

2018 No. xxxx

LANDFILL TAX, ENGLAND AND WALES

LANDFILL TAX, NORTHERN IRELAND

The Landfill Tax (Amendment) Regulations 2018

Made - - - - - ***

Laid before the House of Commons ***

Coming into force - - - - - 1st April 2018

The Commissioners for Her Majesty's Revenue and Customs, in exercise of the powers conferred by sections 47(9), 47(9A), 47(9B), 49, 51, 68 and 71(9) of and paragraph 2 of Schedule 5 to the Finance Act 1996(a), make the following Regulations except regulation 2.

The Treasury, in exercise of the powers conferred by sections 46(1), 46(2) and 71(9) of the Finance Act 1996, makes regulations 1 and 2.

Citation, commencement and effect

1. These Regulations may be cited as the Landfill Tax (Amendment) Regulations 2018, come into force on 1st April 2018, and take effect in respect of disposals made or treated as made on or after that date.

Disposals of material not made at a landfill site

2.—(1) Disposal of material at a place that is not a landfill site within the meaning of section 40(2)(b) of the Finance Act 1996 is not a taxable disposal in the following circumstances.

(2) Such a disposal is not a taxable disposal in England where—

- (a) (i) the Environment Agency has published (and has not withdrawn) guidance in the form of a regulatory position statement(a); and

(a) 1996 (c. 8), as amended by section [42] of, and Schedule [12] to, the Finance Act 2018 (c. xx). Under section 71(2) of the Finance Act 1996, any power to make regulations under Part 3 of that Act shall be exercisable by "the Commissioners". Section 70(1) of that Act defines "the Commissioners" as those of Customs and Excise for the purposes of Part 3 of that Act. The functions of the Commissioners of Customs and Excise were transferred to the Commissioners for Her Majesty's Revenue and Customs by section 5(1) of the Commissioners for Revenue and Customs Act 2005 (c. 11). Section 50(1) of the latter Act provides that a reference to the Commissioners of Customs and Excise shall be taken as a reference to the Commissioners for Her Majesty's Revenue and Customs. Section 40 of the Finance Act 1996 was amended by the Scotland Act 2012 (c. 11), section 31, with effect from 1st April 2015 by virtue of S.I. 2015/638 (C. 35). Section 40 is also amended by section 19 of the Wales Act 2014 (c. 29) with effect from 1st April 2018 by virtue of S.I. [ADO]. Those amendments have the effect that, from 1st April 2018, landfill tax is only chargeable in respect of taxable disposals made in England or Northern Ireland.

- (ii) the disposal is within the scope of the version of the guidance applicable at the time of the disposal; or
 - (b) the disposal is undertaken as part of the operation of any relevant regulated facility in respect of which the operator of that facility holds a permit.
- (3) Such a disposal is not a taxable disposal in Northern Ireland where—
- (a) (i) the Department of Agriculture, Environment and Rural Affairs, or any agency thereof, has published (and has not withdrawn) guidance in the form of a regulatory position statement^(b); and
 - (ii) the disposal is within the scope of the version of the guidance applicable at the time of the disposal; or
 - (b) the disposal is undertaken as part of the operation of any licensed activity.
- (4) In this regulation—
 - “relevant regulated facility” means any of the regulated facilities listed in regulation 8(4) of the Environmental Permitting (England and Wales) Regulations 2016^(c);
 - “licensed activity” means any activity within the scope of a Northern Ireland permit or licence;
 - “Northern Ireland permit or licence” means—
 - (a) a waste management licence issued under Part 2 of the Waste and Contaminated Land (Northern Ireland) Order 1997^(d); or
 - (b) a permit made under regulations made under article 4 of the Environment (Northern Ireland) Order 2002^(e).

