

Statutory Instrument 1999 No. 3270

The Landfill Tax (Amendment) Regulations 1999

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STATUTORY INSTRUMENTS

1999 No. 3270

LANDFILL TAX

The Landfill Tax (Amendment) Regulations 1999

<i>Made</i>	<i>9th December 1999</i>
<i>Laid before the House of Commons</i>	<i>9th December 1999</i>
<i>Coming into force</i>	<i>1st January 2000</i>

The Commissioners of Customs and Excise, in exercise of the powers conferred on them by sections 51(1) and 53(1) of the Finance Act 1996^[1] and of all other powers enabling them in that behalf, hereby make the following Regulations:

1. These Regulations may be cited as the Landfill Tax (Amendment) Regulations 1999 and shall come into force on 1st January 2000.
2. The Landfill Tax Regulations 1996^[2] shall be amended in accordance with the following regulations.
3. In regulation 30 after the definition of "approved object" there shall be inserted -

" "contributing third party" means a person who has made or agreed to make

(whether or not under a legally binding agreement) a payment to a registered person to secure the making by him of a qualifying contribution or to reimburse him, in whole or in part, for any such contribution he has made;"

4. In regulation 31 -

(a) for paragraph (2)(a) there shall be substituted -

" (a) in one accounting period;"

(b) in paragraph (4) for "paragraph (6)" there shall be substituted "paragraphs (6) to (6E)";

(c) at the end of paragraph (5) there shall be inserted - "but this is subject to paragraphs (6) to (6E) below";

(d) after paragraph (6) there shall be inserted -

" **(6A)** Subject to paragraphs (6C) to (6E) below, a registered person may make an election that his first contribution year or any subsequent contribution year of his should be varied by ending instead on the last day of an accounting period of his which he specifies in the notice mentioned in paragraph (6C) below (and that contribution year shall so end).

(6B) Where a contribution year has been varied by virtue of an election made under paragraph (6A) above all of the person's subsequent contribution years shall instead consist of successive periods of 12 months ending on the anniversary of the contribution year as so varied.

(6C) An election shall not be treated as having been made under paragraph (6A) above unless and until notice of it has been given in writing to the Commissioners (and shall accordingly be treated as having been made on the day such notice is given).

(6D) A notice under paragraph (6C) above shall specify an accounting period which does not end either before the date on which the election is made or more than 12 months after that date.

(6E) Where a registered person has made an election under paragraph (6A) above he shall not make another election unless at least 24 months have elapsed since his previous election was made.";

(e) in paragraph (7) for "paragraphs (8) and (10)" there shall be substituted "paragraph (10)";

(f) paragraphs (8) and (9) shall be omitted; and

(g) in paragraph (10) for "paragraphs (7) and (8)" there shall be substituted "paragraph (7)".

5. In regulation 32 -

(a) in paragraph (1)(c) for "paragraph (2)" there shall be substituted "paragraphs (2) to (2B)";

(b) in paragraph (1)(d) after "to him" there shall be inserted ", or a contributing third party,";

(c) after paragraph (2)(b) there shall be inserted -

" (c) the name and address of any contributing third party; and

(d) the amount of the payment made or to be made by the contributing third party and the date, or as the case may require, dates on which payment of the whole or any part of that amount -

(i) was received, or

(ii) is expected to be received";

(d) after paragraph (2) there shall be inserted -

" **(2A)** A person claiming credit under this Part for a contribution in relation to which there is a contributing third party shall have provided to the regulatory body or, if they are performing the functions specified in regulation 34(1) below, to the Commissioners the following information -

(a) the name and address of the contributing third party;

(b) the amount of the payment made or to be made by the contributing third party and the date, or as the case may require, dates on which payment of the whole or any part of that amount -

(i) was received, or

(ii) is expected to be received;

(c) the enrolment number of the approved body to whom the contribution was made.

(2B) A person claiming credit under this Part for a contribution in relation to which there is a contributing third party shall have informed the approved body to which the contribution is made of the name and address of the contributing third party."; and

(e) for paragraph (3) there shall be substituted -

" (3) For the purposes of this Part where any qualifying contribution or income derived therefrom is transferred to a body as described in regulation 30(2)(d) -

(a) the body to whom the sum is transferred shall be treated as having received qualifying contributions of the amount concerned; and

(b) that body shall be treated as having received those qualifying contributions

from the registered person or persons who originally paid them (but this shall not give rise to any further entitlement to credit in respect of those contributions).".

