

Scottish Landfill Tax

A Consultation on Subordinate Legislation

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CONSULTATION QUESTIONS

Tax rates and qualifying materials

Q1 Do you agree with the list of materials to be subject to the lower rate of tax, as set out in the draft Qualifying Materials Order?

Prescribed activities on landfill sites

Q2 Do you agree with the list of prescribed landfill site activities that are to be taxable under Scottish Landfill Tax?

Tax exemption for site restoration

Q3 Do you agree with the proposal to exempt the Scottish Environment Protection Agency and local authorities from Scottish Landfill Tax that may arise from work to clear and restore sites as a result of illegal dumping or the insolvency of a landfill site operator?

Weighing waste

Q4 Do you agree that water should not be discounted in the weighing process when determining liability for Scottish Landfill Tax?

Credit – bad debt

Q5 Do you agree with the Scottish Government's approach to allowing credit for bad debt?

Scottish Landfill Communities Fund

Q6 Do you agree with the Scottish Government's proposed distribution mechanism for the Scottish Landfill Communities Fund?

Q7 Do you agree with the proposed objectives of the Scottish Landfill Communities Fund?

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Accounting and invoicing periods

Q9 Do you agree that the 14 day period provision in section 26 of the Landfill Tax (Scotland) Act 2014 should be removed to align the environmental and tax return periods?

Draft Regulations

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CONSULTATION QUESTIONS (continued)

BUSINESS & REGULATORY IMPACT ASSESSMENT

Q11 Do you have any comments on the draft Business Regulatory Impact Assessment?

EQUALITY IMPACT ASSESSMENT

Q12

A. Please tell us about any potential impacts, either positive or negative, you feel any of the ideas in this consultation may have on particular groups of people?

B. Please also tell us what potential there may be within these ideas to advance equality of opportunity between different groups and to foster good relations between different groups?

HOW TO RESPOND

We invite written responses to this consultation by 31 July 2014.

This consultation, and all other Scottish Government consultation papers, can be viewed online on the consultation web pages of the Scottish Government website at <http://www.scotland.gov.uk/consultations>.

How to respond

When responding please clearly indicate which questions or parts of the consultation paper you are responding to. This will aid our analysis of the responses received.

When responding you **must** complete the [Respondent Information Form](#), and return it to us (please see **handling your response** below).

Please send your response to: david.kerrouchi@scotland.gsi.gov.uk

Or by post to:

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Victoria Quay,
Leith Docks,
Edinburgh EH6 6QQ*

Handling your response

We need to know how you wish your response to be handled and, in particular, whether you are happy for your response to be made public. Your completed [Respondent Information Form](#), which forms part of the consultation questionnaire, will help us to treat your response appropriately. If you ask for your response not to be published we will regard it as confidential and we will treat it accordingly.

All respondents should be aware that the Scottish Government is subject to the provisions of the Freedom of Information (Scotland) Act 2002 and so would have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

Next Steps

If you tell us we can make your response public, we will put it in the Scottish Government Library and on the Scottish Government consultation web pages. We will check all responses where agreement to publish has been given for any wording that might be harmful to others before putting them in the library or on the website.

Following the closing date, all responses will be analysed and considered along with any other available evidence to help us reach a decision about the finalised versions of the relevant subordinate legislation. A report on this consultation process will be published on the Scottish Government's website at:

<http://www.scotland.gov.uk/Publications/Recent>.

Scottish Government consultations

This consultation, and all other Scottish Government consultation exercises, can be viewed online on the consultation web pages of the Scottish Government website at:

www.scotland.gov.uk/consultations.

The Scottish Government has an e-mail alert system for consultations. This system, called SEconsult, allows individuals and organisations to register and receive a weekly email with details of all new consultations (including web links). SEconsult complements, but in no way replaces, Scottish Government distribution lists. It is designed to allow people with an interest to keep up to date with all Scottish Government consultation activity. You can register at SEconsult:

<http://www.scotland.gov.uk/consultations/seconsult.aspx>

CHAPTER 1

INTRODUCTION

Chapter summary

- Scottish Landfill Tax will replace UK Landfill Tax from 1 April 2015.
- Together, the RSTP Bill and SLfT Act, alongside the SLfT regulations in Annex D and secondary legislation following the RSTP Bill, provide the legislative framework required to make SLfT ‘work’.
- Revenue Scotland will prepare guidance over the course of 2014 and published prior to the tax going live in April 2015.
- This consultation asks for your views on the draft subordinate legislation and ways in which the tax can operate effectively and efficiently in Scotland.
- The consultation includes questions on proposals relating to the funding mechanism and operational structure of the Scottish Landfill Communities Fund.

1.1. On 21 January 2014, the Landfill Tax (Scotland) Act 2014 (SLfT Act) was given Royal Assent. Details of the Act’s passage through Parliament can be found on the Scottish Parliament website¹. Scottish Landfill Tax (SLfT) will replace UK Landfill Tax (LfT) in Scotland from 1 April 2015. This Consultation builds on the previous consultation, *‘Protecting Our Resources, a consultation on Scottish Landfill Tax’*² and evidence obtained through the Business and Regulatory Impact Assessment for the SLfT Act³.

