

Statutory Instrument 1996 No. 1527

The Landfill Tax Regulations 1996

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STATUTORY INSTRUMENTS

1996 No. 1527

LANDFILL TAX

The Landfill Tax Regulations 1996

Made

12th June 1996

Laid before the House of Commons

12th June 1996

Coming into force

1st August 1996

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Explanatory Note

The Commissioners of Customs and Excise, in exercise of the powers conferred on them by sections 47(9), 48(1) and (2), 49, 51(1) to (6), 52(1) to (3), 53(1) to (4), 58(1) and (4) to (6), 61(2), 62(1) to (3) and (5) and (6) and 68(1) to (6) of, and paragraphs 2(1) to (3), 13(1) and (6), 14(5), 20(3), 23(1), 42(1) to (5) and 43(1) to (5) of Schedule 5 to, the Finance Act 1996[1], hereby make the following Regulations:

PART I

PRELIMINARY

Citation and commencement

1. These Regulations may be cited as the Landfill Tax Regulations 1996 and shall come into force on 1st August 1996.

Interpretation

2.—(1) In these Regulations—

"accounting period" means—

(a) in the case of a registered person, each period of three months ending on the dates notified to him by the

Commissioners, whether by means of a registration certificate issued by them or otherwise;

(b) in the case of a registrable person who is not registered, each quarter; or

(c) in the case of any registrable person, such other period in relation to which he is required by or under

regulation 11 to make a return;

and, in every case, the first accounting period of a registrable person shall begin on the effective date of registration;

"the Act" means the Finance Act 1996;

"Collector" means a Collector, Deputy Collector or Assistant Collector of Customs and Excise;

"credit", except where the context otherwise requires, means credit which a person is entitled to claim under Part IV of these Regulations;

"disposal" means a landfill disposal (which expression has the meaning given in section 70(2) of the Act) made on or after

1st October 1996 and "disposed of" shall be construed accordingly;

"effective date of registration" means the date determined in accordance with section 47 of the Act upon which the person

was or should have been registered;

"landfill invoice" means an invoice of the description in regulation 37;

"landfill site" has the meaning given in section 66 of the Act;

"landfill tax account" has the meaning given in regulation 12;

"landfill tax bad debt account" has the meaning given in regulation 26;

"quarter" means a period of three months ending at the end of March, June, September or December;

"registered person" means a person who is registered under section 47 of the Act and "register" and "registration" shall be

construed accordingly;

"registrable person" has the meaning given in section 47(10) of the Act;

"registration number" means the identifying number allocated to a registered person and notified to him by the

Commissioners;

"return" means a return which is required to be made in accordance with regulation 11;

"taxable business" means a business or part of a business in the course of which taxable activities are carried out;

"transfer note" has the same meaning as in the Environmental Protection (Duty of Care) Regulations 1991[2];

"working day" means any day of the week except Saturday and Sunday and a bank holiday or public holiday, in either case, for England.

(2) In these Regulations any question whether a person is connected with another shall be determined in accordance with section 839 of the Taxes Act 1988[3].

(3) Any reference in these Regulations to "this Part" is a reference to the Part of these Regulations in which that reference is made.

(4) Any reference in these Regulations to a form prescribed in the Schedule to these Regulations shall include a reference to a form which the Commissioners are satisfied is a form to the like effect.

Designation, direction or approval

3. Any designation, direction or approval by the Commissioners under or for the purposes of these Regulations shall be made or given by a notice in writing.

PART II

REGISTRATION AND PROVISION FOR SPECIAL CASES

Notification of liability to be registered

4.—(1) A person who is required by section 47(3) of the Act to notify the Commissioners of his intention to carry out taxable activities shall do so on the form numbered 1 in the Schedule to these Regulations.

(2) Where the notification referred to in this regulation is made by a person who operates or intends to operate more than one landfill site, it shall include the particulars set out on the form numbered 2 in the Schedule to these Regulations.

(3) Where the notification referred to in this regulation is made by a partnership, it shall include the particulars set out on the form numbered 3 in the Schedule to these Regulations.

(4) The notification referred to in this regulation shall be made within 30 days of the earliest date after 1st August 1996 on which the person either forms or continues to have the intention to carry out taxable activities.

Changes in particulars

5.—(1) A person who has made a notification under regulation 4, whether or not it was made in accordance with paragraph

(4) of that regulation, shall, within 30 days of—
(a) discovering any inaccuracy in; or
(b) any change occurring which causes to become inaccurate,
any of the information which was contained in or provided with the notification,
notify the Commissioners in writing and furnish
them with full particulars.

(2) Without prejudice to paragraph (1) above, a registrable person shall, within 30 days of any change occurring in any of the
circumstances referred to in paragraph (4) below, notify the Commissioners in
writing and furnish them with particulars of—

- (a) the change; and
- (b) the date on which the change occurred.

(3) A registrable person who discovers that any information contained in or
provided with a notification under paragraph (1)
or (2) above was inaccurate shall, within 30 days of his discovering the inaccuracy,
notify the Commissioners in writing and
furnish them with particulars of—

- (a) the inaccuracy;
- (b) the date on which the inaccuracy was discovered;
- (c) how the information was inaccurate; and
- (d) the correct information.

(4) The circumstances mentioned in paragraph (2) above are the following
circumstances relating to the registrable person or
any taxable business carried on by him:

- (a) his name, his trading name (if different), his address and the landfill sites he
operates;
- (b) his status, namely whether he carries on business as a sole proprietor, body
corporate, partnership or other
unincorporated body;
- (c) in the case of a partnership, the name and address of any partner.

(5) Any person failing to comply with a requirement imposed in any of
paragraphs (1) to (3) above shall be liable to a penalty
of £250.

(6) Where in relation to a registered person the Commissioners are satisfied that
any of the information recorded in the
register is or has become inaccurate they may correct the register accordingly.

(7) For the purposes of paragraph (6) above, it is immaterial whether or not the
registered person has notified the
Commissioners of any change which has occurred in accordance with paragraphs
(1) to (3) above.

Notification of cessation of taxable activities

6. A person who is required by section 47(4) of the Act to notify the
Commissioners of his having ceased to have the

intention to carry out taxable activities shall, within 30 days of his so having ceased, notify the Commissioners in writing and shall therein inform them of—

- (a) the date on which he ceased to have the intention of carrying out taxable activities; and
- (b) if different, the date on which he ceased to carry out taxable activities.

Transfer of a going concern

7.—(1) Where—

- (a) a taxable business is transferred as a going concern;
- (b) the registration of the transferor has not already been cancelled;
- (c) as a result of the transfer of the business the registration of the transferor is to be cancelled and the transferee has become liable to be registered; and
- (d) an application is made on the form numbered 4 in the Schedule to these Regulations by both the transferor and the transferee,

the Commissioners may with effect from the date of the transfer cancel the registration of the transferor and register the transferee with the registration number previously allocated to the transferor.

(2) An application under paragraph (1) above shall be treated as the notification referred to in regulation 6.

(3) Where the transferee of a business has been registered under paragraph (1) above with the registration number previously allocated to the transferor—

- (a) any liability of the transferor existing at the date of the transfer to make a return or account for or pay any tax under Part III of these Regulations shall become the liability of the transferee;
- (b) any entitlement of the transferor, whether or not existing at the date of the transfer, to credit or payment under Part IV of these Regulations shall become the entitlement of the transferee.

(4) In addition to the provisions set out in paragraph (3) above, where the transferee of a business has been registered under paragraph (1) above with the registration number previously allocated to the transferor during an accounting period subsequent to that in which the transfer took place (but with effect from the date of the transfer) and any—

- (a) return has been made;
 - (b) tax has been accounted for; or
 - (c) entitlement to credit has been claimed,
- by either the transferor or the transferee, it shall be treated as having been done by the transferee.

