

Landfill Tax and Unauthorised Sites

Callum Ross Mills & Reeve



Legislative background: Europe-UK-devolved

- Waste Framework Directive 2008/98/EC
- UK - EPA 1990 / EPR 2016 / Waste Regs 2011
- Finance Act 1996 / Landfill Tax Regs 1996
- **Finance Act 2018 / Landfill Tax (Miscellaneous Provisions) Regs 2018**
- **HMRC: Excise Notice LFT1: A general guide to Landfill Tax Aug 2018**
- England /N.Ireland (LFT)....Wales (LDT)....Scotland (SLfT)



Landfill tax rises for the development industry

- Landfill Tax introduced 1 October 1996
- Standard rate tax has increased from £7 per tonne to over £90
- 80% reduction in municipal waste to landfill

Date of change	Standard rate	Lower rate
Oct 1996	£7	£2
April 2006	£21	£2
April 2016	£84.40	£2.65
April 2019	£91.35	£2.90
April 2020	£94.15	£3



Increase in waste crime



- 1000 illegal waste tips a year
- Fly-tipping to organised crime....waste is “the new narcotics”
- £1bn revenue lost ... HMRC on the case ...

**DOUBLE
TROUBLE**

Extending Landfill Tax to unauthorised sites

- Finance Act 2018 and Landfill Tax (Miscellaneous Provisions) Regs 2018
- Section 40(2) of the Finance Act 1996
- From **1 April 2018** - taxable disposal
 - Disposal of material as waste
 - Landfill site covered by a permit OR **Unauthorised waste site**
 - Disposals made prior to 1 April 2018 which are still on the site on 1 April 2018



Who is liable for LFT at an unauthorised site?

- **The person who actually makes the disposal**
- **Any person who knowingly causes or knowingly facilitates the disposal**
- Owner, occupier, person controlling the vehicle, person who facilitated the transport, party to contract of sale of waste, **person who took any action with a view to the disposal** (waste chain)
- **Personal liability for any company officer**
- Jointly and severally liable
- Focus on waste duty of care



Offences, penalties and other liabilities

- **Tax liability** - LFT (standard rate): records or estimated volume X 1.5
- **Interest** - from the date the tax was due
- **Additional civil penalty** - up to 100% of the LFT
- **Criminal offences**
 - (a) Magistrates Court - £20,000 or LFT x 3 and/or 6 months jail
 - (b) Crown Court – unlimited fine and/or up to 7 years in prison
- **Waste removal** - s59 EPA 1990 (removal of unlawfully deposited waste)
- **Environmental law offences** – s33, 34 EPA 1990 (duty of care), EPR 2016



The stakes are higher

- Powerday plc **fined £1,000,000 in 2016** for unconsented disposal of 17,500 tonnes of waste. Waste deposited with permission of the farm owner but not in accordance with env permit or registered exemption
- Liable for **£245,000 EA investigation costs** and **waste removal costs**
- **Additional liability if there was HMRC action - £3.2 million plus interest**
- **Landfill tax - £1,600,000**
- **Civil penalty - £1,600,000**



Waste Enforcement (E&W) Regulations 2018

- Waste Removal Notice
 - (a) Occupier – s57ZB EPA 1990
 - (b) Owner – s57ZC EPA 1990
- Where occupier has failed to comply
- Restriction Notice – s109 EA 1995 – 72 hours
- Restriction Order – 6 months, option further 6 months
- Construction sites? – after 29 March 2018



Waste Duty of Care Code of Practice Nov 2018

- Duty of Care must be complied with during the complete journey until disposal
- Reasonable steps
- Every load of waste must be accompanied by a Waste Transfer Note (WTN)
- AWTNs / season ticket can allow multiple movements under certain conditions.
- All hauliers removing waste must be registered as a waste carrier
- Receiving site (e.g. landfill) must have an Environmental Permit or a current registered exemption
- Report suspected breaches to the EA

The image shows a sample Waste Transfer Note (WTN) form from the Environment Agency. The form is titled 'CERTIFICATE OF REGISTRATION UNDER THE CONTROL OF POLLUTION (AMENDMENT) ACT 1986'. It contains fields for 'Sender' and 'Receiver' details, including names, addresses, and contact information. A large 'SAMPLE' watermark is overlaid on the form. Below the form, there is a section for 'SCHEDULE 1 - SPECIFIED LAND' which includes a description of the land and a signature section. The signature section is signed by 'Alan G. [Signature]' and dated '17 JANUARY 2018'. The form also includes a note about the rights of appeal and the contact information for the Environment Agency.

Waste Transfer Notes

Waste (England and Wales) Regulations 2011

Must contain:

- A written description of the waste;
- European Waste Catalogue (EWC) code;
- Standard Industry Classification (SIC) code;
- Waste Hierarchy declaration;
- Waste Carrier's name and Licence Number;
- Full address of receiving site (i.e. landfill) and Environmental Permit / exemption number;
- Signature of the site representative and carrier; and
- Signature of the representative of the receiving site

Duty of care: waste transfer note Keep this page and copy it to the Store page

Section A - Description of waste

(Please write as clearly as possible)

A1 Please describe the waste being transferred:

List of Waste Regulations codes:

A2 How is the waste contained?
 Solid Liquid Gas Other

A3 How much waste? For example, number of drums.

Section B - Current holder of the waste - Transferor

B1 Full name:

Company name and address:

Phone:

B2 Are you:
 The transporter of the waste?
 The holder of a pollution prevention and control licence?
 A registered waste producer?
 A registered waste transporter?
 A registered waste importer?
 A registered waste exporter?



Provide information to EA, Council and HMRC

- S108 Environment Act 1995
- Powers of entry, investigations, documents, sampling
- Require any person to provide information (if reasonable cause to believe they can give relevant information)
- £20k fine / 2 years imprisonment
- Waste Duty of Care COP - report suspected breaches
- Excise Notice LFT1 - Landfill tax civil penalty
- “We can reduce the amount of the (additional 100%) penalty depending on our view of how much assistance you give us”
- Duty of confidentiality v criminal enforcement action/ public interest



Not taxable disposals

- Use of material in construction which is compliant with planning
- Temporary storage: 1 year (disposal) or 3 years (recovery/treatment)
- Compliant with the following “authorisations” at the time of disposal
 - Waste exemption
 - EA regulatory position statement
 - **The Definition of Waste: Development Industry Code of Practice**



- The CoP does not change the statutory powers or duties of the EA