1.2. The Act includes tax-specific provisions needed to allow for the collection of SLfT. The Scottish Parliament was granted legislative competence in the area following the passage of the Scotland Act 2012. The other devolved tax is Land and Buildings Transaction Tax (LBTT) which will replace Stamp Duty Land Tax in Scotland from 1 April 2015. The Land and Buildings Transaction Tax (Scotland) Act 2013 received Royal Assent on 31 July 2013. A separate consultation in relation to subordinate legislation on the LBTT Act 2013 is currently underway.⁴

¹ <http://www.scottish.parliament.uk/parliamentarybusiness/Bills/62160.aspx>

² <http://www.scotland.gov.uk/Publications/2012/10/3524/0>

³ <http://www.scotland.gov.uk/Publications/2013/06/8957/1>

⁴ “Moving Forward with Land and Buildings Transaction Tax: A Consultation on Proposed Subordinate Legislation” available at: <http://www.scotland.gov.uk/Publications/2014/05/8387>

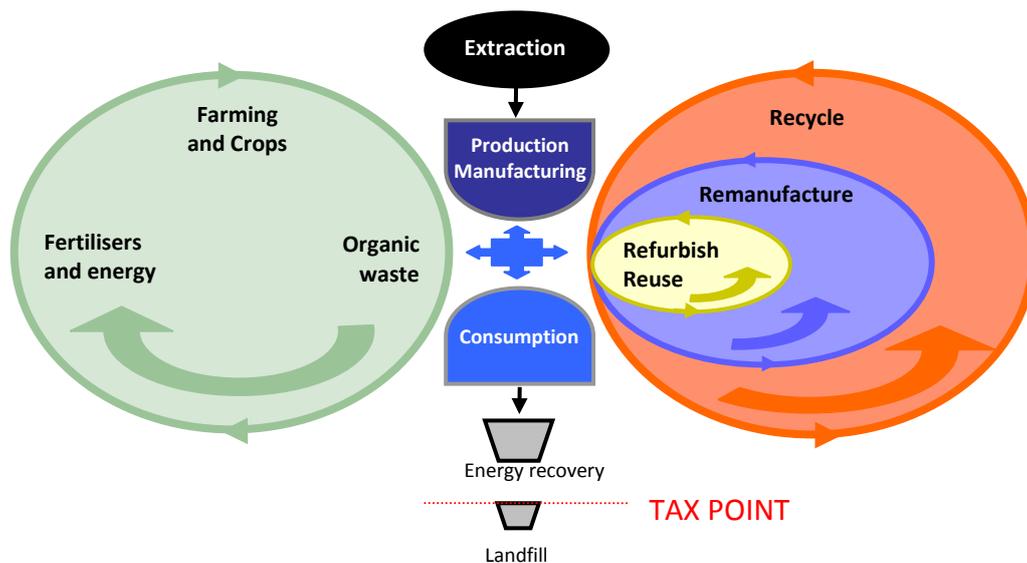
1.3. A third piece of primary legislation for the two devolved taxes, the Revenue Scotland and Tax Powers Bill⁵ (RSTP Bill) was introduced to the Scottish Parliament on 12 December 2013. Subject to the approval of Parliament, it will establish Revenue Scotland as the tax authority responsible for the collection and management of the two devolved taxes. Revenue Scotland will be supported by the Scottish Environment Protection Agency (SEPA) for the collection and management of SLfT and Registers of Scotland (RoS) for the collection and management of LBTT.

1.4. The details of each tax are set out in each of the tax-specific Bills. Subject to the agreement of the UK and Scottish Parliaments, further taxes may be devolved or introduced in Scotland in the future without the need for primary legislation at Westminster.

The Scottish Government's approach to Scottish Landfill Tax

1.5. The Zero Waste agenda, as enshrined in the Zero Waste Plan and the Waste (Scotland) Regulations 2012, enables an ambitious programme of change that aims to create an environment where we make the best use of resources by minimising Scotland's demand on primary resources, and maximising the reuse, recycling and recovery of resources instead of treating them as waste (see figure 1.1).

Figure 1.1: A more circular economy and use of resources



1.6. Preventing and designing out waste is also a vital step in Scotland's journey toward a low carbon economy. A recent UK study estimated around 2.3% of Gross Domestic Product (GDP) could be saved through straightforward resource efficiency measures by using raw materials more efficiently and generating less waste⁶. Where waste can't be prevented, creating efficient routes to circulate materials back into the economy in a way that maintains and enhances the value of those materials will help Scotland continue on its path of sustainable economy growth.

⁵ <http://www.scottish.parliament.uk/parliamentarybusiness/Bills/70929.aspx>

⁶ [WRAP Report - Meeting the UK climate change challenge: The contribution of resource efficiency, 2009](#)

1.7. Through the Zero Waste Plan and the Low Carbon Economic Strategy, the Scottish Government continues to support the growth of a sector that will play an increasingly important role in creating a resilient and sustainable economy. This includes direct support through Zero Waste Scotland, including the 'Safeguarding Scotland's Resources scheme', a loan fund, and large/small scale capital grants to stimulate investment and innovation across the sector.

1.8. The financial savings that can be made through adopting alternatives to landfill are now central to the economics of waste management. Furthermore, the tax has helped establish the stable policy landscape needed to underpin long-term investment decisions on waste and resources infrastructure and collection systems. During a time of significant change in the waste and resources industry, these regulations are designed to support the Zero Waste Plan and maintain a stable landscape when, on 1 April 2015, UK LFT ceases to have effect in Scotland and SLfT is introduced.

Scottish landfill sites

1.9. In 2012 there were 58 landfill sites run by 52 operators disposing of around 4.35m tonnes of Scotland's waste. The majority of this was mixed wastes and mineral wastes (including construction and demolition waste) which together made up 96% of the total. About 36% of the waste landfilled in Scotland originated from households and the remainder was produced by commerce and industry.

The RSTP Bill – a framework for devolved taxes

1.10. Together, the RSTP Bill and SLfT Act (alongside the SLfT regulations in Annex D and secondary legislation following the RSTP Bill) provide the legislative framework required to make SLfT 'work'.

1.11. The RSTP Bill makes provisions for a Scottish tax system to enable the collection and management of LBTT, SLfT and provides the legislative platform for any future tax that may come under the jurisdiction of the Scottish Parliament. It establishes Revenue Scotland as the tax authority responsible for the collection and management of Scotland's two devolved taxes from 1 April 2015. Revenue Scotland currently exists as an administrative function within the Scottish Government. The Bill will put Revenue Scotland on a statutory footing as a non-ministerial department which is accountable to the Scottish Parliament.