(5) Where—

- (a) a taxable business is transferred as a going concern;
- (b) the transferee removes material as described in regulation 21(2) or (4); and
- (c) the transferor has paid tax on the disposal concerned,

then, whether or not the transferee has been registered under paragraph (1) above with the registration number previously allocated to the transferor, any entitlement to credit arising under Part V of these Regulations shall become the entitlement of the transferee.

Representation of unincorporated body

8.—(1) Where anything is required to be done by or under the Act (whether by these Regulations or otherwise) by or on behalf of an unincorporated body other than a partnership, it shall be the joint and several responsibility of—

(a) every member holding office as president, chairman, treasurer, secretary or any similar office; or

(b) if there is no such office, every member holding office as a member of a committee by which the affairs of the body are managed; or

(c) if there is no such office or committee, every member; but, subject to paragraph (2) below, if it is done by any of the persons referred to above that shall be sufficient compliance with any such requirement.

(2) Where an unincorporated body other than a partnership is required to make any notification such as is referred to in regulations 4 to 6, it shall not be sufficient compliance unless the notification is made by a person upon whom a responsibility for making it is imposed by paragraph (1) above.

(3) Where anything is required to be done by or under the Act (whether by these Regulations or otherwise) by or on behalf of a partnership, it shall be the joint and several responsibility of every partner; but if it is done by one partner or, in the case of a partnership whose principal place of business is in Scotland, by any other person authorised by the partnership with respect thereto that shall be sufficient compliance with any such requirement.

Bankruptcy or incapacity of registrable persons

9.—(1) If a registrable person becomes bankrupt or incapacitated, the Commissioners may, from the date on which he became bankrupt or incapacitated, as the case may be, treat as a registrable person any person carrying on any taxable business of his; and any legislation relating to landfill tax shall apply to any person so treated as though he were a registered person.

(2) Any person carrying on such business as aforesaid shall, within 30 days of commencing to do so, inform the Commissioners in writing of that fact and the date of the bankruptcy order or of the nature of the incapacity and the date on which it began.

(3) Where the Commissioners have treated a person carrying on a business as a registrable person under paragraph (1)

above, they shall cease so to treat him if—

(a) the registration of the registrable person is cancelled, whether or not any other person is registered with the

registration number previously allocated to him;

(b) the bankruptcy is discharged or the incapacity ceases; or

(c) he ceases carrying on the business of the registrable person.

(4) In relation to a registrable person which is a company, the references in this regulation to the registrable person becoming

incapacitated shall be construed as references to its going into liquidation or receivership or to an administration order being

made in relation to it; and references to the incapacity ceasing shall be construed accordingly.

PART III

ACCOUNTING, PAYMENT AND RECORDS

Interpretation

10. In this Part, "accounting period" has the meaning given in regulation 2(1).

Making of returns

11.—(1) Subject to paragraph (3) below and save as the Commissioners may otherwise allow, a registrable person shall, in

respect of each accounting period, make a return to the Controller, Central Collection Unit (LT), on the form numbered 5 in the

Schedule to these Regulations.

(2) Subject to paragraph (3) below, a registrable person shall make each return not later than the last working day of the

month next following the end of the period to which it relates.

(3) Where the Commissioners consider it necessary in the circumstances of any particular case, they may—

(a) vary the length of any accounting period or the date on which it begins or ends or by which any return must be made;

(b) allow or direct the registrable person to make a return in accordance with sub-paragraph (a) above;

(c) allow or direct a registrable person to make returns to a specified address, and any person to whom the Commissioners give any direction such as is referred to in this regulation shall comply therewith.

Landfill tax account

12.—(1) Every registrable person shall make and maintain an account to be known as "the landfill tax account".

(2) The landfill tax account shall be in such form and contain such particulars as may be stipulated in a notice published by the Commissioners and not withdrawn by a further notice.

Correction of errors

13.—(1) In this regulation—

"overdeclaration" means, in relation to any return, the amount (if any) which was wrongly treated as tax due for the

accounting period concerned and which caused the amount of tax which was payable to be overstated, or the entitlement

to a payment under regulation 20 to be understated (or both) or would have caused such an overstatement or

understatement were it not for the existence of an underdeclaration in relation to that return;

"underdeclaration" means, in relation to any return, the aggregate of—

(a) the amount (if any) of tax due for the accounting period concerned which was not taken into account; and

(b) the amount (if any) which was wrongly deducted as credit, and which caused the amount of tax which was payable to be understated, or the entitlement to a payment under

regulation 20 to be overstated (or both) or would have caused such an understatement or overstatement were it not for

the existence of an overdeclaration in relation to that return.

(2) This regulation applies where a registrable person has made a return which was inaccurate as the result of an overdeclaration or underdeclaration.

(3) Where in any accounting period a registrable person has discovered one or more overdeclarations, he may enter the overdeclarations in the return for the accounting period in which they were discovered by including their amount in the box opposite the legend "Overdeclarations from previous periods (no limit)".

(4) Where in any accounting period—

(a) a registrable person discovers one or more underdeclarations; and

(b) having treated the amount of those underdeclarations as reduced by the amount of any overdeclarations for the same

accounting periods, the total of those underdeclarations does not exceed £2,000, he may enter the underdeclarations in his return for the accounting period in which they were discovered by including their

amount in the box opposite the legend "Underdeclarations from previous periods (must not exceed £2,000, see general notes)".

(5) Where a registrable person enters an amount in a return in accordance with paragraph (3) or (4) above he shall calculate the tax payable by him or the payment to which he is entitled accordingly.

(6) Where an amount has been entered in accordance with this regulation in a return which has been made—

(a) the return shall be regarded as correcting any earlier return to which that amount relates; and

(b) the registrable person shall be taken to have furnished information with respect to the inaccuracy in the prescribed form and manner for the purposes of paragraph 20 of Schedule 5 to the Act.

(7) No amount shall be entered in a return in respect of any overdeclaration or underdeclaration except in accordance with this regulation; and as regards any underdeclaration that cannot be corrected under paragraph (4) above a person shall not be taken to have furnished information with respect to an inaccuracy in the prescribed form and manner for the purposes of paragraph 20 of Schedule 5 to the Act unless he provides such information to the Commissioners in writing.

Claims for overpaid tax

14. Except where the amount to which the claim relates has been entered in a return in accordance with regulation 13 or is included in an amount so entered, any claim under paragraph 14 of Schedule 5 to the Act shall be made in writing to the Commissioners and shall, by reference to such documentary evidence as is in the possession of the claimant, state the amount of the claim and the method by which that amount was calculated.

Payment of tax

15. Save as the Commissioners may otherwise allow or direct, any person required to make a return shall pay to the Controller, Central Collection Unit (LT), such amount of tax as is payable by him in respect of the accounting period to which the return relates no later than the last day on which he was required to make the return.

Records

16.—(1) Every registrable person shall, for the purpose of accounting for tax, preserve the following—

- (a) his business and accounting records;
- (b) his landfill tax account;
- (c) transfer notes and any other original or copy records in relation to material brought onto or removed from the landfill site (including any record made for the purpose of Part IX of these Regulations);
- (d) all invoices (including landfill invoices) and similar documents issued to him and copies of such invoices and similar documents issued by him;
- (e) all credit or debit notes or other documents received by him which evidence an increase or decrease in the amount of any consideration for a relevant transaction, and copies of such documents that are issued by him;
- (f) such other records as the Commissioners may specify in a notice published by them and not withdrawn by a further notice.

