STATUTORY INSTRUMENTS

2018 No. 396

LANDFILL TAX, ENGLAND
LANDFILL TAX, NORTHERN IRELAND

The Landfill Tax (Miscellaneous Provisions) Regulations 2018

Made - - - -	*21st March 2018*
Laid before the House of Commons - - - -	*23rd March 2018*
Coming into force - -	*1st April 2018*

The Commissioners for Her Majesty's Revenue and Customs make the following Regulations, except regulation 2, 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(**1**), and now exercisable by them(**2**).

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

Citation, commencement and effect

1. These Regulations may be cited as the Landfill Tax (Miscellaneous Provisions) 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 (and to the extent that) either—

(**1**) 1996 c. 8, as amended by section 42 of, and Schedule 12 to, the Finance Act 2018 (c. 3). The Finance Act 2018 amends sections 46(2), 47 and 49 of the Finance Act 1996 and inserts new sections 40A and 50A.

(**2**) 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.

(a) the Environment Agency has published (and has not withdrawn) guidance in the form of a regulatory position statement(**3**) and the disposal is within the scope of the version of the guidance applicable at the time of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 an environmental permit.

(3) Such a disposal is not a taxable disposal in Northern Ireland where (and to the extent that) either—

(a) 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(**4**) and 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—

"environmental permit" has the meaning given in regulation 13(1) of the EPEWR 2016;

"EPEWR 2016" means the Environmental Permitting (England and Wales) Regulations 2016(**5**);

"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(**6**); or

(b) a permit issued under regulations made under article 4 of the Environment (Northern Ireland) Order 2002(**7**);

"relevant regulated facility" means any of the regulated facilities listed in regulation 8(4) of the EPEWR.

Amendments to the Landfill Tax Regulations 1996

3. The Landfill Tax Regulations 1996(**8**) 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—

(**3**) https://www.gov.uk/government/collections/basic-rules-environmental-permitting-regulatory-positions. Copies can be obtained from the Environment Agency at National Customer Contact Centre, PO Box 544, Rotherham, S60 1BY.

(**4**) https://www.daera-ni.gov.uk/articles/regulatory-position-statements. Copies can be obtained from the Regulation Unit, Resource Efficiency Division, Northern Ireland Environment Agency, Klondyke Building, Cromac Avenue, Malone Lower, Belfast, BT7 2JA.

(**5**) S.I. 2016/1154, relevantly amended by S.I. 2018/110.

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

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

(**8**) 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.

""environmental regulator" means the Environment Agency in England and the Department of Agriculture, Environment and Rural Affairs, or any agency thereof, in Northern Ireland;"; and

(d) in the definition of "landfill site", for "section 66", substitute "section 40(4)".

5. In regulation 4 (notification of liability to be registered)—

(a) after paragraph (1), insert—

"(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), for "The", substitute "Subject to paragraph (5), a " and omit "after 1st August 1996"; and

(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) For the purposes of 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 of any licence or permit issued by an environmental regulator in respect of each place;

(f) whether any of the intended disposals 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 sub-paragraphs 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) Subject to paragraph (3), the Commissioners may not register a person ("P") who carries out taxable activities at a place other than a landfill site.

(3) 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 (4).

(4) The conditions referred to in paragraph (3) 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 preserve any records required by them to be preserved;

(d) in circumstances where a period of provisional registration ends under sub-paragraph (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 registered with effect from the time that P began taxable activities.

(5) In paragraph (4)—

(a) "agreed" means agreed between P and the Commissioners; and

(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—

"**Interpretation**

10.—(1) In this Part, an accounting period of a registered person means each period of three months ending on the dates notified to that person by the Commissioners, whether by means of a registration certificate issued by them or otherwise.