1.12. Some of the operational functions of Revenue Scotland with respect to SLfT will be devolved to the Scottish Environment Protection Agency (SEPA). Revenue Scotland will retain overall responsibility for the collection and management of the two devolved taxes, including the Scottish Landfill Communities Fund (SLCF).

1.13. The RSTP Bill puts in place a statutory framework which will apply to the devolved taxes and sets out the relationship between the tax authority and taxpayers in Scotland, including the relevant powers, rights and duties.

1.14. The RSTP Bill will deliver certainty to taxpayers and has been designed to be as simple as possible, with a common approach to tax assessments, applying penalties, promoting compliance and resolving tax disputes. It will deliver convenience because

collection will be supported by a modern electronic payments system in line with the ambitions set out in Scotland's Digital Future: A Strategy for Scotland ⁷.

1.15. Taxpayers will be required to submit a self-assessed tax return (a "self-assessment") where there is a liability to pay tax. Both taxpayers and Revenue Scotland will have the power to amend tax assessments after they have been submitted. Revenue Scotland will also have the power to issue its own tax assessment in certain circumstances, or to amend a self-assessment made by a taxpayer.

1.16. Revenue Scotland (and SEPA if delegated powers), will have the power to issue penalty notices to taxpayers or to their agents for non-compliant behaviour with respect to the devolved taxes. It will also have the power to apply discretion with respect to reducing or waiving penalties in certain circumstances and must issue guidance on how discretion will be exercised.

1.17. The RSTP Bill specifies the non-compliant behaviour that should be subject to penalties, including, for example, late or non-payment of tax, errors in documents submitted or not submitting information requested by Revenue Scotland or by another public body to which Revenue Scotland has delegated some of its powers.

1.18. There will be three kinds of financial penalties for non-compliant behaviour – fixed penalties, daily penalties, and percentage-based penalties, where the penalty is linked to the potential loss in tax revenues. Revenue Scotland will also have the power to inspect records, enter business premises to carry out investigations in relation to tax activity and to seek a summary warrant from the sheriff court to collect unpaid taxes and/or penalties owed.

1.19. The provisions in the RSTP Bill include measures to counteract tax avoidance through the introduction of a Scottish general anti-avoidance rule (GAAR). The purpose of the GAAR is to give Revenue Scotland the power to counteract tax advantages arising from tax avoidance arrangements that are artificial. The Scottish GAAR would enable Revenue Scotland to take counteraction in a wider range of circumstances than the existing UK GAAR (which deals with tax abuse rather than tax avoidance).

1.20. The RSTP Bill also sets out a structure for resolving tax disputes by providing that the taxpayer can require Revenue Scotland to carry out an internal review. Revenue Scotland may also offer to enter into mediation with the taxpayer. If a dispute is not resolved by an internal review or if mediation is entered into and an agreement is not reached, the taxpayer will still have recourse to the new Scottish Tax Tribunals which will be established by the Bill. A taxpayer who wishes may lodge an appeal with the Scottish Tax Tribunals without first asking for an internal review or may refuse to enter into mediation. A further appeal on a point of law against a decision taken by the Scottish Tax Tribunals could be made to the Court of Session.

⁷ <http://www.scotland.gov.uk/Publications/2011/03/04162416/0>

Administrative arrangements - Revenue Scotland and SEPA

1.21. Revenue Scotland, Registers of Scotland and SEPA are working together to establish their respective roles and responsibilities with regard to the devolved taxes, building on each other's knowledge and experience.

1.22. Documents which describe delegated functions and related performance expectations will be developed towards the end of 2014 will be agreed between the three organisations and confirmed before April 2015.

1.23. Revenue Scotland will be required to ensure that clear advice and guidance, tailored to Scots law and practice, is available to help taxpayers, and their advisers to understand the new system and any changes in processes for submitting tax returns and payments.

Consultation arrangements and timetable

1.24. A timeline of upcoming arrangements with regards to the devolved taxes can be found in Table 1.1. The Scottish Government intends to lay the subordinate legislation in Parliament in October 2014.

Table 1.1: Timeline of consultation arrangements for devolved taxes

2014	Early May	Land and Building Transaction Tax consultation on secondary legislation published
	Mid May	Scottish Landfill Tax consultation on secondary legislation published
	May	RSTP Bill Stage 1 debate
	June	RSTP Bill Stage 2 - consideration by Finance Committee of amendments to the Bill
	August	RSTP Bill Stage 3 debate
	Autumn	Draft 2015/16 Budget, with proposed tax rates
	October	Secondary legislation laid (excluding tax rates)
2015	Early 2015	Revenue Scotland becomes a non-Ministerial officeholder in the Scottish Administration (dependent on the passage of a section 104 order under the Scotland Act 1998 at Westminster)
	Early 2015	Orders laid on the rates of tax
	1 April	Commencement of legislation for the devolved taxes

CHAPTER 2

TAX RATES AND QUALIFYING MATERIALS

Chapter summary

- Tax rates will be announced as part of the 2015 draft budget process.
- Scottish Landfill Tax will maintain two rates of tax when introduced. However further engagement with industry and investigatory work will be carried out post implementation to examine the possibility of additional rates and materials contained within the rates.
- In order to maintain stability and consistency for industry, the Scottish Government has set the same list of qualifying material that applies to UK Landfill Tax.

Tax rates

2. Scottish Ministers have indicated that in autumn 2014 they will bring forward proposals on the rates of tax to apply to the devolved taxes from April 2015 as part of the draft Budget process for 2015-16. Subject to the approval of Parliament, the tax rates will then apply until a subsequent order is laid. In advance of each annual draft Budget process, consideration will be given to whether rates should be adjusted taking into account all relevant factors. It is common practice amongst many governments to set tax rates as part of the annual budget process, depending on a range of factors including spending priorities and economic circumstances, whilst retaining an ability to make changes to tax rates or thresholds quickly if necessary.

