concerns for increased simplification and less bureaucracy, will improve the flow of funds to communities by removing barriers that prevent funds reaching projects and ensure value for money for the taxpayer.
- 8.3 This instrument was exposed in draft on 9 December 2015 for a period of 8 weeks. Following representations from stakeholders, the Government has decided to withdraw proposed amendments to remove the provision for contributing third parties, and to remove a landfill operator's entitlement to credit should they require reimbursement of any part of the qualifying contribution made to an environmental body.

9. Guidance

- 9.1 A summary of responses to the consultation Reform of the Landfill Communities Fund was published on 25 November 2015 on the gov.uk website. Information has also been published on the website of ENTRUST, the LCF's regulator.

10. Impact

- 10.1 The impact on business, charities or voluntary bodies is negligible.
- 10.2 There is no impact on the public sector.
- 10.3 A Tax Information and Impact Note was published on the Government website gov.uk. This has been updated as a result of changes to the impacts as a result of this instrument and is available on the gov.uk website at <https://www.gov.uk/government/collections/tax-information-and-impact-notes-tiins>.

11. Regulating small business

- 11.1 The legislation applies to activities that are undertaken by small businesses.

11.2 To minimise the impact of the requirements on small businesses (employing up to 50 people), the approach taken is to keep to a minimum any new regulatory requirements as part of this change.

12. Monitoring & review

12.1 This will be monitored through the existing compliance programme for landfill tax and as part of the existing arrangements for monitoring the LCF.

13. Contact

13.1 Daniel Taylor at HM Revenue and Customs Telephone: 03000 585973 or email: Daniel.Taylor@hmrc.gsi.gov.uk can answer any queries regarding the instrument.