EXPLANATORY MEMORANDUM TO

THE LANDFILL TAX (AMENDMENT) (NO. 3) REGULATIONS 2015

2015 No. 1453

1. This explanatory memorandum has been prepared by HM Revenue & Customs ("HMRC") and is laid before the House of Commons by Command of Her Majesty.

This memorandum contains information for the Select Committee on Statutory Instruments.

2. Purpose of the instrument

These Regulations, which come into force on 2 July 2015, amend the Landfill Tax Regulations 1996 (S.I. 1996/1527) to update references to other secondary legislation. They reflect the fact that the Landfill Tax (Qualifying Fines) Order 2015 (S.I 2015/845) has lapsed and was replaced by the Landfill Tax (Qualifying Fines) (No.2) Order 2015 (S.I. 2015/1385).

3. Matters of special interest to the Select Committee on Statutory Instruments

It is very much regretted that these regulations are in breach of the rule requiring laying of an instrument 21 days before its provisions take effect.

These Regulations amend the Landfill Tax Regulations 1996. Regulation 16ZA of those Regulations contains a reference to the 'LOI test', which is defined in regulation 2(1) by reference to the Landfill Tax (Qualifying Fines) Order 2015. That Order lapsed on 14 June 2015, and was replaced by the Landfill Tax (Qualifying Fines) (No.2) Order 2015, which came into force on 15 June 2015.

As a result there could be uncertainty about the meaning of 'LOI test' in the 1996 Regulations. In order to clarify the position as soon as possible, these Regulations come into effect fewer than 21 days after they are made and laid.

This amendment does not make substantive changes, but simply updates the reference to the Order, which is in identical substantive terms to that which it replaced.

4. Legislative Context

4.1 The primary legislation for landfill tax is contained in sections 39-71 of, and Schedule 5 to, the Finance Act 1996. These Regulations are made under section 71(9) and various paragraphs in the schedule.

4.2 These Regulations are ancillary to the Landfill Tax (Qualifying Fines) (No.2) Order 2015, which sets out what fines are qualifying fines and conditions that must be met for treating fines as qualifying fines.

5. Territorial Extent and Application

This instrument applies to England, Wales and Northern Ireland.

6. European Convention on Human Rights

As the instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 The government announced in the Autumn Statement 2014 that the UK would introduce a Loss on Ignition test in respect of waste fines that are sent to landfill.

7.2 The new test will help landfill site operators who are responsible for accounting for landfill tax to identify the correct tax liability of waste fines.

8. Consultation outcome

Formal consultation was carried out during summer 2014 on the proposals for how the testing regime will operate, including processes for the testing of samples and recordkeeping requirements. The proposals set out in the consultation paper were refined through further discussion with a government-industry working group and the government issued its response to the comments made alongside the Autumn Statement 2014, along with a summary of the responses received. Draft primary legislation was published shortly after Autumn Statement 2014 and draft secondary legislation was published in February 2015 along with draft HMRC guidance.

9. Guidance

HMRC guidance was updated to include details of HMRC's requirements for the methodology and frequency of testing and other evidence and checks that are required in order to ensure that only waste fines that qualify for the lower rate of the tax are charged at that rate.

10. Impact

10.1 The changes will have no impact on business, charities, or voluntary bodies because the instrument contains no substantive changes to policy.

10.2 The changes will have no impact on the public sector because the instrument contains no substantive changes to policy.

11. Regulating small business

The legislation will apply to a very small number of small businesses.

12. Monitoring & review

HMRC will continue to monitor the impact of the legislation through information collected from the joint industry-government working group, made up of waste industry representatives.

13. Contact

Helen Horton at HMRC Tel: 03000 514475 or email: helen.horton@hmrc.gsi.gov.uk can answer any queries regarding the instrument.