Amendments to the Landfill Tax Regulations 1996

- 3.** The Landfill Tax Regulations 1996^(f) are amended as follows.
- 4.** In regulation 2 (interpretation), in paragraph (1)—
 - (a) omit the definition of “accounting period” and substitute—
 - ““accounting period” has the meaning given in regulation 10;”;
 - (b) for the definition of “disposal”, substitute—
 - ““disposal” and “disposed of” shall be construed in accordance with section 40A of the Act (including any order made under that section or section 46 of the Act) (save in regulation 21(4)(c));”;
 - (c) after the definition of “disposal”, insert—
 - ““environmental regulator” means the Environment Agency in England and Department of Agriculture, Environment and Rural Affairs, or any agency thereof, in Northern Ireland;”;
 - (d) for the definition of “landfill site”, substitute—
 - ““landfill site” has the meaning given in section 40(4) of the Act;”.
- 5.** In regulation 4 (notification of liability to be registered)—
 - (a) after regulation 4(1), insert—

(a) <https://www.gov.uk/government/collections/basic-rules-environmental-permitting-regulatory-positions>. [Copies can be obtained from the Environment Agency at [address]].

(b) <https://www.daera-ni.gov.uk/articles/regulatory-position-statements>. [Copies can be obtained from [] at [address]].

(c) S.I. 2016/1154.

(d) S.I. 1997/2778 (N.I. 19), amended by the Waste and Contaminated Land (Amendment) Act (Northern Ireland) 2011 (2011 c. 5 (N.I.)).

(e) S.I. 2002/3153 (N.I. 7). There is an amending instrument, but it is not relevant.

(f) S.I. 1996/1527, amended by S.I. 1998/61, S.I. 2009/1930, S.I. 2013/755, S.I. 2015/826, S.I. 2015/1453. There are other amending instruments, but none is relevant.

“(1A) A registered person who is required by section 47(3A) of the Act to notify the Commissioners of their intention to carry out taxable activities shall do so by providing the information prescribed by paragraph (6).”

- (b) in paragraph (2), after “landfill site”, add “ or place other than a landfill site”;
- (c) in paragraphs (2), (3) and (4), in each case, for “the notification” substitute “a notification”;
- (d) in paragraph (4), omit “The” and insert “Subject to paragraph (5),” and “ after 1st August 1996”;
- (e) after paragraph (4), insert—

“(5) The Commissioners may allow a registered person additional time to comply with paragraph (4) in relation to a notification made under section 47(3A) of the Act.

(6) In paragraph (1A), the prescribed information required from a registered person is—

- (a) their name and address and, where applicable, company registration number;
- (b) their contact telephone number;
- (c) if a business, whether they are a sole trader, partnership or a company;
- (d) the address of each place other than a landfill site at which they intend to carry out taxable activities;
- (e) the details any licence or permit issued by an environmental regulator in respect of each place;
- (f) whether the intended disposals, or any of them, are within the scope of any published guidance issued by an environmental regulator in the form of a regulatory position statement;
- (g) if any disposals have already taken place at any place other than a landfill site at the time of notification, the address of each place at which such disposal occurred and the volume of the material disposed of;
- (h) a signed declaration that the information provided under the preceding subparagraphs is true and complete.”.

6. After regulation 6, insert—

“Registration: taxable activities at places other than a landfill site

6A.—(1) This regulation applies to taxable disposals of material—

- (a) at a place other than a landfill site; or
- (b) where it is not known whether the place of disposal is a landfill site at the time that any matter falls for consideration by the Commissioners under this regulation.

(2) The criterion the Commissioners shall apply in deciding whether to register a person (“P”) who carries out taxable activities is whether P carries out those activities at a place other than a landfill site.

(3) Subject to paragraph (4), the Commissioners may not register a person who carries out taxable activities at a place other than a landfill site.

(4) Where it is not known whether a place is a landfill site, the Commissioners may register P on a provisional basis, subject to the conditions prescribed in paragraph (5).

(5) The conditions referred to in paragraph (4) are that—

- (a) the Commissioners may require security under paragraph 31 of Schedule 5 to the Act from P during the period of provisional registration as if the site were a place other than a landfill site;
- (b) the Commissioners may require P to preserve records in accordance with regulations 16 and 16ZZA;
- (c) any period of provisional registration shall end—

- (i) when it is agreed or finally determined that a place is a place other than a landfill site;
 - (ii) if the Commissioners are provided by P with any information that is or becomes inaccurate; or
 - (iii) if P fails to account for any tax, make any returns, pay any tax, provide any security required by the Commissioners, or to preserve any records required by them to be preserved;
 - (d) in circumstances where a period of provisional registration ends under subparagraph (c), the Commissioners may determine that P shall be treated as if P had never been registered;
 - (e) if it is agreed or finally determined that a place is a landfill site, P must be unconditionally registered with effect from the time that P began taxable activities.
- (6) In paragraph (5)—
- (a) “agreed” means agreed between P and the Commissioners;
 - (b) “finally determined” means that—
 - (i) an environmental regulator has determined whether a place is a place other than a landfill site and any dispute as to that determination has been resolved by agreement or otherwise finally concluded; or
 - (ii) an appeal under section 55(1)(a) of the Act brought by P against a decision by the Commissioners to decline to register them on the ground contained in paragraph (3) has been finally determined.”.

