EXPLANATORY MEMORANDUM TO

THE LANDFILL TAX (PRESCRIBED LANDFILL SITE ACTIVITIES) ORDER 2009

2009 No. 1929

1. This explanatory memorandum has been prepared by Her Majesty's Treasury and is laid before the House of Commons by Command of Her Majesty.

2. Purpose of the instrument

This Order prescribes seven uses of material on a landfill site which will be subject to landfill tax. It also provides that material is taxable if certain requirements for notification, designation of information areas, provision of information or keeping of records are not complied with.

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

None

4. Legislative Context

4.1 This Order is made under new powers granted by section 65A of the Finance Act 1996 to prescribe certain landfill site activities. Once prescribed, activities will be treated as disposals and subjected to landfill tax.

4.2 The changes to the law made by section 65A of the Finance Act 1996 were made following the Court of Appeal judgment in Commissioners for Her Majesty's Revenue and Customs v Waste Recycling Group Limited [2008] EWCA Civ 849 (the "WRG judgement"). It was held in that case that where material is received on a landfill site and put to use there is no liability to landfill tax. This meant that the landfill tax legislation relating to use of waste no longer reflected the policy intention, which was that uses of material at a landfill site which were disposals in terms of their environmental impact should be taxable.

4.3 A related instrument, the Landfill Tax (Amendment) Regulations 2009 (which comes into force on 1 September 2009), contains requirements about the provision of information about material in "information areas" and the keeping of records. If certain of these requirements are not complied with, the material that is being dealt with will become subject to landfill tax under this Order.

5. Territorial Extent and Application

This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

The Exchequer Secretary, Sarah McCarthy-Fry, has made the following statement regarding Human Rights:

In my view the provisions of the Landfill Tax (Prescribed Landfill Site Activities) Order 2009 are compatible with the Convention rights.

7. Policy background

What is being done and why

7.1 Landfill tax is an environmental tax which seeks to ensure that the full environmental cost of waste disposal to landfill is reflected in business decision-making. As explained in section 4 above, the WRG judgment means that where waste is put to use on a landfill site it is not subject to tax.

7.2 This Order will bring into tax uses of waste at a landfill site where they do not involve the creation of a tangibly engineered structure. This is on the basis that such uses are, in effect, disposal in terms of environmental impact and it is in line with the policy intention for the tax as a whole that they should be subject to tax.

Consolidation

7.3 Not applicable. This Order does not amend another instrument.

8. Consultation outcome

The Government views this Order as broadly returning landfill tax to the position it was believed to be in prior to the WRG judgment. On this basis, consultation was not considered necessary.

9. Guidance

HMRC sent letters to all landfill site operators registered for landfill tax alerting them to this Order. They will publish full public guidance before the Order comes into effect which will be sent to all registered landfill site operators and placed on the HMRC website.

10. Impact

10.1 The impact on business, charities or voluntary bodies is negligible.

10.2 The impact on the public sector is negligible.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation does apply to small business.

11.2 No action has been taken to minimise the impact of the requirements on firms employing up to 20 people.

11.3 The basis for the final decision on what action to take to assist small business is that small businesses will have less complex systems for administering landfill tax and this will have the effect of reducing the impact of these requirements.

12. Monitoring & review

At Budget 2009, the Government published a consultation document – "Modernising Landfill Tax Legislation" – on proposals for wider changes to the administrative and legislative framework underpinning landfill tax. This Order will be reviewed alongside the responses to the consultation.

13. Contact

Katherine Mansfield at Her Majesty's Revenue and Customs Tel: 020 7147 0116 or email: katherine.mansfield@hmrc.gsi.gov.uk can answer any queries regarding the instrument.