(2) Subject to paragraphs (3) and (4) below, every registrable person shall preserve the records specified in paragraph (1) above for a period of six years.

(3) Subject to paragraph (4) below, a registrable person who has made a landfill tax bad debt account shall preserve that account for a period of five years from the date of the claim made under Part VI of these Regulations.

(4) The Commissioners may direct that registrable persons shall preserve the records specified in paragraph (1) above for a shorter period than that specified in this regulation; and such direction may be made so as to apply generally or in such cases as the Commissioners may stipulate.

(5) In paragraph (1) above—
(a) the reference to material being brought onto a landfill site is a reference to material that is brought onto the site for the purpose of a relevant transaction;
(b) the reference to material being removed from a landfill site is a reference to material being removed that has at some previous time fallen wholly or partly within paragraph (a) above.

(6) In this regulation "relevant transaction" means a disposal or anything that would be a disposal but for the fact that the material is not disposed of as waste.

PART IV

CREDIT: GENERAL

Interpretation

17. In this Part—
"relevant accounting period" means—
(a) in the case of an entitlement to credit arising under Part V of these Regulations, the accounting period in which the reuse condition or, as the case may be, the enforced removal condition was satisfied;
(b) in the case of an entitlement to credit arising under Part VI of these Regulations, the accounting period in which the period of one year from the date of the issue of the landfill invoice expired;
(c) in the case of an entitlement arising under Part VII of these Regulations, the accounting period in which the qualifying contribution was made;

"relevant amount" means the amount of the credit as determined in accordance with Part V, VI or VII of these

Regulations, as the case may be;

"relevant tax" means the tax, if any, that was required to have been paid as a condition of the entitlement to credit.

Scope

18.—(1) This Part applies to entitlements to credit arising under Part V, VI or VII of these Regulations.

(2) No credit arising under any provision of these Regulations may be claimed except in accordance with this Part.

Claims in returns

19.—(1) Subject to paragraphs (2) and (3) below, a person entitled to credit may claim it by deducting its amount from any

tax due from him for the relevant accounting period or any subsequent accounting period and, where he does so, he shall make

his return for that accounting period accordingly.

(2) Where the entitlement to credit arises under Part VII of these Regulations paragraph (1) above shall apply as if there

were substituted for "or any subsequent accounting period" the words "or any subsequent accounting period in the same

contribution year as determined in relation to that person under regulation 31".

(3) The Commissioners may make directions generally or with regard to particular cases prescribing rules in accordance

with which credit may or shall be held over to be credited in an accounting period subsequent to the relevant accounting period;

and where such a direction has been made that credit, subject to any subsequent such direction varying or withdrawing the

rules, may only be claimed in accordance with those rules.

Payments in respect of credit

20.—(1) Subject to paragraph (5) below, where the total credit claimed by a registrable person in accordance with this Part

exceeds the total of the tax due from him for the accounting period, the Commissioners shall pay to him an amount equal to the

excess.

(2) Where the Commissioners have cancelled the registration of a person in accordance with section 47(6) of the Act, and

he is not a registrable person, he shall make any claim in respect of credit to which this Part applies by making an application in

writing.

(3) A person making an application under paragraph (2) above shall furnish to the Commissioners full particulars in relation

to the credit claimed, including (but not restricted to)—

(a) except in the case of an entitlement to credit arising under Part VII of these Regulations, the return in which the relevant tax was accounted for;

(b) except in the case of an entitlement to credit arising under Part VII of these Regulations, the amount of the tax and the date and manner of its payment;

(c) the events by virtue of which the entitlement to credit arose.

(4) Subject to paragraph (5) below, where the Commissioners are satisfied that a person who has made a claim in

accordance with paragraphs (2) and (3) above is entitled to credit, and that he has not previously had the benefit of that credit,

they shall pay to him an amount equal to the credit.

(5) The Commissioners shall not be liable to make any payment under this regulation unless and until the person has made all the returns which he was required to make.

PART V

CREDIT: PERMANENT REMOVALS ETC.

Entitlement to credit

21.—(1) An entitlement to credit arises under this Part where—

(a) a registered person has accounted for an amount of tax and, except where the removal by virtue of which sub-paragraph (b) below is satisfied takes place in the accounting period in which credit arising under this Part is claimed

in accordance with Part IV of these Regulations, he has paid that tax; and

(b) in relation to the disposal on which that tax was charged, either—

(i) the reuse condition has been satisfied; or

(ii) the enforced removal condition has been satisfied.

(2) The reuse condition is satisfied where—

(a) the disposal has been made with the intention that the material comprised in it—

(i) would be recycled or incinerated, or

(ii) removed for use (other than by way of a further disposal) at a place other than a relevant site;

(b) that material, or some of it, has been recycled, incinerated or permanently removed from the landfill site, as the case

may be, in accordance with that intention;

(c) that recycling, incineration or removal—

(i) has taken place no later than one year after the date of the disposal; or

(ii) where water had been added to the material in order to facilitate its disposal, has taken place no later than five

years after the date of the disposal; and

(d) the registered person has, before the disposal, notified the Commissioners in writing that he intends to make one or

more removals of material in relation to which sub-paragraphs (a) to (c) above will be satisfied.

(3) For the purpose of paragraph (2)(a)(ii) above a relevant site is the landfill site at which the disposal was made or any other landfill site.

(4) The enforced removal condition is satisfied where—

(a) the disposal is in breach of the terms of the licence or resolution, as the case may be, by virtue of which the land constitutes a landfill site;

(b) the registered person has been directed to remove the material comprised in the disposal, or some of it, by a relevant authority and he has removed it, or some of it; and

(c) a further taxable disposal of the material has been made and, except where the registered person is the person liable for the tax chargeable on that further disposal, he has paid to the site operator an amount representing that tax.

(5) For the purpose of paragraph (4)(b) above the following are relevant authorities—

(a) the Environment Agency;

(b) the Scottish Environment Protection Agency;

(c) the Department of the Environment for Northern Ireland;

(d) a district council in Northern Ireland.

(6) The amount of the credit arising under this Part shall be equal to the tax that was charged on the disposal; except that where only some of the material comprised in that disposal is removed, the amount of the credit shall be such proportion of that tax as the material removed forms of the total of the material.

PART VI

CREDIT: BAD DEBTS

Interpretation

22. In this Part—

"claim" means a claim in accordance with Part IV of these Regulations for an amount of credit arising under this Part and

"claimant" shall be construed accordingly;

"customer" means a person for whom a taxable activity is carried out by the claimant;

"outstanding amount" means, in relation to any claim—

(a) if at the time of the claim the claimant has received no payment in respect of the amount written off in his accounts, the amount so written off; or

(b) if at that time he has received a payment, the amount by which the amount written off exceeds the payment (or the aggregate of the payments);

"relevant disposal" means any taxable disposal upon which a claim is based;

"security" means—

(a) in relation to England, Wales and Northern Ireland, any mortgage, charge, lien or other security; and

(b) in relation to Scotland, any security (whether heritable or moveable), any floating charge and any right of lien or preference and right of retention (other than a right of compensation or set-off).

Scope

23. An entitlement to credit arises under this Part where—

(a) a registered person has carried out a taxable activity for a consideration in money for a customer with whom he is not connected;

(b) he has accounted for and paid tax on the disposal concerned;

(c) the whole or any part of the consideration for the disposal has been written off in his accounts as a bad debt;

(d) he has issued a landfill invoice in respect of the disposal which shows the amount of tax chargeable;

(e) that invoice was issued—

(i) within 14 days of the date of the disposal, or

(ii) within such other period as may have been specified in a direction of the Commissioners made under section

61(3) of the Act;

(f) a period of one year (beginning with the date of the issue of that invoice) has elapsed; and

(g) the following provisions of this Part have been complied with.