7. In regulation 7 (transfer of a going concern)—

- (a) after paragraph (1)(a), insert—

“(ab) that business includes taxable activities that are carried out by a registered person;”;

- (b) after paragraph (5)(a), insert—

“(ab) that business includes taxable activities that are carried out by a registered person;”.

8. In regulation 9 (bankruptcy or incapacity of registrable person), in paragraph (1), after “If a registrable person”, insert “carrying out disposals at a landfill site”.

9. For regulation 10 (interpretation), substitute—

“(1) An accounting period means—

- (a) in the case of a registered person, each period of three months ending on the dates notified to him by the Commissioners, whether by means of a registration certificate issued by them or otherwise;
- (b) in the case of a registrable person who is not registered, each quarter; or
- (c) in the case of any registrable person, such other period in relation to which he is required by or under regulation 11 to make a return;

and, in every case, the first accounting period of a registrable person shall begin on the effective date of registration.

(2) For the purposes of paragraph (1), reference to a registrable person shall be limited to a person who carries out taxable activities at a landfill site.”.

10. In regulation 11 (making of returns), in paragraphs (1), (2) and (3), in each case, for “registrable person” substitute “registered person”.

11. In regulation 12 (landfill tax account), in paragraph (1), for “registrable person” substitute “registered person”.

12. In regulation 13 (correction of errors), in paragraphs (2), (4), (5) and (6)(b), in each case, for “registrable person” substitute “registered person”.

13. In regulation 16 (records)—

- (a) in the heading, after “Records”, insert “: landfill sites”;
- (b) in paragraph (1), after “registrable person”, insert “carrying out taxable activities at a landfill site”;
- (c) in paragraph 1(e) and in paragraph (5)(a), in each case, for “relevant transaction”, substitute “disposal”;
- (d) omit paragraph (6).

14. After regulation 16, insert—

“Records: taxable activities at places other than landfill sites

16ZZA.—(1) Every registrable person (“RP”) carrying out taxable activities at a place other than a landfill site shall preserve the following records—

- (a) their business and accounting records;
- (b) their landfill tax account;
- (c) transfer notes and any other original or copy records in relation to material brought onto or removed from the place other than a landfill site;
- (d) all invoices (including landfill invoices) and similar documents issued to RP and copies of such invoices and similar documents issued by RP;
- (e) all credit or debit notes or other documents received by RP which evidence an increase or decrease in the amount of any consideration for a disposal, and copies of such documents that are issued by RP;
- (f) copies of any application made by RP to an environmental regulator in respect of a place other than a landfill site at which they carry out taxable activities;
- (g) such other records as the Commissioners may specify in a notice published by them and not withdrawn by a further notice.

(2) Subject to paragraph (3) below, every registrable person shall preserve the records specified in paragraph (1) above for a period of six years.

(3) The Commissioners may direct that registrable persons shall preserve the records specified in paragraph (1) above for a shorter period than that specified in this regulation; and such direction may be made so as to apply generally or in such cases as the Commissioners may stipulate.”.

15. In regulation 16ZA (information relating to qualifying fines), in paragraph (1), after “registrable person” insert “carrying on taxable activities at a landfill site”.

16. In regulation 16A (information areas), paragraph (2), omit “as waste”.

17. In regulation 18 (scope), paragraph (1), after “credit”, insert “in respect of disposals at a landfill site”.

18. In regulation 20 (payments in respect of credit), in paragraph (1), after “registrable person”, add “in respect of disposals at a landfill site”.