6. In regulation 33 -

(a) in paragraph (1) for "A body is within this regulation if - " there shall be substituted "A body is eligible to be approved if - ";

(b) for paragraph (1)(e) there shall be substituted;

" (e) it is precluded from applying any of its funds for the benefit of any of the persons -

(i) who have made qualifying contributions to it, or

(ii) who were a contributing third party in relation to such contributions,

except that such persons may benefit where they belong to a class of persons that benefits generally;"

(c) the word "and" after paragraph (1)(e) shall be omitted;

(d) for paragraph (1)(f) there shall be substituted -

" (f) it is not controlled by one or more of the persons and bodies listed in paragraphs (1A) and (1B) below;

(g) none of the persons or bodies listed in paragraph (1B) below is concerned in its management; and

(h) it pays to the regulatory body an application fee of £100 or such lesser sum as the regulatory body may require.";

(e) after paragraph (1) there shall be inserted -

" **(1A)** The persons and bodies mentioned in paragraph (1)(f) above are:

(a) a local authority;

(b) a body corporate controlled by one or more local authorities;

(c) a registered person;

(d) a person connected with any of the persons or bodies mentioned in sub-paragraphs (a) to (c) above.

(1B) The persons and bodies mentioned in paragraph 1(f) and (g) above are:

- (a) a person who controlled or was concerned in the management of a body the approval of which was revoked otherwise than under regulation 34(1)(ee);
- (b) a person who has been convicted of an indictable offence;
- (c) a person who is disqualified for being a charity trustee or a trustee for a charity by virtue of section 72 of the Charities Act 1993^[3];
- (d) a person connected with any of the persons or bodies mentioned in subparagraphs (a) to (c) above;
- (e) a person who is incapable by reason of mental disorder.

(1C) For the purpose of paragraph 1(B)(e) above, a person shall be treated as incapable by reason of mental disorder where -

- (a) in England and Wales, the judge has exercised any of his functions under Part VII of the Mental Health Act 1983^[4];
- (b) in Scotland, the court has appointed a curator bonis, tutor or judicial factor; or
- (c) in Northern Ireland, the court has exercised any of its powers under Part VIII of the Mental Health (Northern Ireland) Order 1986^[5] (whether or not by virtue of Article 97(2) of that Order),

but shall cease to be so treated where the judge or court concerned has made a finding that he is not or is no longer incapable of managing and administering his property and affairs.";

(f) after paragraph (2)(c) there shall be inserted -

" (cc) for the purpose of encouraging the development of products from waste or the development of markets for recycled waste -

- (i) research and development,
- (ii) education, or
- (iii) collection and dissemination of information about the development of products from waste or the development of markets for recycled waste;"

(g) in paragraph (5) after "reuse of waste," there shall be inserted "recycling of waste,";

(h) in paragraph (7)(b) the words "where the regulatory body has made the approval of the body subject to a condition to that effect," shall be omitted;

(i) in paragraph (9) for "a local authority, body corporate or registered person (in each case, "the person")" there shall be substituted "a body or person (in either case, for the purposes of this paragraph, "the person")"; and

(j) for paragraph (10)(b) there shall be substituted -

" (b) a term of an agreement made under -

- (i) section 106 of the Town and Country Planning Act 1990^[6],
 - (ii) section 75 of the Town and Country Planning (Scotland) Act 1997^[7],
or
 - (iii) article 40 of the Planning (Northern Ireland) Order 1991^[8],
- to which such a person is a party."

7. After regulation 33 there shall be inserted -

" Obligations of approved bodies

33A. - (1) An approved body shall -

- (a) continue to meet all the requirements of regulation 33 above;
- (b) apply qualifying contributions and any income derived therefrom only to approved objects;
- (c) not apply any of its funds for the benefit of any of the persons who have made qualifying contributions to it or who were contributing third parties in relation to such contributions (except to the extent that they benefit by virtue of belonging to a class of persons that benefits generally);
- (d) make and retain records of the following -
 - (i) the name, address and registration number of each registered person making a qualifying contribution to the body;
 - (ii) the name and address of any contributing third party in relation to a qualifying contribution received by the body;
 - (iii) the amount and date of receipt of each qualifying contribution and the amount and date of receipt of any income derived therefrom;
 - (iv) in the case of a transfer of the whole or part of any qualifying contribution or income derived therefrom to or from the body, the date of the transfer, the amount transferred, the name and enrolment number of the body from or, as the case may require, to which it was transferred, the name, address and registration number of the person who made the qualifying contribution and the name and address of any contributing third party in relation to the qualifying contribution;
 - (v) in respect of each qualifying contribution and any income derived therefrom, including any such amount transferred to the body by another approved body, the date of and all other details relating to its expenditure;
- (e) provide the following information to the regulatory body or, if they are performing the functions specified in regulation 34(1) below, to the

