

Order 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.

STATUTORY INSTRUMENTS

2011 No. 1017

LANDFILL TAX

The Landfill Tax (Qualifying Material) Order 2011

<i>Made</i>	- - - -	<i>31st March 2011</i>
<i>Laid before the House of Commons</i>	- - - -	<i>31st March 2011</i>
<i>Coming into force</i>	- -	<i>1st April 2011</i>

Section 42(2) of the Finance Act 1996⁽¹⁾ provides for a lower rate of landfill tax to be charged where the material disposed of consists entirely of qualifying material;

Section 42(3) of that Act provides that qualifying material is material for the time being listed in an Order made by the Treasury;

Section 42(4) of that Act requires the Treasury to set criteria to be considered in determining from time to time what material is to be listed as qualifying material;

Section 42(5) of that Act requires the Commissioners ⁽²⁾ to publish the criteria (and any revised criteria) set by the Treasury;

Section 42(6) of that Act requires the Treasury, in determining from time to time what material is to be listed, to have regard to the criteria published by the Commissioners under section 42(5) of that Act and any other factors it considers relevant.

The Treasury has now set criteria to be considered in determining from time to time what material is to be listed as qualifying material and the Commissioners have published those criteria.

Accordingly, the Treasury, having regard to the criteria published by the Commissioners under section 42(5) of Finance Act 1996 and to the other factors they consider relevant, make the following Order in exercise of the powers conferred by sections 42(3) and 63(5) of the Finance Act 1996.

(1) 1996 c. 8. Subsections 42(4) to (6) were substituted for section 42(4) of the Finance Act 1996 (c. 8) by section [24] of the Finance (No. 3) Act 2010 (c.). There are other amendments to section 42, but none is relevant.

(2) Landfill tax was under the care and management of the Commissioners of Customs and Excise under section 39(2) of the Finance Act 1996. The functions of the Commissioners for Customs and Excise were transferred to the Commissioners for Revenue and Customs by section 5(2) of the Commissioners for Revenue and Customs Act 2005 (c. 11). Section 50(1) of that Act provides that, in so far as is appropriate in consequence of section 5, a reference to the Commissioners of Her Majesty's Customs and Excise shall be taken as a reference to the Commissioners for Her Majesty's Revenue and Customs.

Citation and Commencement

1. This Order may be cited as the Landfill Tax (Qualifying Material) Order 2011 and comes into force on 1st April 2011 and has effect in relation to disposals made or treated as made on or after that day.

Revocation

2. The Landfill Tax (Qualifying Material) Order 1996⁽³⁾ is revoked.

Qualifying Materials

3. Subject to articles 4 to 6, the material listed in column 2 of the Schedule to this Order (“the Schedule”) is qualifying material for the purpose of section 42 of the Finance Act 1996.

4. The Schedule shall be construed in accordance with the notes contained in it.

5. The material listed in column 2 of the Schedule must not be treated as qualifying material unless any condition set out alongside the description of the material in column 3 of the Schedule is met.

6. Where the owner of the material immediately prior to the disposal and the operator of the landfill site at which the disposal is made are not the same person, material must not be treated as qualifying material unless it meets the relevant condition.

7. The relevant condition is that a transfer note includes in relation to each type of material of which the disposal consists a description of the material which—

- (a) accords with its description in column 2 of the Schedule;
- (b) accords with a description listed in a note to the Schedule (other than by way of exclusion);
or
- (c) is some other accurate description.

8. In article 7 above “transfer note” means a transfer note within the meaning of—

- (a) the Environmental Protection (Duty of Care) Regulations 1991⁽⁴⁾ in relation to a disposal at a landfill site in Great Britain, or
- (b) the Controlled Waste (Duty of Care) Regulations (Northern Ireland) 2002⁽⁵⁾ in relation to a disposal at a landfill site in Northern Ireland.

31st March 2011

Michael Fabricant
Angela Watkinson
Two of the Lords Commissioners of Her
Majesty’s Treasury

⁽³⁾ [S.I. 1996/1528](#).

⁽⁴⁾ [S.I. 1991/2839](#). This Regulation has been amended, but none of the amendments are relevant.

⁽⁵⁾ [S.I. 2002/271](#). This Regulation has been amended, but none of the amendments are relevant.