2.1. Under the current UK LFT system, landfill tax is chargeable by weight and there are two rates:

- a lower rate that applies to less polluting (or damaging) wastes listed in the Landfill Tax (Qualifying Material) Order 2011; and
- a standard rate that applies to all other taxable waste disposals.

2.2. To provide the policy certainty needed to support current and future investment decisions in waste and resources infrastructure, the Scottish Government intends to introduce the tax, at tax rates no lower than those for UK LFT at April 2015.

2.3. For the introduction of the tax in 2015, it is the Scottish Government's intention to maintain a similar two rate system that is charged by weight. Scottish Ministers have the power to vary the material qualifying for the lower rate in the future. However to

ensure consistency and to aid implementation for the SLfT tax regime in Scotland for operators and regulators at the outset, the list of qualifying material in the Landfill Tax (Qualifying Material) 2011 (see Annex C) has been replicated.

2.4. This will be a stabilising factor for the industry in the short term. This position will be reviewed in the future further to additional engagement with industry once SLfT is established. Ministers will then consider whether certain materials could be subject to different rates of tax.

2.5. The lower rate of tax recognises that there is a relatively low level of environmental impact associated with the landfilling of wastes which are inert. Inert wastes do not biodegrade, they do not produce landfill gas and there is a low risk of pollution to groundwater or surface water. Inert waste landfills can be subject to a much shorter period of aftercare and be returned more readily to other productive uses.

Qualifying materials

2.6. The definition of inert waste in the European Waste Directive differs from what has historically been classified as inert for UK LfT purposes. The Scottish Government has therefore not defined the qualifying materials as inert, but recognises that these materials have lower environmental impacts.

2.7. Although not all material meeting the criteria below will be subject to the lower rate of tax, all material in the Qualifying Material Order must meet the following conditions:

- **Non-hazardous**

Wastes which are not 'hazardous' within the meaning of article 3.2 of the revised Waste Framework Directive (2008/98/EC), unless the material has no practical alternative waste management option and must be disposed of to landfill.

- **Low potential for greenhouse gas emissions**

Wastes which are not biodegradable, have a low organic content or do not break down under the anaerobic conditions that prevail in landfill sites to produce methane. These include inert waste within meaning of article 2(e) of the Landfill Directive (1999/31/EC); and waste with little or no organic content such as inorganic residues or completely combusted residues from the incineration of biodegradable/organic wastes.

- **Low polluting potential in the landfill environment**

- Waste where the contaminants are unlikely to become mobile in the landfill and any leachate produced has little or no pollution potential.
- Where the pollution potential of the waste is reduced if deposited alone in mono-fill landfill sites or within separate cells (not mixed with other wastes) within a landfill site.

- The engineering requirements for the landfill are lower than would be the case for a non-hazardous landfill (as laid out in the Landfill Directive) by virtue of a risk assessment agreed with the regulator.
- The aftercare period and requirements are significantly lower than would normally be required for a non-hazardous waste landfill, based on a risk assessment agreed with the regulator.

2.8. To improve clarity and consistency, the Scottish Government wishes to seek views on whether any further refinement to these definitions should be considered.

Qualifying Materials Order

Q1. Do you agree with the list of materials to be subject to the lower rate of tax, as set out in the draft Qualifying Materials Order?

CHAPTER 3

PRESCRIBED ACTIVITIES ON LANDFILL SITES

Chapter Summary

- Drawing on the power in section 6(1) of the Landfill Tax (Scotland) Act 2014, the draft Prescribed Activities Order sets out which landfill site activities are to be treated as taxable disposals under Scottish Landfill Tax.
- All material entering a landfill site will be taxable provided it is not subject to a tax exemption, stored in a non-disposal area or is used in the final restoration of a site according with the site permit.

3. Section 3 of the Landfill Tax (Scotland) Act 2014 defines what a taxable disposal is but this provision allows the Scottish Ministers to prescribe a specific “landfill site activity”, with the effect that it will constitute a taxable disposal. It also allows for certain conditions to be set before an activity is considered a landfill site activity or a disposal.

3.1. Section 6 of the Act provides an Order-making power to prescribe “landfill site activity”, which is then to be treated (a) as a disposal at the landfill site of the material involved in the activity as waste, (b) as a disposal of that material made by way of landfill, and (c) as a disposal at the landfill site of that material. These powers will be exercised by the Scottish Government by means of a Prescribed Activities Order.

3.2. The Scottish Government is of the view that all material entering a landfill site, provided it is not used in the final restoration of the site or stored in a non-disposal area, should be subject to the tax.

3.3. The Order is necessary to tax material received on a landfill site that is put to a temporary use (for example, for the daily coverage of sites required under environmental regulation, and construction of on-site haul roads).

3.4. Therefore the activities described in paragraph 3.5 are to be treated as a taxable disposal for the purposes of SLfT.

Proposal

3.5. The draft Order in Annex D sets out the landfill site activities that will be taxable under SLfT. To provide clarity and consistency to the industry, the activities are in line with those set out in the Landfill Tax (Prescribed Landfill Site Activities) Order 2009 for UK LfT. Activities to be replicated are:

- (1)(a) the use of material to cover a disposal area during a cessation in landfill disposal activity;
- (b) the use of material to create or maintain a temporary haul road;
- (c) the use of material to create or maintain temporary hard standing;
- (d) the use of material to create or maintain a cell bund;
- (e) the use of material to create or maintain a temporary screening bund except where the material so used is naturally occurring material extracted from the landfill site in which the temporary screening bund is located;
- (f) the temporary storage of ashes (including pulverised flue ash and furnace bottom ash);
- (g) the use of material placed against the drainage layer , liner or cap of the disposal area to prevent damage to that layer or liner;
- (h) any other landfill site activity if in relation to that activity –
- (i) sections 30 or 31 of the Landfill Tax (Scotland) Act 2014 requires a person to notify or give information, or a person is required to designate a part of a landfill site as an “non-disposal area”⁸ , give information or maintain a record in respect of the area; and
 - (ii) that requirement is not complied with.
- (i) any use of waste material deposited out with the conditions of an authorisation.
- (j) any use of waste material deposited without an authorisation when an authorisation would normally be required for that activity.

