

EXPLANATORY MEMORANDUM TO

THE LANDFILL TAX (MISCELLANEOUS PROVISIONS) REGULATIONS 2018

2018 No. 396

1. Introduction

- 1.1 This explanatory memorandum has been prepared by HM Revenue and Customs (“HMRC”), and on behalf of HM Treasury where applicable, 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 These Regulations come into force on 1st April 2018.
- 2.2 Regulation 2, which is made by HM Treasury makes provision for certain disposals of material made at unauthorised landfill sites to be exempt from the extension of Landfill Tax to such sites otherwise effected by amendments made to the Finance Act 1996 (FA 1996) by the Finance Act 2018 (FA 2018).
- 2.3 The remainder of the Regulations are made by the Commissioners for HMRC. They amend the Landfill Tax Regulations 1996 (S.I. 1996/1527, and as previously amended) in order to make those Regulations compatible with the extension of liability to Landfill Tax to unauthorised sites.
- 2.4 These Regulations make changes to the provisions concerning the notification of the commencement of taxable activities at unauthorised sites, concerning the registration of such activities, record keeping, and the weighing of material disposed at them.
- 2.5 They also make definitional and other minor consequential changes, including provision to ensure that no credit to Landfill Tax is available where material disposed of at an authorised landfill site in England or Northern Ireland is required to be removed, unless that removal is to another authorised site in any part of the United Kingdom.

3. Matters of special interest to Parliament

Matters of special interest to the Select Committee on Statutory Instruments

- 3.1 This instrument is made and laid fewer than 21 days before it comes into force. As mentioned in paragraph 2.2, it is made ancillary to changes to the Landfill Tax primary legislation made by the FA 2018. Those changes come into force on 1st April 2018 and powers added to the FA 1996 by Schedule 12 to the FA 2018 are also required to make parts of this instrument. The FA 2018 has received Royal Assent fewer than 21 days prior to 1st April 2018. This instrument is made and laid as soon as reasonably practicable following Royal Assent. .
- 3.2 Regulation 2 is made as part of these regulations under the provisions of section 105 of the Deregulation Act 2015, which permits powers framed as exercisable by order (here, under section 46 of the FA 1996) to be made by regulation.

Other matters of interest to the House of Commons

- 3.3 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 The primary legislation for Landfill Tax is contained in section 39 -71 of, and Schedule 5 to, FA 1996 (as amended by section 42 of, and Schedule 12 to, FA 2018). The instrument is being made in connection with the extension of Landfill Tax to disposals at unauthorised sites. Landfill Tax is chargeable under section 40 of the FA 1996. This no longer applies in Scotland by virtue of section 31 of the Scotland Act 2012 or in Wales by virtue of section 19 of the Wales Act 2014. The latter takes effect from 1st April 2018 under S.I. 2018/214 (C. 21).

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 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 Landfill Tax was introduced on 1 October 1996 as a tax on the disposal of waste at permitted or licenced landfill sites. Its aim is to encourage more sustainable ways of managing waste, and since the introduction of the tax in the UK, landfilling is down more than 60%.
- 7.2 In 2008, a ruling by the Court of Appeal challenged the interpretation of what is a taxable disposal. This was in the case of the Commissioners for Her Majesty's Revenue and Customs v Waste Recycling Group Limited [2008] EWCA Civ 849. In this case, the Court of Appeal found that material put to use on a landfill site as daily cover or to construct roads within a landfill site was not taxable.
- 7.3 Initially legislative changes were introduced in The Landfill Tax (Prescribed Site Activities Order) 2009 that brought certain activities at a landfill site back into the scope of the tax.
- 7.4 Since then, some landfill operators have claimed for new uses not listed in the 2009 Order. This has created uncertainty over what constitutes a taxable disposal and has led to increased complexity for operators. In response to this, at Budget 2016 the government consulted on proposals to amend the definition of a taxable disposal to put the matter beyond doubt. The majority of respondents were supportive of the changes.
- 7.5 Further to these changes, at Spring Budget 2017, the government announced it would consult on whether to extend the scope of Landfill Tax to disposals of material at sites operating without the appropriate environmental permit or licence.

- 7.6 These unauthorised sites operate outside the scope of the tax, which makes the activity attractive to those who wish to exploit the disparity of tax treatment to undercut legitimate operators. Previously, the government has invested an additional £20m in the Environment Agency ('EA') in response to the increase in criminal activity in the waste sector. This had helped the EA close down 824 illegal waste sites in England in 2016/17. In spite of this increased activity, during the same year a further 852 new illegal waste sites were identified. By the end of 2016/17, there were 601 known illegal waste sites still operating in England.
- 7.7 As such, there was strong public support for these proposals and on 13 September 2017, the government announced it would extend the scope of Landfill Tax to unauthorised sites.
- 7.8 The OBR have forecast that these changes will raise £145m over the scorecard period by tackling those that disposal of waste at unauthorised sites. Alongside these changes, the government have provided both HMRC and the EA additional funds to tackle this activity.
- 7.9 Landfill Tax was devolved to Scotland in April 2015, and will be devolved to Wales from 1st April 2018. Both the Scottish and Welsh governments have provisions in their respective legislation for a charge on material deposited at illegal waste sites.

Consolidation

- 7.10 There is no current intention to consolidate the amendments that have been made to the Regulations.

8. Consultation outcome

- 8.1 The government published a consultation paper in May 2017, which set out the reasons for extending the scope of Landfill Tax to non-permitted sites, and asked for responses on a number of areas including how to define an illegal waste site and who should be liable for the tax.
- 8.2 Following support for the industry to the proposed changes, the government confirmed its intention to legislate to extend the scope of Landfill Tax to illegal waste sites and published a summary of responses to the consultation on gov.uk on 13 September 2017. Full consideration has been given to comments received.
- 8.3 A draft of this Instrument was exposed for public consultation on 22 January 2018 and full consideration has been given to comments received.

9. Guidance

- 9.1 Landfill Tax guidance is published in Notice LFT1 on gov.uk. HMRC is working closely with industry to publicise the changes and to update the guidance ahead of the changes coming into force.

10. Impact

- 10.1 The impact on compliant 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 13th September 2017 and is available on the Gov.uk website at

<https://www.gov.uk/government/publications/landfill-tax-disposals-not-made-at-landfill-sites/landfill-tax-disposals-not-made-at-landfill-sites> .

11. Regulating small business

- 11.1 The legislation applies to activities that are undertaken by small businesses.
- 11.2 No specific action is proposed to minimise regulatory burdens on small businesses.
- 11.3 This legislation does not change the existing burdens on small businesses.

12. Monitoring & review

- 12.1 HMRC will monitor the changes through its compliance risk review processes. The implementation and impact will be measured within the internal governance and risk management process.

13. Contact

- 13.1 James Wilson at HMRC. Telephone: 03000 575 578 or email: james.wilson3@hmrc.gsi.gov.uk can answer any queries regarding the instrument.