

2018 No.

LANDFILL TAX, ENGLAND AND WALES

LANDFILL TAX, NORTHERN IRELAND

**The Devolution of Landfill Tax (Wales) (Consequential,
Transitional and Saving Provisions) Order 2018**

Made - - - - - ***
Laid before the House of Commons ***
Coming into force - - - 31st March 2018

The Treasury, in exercise of the powers conferred by sections 28(1), 28(2) and 28(3) of the Wales Act 2014(a), makes the following Order:

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Devolution of Landfill Tax (Wales) (Consequential, Transitional and Saving Provisions) Order 2018 and comes into force on 31st March 2018.

(2) The amendments made by article 2 of this Order take effect in respect of any payment to an approved body accounted for in a return for an accounting period beginning on or after the first day of the transitional period.

(3) The transitional and saving provisions made in the rest of this Order take effect in respect of a payment or disposal made in any accounting period.

(4) In this Order—

“FA 1996” means the Finance Act 1996(b);

“LFTR 1996” means the Landfill Tax Regulations 1996(c);

“relevant amendments” means the amendments made to LFTR 1996 by article 2 of this Order;

“transitional period” means a period of 2 years which commences on the day on which the amendments made by sections 18 and 19 of the Wales Act 2014 come into force.

(5) Save where an alternative meaning is given, expressions used in this Order have the same meaning as they have in LFTR 1996.

Amendments to LFTR 1996

2. In regulation 33 LFTR 1996—

(a) 2014 c. 29.

(b) 1996 c. 8.

(c) S.I. 1996/1527, amended by S.I. 2015/599, S.I. 2016/376. There are other amending instruments, but none is relevant.

- (a) in paragraph (11), omit “, Wales, ”;
- (b) in paragraph (12)(b), omit “, Wales”;
- (c) in paragraph (12)(c), omit “, Wales”.

Transitional provisions: credit- bodies concerned with the environment

- 3.—(1) The relevant amendments are disregarded where—
- (a) a payment is a qualifying contribution at the time it is made;
 - (b) as a result of the relevant amendments, the payment would not be a qualifying contribution if it were to be accounted for in a return for an accounting period beginning on or after the first day of the transitional period; and
 - (c) either—
 - (i) the payment is spent by an approved body during the transitional period; or
 - (ii) it is treated as having been so spent under paragraph (2).
- (2) A payment is treated as spent immediately prior to the end of the transitional period where that payment is retained by an approved body to be spent either—
- (a) on its residual costs; or
 - (b) on its other running costs.
- (3) In a case where article 3(1)(c)(i) applies, a qualifying contribution is spent—
- (a) if one of the requirements specified in regulation 30(2) LFTR 1996 has been satisfied; and
 - (b) in a case where regulation 30(2)(a) LFTR 1996 applies, the condition to which that sub-paragraph refers was imposed at a time prior to the making of this Order.
- (4) In article 3(2)(a), the retention of the payment must be approved by the regulatory body.
- (5) For the purposes of article 3(2)(b)—
- (a) the payment retained for other running costs must not exceed the proportion of that body’s total running costs (whether or not those are residual costs) that is, on a just and equitable basis, attributable to its carrying out of approved objects; and
 - (b) the proportion of qualifying contributions retained to be spent on other running costs must not exceed the amount specified by regulation 33(8) LFTR 1996, reading that regulation as if reference to “other running costs” were substituted for “running costs”.
- (6) For the purposes of a contribution to which article 3(2) applies—
- (a) regulations 36(1)(a)(i) and 36(1)(a)(ii) LFTR 1996 (repayment of credit) shall respectively be read as if “or is treated as spent” were inserted after the words “has been”;
 - (b) regulation 36(1)(c)(ii) LFTR 1996 shall be read as if “or treated as spent” were inserted after “had not been spent”.
- (7) In this article—
- (a) “approved objects” means any objects that are approved objects on the day that the transitional period ends in respect of any payment to which this article does not apply;
 - (b) “other running costs” means running costs, other than residual costs;
 - (c) “residual costs” means sums set aside by an approved body for its running costs (including contractual or statutory costs) where those are incidental to, or consequential on, the cessation of its operations.

Saving for disposals treated as having been made after the relevant day by section 61 of FA 1996

4. Notwithstanding the amendments made by section 19 of the Wales Act 2014, the provisions of Part 3 of, and Schedule 5 to, FA 1996 shall continue to apply to disposals that are made before

the commencement of the transitional period when those are treated as having been made on or after that day under section 61(1) of FA 1996.

	<i>Name</i>
	<i>Name</i>
Date	Two of the Lords Commissioners of Her Majesty's Treasury

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes consequential, transitional and saving arrangements in relation to the devolution of landfill tax to Wales. Specifically, it makes amendments to the Landfill Tax Regulations 1996 (S.I. 1996/1527) (“LFTR 1996”) to reflect the fact that landfill tax will no longer be charged in Wales with effect from the day on which sections 18 and 19 Wales Act 2014 (c. 29) come into force (the “commencement date”). The amendments made by the Order will come into force on the commencement date.

Sections 51 and 53 of FA 1996 together with Part 7 of LFTR 1996 provide that a person liable to pay landfill tax (“the taxable person”) is entitled to credit where that person pays a sum to an environmental body (an “approved body”) and that body meets specified objectives (“approved objects”).

The effect of the amendments made to LFTR 1996 by article 2 of this Order is to provide that, following devolution of landfill tax to Wales, the taxable person shall only be entitled to credit where the objects of the approved body to whom the sum is paid involve work carried out wholly or primarily in England or Northern Ireland (landfill tax was devolved to Scotland in 2015).

Article 3 establishes a transitional regime where, for a period of 2 years from the commencement date, the amendments made by article 2 will not have effect. This is in 2 situations: where sums have been paid to an approved body prior to the commencement date and are spent during the 2 year transitional period; and when sums are not spent within the transitional period, but are treated as if they had been. The latter will apply in respect of sums held to meet the running costs of an approved body, including on the cessation of its operations, under various conditions.

Article 3 also modifies the effect of regulation 36 of LFTR 1996 for the purposes of payments falling within the transitional regime, so that Her Majesty's Revenue and Customs can require the repayment of credit from a taxable person in cases where they are not satisfied that the approved body to whom it was paid will use it for an approved purpose.

Article 4 is a saving provision, so that the amendments made by section 19 Wales Act 2014 do not have effect in relation to taxable disposals that took place prior to the date of the coming into force of that section, but are treated as though they had been made after that date in accordance with section 61 of FA 1996.

A tax impact and information note covering this instrument was published on [xxxxx] and is available on the gov.uk website at <https://www.gov.uk/collections/tax-information-and-impact-notes-tiins>. It remains an accurate summary of the impacts that result from this instrument.