(2) Paragraph (1) does not apply to any landfill site activity if, or to the extent that, it involves material that is or has been otherwise chargeable to landfill tax or exempted from landfill tax.”

Prescribed activities on landfill sites

Q2 Do you agree with the list of prescribed landfill site activities that are to be taxable under Scottish Landfill Tax?

⁸ “Information areas” in the UK legislation are referred to as “non-disposal areas” in s30 of the SLFT Act.

CHAPTER 4

TAX EXEMPTION FOR SITE RESTORATION

Chapter Summary

- The Scottish Government intends to use the power in section 11 of the SLfT Act to provide an exemption for SEPA and local authorities from Scottish Landfill Tax in cases where they have a statutory obligation to restore sites created as a result of illegal activity/or where a landfill site operator has become insolvent.

Background

4. The *Waste (Scotland) Regulations 2012* aim to ensure that the minimum level of waste services on offer is better than that of the past. This will require increased competition in the waste management sector to ensure that businesses have access to choice and the sector passes on the opportunities and savings that come with moving to a resource-minded approach to waste management. To drive these changes, the regulations introduce a series of measures to:

- maximise the quantity and quality of materials available for recycling and minimise the need for residual waste treatment capacity;
- move residual waste management up the waste hierarchy so as to extract resource value from those materials we can't recycle;
- drive operational and cultural shifts in how waste is managed, including improved provision of services to households and businesses;
- create the market certainty needed to support investment by businesses in the recycling, materials reprocessing and waste management sector;

4.1. The regulations will also ensure the Scottish Government meets its requirements under the European Waste Framework Directive (WFD). Meeting the requirements of the WFD will require substantial changes to waste management in Scotland, including increased recycling rates. The Zero Waste Plan is well aligned to the aims of the WFD, and the regulations are intended to bring about the changes required under the WFD in a way that will maximise the economic opportunities afforded by a resource-centred approach to managing Scotland's waste.

4.2. Specific measures introduced by the regulations include:

- a requirement to remove key recyclables (hard plastics and non-ferrous metals) from mixed (unsorted) waste prior to incineration (2012);
- a requirement for businesses to present dry recyclables (metals, plastics, paper, card and glass) (2013) and food waste for collection (2013 and 2015 for businesses producing less than 50kg of food waste);

- a requirement on local authorities to provide householders with a collection service for dry recyclables (2013) and food waste (2015).
- a ban on materials collected separately for recycling going to landfill or incineration (2014);
- a ban on biodegradable municipal waste going to landfill, thus helping to substantially reduce harmful emissions of methane (2020).

4.3. The *Waste (Scotland) Regulations 2012*⁹ will have a dramatic effect on SLFT over the coming decade and will progressively change both the amount and composition of waste going to landfill. The current landscape of landfill sites in Scotland is therefore expected to change significantly, with less material being landfilled and that which is progressively being inert materials that can't be recycled or industrial wastes for which there are currently no alternative treatment routes. We are therefore likely to see fewer landfill sites in the future, although some sites will remain open for longer so that they can complete their full cycle through to restoration and closure.

4.4. These changes in the waste and resources sector mean that there will be an increasing risk that business models that underpin some landfill sites may become unviable and some sites consequently become insolvent.

Proposal

4.5. Section 11 of the SLFT Act allows for the Scottish Ministers to vary what is categorised as a taxable disposal, what is not a taxable disposal and what is exempt.

4.6. The Scottish Government is keen to ensure that both illegal sites and sites where the operator has become insolvent are properly restored. Currently, if a landfill site operator becomes insolvent then SEPA or the local authority (LA), having already tried to utilise the sites financial provision, may have to clean the site up including getting contractors and heavy machinery on site to remove the waste material and dispose of it properly. Although such circumstances are only likely to happen on limited occasions SLFT would be incurred if taken for disposal by SEPA or the LA.

4.7. In insolvency cases the administrator should be liable for the cost in the first instance. If there are no assets or they do not cover the cost of disposing of the material then SEPA or a local authority would be eligible to claim the exemption (or contractors operating on their behalf).

4.8. Where material has been illegally disposed, SEPA or the local authority may have to remove it, after not being able to establish the responsible person (for example if a s59 notice of the Environmental Protection Act 1990 is not complied with or s59(7) is utilised).

4.9. In illegal ('un-authorized') cases, the disposer of the material (the operator operating without an authorisation) should be liable for the cost in the first instance. If Revenue Scotland cannot secure payment of the evaded tax liability or this does not

⁹ Available at: <http://www.legislation.gov.uk/sdsi/2012/9780111016657/contents>

cover the SLfT cost of disposing of the material, then SEPA or a local authority will be eligible to claim the exemption or a portion of it (for the remaining difference).

Tax exemption for site restoration

Q3. Do you agree with the proposal to exempt the Scottish Environment Protection Agency and local authorities from Scottish Landfill Tax that may arise from work to clear and restore sites as a result of illegal dumping or the insolvency of a landfill site operator?

CHAPTER 5

WEIGHING WASTE

Chapter Summary

- Landfill site operators will have a duty to use a weighbridge where one is functional and available on the landfill site.
- If there is no weighbridge available on site, any alternative method of weighing the waste must be approved by Revenue Scotland / SEPA before it can be used for the purposes of a tax return.
- To reduce pollution and encourage removal of water from waste material, the Scottish Government proposes that water cannot be discounted for the purpose of the tax calculation.