Amount of credit

24. The credit arising under this Part shall be of an amount equal to such proportion of the tax charged on the relevant disposal as the outstanding amount forms of the total consideration.

Evidence required in support of claim

25. The claimant, before he makes a claim, shall hold in respect of each relevant disposal—

(a) a copy of the landfill invoice issued by him;

(b) records or any other documents showing that he has accounted for and paid tax on the disposal; and

(c) records or any other documents showing that the consideration has been written off in his accounts as a bad debt.

Records required to be kept

26.—(1) Any person who makes a claim shall make a record of that claim.

(2) The record referred to in paragraph (1) above shall contain the following information in respect of each claim made:

- (a) in respect of each relevant disposal—
 - (i) the amount of tax charged;
 - (ii) the return in which that tax was accounted for and when it was paid;
 - (iii) the date and identifying number of the landfill invoice that was issued;
 - (iv) any consideration that has been received (whether before the claim was made or subsequently);
 - (v) the details of any transfer note;
- (b) the outstanding amount;
- (c) the amount of the claim;
- (d) the return in which the claim was made.

(3) Any records made in pursuance of this regulation shall be kept in a single account known as "the landfill tax bad debt account".

Attribution of payments

27.—(1) Where—

- (a) the claimant has carried out a taxable activity for a customer;
- (b) there exist one or more other matters in respect of which the claimant is entitled to a debt owed by the customer (whether they involve a taxable disposal or not and whether they are connected with waste or not); and
- (c) a payment has been received by the claimant from the customer, the payment shall be attributed to the taxable activity and the other matters in accordance with the rule set out in paragraphs (2) and (3) below (and the debts arising in respect of the taxable activity and the other matters are collectively referred to in those paragraphs as debts).

(2) The payment shall be attributed to the debt which arose earliest and, if not wholly attributed to that debt, thereafter to debts in the order of the dates on which they arose, except that attribution under this paragraph shall not be made if the payment was allocated to a debt by the customer at the time of payment and the debt was paid in full.

(3) Where—

- (a) the earliest debt and the other debts to which the whole of the payment could be attributed arose on the same day; or
- (b) the debts to which the balance of the payment could be attributed in accordance with paragraph (2) above arose on the same day, the payment shall be attributed to those debts by multiplying, for each such debt, the payment made by a fraction of which the numerator is the amount remaining unpaid in respect of that debt and the denominator is the amount remaining unpaid in respect of all those debts.

Repayment of credit

28.—(1) Where a claimant—

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

(b) either—

(i) a payment for the relevant disposal is subsequently received; or

(ii) a payment is, by virtue of regulation 27, treated as attributed to the relevant disposal,

he shall repay to the Commissioners such amount as equals the amount of the credit, or the balance thereof, multiplied by a

fraction of which the numerator is the amount so received or attributed, and the denominator is the amount of the outstanding consideration.

(2) Where the claimant—

(a) fails to comply with the requirements of regulation 26; or

(b) in relation to the documents mentioned in that regulation, fails to comply with either—

(i) regulation 16; or

(ii) any obligation arising under paragraph 3 of Schedule 5 to the Act,

he shall repay to the Commissioners the amount of the claim to which the failure to comply relates.

Writing off debts

29.—(1) This regulation shall apply for the purpose of determining whether, and to what extent, the consideration is to be taken to have been written off as a bad debt.

(2) The whole or any part of the consideration for a taxable activity shall be taken to have been written off as a bad debt

where—

(a) the claimant has written it off in his accounts as a bad debt; and

(b) he has made an entry in relation to that activity in the landfill tax bad debt account in accordance with regulation 26

(and this shall apply regardless of whether a claim can be made in relation to that activity at that time).

(3) Where the claimant owes an amount of money to the customer which can be set off, the consideration written off in the

landfill tax bad debt account shall be reduced by the amount so owed.

(4) Where the claimant holds in relation to the customer an enforceable security, the consideration written off in the landfill tax

bad debt account shall be reduced by the value of the security.

PART VII

CREDIT: BODIES CONCERNED WITH THE ENVIRONMENT

Interpretation and general provisions

30.—(1) In this Part—

"approved body" means a body approved for the time being under regulation 34;

"approved object" has the meaning given in regulation 33;

"income" includes interest;

"qualifying contribution" has the meaning given in regulation 32;

"the regulatory body" means such body, if any, as in relation to which an approval of the Commissioners under regulation

35 has effect for the time being;

"running costs" includes any cost incurred in connection with the management and administration of a body or its assets.

(2) A body shall only be taken to spend a qualifying contribution in the course or furtherance of its approved objects—

(a) in a case where the contribution is made subject to a condition that it may only be invested for the purpose of

generating income, where the body so spends all of that income;

(b) in a case not falling within sub-paragraph (a) above, where the body becomes entitled to income, where it so spends

both the whole of the qualifying contribution and all of that income;

(c) in a case not falling within either of sub-paragraphs (a) and (b) above, where the body so spends the whole of the

qualifying contribution; or

(d) where—

(i) it transfers any qualifying contribution or income derived therefrom to another approved body, and

(ii) that transfer is subject to a condition that the sum transferred shall be spent only in the course or furtherance of

that other body's approved objects.

(3) Any approval, or revocation of such approval, by the Commissioners or the regulatory body shall be given by notice in

writing to the body affected and shall take effect from the date the notice is given or such later date as the Commissioners or, as

the case may be, the regulatory body may specify in it.

Entitlement to credit

31.—(1) Subject to the following provisions of this regulation, an entitlement to credit arises under this Part in respect of

qualifying contributions made by registered persons.

(2) Subject to paragraph (3) below, a person shall be entitled to credit in respect of 90 per cent. of the amount of each

qualifying contribution made by him in any accounting period; and for this purpose a qualifying contribution made—

(a) in the first accounting period following the end of a contribution year;

(b) before the return for the previous accounting period has been made; and

(c) before the period within which that return is required to be made has expired, shall be treated as having been made in the accounting period mentioned in sub-paragraph (b) above (and not in the accounting

period in which it was in fact made).

(3) In respect of the qualifying contributions made in each contribution year, a person shall not be entitled to credit of an amount greater than 20 per cent. of his relevant tax liability.

(4) For the purpose of paragraphs (2) and (3) above the contribution year of a person is his first contribution year and each period of 12 months ending on the anniversary of the end of his first contribution year; but this is subject to paragraph (6) below.

(5) The reference in paragraph (4) above to the first contribution year of a person is a reference to—

(a) the period of 12 months beginning with his effective date of registration; or
(b) where that period of 12 months does not end on the last day of an accounting period, the period beginning with his effective date of registration and ending on the last day of the accounting period in which the 12 month period ends.

(6) Where—

(a) the Commissioners vary the length of a person's accounting period under regulation 11(3);
(b) as a consequence of the variation the end of any contribution year of his other than the first contribution year would not coincide with the end of an accounting period, the contribution year thus affected shall end on the same day as the end of the accounting period in which that contribution year would apart from this regulation end; and each of the person's subsequent contribution years shall end on the anniversary of the end of that contribution year (subject to any subsequent application of this paragraph).

(7) Subject to paragraphs (8) and (10) below, the reference in paragraph (3) above to the relevant tax liability of a person is a reference to the aggregate of—

(a) the tax payable by him, if any, in respect of the accounting period in relation to which that liability falls to be determined; and
(b) the tax payable by him, if any, in respect of any earlier accounting period or periods which fall within the same contribution year as that accounting period; and where in respect of any accounting period he is entitled to a payment under regulation 20 the aggregate of the tax payable by him in respect of the accounting periods mentioned in sub-paragraphs (a) and (b) above shall be reduced by the amount of that payment.