Commissioners within 7 days of the receipt by it of any qualifying contribution -

- (i) the amount of the contribution;
- (ii) the date it was received;
- (iii) the name and registration number of the person making the contribution;
- (iv) the name and address of any contributing third party in relation to the contribution notified to it by virtue of regulation 32(2B) above;

(f) notify the regulatory body within seven days of any transfer to or by it of qualifying contributions or of income derived therefrom of -

- (i) the date of the transfer;
- (ii) the enrolment number of the approved body by or, as the case may require, to which the transfer was made;
- (iii) the amount transferred;
- (iv) the name and registration number of the person who made the qualifying contribution;
- (v) the name and address of any contributing third party in relation to the contribution; and
- (vi) the approved objects to which the transferred funds are to be applied;

(g) provide the regulatory body or, if they are performing the functions specified in regulation 34(1) below, the Commissioners with information from or access to the records referred to in sub-paragraph (f) above within 14 days (or such longer period as the regulatory body or, as the case may require, the Commissioners may allow) of a request being made for such information or access;

(h) submit to the regulatory body or, if they are performing the functions specified in regulation 34(1) below, to the Commissioners within 14 days of the end of the relevant period determined in accordance with paragraph (2) below details of -

- (i) qualifying contributions and any other income or profit whatsoever received by it,
- (ii) any expenditure made by it during the period, and
- (iii) any balances held by it at the end of the period;

(i) submit to the regulatory body within 9 months of the end of its financial year independently audited financial accounts for that year; and

(j) pay to the regulatory body an amount equal to 5 per cent. of each qualifying contribution it receives, or such lesser amount as the regulatory body may require, towards its running costs within 14 days of receipt of a demand for payment.

(2) For the purposes of paragraph (1)(h) above, the relevant period in respect of an approved body is -

(a) in the case of the first such period -

(i) the period of 6 months, or

(ii) where the aggregate of the qualifying contributions and income therefrom received by the body in the period referred to in sub-paragraph (i) above is no greater than £100,000, the period of 12 months,

commencing with the date on which the body was approved; and

(b) in the case of subsequent periods -

(i) the period of 6 months, or

(ii) where the aggregate of the qualifying contributions and income therefrom received by the body during the period referred to in sub-paragraph (i) above and the period of 6 months preceding that does not exceed £100,000, the period of 12 months,

commencing with the day after the end of the first or, as the case may require, a subsequent period."

8. In regulation 34 -

(a) for paragraph (1)(a) there shall be substituted -

" (a) shall, on application being made to it by a body which is eligible to be approved under regulation 33 above, approve that body;"

(b) paragraphs (1)(b), (c) and (d) shall be omitted;

(c) for paragraph (1)(e) there shall be substituted -

" (e) may revoke the approval of any body which fails to comply with any requirement of regulation 33A(1);

(ee) shall revoke the approval of any body which applies for its approval to be revoked;"

(d) the word "and" after paragraph (1)(i) shall be omitted;

(e) after paragraph (1)(j) there shall be inserted -

" ; and

(k) shall, when notified by an approved body of the transfer to or by it of the whole or part of a qualifying contribution or of income derived therefrom, notify the registered person who made the qualifying contribution, and any contributing third party in relation to it, of -

(i) the date of the transfer,

(ii) the name and enrolment number of the body by or, as the case may require, to whom the transfer was made;

(iii) the amount transferred; and

(iv) the approved objects to which the transferred funds are to be applied."; and

(f) in paragraph (2)(b) for "will not be" there shall be substituted "will be".

9. In regulation 35 -

(a) for paragraph (1)(a) there shall be substituted -

" (a) may approve a body to carry out the functions prescribed by regulation 34(1) above;"

(b) paragraph (1)(b) shall be omitted;

(c) before "body" where it appears in each of paragraphs (1)(f) and (g) there shall be inserted "regulatory"; and

(d) for paragraph (2) there shall be substituted -

" (2) Without prejudice to the generality of paragraph (1)(c) above, the Commissioners may revoke their approval of the regulatory body where it appears to them necessary to do so for the proper operation of the credit scheme established by this Part."

10. For regulation 36(3) there shall be substituted -

" (3) Where -

(a) a person has benefited from an amount of credit to which he was entitled under this Part; and

(b) the whole or a part of the qualifying contribution in respect of which the entitlement to credit arose has been repaid to him or a person who was a contributing third party in relation to the qualifying contribution,

he shall pay to the Commissioners an amount equal to 90 per cent. of the amount repaid to him or, as the case may require, to the contributing third party."