5. SLfT will apply to disposals of material by way of a landfill site. The amount of tax due is calculated on the basis of the weight of material being disposed; therefore stringent weighing methodologies are required to ensure consistency, openness and fairness.

Weighing waste

5.1. The draft Regulations in Annex E (Part 9, Regulation 35-40) set out the Scottish Government's approach to the weighing of waste. The approach is similar to the approach for UK LFT set out in section 44 of the Finance Act 1996. The draft regulations also allow Revenue Scotland to specify and alter the detail of how material is weighed by means of guidance. This will allow future technological developments to be employed and will reduce the possibility of any misuse of the system.

5.2. Where a site has no weighbridge, the landfill site operator will be required to seek approval from Revenue Scotland / SEPA for an alternative method of calculating the weight of the material being disposed to landfill. The regulations state that where a weighbridge is available either on site or within close enough proximity of a site so as not to incur excessive costs, then it must be used to weigh all disposals.

5.3. Most operators now have weighbridges at their landfill sites and there are many public or accessible weighbridges. The number of applications for approval of alternative forms of weighing is therefore expected to be minimal.

5.4. Other arrangements will be required for weighbridge breakdowns or when an alternative weighbridge is not available within a close proximity. These arrangements should be agreed by with the tax authority who will define agreed methods of weighing in the guidance.

5.5. Any weighbridge used for SLfT purposes must comply with the relevant weights and measures legislation.

5.6. This is very similar to the existing approach taken for UK LfT. However, the approach to SLfT emphasises the requirement to weigh materials on site or at a nearby weighbridge in the first instance; only in exceptional circumstances would other agreed methods be permitted by Revenue Scotland / SEPA.

5.7. Only material weighed in accordance with the regulations can be submitted in a tax return. If inappropriate weighing techniques are utilised, the tax return would be invalid.

Water content

5.8. The Scottish Government has given consideration to the weighing of water contained within waste to be disposed at landfill sites. It has been noted that:

- The current UK LfT system actively discourages the de-watering of waste by allowing water to be discounted.
- The process of encouraging water to be discounted from waste going to landfill allows for excess water to be allowed into the landfill mass. This in turn adds to the generation of leachate and creates a further pollution risk, or at least resources have to be utilised in the form of leachate treatment to minimise the risk of pollution.
- Liquid waste going to landfill was banned in 2003 by the Landfill (Scotland) Regulations 2003. There should therefore be less need to discount water than there was in 1996 when LfT was first introduced.
- The discount process when determining the tax due can be quite complex, which in turn, increases the scope for abuse/evasion.

5.9. For these reasons, the Scottish Government proposes that water should not be regarded as a discountable constituent for the purposes of SLfT calculations to encourage more dewatering to take place.

Weighing Waste

Q4 Do you agree that water should not be discounted in the weighing process when determining liability for Scottish Landfill Tax?

CHAPTER 6

CREDIT - BAD DEBT

Chapter Summary

- If a landfill site operator issues an invoice for a deposit and the customer enters an insolvency procedure, the landfill site operator will be able to apply for a credit for a portion of the bad debt.
- The credit will only be for the Scottish Landfill Tax element of the debt and the credit will be for the same proportion of SLfT that the outstanding bad debt forms of the whole.

6. Section 19 of the SLfT Act contains provisions that allow Revenue Scotland and landfill site operators to write off bad debts should the landfill site operator issue an invoice for a deposit and the same customer enters an insolvency procedure.

Proposal

6.1. The regulations 18-25 in Annex E propose that if a customer of a landfill site operator becomes insolvent, the operator may claim a credit for bad debt if all of the following conditions are met:

- The landfill site operator has carried out a taxable activity, for example disposal of waste, for a consideration in money;
- The customer is not connected with the landfill site operator (as defined in Section 1122 of the Corporation Tax Act 2010);
- The landfill site operator has already accounted for the SLfT on the disposal and paid it to Revenue Scotland;
- The landfill site operator has written off the debt in the day-to-day accounts and transferred it to a separate bad debt account;
- That the landfill invoice was issued within 14 days of the disposal and complies with regulations under 26(3); and
- 12 months have passed since the date of issue of the landfill invoice.

6.2. Before the credit can be claimed, the landfill site operator must have the following records:

- a copy of the SLfT invoice that the landfill site operator issued, and
- the details of any waste transfer note;
- the outstanding amount;
- the amount of the claim;
- the return in which the claim was made ;
- a separate bad debt account showing, for each relevant disposal;

- the amount of tax charged;
- the return in which that tax was accounted for and when it was paid;
- the date and identifying number of the landfill invoice that was issued; and
- any payment or other consideration received.

6.3. The landfill site operator can only claim credit for the amount of SLfT charged on the disposal relating to the bad debt. However, the following must be offset against the amount of the bad debt:

- any amount that they owe the customer (or mutual debt);
- the value of any enforceable security that they have in relation to that customer; and/or
- any part payment made by the customer for the debt.

6.4. In such a case, the landfill site operator's claim to credit can only be for the same proportion of SLfT that the outstanding bad debt forms of the whole, as the example below illustrates:

- total charge for disposal £182.50 (including £82.50 SLfT which has been paid)
- payment received £90
- amount of debt £92.50
- bad debt credit claimable $\frac{£92.50}{£182.50} \times £82.50 = £41.81$

Credit – bad debt

Q5 Do you agree with the Scottish Government's approach to allowing credit for bad debt?