(8) Where paragraph (5)(b) above applies so that the first contribution year of a person exceeds 12 months his relevant tax liability for that contribution year shall be taken to be such amount as is found by multiplying the tax payable by him in respect of

that accounting period by a fraction the numerator of which is 12 and the denominator of which is the number of months comprised in the period.

(9) For the purpose of determining the number of months comprised in an accounting period as described in paragraph (8) above—

(a) if the period does not begin on the first day of a month, it shall be taken to begin on the nearest first day of a month;

(b) if the period does not end on the last day of a month, it shall be taken to end on the nearest last day of a month;

(c) if the period begins or ends on the sixteenth day of a month comprising thirty-one days, it shall be taken to begin on the first day of the following month or, as the case may be, end on the last day of the preceding month;

(d) if the period begins or ends on the fifteenth day of February when it contains twenty-nine days, it shall be taken to begin on the first day of March or, as the case may be, end on the last day of January.

(10) For the purposes of paragraphs (7) and (8) above any entitlement to credit arising under this Part shall be disregarded in determining the tax payable by a person in respect of any period.

Qualifying contributions

32.—(1) A payment is a qualifying contribution if—

(a) it is made by a registered person to an approved body;

(b) it is made subject to a condition that the body shall spend the sum paid or any income derived from it or both only in the course or furtherance of its approved objects;

(c) the requirements of paragraph (2) below have been complied with in relation to that payment; and

(d) it is not repaid to him in the same accounting period as that in which it was made.

(2) A person claiming credit arising under this Part shall make a record containing the following information—

(a) the amount and date of each payment he has made to an approved body;

(b) the name and enrolment number of that body.

(3) 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 for the purposes of this Part as having received qualifying contributions of that amount; and

(b) that body shall be treated accordingly as having received qualifying contributions from the person or persons from whom the body making the transfer in fact received them (but this shall not give rise to any further entitlement to credit in

respect of those contributions).

Bodies eligible for approval

33.—(1) A body is within this regulation if—

(a) it is—

(i) a body corporate, or

(ii) a trust, partnership or other unincorporated body;

(b) its objects are or include any of the objects within paragraph (2) below (approved objects);

(c) it is precluded from distributing and does not distribute any profit it makes or other income it receives;

(d) it applies any profit or other income to the furtherance of its objects (whether or not approved objects);

(e) it is precluded from applying any of its funds for the benefit of any of the persons who have made qualifying

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

and

(f) it is not controlled by one or more—

(i) local authorities,

(ii) bodies corporate controlled by one or more local authorities, or

(iii) registered persons.

(2) The objects of a body are approved objects insofar as they are any of the following objects—

(a) in relation to any land the use of which for any economic, social or environmental purpose has been prevented or restricted because of the carrying on of an activity on the land which has ceased—

(i) reclamation, remediation or restoration; or

(ii) any other operation intended to facilitate economic, social or environmental use;

but this is subject to paragraph (3) below;

(b) in relation to any land the condition of which, by reason of the carrying on of an activity on the land which has ceased,

is such that pollution (whether of that land or not) is being or may be caused—

(i) any operation intended to prevent or reduce any potential for pollution; or

(ii) any operation intended to remedy or mitigate the effects of any pollution that has been caused,

but this is subject to paragraph (3) below;

(c) for the purpose of encouraging the use of more sustainable waste management practices—

(i) research and development;

(ii) education; or

(iii) collection and dissemination of information about waste management practices generally;

(d) where it is for the protection of the environment, the provision, maintenance or improvement of—

(i) a public park; or

(ii) another public amenity,

in the vicinity of a landfill site, provided the conditions in paragraph (6) below are satisfied;

(e) where it is for the protection of the environment, the maintenance, repair or restoration of a building or other structure which—

(i) is a place of religious worship or of historic or architectural interest,

(ii) is open to the public, and

(iii) is situated in the vicinity of a landfill site,

provided the conditions in paragraph (6) below are satisfied;

(f) the provision of financial, administration and other similar services to bodies which are within this regulation and only such bodies.

(3) An object shall not be, or shall no longer be, regarded as falling within paragraph (2)(a) or (b) above if the reclamation, remediation, restoration or other operation—

(a) is such that any benefit from it will accrue to any person who has carried out or knowingly permitted the activity which has ceased;

(b) involves works which are required to be carried out by a notice or order within paragraph (4) below; or

(c) is wholly or partly required to be carried out by a relevant condition.

(4) The notices and order mentioned in paragraph (3) above are—

(a) a works notice served under section 46A of the Control of Pollution Act 1974[4];

(b) an enforcement notice served under section 13 of the Environmental Protection Act 1990[5];

(c) a prohibition notice served under section 14 of the Environmental Protection Act 1990;

(d) an order under section 26 of the Environmental Protection Act 1990;

(e) a remediation notice served under section 78E of the Environmental Protection Act 1990[6];

(f) an enforcement notice served under section 90B of the Water Resources Act 1991[7];

(g) a works notice served under section 161A of the Water Resources Act 1991[8];

(5) In paragraph (2)(c) above "waste management practices" includes waste minimisation, minimisation of pollution and harm

from waste, reuse of waste, waste recovery activities and the clearing of pollutants from contaminated land.

(6) The conditions mentioned in sub-paragraphs (d) and (e) of paragraph (2) above are—

(a) in a case falling within sub-paragraph (d), that the provision of the park or amenity is not required by a relevant condition; and

(b) in a case falling within either of those sub-paragraphs, that the park, amenity, building or structure (as the case may be)

is not to be operated with a view to profit.

(7) Where the objects of a body are or include any of the objects set out in paragraph (2) above, the following shall also be regarded as objects within that paragraph—

(a) the use of qualifying contributions in paying the running costs of the body, but this is subject to paragraph (8) below;

(b) where the regulatory body has made the approval of the body subject to a condition to that effect, the use of qualifying contributions in paying a contribution to the running costs of the regulatory body.

(8) The use of qualifying contributions in paying the running costs of the body shall only be regarded as an approved object if the body determines so to use no more than such proportion of the total of qualifying contributions, together with any income derived from them, (or, in the case of a contribution within regulation 30(2)(a), only that income) as the proportion of that total forms of the total funds at its disposal and does not in fact use a greater amount.

(9) For the purposes of paragraph (1) above a local authority, body corporate or registered person (in each case, "the person") shall be taken to control a body where—

(a) in the case of a body which is a body corporate, the person is empowered by statute to control that body's activities or if he is that body's holding company within the meaning of section 736 of the Companies Act 1985[9], and an individual shall be taken to control a body corporate if he, were he a company, would be that body's holding company within the meaning of that Act;

(b) in the case of a body which is a trust or a partnership, where—
(i) the person, taken together with any nominee of his, or
(ii) any nominee of the person, taken together with any nominee of that nominee or any other nominee of the person,

forms a majority of the total number of trustees or partners, as the case may be;

(c) in the case of any other body, where the person, whether directly or through any nominee, has the power—

(i) to appoint or remove any officer of the body;

(ii) to determine the objects of the body;

(iii) to determine how any of the body's funds may be applied.

(10) For the purposes of paragraphs (3) and (6) above a condition is relevant if it is—

(a) a condition of any planning permission or other statutory consent or approval granted on the application of any person

making a qualifying contribution to the body, or

(b) a term of an agreement made under section 106 of the Town and Country Planning Act 1990[10] to which such a person is a party.