SCHEDULE

Article 2

Column 1	Column 2	Column 3
Group	Description of material	Conditions
1	Rocks and soils	Naturally occurring
2	Ceramic or concrete materials	
3	Minerals	Processed or prepared
4	Furnace slags	
5	Ash	
6	Low activity inorganic compounds	
7	Calcium Sulphate	Disposed of in landfills for non-hazardous waste in a cell where no biodegradable waste is accepted
8	Calcium hydroxide and brine	Deposited in a brine cavity

Notes:

(1) Group 1 comprises only—

- (a) rock;
- (b) clay;
- (c) sand;
- (d) gravel;
- (e) sandstone;
- (f) limestone;
- (g) crushed stone;
- (h) china clay;
- (i) construction stone;
- (j) stone from the demolition of buildings or structures;
- (k) slate;
- (l) sub-soil;
- (m) silt;
- (n) dredgings.

(2) Group 2 comprises only—

- (a) glass, including fritted enamel;
- (b) ceramics, including bricks, bricks and mortar, tiles, clay ware, pottery, china and refractories;
- (c) concrete, including reinforced concrete, concrete blocks, breeze blocks and aircrete blocks.

(3) Group (2) does not include—

- (a) glass fibre and glass-reinforced plastic; and

- (b) concrete plant washings.
- (4) Group 3 comprises only—
 - (a) moulding sands, including used foundry sand;
 - (b) clays, including moulding clays and clay absorbents (including Fuller's earth and bentonite);
 - (c) mineral absorbents;
 - (d) man-made mineral fibres, including glass fibres;
 - (e) silica;
 - (f) mica;
 - (g) mineral abrasives;
- (5) Group 3 does not include—
 - (a) moulding sands containing organic binders;
 - (b) man-made mineral fibres made from glass-reinforced plastic and asbestos.
- (6) Group 4 comprises only —
 - (a) vitrified wastes and residues from thermal processing of minerals where, in either case, the residue is both fused and insoluble, and
 - (b) slag from waste incineration.
- (7) Group 5 comprises only—
 - (a) bottom ash and fly ash from wood or waste combustion; and
 - (b) bottom ash and fly ash from coal or petroleum coke combustion (including when burnt together with biomass).
- (8) Group 5 does not include fly ash from sewage sludge, municipal, clinical and hazardous waste incinerators.
- (9) Group 6 comprises only—
 - (a) calcium based reaction wastes from titanium dioxide production;
 - (b) calcium carbonate;
 - (c) magnesium carbonate;
 - (d) magnesium oxide;
 - (e) magnesium hydroxide;
 - (f) iron oxide;
 - (g) ferric hydroxide;
 - (h) aluminium oxide;
 - (i) aluminium hydroxide;
 - (j) zirconium dioxide.
- (10) Group 7 includes calcium sulphate, gypsum and calcium sulphate based plasters but does not include plasterboard.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order comes into force on 1st April 2011 and has effect for disposals of qualifying material made or treated as made on or after that day. It revokes the Landfill Tax (Qualifying Material) Order 1996. In making this Order, the Treasury had regard to the criteria published by the Commissioners under section 42(5) of the Finance Act 1996 and to other factors they considered to be relevant. The criteria were published by the Commissioners in December 2010 and can be found at <http://www.hmrc.gov.uk/briefs/excise-duty/brief0811.htm>.

Article 3 of this Order provides that, subject to the conditions in articles 4 to 6, the material listed in column 2 to the Schedule is qualifying material. Article 4 requires the Schedule to be construed in accordance with the notes contained in it. Article 5 provides that material listed in the Order must not be treated as qualifying material unless any condition set out alongside the description of the material in the Schedule to the Order is satisfied.

Article 6 and 7 provide that, except where the owner of the waste is also the owner of the landfill site, material listed in the Order must not be treated as qualifying material unless it satisfies the relevant condition. The relevant condition is that a transfer note describes material in the same way as the Schedule, or the notes to the Schedule, or contains some other accurate description. Article 8 defines “transfer note”.

The Schedule lists, in 8 groups, the description of the qualifying materials with any conditions listed alongside. Notes to the Schedule amplify the descriptions.

A Tax Information and Impact Note covering this instrument will be published on the HMRC website at <http://www.hmrc.gov.uk/thelibrary/tiins.htm>.