

*Order made by the Treasury and laid before the House of Commons under section 71(4) and (7) of the Finance Act 1996, for approval by resolution of the House of Commons within twenty eight days beginning with the day on which the Order was made, subject to extension for periods of dissolution, prorogation or adjournment for more than four days.*

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STATUTORY INSTRUMENTS

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**2018 No. xxxx**

**LANDFILL TAX, ENGLAND AND WALES**

**LANDFILL TAX, NORTHERN IRELAND**

**The Landfill Tax (Disposals of Material) 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 40A(5), (6), (7), (8), 46(1), 46(2) and 65A(1) of the Finance Act 1996(a), makes the following Order:

**Citation, definition, commencement and effect**

**1.**—(1) This Order may be cited as the Landfill Tax (Disposals of Material) Order 2018 and comes into force on [31st March 2018].

(2) Articles [4 and 5] have effect in relation to the disposal of material(b) (including material treated as disposed of under this Order) at a landfill site(c) on or after 1st April 2018.

(3) Article 6 has effect in relation to disposals from 1st April 2018.

**2.** In this Order—

“FA 1996” means the Finance Act 1996;

“environmental permit” has the meaning given by regulation 13(1) of the EPEWR;

“EPEWR” means the Environmental Permitting (England and Wales) Regulations 2016(d).

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(a) 1996 c. 8. Section 40A of the Finance Act 1996 was inserted, and section 46(2) amended, by [section [xx] of the Finance Act 2018.] Under section 71(1) of the Finance Act 1996, any power to make an Order under Part 3 of that Act (apart from under section 57) shall be exercisable by the Treasury. 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.

(b) “Material” is defined by section 70(1) of the Finance Act 1996.

(c) “Landfill site” is defined by section by section 70(1) of the Finance Act 1996 (as amended by paragraph [x] of Schedule [x] to the Finance Act 2018).

(d) S.I. 2016/1154.

## Revocation

3. The Landfill Tax (Prescribed Landfill Site Activities) Order 2009(a) is revoked on 1st April 2018.

## Disposals of material at landfill sites

4.—(1) The material listed in paragraphs (2) and (3) is treated as disposed of for the purposes of Part 3 of FA 1996 where it would not otherwise be so treated.

(2) All material placed in a landfill cell except—

- (a) material that forms a layer which performs the function of drainage at the base of a landfill cell;
- (b) material that forms the impermeable layer that delimits the landfill cell;
- (c) a pipe, pump or associated infrastructure inserted into a landfill cell for the purposes of the extraction or control of surplus liquid or gas from or within that cell;
- (d) material used for restoration of a landfill cell that only contains inert material; and
- (e) material placed in an information area within the meaning given by regulation 16A(1) of the Landfill Tax Regulations 1996(b).

(3) All material placed on or under a landfill site, but outside a landfill cell, and used to create or maintain—

- (a) a temporary haul road that gives access to a landfill cell;
- (b) a temporary base on which sorting, treatment, processing, storage, recycling or any similar activity is carried out; or
- (c) a temporary structure (whether below or above ground) put in place to protect or conceal any activity or to reduce nuisance from noise, except where the material so used is naturally occurring material extracted from the landfill site in which the structure is located.

(4) In this article—

“impermeable layer” means any layer, liner, seal or cap that seeks to prevent the transmission of liquids or gasses;

“landfill cell” means a unit or structure in which material is placed that is delimited by an impermeable layer along its base and sides and, save where the cell only contains inert material, at the top of the unit or structure;

“relevant instrument” is a permit or licence referred to in section 40(4) FA 1996(c) or a planning consent in respect of the land in or on which a landfill cell is situated;

“restoration” means work that is required by a relevant instrument to be carried out to restore a landfill site to use once the disposal of material in it has been concluded.

5. For the purposes of Part 3 of FA 1996, material is to be treated as not disposed of (where otherwise it would be so treated) where it has previously been treated as disposed of under article 2.

## Disposals of prohibited material

6.—(1) Disposal of any prohibited material is to be treated as a prohibited disposal falling within section 40(2)(b) of FA 1996.

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(a) S.I. 2009/1929.

(b) S.I. 1996/1527, inserted by S.I. 2009/1930. [These Regulations are further amended by S.I. 2018/xxxx.]

(c) As inserted by paragraph [x] of Schedule [x] to the Finance Act 2018.

(2) In paragraph (1), “prohibited material” means any material (including the dilution of such material)—

- (a) in England, the disposal of which a regulator is required to exclude from the scope of an environmental permit by virtue of paragraph 5(1)(b) of Schedule 10 to the EPEWR;
- (b) in Northern Ireland, listed in regulation 9 of the Landfill Regulations (Northern Ireland) 2003(a).

	<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 gives effect to certain exemptions to Landfill Tax under amendments made to the Finance Act 1996 (c. 8) by section [x] of, and Schedule [x] to, the Finance Act 2018. The Order will work in conjunction with amendments made by the Finance Act 2018.

First, these measures implement a simpler system for determining what is a ‘taxable disposal’ for the purposes of landfill tax. This Order provides for certain material to be treated as disposed of at a landfill site (meaning a site for which an environmental permit or licence subsists, in the light of other amendments to the Finance Act 1996 made by the Finance Act 2018 to be commenced simultaneously with the commencement of this Order) in specified circumstances.

Secondly, the Order 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 provides that the disposal of certain types of material at a place other than an authorised landfill site is taxed, when such disposal cannot be permitted or licensed under environmental legislation.

Finally, the Order expressly revokes the Landfill Tax (Prescribed Landfill Site Activities) Order 2009 (S.I. 2009/1929).

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.

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(a) S.R. (NI) 2003 No 496, amended by S.R. (NI) 2004 No 297, S.R. (NI) 2013 No 161. There are other amending instruments, but none is relevant.