Functions of the regulatory body

- 34.—(1) The regulatory body—
- (a) may approve a body which is within regulation 33;
 - (b) may require any person applying for approval to pay an application fee;
 - (c) without prejudice to the generality of sub-paragraph (d) below, may require approved bodies to pay a contribution to the running costs of the regulatory body and such contribution may be required to be paid periodically;
 - (d) may, either at the time of granting the approval or subsequently, make the approval subject to such conditions as it thinks fit, including conditions relating to the records and accounts the body shall keep;
 - (e) may revoke the approval;
 - (f) shall maintain a roll of bodies which it has approved;
 - (g) shall allocate an identifying number (the enrolment number) to each such body;
 - (h) shall remove from the roll any body whose approval it has revoked;
 - (i) shall satisfy itself, by reference to such records or other documents or information it thinks fit, that the qualifying contributions received by the body have been spent by it only in the course or furtherance of its approved objects;
 - and
 - (j) shall publish information regarding which bodies it has approved and which approvals it has revoked.

(2) Where—

- (a) the Commissioners revoke their approval of the regulatory body without approving another body with effect from the day after the revocation takes effect; and
 - (b) they have not given notice in writing to each body which has been enrolled (and which has not been removed from the roll), no later than the date such revocation takes effect, that they will not be performing any of the functions specified in paragraph (1) above,
- the approval of all such bodies shall be deemed to have been revoked on the day the Commissioners revoked their approval.

Functions of the Commissioners

- 35.—(1) The Commissioners—
- (a) may approve a body for the purposes of this Part;
 - (b) may, either at the time of granting the approval or subsequently, make the approval subject to such conditions as they think fit;
 - (c) may revoke the approval;
 - (d) shall not approve a body without first revoking the approval for any other body with effect from a time earlier than that for which the new approval is to take effect;
 - (e) for any time as regards which no approval has effect, may perform any of the functions specified in regulation 34(1);

(f) may disclose to the body information which relates to the tax affairs of registered persons and which is relevant to the credit scheme established by this Part; and
(g) having regard to any information received from the body, may serve notices under regulation 36.

(2) Without prejudice to the generality of paragraph (1)(c) above, the Commissioners may revoke their approval of a body where it appears to them—
(a) that the body is in breach of any condition imposed under paragraph (1)(b) above; or
(b) that it is necessary to do so for the proper operation of the credit scheme established by this Part.

Repayment of credit

36.—(1) Where a person has benefited from an amount of credit to which he was entitled under this Part and the

Commissioners serve upon him a notice in relation to a qualifying contribution paid to an approved body—

(a) specifying that—
(i) they are not satisfied that the contribution has been spent by the body only in the course or furtherance of its approved objects; or
(ii) they are not satisfied that any income derived from the contribution has been so spent by the body;
(b) specifying a breach of a condition to which the approval of the body was made subject and which occurred before the contribution was spent by the body; or
(c) specifying that—
(i) the approval of the body has been revoked; and
(ii) the contribution had not been spent by the body before that revocation took effect,

he shall repay to the Commissioners the credit claimed in respect of the qualifying contribution.

(2) For the purpose of paragraph (1) above where—
(a) repayment is required in relation to credit that has been claimed in respect of more than one qualifying contribution in an accounting period; and
(b) regulation 31(3) applied so that the amount of credit was restricted, the person shall be deemed to have claimed credit in respect of such proportion of each contribution made in that accounting period as the total credit claimed in accordance with that regulation forms of the total of the contributions made.

(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,
he shall pay to the Commissioners an amount equal to 90 per cent. of the amount repaid to him.

(4) Paragraph (5) below applies where—

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

(b) he is entitled to a payment under regulation 20 in respect of a later accounting period in the same contribution year as the accounting period in respect of which that credit was claimed.

(5) Where this paragraph applies the person shall pay to the Commissioners an amount equal to the difference between—

(a) the aggregate of—

(i) the amount of the credit from which he has benefited, and

(ii) any other amounts of credit arising under this Part which he is or was entitled to claim,

in respect of that contribution year; and

(b) the amount of credit which he would have been entitled to claim if he had in fact claimed the aggregate amount

mentioned in sub-paragraph (a) above in the return for the accounting period in respect of which he was entitled to the payment under regulation 20.

(6) Where—

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

(b) he acquires an asset from a body to which he has made a qualifying contribution for—

(i) no consideration, or

(ii) a consideration which is less than the open market value of the asset,

he shall pay to the Commissioners an amount equal to 90 per cent. of the amount by which the open market value exceeds

the consideration; but this is subject to paragraph (7) below.

(7) A person required to pay an amount to the Commissioners by paragraph (6) above—

(a) shall not be required to pay more than the total amount of relevant credit;

(b) shall not be entitled to claim any further amounts of credit in respect of qualifying contributions made by him to the

body in question on or after the date on which he acquired the asset.

(8) For the purposes of paragraphs (6) and (7) above—

(a) "asset" includes land, goods or services and any interest in any of these;

(b) the open market value of an asset is the amount of the consideration in money that would be payable for the asset by a

person standing in no such relationship with any person as would affect that consideration;

(c) "relevant credit" means credit arising under this Part—

(i) from which a person has benefited, and

(ii) which has arisen in respect of qualifying contributions made by him to the body in question or treated by virtue of regulation 32(3) as having been received by that body from him.

PART VIII

LANDFILL INVOICES

Contents of a landfill invoice

37.—(1) An invoice is a landfill invoice if it contains the following information:

- (a) an identifying number;
- (b) the date of its issue;
- (c) the date of the disposal or disposals in respect of which it is issued or, where a series of disposals is made for the same person, the dates between which the disposals were made;
- (d) the name, address and registration number of the person issuing it;
- (e) the name and address of the person to whom it is issued;
- (f) the weight of the material disposed of;
- (g) a description of the material disposed of;
- (h) the rate of tax chargeable in relation to the disposal or, if the invoice relates to more than one disposal and the rate of tax for each of them is not the same, the rate of tax chargeable for each disposal;
- (i) the total amount payable for which the invoice is issued; and
- (j) where the amount of tax is shown separately, a statement confirming that that tax may not be treated as the input tax of any person.

(2) In paragraph (1)(j) above "input tax" has the same meaning as in section 24(1) of the Value Added Tax Act 1994[11].

PART IX

TEMPORARY DISPOSALS

Scope and effect

38.—(1) A disposal to which this Part applies—

- (a) shall not be treated as made at the time when apart from this Part it would be regarded as made; and
- (b) shall be treated as having been made—
 - (i) when it is treated as being an exempt disposal by virtue of regulation 39,

or

- (ii) to the extent that it is not so treated, at the time when it is treated as having been made by virtue of regulation 40.

(2) This Part applies to a disposal where—

- (a) an authorised person has designated an area (the designated area) for the purpose of this Part;
- (b) material is disposed of in the designated area at a time when the designation has effect;
- (c) the disposal is a temporary one pending all of the material being put to a qualifying use within the relevant period; and
- (d) such other conditions as the Commissioners or an authorised person may specify for the purpose of this Part, whether generally or with regard to particular cases, are satisfied.

(3) A designation ceases to have effect if—

- (a) notice to that effect is given in writing by the Commissioners or by an authorised person;
- (b) any period for which the designation was to have effect by virtue of a condition specified in relation thereto expires;
- (c) any disposal to which this Part does not apply (whether because it is not temporary or for some other reason) is made in the designated area; or
- (d) a disposal is treated by virtue of regulation 40 as having been made at a certain time and all of the material comprised in that disposal is not removed from the designated area within seven days of that time.