New King's Beam House 22 Upper Ground London SE1 9PJ

D. J. Howard
Commissioner of Customs and Excise

9th December 1999

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, which come into force on 1st January 2000, amend the Landfill Tax Regulations 1996 ("the Regulations") to provide a number of changes to the scheme whereby landfill site operators are entitled to credit based upon the contributions they give to approved bodies with objects concerned with the environment. The details of this scheme are to be found in Part VII of the Regulations "Credit: bodies concerned with the environment".

Regulation 3 provides for the insertion of a definition of "contributing third party" in regulation 30 "Interpretation and general provisions" as a person who makes or agrees to make a payment to a landfill site operator to secure a qualifying contribution by that operator.

Regulation 4 provides for amendments to regulation 31 "Entitlement to credit", which determines when a landfill site operator can claim tax credits and how he should calculate his entitlement to credit. The amendment to regulation 31(2) changes the rule whereby a registered operator can claim credit in a landfill tax return for an earlier accounting period to allow such entitlements to be possible for all earlier accounting periods, and not just the last periods of contribution years. The amendments to regulation 31(4), 31(5) and 31(6) allow a landfill site operator to elect to vary his contribution year (the period according to which the maximum entitlement to credit is calculated), within certain limits. The notice of such an election must be made in writing by the operator to the Commissioners before it can come into effect and he cannot make another election until 24 months have elapsed.

Regulation 5 makes changes to take account of contributing third parties within regulation 32 "Qualifying contributions". Amendments to regulation 32(1) and 32(2) impose additional requirements for a payment to become a qualifying contribution. These include: that a payment is not repaid to a contributing third party in the same accounting period as it was made; that a landfill site operator must record details of the contributing third party and the payment, and also provide those details to the regulatory body; that the operator informs the approved body of the third party contributor. Additionally an amendment to regulation 32(3)(b) confirms that the original contributing landfill site operator is treated as the contributor when qualifying contributions are transferred from one approved body to another.

Regulation 6 provides for a number of amendments to regulation 33 "Bodies eligible for approval" to further restrict the category of bodies that is eligible for approval. The first (to regulation 33(1)(e)) precludes a third party contributor from directly benefiting from his contributions. Also, certain persons must not control the body, and some of these must not be concerned in its management either. The persons thus disqualified are listed in new paragraphs (1A) and (1B). The former includes the existing disqualified persons, and adds persons connected with them. In addition, the body must pay an application fee of up to £100 to the regulatory body.

There is also a new category of approved object (new paragraph (2)(cc)), which is the promotion of the development of products from waste and markets for recycled waste. The definitions of "waste management practices" in paragraph (5), the promotion of which is an approved object under paragraph (2)(c), is extended to include recycling. Finally, further types of statutory agreement which give rise to obligations to carry out environmental projects are added (so that these are not approved objects).

Regulation 7 provides for the insertion of a new regulation 33A "Obligations of approved bodies". The regulation requires that a body which has been approved must comply with certain requirements, including: continue to meet the requirements of regulation 33; spend qualifying contributions only on approved objects; certain record-keeping requirements; inform the regulatory body of a qualifying contribution or a transfer of qualifying contributions within 7 days; provide the regulatory body with access to its records; periodically submit to the regulatory body details of its funding and expenditure. In addition, an approved body must pay up to 5 per cent of qualifying contributions towards the running costs of the regulatory body.

Regulation 8 provides, through amendment to regulation 34(1) "Functions of the regulatory body", that the regulatory body shall approve a body eligible under regulation 33 and revoke approval of a body that applies for revocation. The regulatory body also has a discretion to revoke approval of a body for breach of a requirement of regulation 33A. The amendment further requires the regulatory body to inform landfill site operators of details of transfers of qualifying contributions to which those operators contributed.

Regulation 9 makes certain stylistic changes to regulation 35 "Functions of the Commissioners", as well as restricting the Commissioners' power to impose conditions on the regulatory body and revoke their approval of it.

Regulation 10 provides, through amendment to regulation 36 "Repayment of credit", that the landfill site operator must repay credit he has claimed where the qualifying contribution on which it was based is repaid to a contributing third party.

Notes:

[1] 1996 c. 8; section 71(2) provides that any power to make regulations under Part III of the Act shall be exercisable by the Commissioners and section 70(1) defines "the Commissioners" as meaning the Commissioners of Customs and Excise.[back](#)

[2] S.I. 1996/1527; to which there are amendments not relevant to these Regulations.[back](#)

[3] 1993 c. 10.[back](#)

[4] 1983 c. 20.[back](#)

[5] S.I. 1986/595 (N.I.4).[back](#)

[6] 1990 c. 8.[back](#)

[7] 1997 c. 8.[back](#)

[8] S.I. 1991/1220 (N.I. 11).[back](#)

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