

EXPLANATORY MEMORANDUM TO
THE DEVOLUTION OF LANDFILL TAX (WALES) (CONSEQUENTIAL,
TRANSITIONAL AND SAVING PROVISIONS) ORDER 2018
2018 No. [XXXX]

1. Introduction

- 1.1 This explanatory memorandum has been prepared by Her Majesty's Revenue and Customs on behalf of HM Treasury and is laid before the House of Commons by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 This instrument will take effect on the devolution to Wales of the power to introduce a tax on disposals to landfill. It provides for: the closure of the Landfill Communities Fund (LCF) in Wales; arrangements for a two year transitional period during which environmental bodies may continue to spend funds on projects in Wales; and for UK landfill tax to apply on disposals up until devolution 2018, including where, under special accounting provisions in the Finance Act 1996 (FA96), it would normally be accounted for at a later date.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Other matters of interest to the House of Commons

- 3.2 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 FA 1996 and is chargeable on the disposal of waste made by way of landfill at a landfill site. Section 51 of FA1996 provides a regulation-making power whereby persons liable to pay landfill tax are entitled to credit against their liability to tax. Credit is established in accordance with prescribed rules. Section 53(1) of FA 1996 provides for regulations to be made for securing an entitlement to credit if those persons pay sums to an environmental body and other prescribed conditions are fulfilled. Regulations 30-36 of the Landfill Tax Regulations 1996 (SI 1996/1527) (LFTR) 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 contributions from landfill operators who receive a credit for contributions they make to environmental bodies enrolled in the scheme.
- 4.3 Sections 18 and 19 of the Wales Act 2014 provide for, firstly, the devolution of landfill tax to Wales, and secondly, the disapplication of the existing UK landfill tax in Wales. It is intended that the devolution to Wales will take effect from 1 April 2018. On or after

that date, landfill tax credits provided for under the existing landfill tax legislation will only be available to landfill operators registered for and paying landfill tax in England and Northern Ireland. Landfill tax was devolved to Scotland from 1 April 2015.

- 4.4 This Order amends the scope of the existing LCF with effect from devolution so that it corresponds with the revised territorial scope of the present landfill tax legislation so that landfill operators who will remain subject to the existing landfill tax regime after devolution will only be eligible to receive tax credits in respect of contributions made to environmental bodies carrying out work in England and Northern Ireland.
- 4.5 When the tax is devolved, some environmental bodies may be holding unspent funds derived from contributions by landfill operators across England, Northern Ireland and Wales. This Order also establishes a transitional regime so that landfill operators who have previously made contributions to environmental bodies carrying out work in Wales will remain eligible for a tax credit provided those contributions are spent within 2 years of the date upon which devolution of landfill tax takes place and in certain other circumstances.

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 Landfill tax will be devolved to Wales from 1 April 2018.
- 7.2 The Wales Bill 2014 Command Paper (Cm 8838) stated that there would be a 2 year transitional period for the application of the LCF in Wales.
- 7.3 The LFTR are amended so that, when landfill tax is devolved to Wales, only landfill operators registered in England and Northern Ireland will be eligible to claim landfill tax credit under the existing legislation in respect of a contribution to an environmental body for approved projects sited in England and Northern Ireland.
- 7.4 The amendments allow for unspent funds held by environmental bodies immediately prior to devolution to continue to be spent on projects in Wales for a two year transitional period.
- 7.5 The amendments also allow for funds to be treated as spent at the end of the transitional period in two other situations: (1) if they are held to meet running costs set aside for costs related to the cessation of operations in the future when those sums are agreed with the regulatory body; or (2) if they are held to meet its other running costs, provided that those costs are in proportion to the total amount of funds that are spent by that body on projects in England and Northern Ireland and also meet a test of proportionality already set out in the LFTR.
- 7.6 Any funds remaining at the end of the transitional period, other than those that are treated as spent, and those which can no longer be spent, namely funds held by environmental

bodies who fund only projects in Wales, may be recovered from the landfill operator who claimed a tax credit for the original contribution.

- 7.7 UK landfill tax will be paid on all disposals up to devolution including where it would normally be accounted for at a later date, ensuring that the correct tax is paid to HM Revenue and Customs.

Consolidation

- 7.8 None.

8. Consultation outcome

- 8.1 None.

9. Guidance

- 9.1 A mailshot to all registered operators was sent on the same day as the draft legislation was published on www.Gov.uk. Information is also published on the website of ENTRUST, the LCF's regulator www.entrust.org.uk.

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 An Impact Assessment is submitted with this memorandum and is published alongside the Explanatory Memorandum on www.Gov.uk.

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

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 Catherine Mawer at HM Revenue and Customs Telephone: 03000 585946 or email: Catherine.Mawer@hmrc.gsi.gov.uk can answer any queries regarding the instrument.