(4) A use is a qualifying use if thereby the material is—

- (a) recycled or incinerated;
- (b) used (other than by way of a further disposal) at a place other than a relevant site; or
- (c) sorted pending—
 - (i) its use at a place other than a relevant site, or
 - (ii) its disposal,being a use or disposal, as the case may be, within the relevant period.

(5) For the purposes of paragraph (4) above—

- (a) a use is not a qualifying use if it would constitute a breach of any condition relating to the use of the material to be disposed of which has been specified in relation to that designated area or generally;
- (b) a relevant site is the landfill site at which the disposal was made or any other landfill site;
- (c) the relevant period is the period of one year commencing with the date of the disposal or such other period as the Commissioners or an authorised person may approve or direct.

Disposals to be treated as exempt

39.—(1) Where there is a disposal to which this Part applies and—

- (a) the material comprised in the disposal has been put to a qualifying use within the relevant period, if it would otherwise be a taxable disposal that disposal shall be treated as not being a taxable disposal (shall be treated as being an exempt disposal); but this is subject to paragraph (2) below;

(b) some of the material comprised in a disposal has been put to a qualifying use within the relevant period (and some has not), the disposal shall be treated as being an exempt disposal to the extent of the part so dealt with and the remaining part shall be treated in accordance with regulation 40.

(2) A disposal shall not be treated as being an exempt disposal unless the landfill site operator concerned has made and, in relation to that disposal, maintained the record specified in paragraph (3) below (the temporary disposal record).

(3) The temporary disposal record mentioned in paragraph (2) above is a record, in relation to the designated area, of—

- (a) the weight and description of all material disposed of;
- (b) the intended destination of all such material and, where any material has been removed, the actual destination of that material; and
- (c) the weight and description of any material removed.

Disposals to be treated as made at certain times

40.—(1) Where in the case of a disposal to which this Part applies the disposal is not wholly treated as being an exempt

disposal it shall, to the extent that it is not so treated, be treated as having been made at the earliest of the following times—

- (a) when the relevant period has expired;
- (b) when the designation ceases to have effect;
- (c) when there has been a breach of any condition specified by the Commissioners or an authorised person;
- (d) when there has been a failure to make the temporary disposal record;
- (e) when there has been a failure to maintain the temporary disposal record;
- (f) when any of the material concerned is used (other than by way of a further disposal) at the same or another landfill site (but not in the same designated area).

(2) The reference in paragraph (1)(e) above to a failure to maintain the temporary disposal record is a reference to an omission to enter in a record that has been made the information specified in regulation 39(3) in relation to any disposal made after the record was made.

PART X

DETERMINATION OF WEIGHT OF MATERIAL DISPOSED OF

Scope

41. This Part applies for the purpose of determining the weight of material comprised in a disposal; and references in this

Part to weight shall be construed as references to the weight of such material.

Basic method

42.—(1) Except where regulation 43 or 44 applies and subject to paragraph (2) below, a registrable person shall determine weight by weighing the material concerned.

(2) The weighing of the material shall be carried out at the time of the disposal; and for this purpose any time at which section 61 of the Act or Part IX of these Regulations require the disposal to be treated as made shall be disregarded.

Specified methods

43.—(1) Except where regulation 44 applies, this regulation applies where the Commissioners have specified rules for determining weight in a notice published by them and not withdrawn by a further notice.

(2) A specification made by the Commissioners as described in paragraph (1) above may make provision for—

- (a) the method by which weight is to be determined;
- (b) the time by reference to which weight is to be determined.

(3) A specification made by the Commissioners as described in paragraph (1) above may provide—

- (a) that it is to have effect only in relation to disposals of such descriptions as may be set out in the specification;
- (b) that it is not to have effect in relation to particular disposals unless the Commissioners are satisfied that such conditions as may be set out in the specification are met in relation to the disposals.

(4) Where this regulation applies the registrable person shall determine weight in accordance with the rules in the specification (and not in accordance with the rule in regulation 42).

Agreed methods

44.—(1) This regulation applies where—
(a) the registrable person and an authorised person have agreed in writing that weight shall be determined in accordance with rules other than those described in regulation 42 or specified under regulation 43; and

- (b) a direction under paragraph (3) below has not been made.

(2) Rules may be agreed under this regulation as regards—

- (a) the method by which weight is to be determined;
- (b) the time by reference to which weight is to be determined;
- (c) the discounting of water forming a constituent of material disposed of, but this is subject to paragraph (5) below.

(3) Where rules have been agreed under this regulation and the Commissioners believe that they should no longer be applied because they do not give an accurate indication of the weight or they are not being fully observed or for some other reason they may direct that the agreed rules shall no longer have effect.

(4) Where this regulation applies the registrable person shall determine weight in accordance with the rules agreed (and not in accordance with the rule in regulation 42 or 43).

(5) Subject to paragraphs (6) to (8) below, rules may be agreed regarding the discounting of water if, and only if—

(a) no water is present in the material naturally and the water is present because—

(i) it has been added for the purpose of enabling the material to be transported for disposal;

(ii) it has been used for the purpose of extracting any mineral; or

(iii) it has arisen, or has been added, in the course of an industrial process; or

(b) the material is the residue from the treatment of effluent or sewage by a water treatment works.

(6) Rules may not be agreed under paragraph (5) above where any of the material is capable of escaping from the landfill site concerned by leaching unless—

(a) it is likely to do so in the form of water only; or

(b) the leachate is to be collected on the site concerned and treated in order to eliminate any potential it has to cause harm.

(7) Where the material falls within paragraph (5)(a) above rules may not be agreed under paragraph (5) above unless the total water which has been added, or (in a case falling within paragraph (5)(a)(iii) above) has arisen or has been added or both, constitutes 25 per cent. or more of the weight at the time of the disposal.

(8) Where the material falls within paragraph (5)(b) above rules may not be agreed under paragraph (5) above except for the discounting of water which has been added prior to disposal (and not of water which is present in the material naturally).

(9) For the purposes of paragraph (8) above any water which has been extracted prior to disposal shall be deemed to be water that has been added, except that where the water extracted exceeds the quantity of water added that excess shall be deemed to have been present naturally.

PART XI

SET-OFF OF AMOUNTS

Landfill tax amount owed to Commissioners

45.—(1) Subject to regulation 47, this regulation applies where—

- (a) a person is under a duty to pay to the Commissioners at any time an amount or amounts in respect of landfill tax; and
- (b) the Commissioners are under a duty to pay to that person at the same time an amount or amounts in respect of any tax or taxes under their care and management.

(2) Where the total of the amount or amounts mentioned in paragraph (1)(a) above exceeds the total of the amount or amounts mentioned in paragraph (1)(b) above, the latter shall be set off against the former.

(3) Where the total of the amount or amounts mentioned in paragraph (1)(b) above exceeds the total of the amount or amounts mentioned in paragraph (1)(a) above, the Commissioners may set off the latter in paying the former.

(4) Where the total of the amount or amounts mentioned in paragraph (1)(a) above is the same as the total of the amount or amounts mentioned in paragraph (1)(b) above, no payment need be made in respect of either.

(5) Where this regulation applies and an amount has been set off in accordance with any of paragraphs (2) to (4) above, the duty of both the person and the Commissioners to pay the amount or amounts concerned shall be treated as having been discharged accordingly.

(6) References in paragraph (1) above to an amount in respect of a particular tax include references not only to an amount of tax itself but also to amounts of penalty, surcharge or interest.

(7) In this regulation "tax" includes "duty".

