STATUTORY INSTRUMENTS

2018 No. 442

LANDFILL TAX, ENGLAND
LANDFILL TAX, NORTHERN IRELAND

The Landfill Tax (Disposals of Material) Order 2018

Approved by the House of Commons

	at 10.15 a.m. on
Made - - - -	*28th March 2018*
Laid before the House of Commons - - - -	*at 3.00 p.m. on 28th March 2018*
Coming into force - -	*1st April 2018*

The Treasury, in exercise of the powers conferred by section 40A(5), (6), (7) and (8) of the Finance Act 1996(**1**), make the following Order.

Citation, commencement, interpretation and effect

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

(2) Article 2 has effect in relation to the disposal of material(**2**) (including material treated as disposed of under this Order) at a landfill site(**3**) when that disposal is made or treated as made on or after 1st April 2018.

(3) Article 3 has effect in relation to the disposal of material made or treated as made on or after 1st April 2018.

Disposals of material at landfill sites

2.—(1) Material to which paragraph (2) or (4) applies is to be treated as disposed of for the purposes of Part 3 of the Finance Act 1996 where it would not otherwise be so treated.

(**1**) 1996 c. 8. Section 40A of the Finance Act 1996 was inserted by section 42 of, and Schedule 12 to, the Finance Act 2018 (c. 3). 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, as amended by section 31 of the Scotland Act 2012 (c. 11) and by section 19 of the Wales Act 2014 (c. 29) with effect from 1st April 2018 by virtue of S.I. 2018/214 (C. 21), has the effect that, from 1st April 2018, landfill tax is only chargeable in respect of taxable disposals made in England or Northern Ireland. Section 70(1) of the Finance Act 1996 provides that "prescribed" means prescribed by an order or regulations under Part 3 of that Act.

(**2**) "Material" is defined by section 70(1) of the Finance Act 1996.

(**3**) "Landfill site" is defined by section 70(1) of the Finance Act 1996 as having the meaning given by section 40(4) of that Act. Both the definition in section 70(1), and section 40(4), were added to the Finance Act 196 by Schedule 12 to the Finance Act 2018.

(2) This paragraph applies to all material placed in a landfill cell except material described in paragraph (3).

(3) Paragraph (2) does not apply to—

(a) material placed in a landfill cell which forms a layer immediately above the base of that cell and performs the function of drainage;

(b) 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;

(c) material used for restoration of a landfill cell, where that cell only contains inert material; or

(d) material placed in an information area within the meaning of paragraph 1A(3) of Schedule 5 to the Finance Act 1996.

(4) This paragraph applies to 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 or recycling 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.

(5) In this article—

"impermeable layer" means any layer, liner, seal or cap that has the function of preventing the transmission of liquids or gases;

"landfill cell" means a structure formed of an impermeable layer at 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) of the Finance Act 1996(**4**) 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 cell to use once the disposal of material in it has been concluded.

Disposals of prohibited material

3.—(1) A prohibited disposal is to be treated as a disposal falling within section 40(2)(b) of the Finance Act 1996(**5**).

(2) The following enactments are prescribed for the purpose of the definition of "prohibited disposal"—

(a) in England, paragraph 5(1)(b) of Schedule 10 to the Environmental Permitting (England and Wales) Regulations 2016(**6**);

(b) in Northern Ireland, regulation 9 of the Landfill Regulations (Northern Ireland) 2003(**7**).

(**4**) Section 40(4) was inserted by paragraph 2 of Schedule 12 to the Finance Act 2018.
(**5**) "Prohibited disposal" is defined in section 40A(7) of the Finance Act 1996, inserted by paragraph 4 of Schedule 12 to the Finance Act 2018.
(**6**) S.I. 2016/1154. A regulator is required to exclude a disposal from the scope of an environmental permit by virtue of this provision. There is an instrument amending these Regulations, but it is not relevant.
(**7**) S.R. (NI) 2003 No. 496, amended by S.R. (NI) 2004 No. 297, 2013 No. 161 and 2015 No. 14. There are other amending instruments, but none is relevant. Regulation 9 lists descriptions of material, the disposal of which is prohibited.