CHAPTER 7

A SCOTTISH LANDFILL COMMUNITIES FUND - SUPPORTING THOSE AFFECTED BY LANDFILL

Chapter summary

- Regulations 26-33 set out the detail of a Scottish Landfill Communities Fund (SLCF) to replace the UK fund from April 2015.
- Landfill is an environmentally damaging activity. Methane emissions contribute to climate change and locally there can be detrimental impacts on wildlife, air quality (noise and odour) and on watercourses as well as litter problems and vermin.
- The Scottish Government proposes to establish a fund for worthy causes and to finance it through a tax credit system. Furthermore, to support and enhance the continued role of a communities fund, Scottish Government proposes to increase the tax credit limit by 10% over the UK LCF at introduction.
- In order to keep administration costs to a minimum and to maximise money spent on projects, landfill site operators will only be able to distribute funds through bodies registered and approved by the tax authority.
- Organisations that wish to distribute funds on behalf of landfill site operators must be a member of the Scottish Landfill Communities Fund Forum and will need to register for that objective separately with SEPA. These requirements will be set out in guidance.
- Projects within 10 miles of a landfill site or waste transfer station will be eligible for funding.

Introduction

7. The Scottish Government recognises that landfill is an environmentally damaging activity. Those living close to landfill sites can experience detrimental impacts on wildlife, air quality (noise and odour) and on watercourses as well as unsightly litter from wind blow and vermin problems and impacts of vehicle movements. Methane emissions from landfill sites also contribute to climate change, something that affects all of us.

7.1. The UK Landfill Communities Fund (UK LCF) was set up in 1996 to provide funding for community or environmental projects in the vicinity of landfill sites. The fund operates as a tax credit scheme whereby landfill site operators can contribute up

to 5.1% of their UK LFT liability to Environmental Bodies (EBs) and reclaim 90% of this contribution as a tax credit. They then either bear the remaining 10% themselves or an independent third party can make up the difference to the landfill site operator.

7.2. The Scottish Ministers will use the powers in section 18 of the SLfT Act to set, control and administer a Scottish Landfill Communities Fund (SLCF) credit scheme in order to set up a similar system in Scotland. The provisions in the regulations ensure that a landfill site operator is only entitled to credit if certain conditions are met i.e. to pay a sum to a registered Distributive Environmental Body (DEB).

7.3. The Scottish Government intends to create a framework that maintains the best parts of the existing system, while also ensuring that administration costs are minimised so that the maximum amount of funds are spent on actual projects.

Projects and spend in Scotland

7.4. The UK LCF has delivered a wide variety of projects in areas affected by landfill sites. Around £80 million (as at 2012) has been distributed to projects in Scotland from the UK LCF. In addition, because the funds are received directly from landfill site operators and not from a public body, they have levered in a significant amount of other funding over the past 18 years. The UK LCF is entirely private funding and therefore not limited by state aid rules. It is therefore able to be used as match funding for public funding from a variety of sources.

Table 7.1: Summary of UK LCF spend in 2010/11 financial year

Objective	Provide or improve a general public amenity	Protect or enhance a species or its environment where it naturally occurs	Restoration of religious buildings or historic structures	Total
% of spend	80	13	7	100
Spend 2010/11 (£M)	3.65	0.54	0.35	4.54

7.5. The Scottish Government expects that the net effect of Scotland's Zero Waste Plan and the Waste (Scotland) Regulations 2012 will result in a significant decrease of landfill tonnages in Scotland over the next ten years, with a corresponding reduction in tax receipts. The Scottish Government's analysis of these trends suggests that tax receipts will drop by 62% and stabilise in 2025 at around 38% of the receipts in 2010-11, assuming no further escalation in tax rates.

Proposals

7.6. The Scottish Government believes that the UK LCF has played an important role in supporting communities affected by landfill sites as well as to the wider Scottish environment. The Scottish Government proposes to establish a Scottish Landfill Communities Fund for worthy causes and to finance it through a tax credit system.

Credit rate

7.7. Furthermore, to enhance the ability of the fund to address a wide range of outcomes for Scotland's environment and communities, the Scottish Government proposes to increase the amount of funding available to projects for the first three years of the scheme by 10% over the current system. Based on current landfill activities and tax rates, this would increase the fund in Scotland by approximately £450,000 each year.

Private Funding Status and Match Funding

7.8. The UKLCF has been broadly successful at leveraging funding for good causes. For every £1 spent by the fund, the Scottish Government understands that around £4-5 is levered by way of match funding from other sources. Money from other sources includes other Scottish Government, local authority, UK and European funds. Access to these funds often carries a qualification that is dependent on match funding from non-government sources. The regulations (26-33) in Annex E relating to the SLCF have been designed so that the SLCF will maintain its private funding status and to ensure that as much money as possible from the scheme goes to support worthy causes.

Registration Process

7.9. For clarity we will refer to an environmental body carrying out projects as an, 'Environmental Body (EB). DEB means 'Distributive Environmental Body' which is a member of the Scottish Landfill Communities Fund Forum (SLCFF). Section 18 of the Landfill Tax (Scotland) Act 2014 and Regulation 28 in Annex E allow landfill site operators to claim a tax credit if they pay money to an DEB registered for objective F as set out in the regulations.

7.10. All DEBs have to be registered with SEPA (acting on behalf of Revenue Scotland). Bodies that provide administrative, financial or other services to EBs to allow them to operate (in accordance with Objective F (as described in Annex E)) are to be registered separately from the other organisations working on the other 5 objectives. This allows the tax authority to carefully monitor the number of bodies carrying out this function.