Landfill tax amount owed by Commissioners

46.—(1) Subject to regulation 47, this regulation applies where—

- (a) a person is under a duty to pay to the Commissioners at any time an amount or amounts in respect of any tax or taxes under their care and management; and
- (b) the Commissioners are under a duty to pay to that person at the same time an amount or amounts in respect of landfill tax.

(2) Where the total of the amount or amounts mentioned in paragraph (1)(a) above exceeds the total of the amount or amounts mentioned in paragraph (1)(b) above, the latter shall be set off against the former.

(3) Where the total of the amount or amounts mentioned in paragraph (1)(b) above exceeds the total of the amount or amounts mentioned in paragraph (1)(a) above, the Commissioners may set off the latter in paying the former.

(4) Where the total of the amount or amounts mentioned in paragraph (1)(a) above is the same as the total of the amount or amounts mentioned in paragraph (1)(b) above, no payment need be made in respect of either.

(5) Where this regulation applies and an amount has been set off in accordance with any of paragraphs (2) to (4) above, the duty of both the person and the Commissioners to pay the amount or amounts concerned shall be treated as having been discharged accordingly.

(6) Paragraphs (6) and (7) of regulation 45 shall apply in relation to this regulation as they apply in relation to that regulation.

No set-off where insolvency procedure applied

47.—(1) Neither regulation 45 nor 46 shall require any such amount as is mentioned in paragraph (1)(b) of those regulations

(in either case, "the credit") to be set against any such sum as is mentioned in paragraph (1)(a) of those regulations (in either case, "the debit") in any case where—

(a) an insolvency procedure has been applied to the person entitled to the credit;
(b) the credit became due after that procedure was so applied;
(c) the liability to pay the debit either arose before that procedure was so applied or (having risen afterwards) relates to,
or to matters occurring in the course of—
(i) the carrying on of any business; or
(ii) in the case of any sum such as is mentioned in regulation 46(1)(b), the carrying out of taxable activities,
at times before the procedure was so applied.

(2) Subject to paragraph (3) below, the following are the times when an insolvency procedure is to be taken, for the purposes of this regulation, to have been applied to any person, that is to say—

(a) when a bankruptcy order, winding-up order, administration order or award of sequestration is made in relation to that person;

(b) when that person is put into administrative receivership;
(c) when that person, being a corporation, passes a resolution for voluntary winding-up;

(d) when any voluntary arrangement approved in accordance with Part I or Part VIII of the Insolvency Act 1986[12], or

Part II or Chapter II of Part VIII of the Insolvency (Northern Ireland) Order 1989[13], comes into force in relation to that person;

(e) when a deed of arrangement registered in accordance with the Deeds of Arrangement Act 1914[14] or Chapter I of Part VIII of that Order of 1989 takes effect in relation to that person;
(f) when that person's estate becomes vested in any other person as that person's trustee under a trust deed.

(3) References in this regulation, in relation to any person, to the application of an insolvency procedure to that person shall not include—

(a) the making of a bankruptcy order, winding-up order, administration order or award of sequestration at a time when any such arrangements or deed as is mentioned in paragraph (2)(d) to (f) above is in force in relation to that person;

(b) the making of a winding-up order at any of the following times—
(i) immediately upon the discharge of an administration order made in relation to that person;

(ii) when that person is being wound-up voluntarily;
(iii) when that person is in administrative receivership; or
(c) the making of an administration order in relation to that person at any time when that person is in administrative receivership.

(4) For the purposes of this regulation a person shall be regarded as being in administrative receivership throughout any continuous period for which (disregarding any temporary vacancy in the office of receiver) there is an administrative receiver of that person, and the reference in paragraph (2) above to a person being put into administrative receivership shall be construed accordingly.

PART XII

DISTRESS AND DILIGENCE

Distress

48.—(1) Subject to paragraph (2) below, if upon written demand a person neglects or refuses to pay any tax due from him or any amount recoverable as if it were tax due from him, a Collector or an officer of rank not below that of Higher Executive Officer may distress on the goods and chattels of that person and by warrant signed by him direct any authorised person to levy such distress.

(2) Where—

(a) the amount in relation to which a warrant has been issued under paragraph (1) above is not an amount assessed under section 50(1) of the Act upon failure to make a return; and

(b) the Commissioners may be required under section 54 of the Act to review a decision which, if that decision were

varied or withdrawn, would cause the amount in relation to which the warrant has been issued to be reduced or extinguished,
no distress shall be levied before the last day on which the person who is liable to pay the amount concerned is required, by rules made under paragraph 9 of Schedule 12 to the Value Added Tax Act 1994[15], to serve a notice of appeal with respect to that decision.

(3) A levy shall be executed by or under the direction of, and in the presence of, the authorised person.

(4) A person in respect of whose goods and chattels a warrant has been signed shall be liable for all costs and charges in connection with anything done under this regulation.

(5) If the person aforesaid does not pay the amount due together with the costs and charges within five days of a levy, the distress shall be sold by the authorised person for payment of the amount due and all costs and charges; and costs and charges of taking, keeping and selling the distress shall be retained by the authorised person and any surplus remaining after the deduction of the costs and charges and of the amount due shall be restored to the owner of the goods distrained.

Diligence

49. In Scotland the following provisions shall have effect:

(a) where the Commissioners are empowered to apply to the sheriff for a warrant to authorise a sheriff officer to recover any amount of tax or sum recoverable as if it were tax remaining due and unpaid, any application, and any certificate required to accompany that application, may be made on their behalf by a Collector or an officer of rank not below that of Higher Executive Officer;

(b) where during the course of a poinding and sale in accordance with Schedule 5 to the Debtors (Scotland) Act 1987[16] the Commissioners are entitled as a creditor to do any act, then any such act, with the exception of the exercise of the power contained in paragraph 18(3) of that Schedule, may be done on their behalf by a Collector or an officer of rank not below that of Higher Executive Officer.

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

D. J. Howard

Commissioner of Customs and Excise

12th June 1996

(Schedule omitted)

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision for the administration and assurance of landfill tax. In particular:

— Part I provides for the Regulations to come into force on 1st August 1996, defines expressions used in them and provides for certain decisions of the Commissioners to be made in writing.

— Part II regulates the registration of persons who intend to make taxable disposals. It provides for changes to the register and the removal from the register of persons who cease to intend to make taxable disposals. It also makes special provision for transfers of a going concern, partnerships and other unincorporated bodies and relating to the bankruptcy or incapacity of registered persons.

— Part III deals with accounting for tax by making returns, the keeping of a landfill tax account, the correction of errors, payment of the tax and retention of records.

— Part IV deals with claims and payments in respect of credits of tax arising under Parts V, VI and VII.

— Part V provides for an entitlement to credit in circumstances relating to the recycling, incineration and permanent removal of waste.

— Part VI provides for an entitlement to credit in respect of bad debts, and regulates the evidence required and records to be kept. It also provides for the attribution of payments to debts and the repayment of credit.

— Part VII provides for an entitlement to credit for contributions made to bodies for expenditure on approved environmental objects. It also defines the roles and responsibilities of a special regulatory body and Customs and Excise.

— Part VIII specifies what information a landfill invoice must contain.

— Part IX deals with temporary disposals, and makes special provision for the disposal to be exempt or for the tax to be deferred.

— Part X sets out the basic method of determining the weight of material disposed of, and provides for specified and agreed methods to be used instead.

— Part XI provides for the set-off of landfill tax credits and debits against credits and debits arising from other taxes and duties administered by Customs and Excise, and prevents the set-off of credits in cases of insolvency.

— Part XII provides for distress to be levied in respect of landfill tax debts and for certain things relating to diligence in Scotland to be done by officers of Customs and Excise of a minimum grade.