19. In regulation 21 (entitlement to credit)—

- (a) in paragraph (4)(c), omit “taxable” and after “has been made”, insert “at a UK landfill site”;
- (b) in paragraph (7), after the definition of “screening bund”, omit the full stop, substitute a semi-colon and insert the following additional definition—

““UK landfill site” means—

- (a) a landfill site;
 - (b) a landfill site in respect of which there is an authorisation in force at the time of the disposal within the meaning of section 12(1) of the Landfill Tax (Scotland) Act 2014^(a); or
 - (c) an authorised landfill site within the meaning of section 5 of the Landfill Disposals Tax (Wales) Act 2017^(b).”;
 - (c) after paragraph (7), insert—
- “(8) For the purposes of paragraph (4)(c) only, “disposal” shall be construed—
- (a) when that disposal takes place in England or Northern Ireland, in accordance with the definition in regulation 2(1);
 - (b) in Scotland, in accordance with section 4 of the Landfill Tax (Scotland) Act 2014; or
 - (c) in Wales, in accordance with section 4 of the Landfill Disposals Tax (Wales) Act 2017.”.

20.—(1) After the heading “PART X”, insert the new sub-heading “CHAPTER I”.

(2) In the title, after “DISPOSED OF”, insert “AT A LANDFILL SITE”.

21. In regulation 41 (scope)—

- (a) for “Part”, substitute “Chapter”;
- (b) after “disposal”, insert “at a landfill site”.

22. After regulation 44, insert—

- (a) the sub-heading “CHAPTER II: DETERMINATION OF WEIGHT OF MATERIAL DISPOSED OF AT A PLACE OTHER THAN A LANDFILL SITE”; and
- (b) after that sub-heading—

“Scope

44A. This Chapter applies for the purpose of determining the weight of material comprised in a taxable disposal at a place other than a landfill site.

Method

44B.—(1) The weight of material disposed of at a place other than a landfill site is to be determined in accordance with the prescribed rules set out in paragraph (2) and references in this Chapter to weight shall be construed as references to the weight of such material.

(2) The prescribed rules are that weight is to be determined—

- (a) by reference to any records held by a taxable person relating to the volume of the material disposed of, provided that the Commissioners are reasonably satisfied as to the completeness and accuracy of those records;
- (b) by using any reasonable method of estimation of the volume of the material disposed of, including, but not limited to, the use of technology;
- (c) by applying a multiplier of 1.5 per cubic metre of material to its volume (whether determined under sub-paragraph (a) or (b)), in order to calculate its weight, expressed in tonnes (to one decimal place);
- (d) without any discounting of constituents (including water);

(a) 2014 asp 2.
(b) 2017 anaw 3.

- (e) by reference to the material disposed of that is present at a place other than a landfill site at the time that the Commissioners carry out any inspection of that material, but they may also take into account—
 - (i) such other information that they may obtain in relation to material disposed of that place that is no longer present at the time of any inspection (including from records held by a taxable person);
 - (ii) any information provided to them by an environmental regulator;
- (f) by the Commissioners making such reasonable apportionment as they can in the circumstances between the weight of the material and the weight of any other material previously disposed of and assessed to tax under section 50A of the Act or paragraph 31 of Schedule 12 to the Finance Act 2018(a).”.

Name
Name

Date Two of the Commissioners for Her Majesty’s Revenue and Customs

Name
Name

Date Two of the Lords Commissioners of Her Majesty’s Treasury

EXPLANATORY NOTE

(This note is not part of these Regulations)

These Regulations make amendments to 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 places other than landfill sites under amendments made to the Finance Act 1996 by the Finance Act 2018. These Regulations make changes to provisions concerning the notification of the commencement of taxable activities at places other than a landfill site, concerning the registration of such activities, record-keeping, and the weighing of material disposed at them. 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.

Regulation 2 makes provision ancillary to the extension of Landfill Tax by the Finance Act 2018 to disposals at a place other than a permitted or licensed landfill site. It ensures that certain kinds of disposals will not be taxed when the Environment Agency in England, or the Northern Ireland Environment Agency, do not enforce the requirement for an environmental permit in accordance with guidance published by them, or where those activities are within the scope of certain non-disposal permits or licence.

A Tax Information and Impact Note covering this instrument was published on [xx] December 2017 and is available on the gov.uk website at <https://www.gov.uk/government/collections/tax-information-and-impact-notes-tiins>. It remains an accurate summary of the impacts that apply to this instrument.

(a) 2018 c. xx.