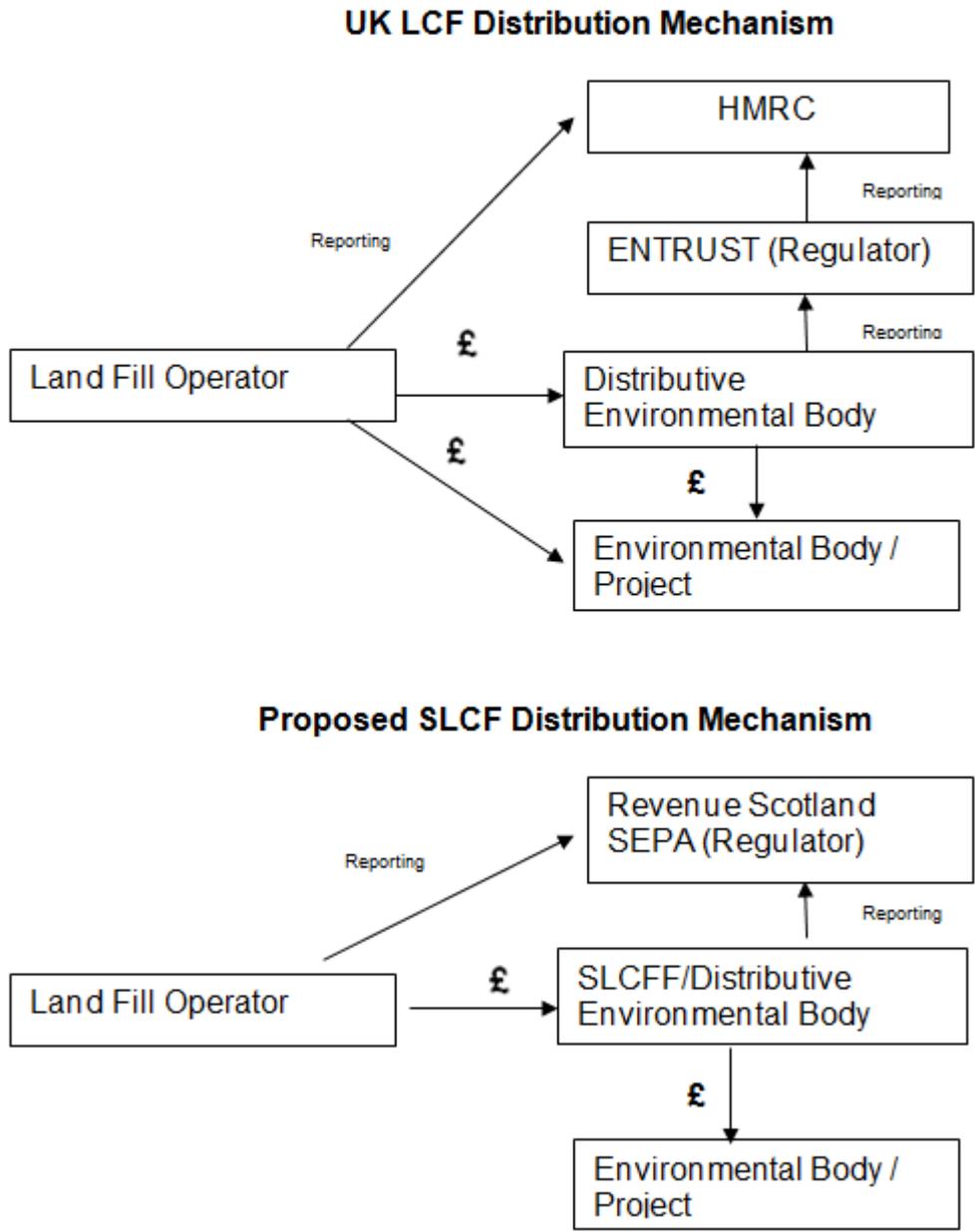
7.11. In addition, as a pre-requisite for registration, DEBs would have to be a member of the Scottish Landfill Communities Fund Forum (SLCFF). The Forum has its own conditions of membership.

7.12. Currently, the most common way for a project to apply for and receive funding is to approach a DEB. These bodies can receive and hold contributions from landfill

site operators for distribution in respect of approved projects on behalf of a landfill site operator, or for more than one landfill site operator. Figure 7.1 below sets out how funds are distributed in the UK LCF model and how it is proposed that funds will be distributed in the SLCF.

Figure 7.1: Distribution of funding: comparison of the UK LCF and SLCF

Model Comparisons



Objectives of the SLCF

7.13. Projects and activities that meet one of the following objectives will be considered for SLCF funding:

- A. Land Reclamation, Remediation or Restoration
- B. Community based recycling and reuse projects
- C. Public parks and public amenities
- D. Biodiversity conservation
- E. The restoration of places of worship and historic buildings
- F. The provision of administrative, financial or other similar services to environmental bodies enrolled with the Scottish Landfill Communities Fund Forum and registered with SEPA.

7.14. As described further below, landfill site operators would make all SLCF contributions to a DEB (either an existing body or one they create). The roles and responsibilities of participants in the SLCF are as follows:

Roles under the proposed scheme:

Environmental Bodies/Projects (EBs)

- Communities and environmental bodies will be able to seek access to funding from the SLCF by contacting the DEB that operates in their local area or the Scottish Landfill Communities Fund Forum. Revenue Scotland, SEPA and the landfill site operator would, if approached, also point organisations to the appropriate body.
- All EBs/projects would be registered and approved by SEPA acting on behalf of Revenue Scotland. The EBs/projects would receive funding and be assisted in this by their local DEB or the Scottish Landfill Communities Fund Forum which would provide a service to the project by helping with the application for funding and, if successful, with project management and accounting.

Distributive Environmental Bodies (DEBs)

- The DEBs will be required to register with the Scottish Landfill Communities Fund Forum and adhere to a formal code of conduct. The Scottish Landfill Communities Fund Forum will report to the regulator, SEPA, which along with Revenue Scotland, will be represented on the Scottish Landfill Communities Fund Forum board. The Scottish Landfill Communities Fund Forum would be entitled to an agreed level of contributions to the SLCF to meet the costs of its reporting role.
- Landfill site operators will be able to make funding contributions to the local Distributive Environmental Body directly (all such contributions would be notified to SEPA in its role as the fund regulator). The DEBs will assess applications from community and environmental projects for SLCF funding. If the projects meet the objectives of the fund (and other criteria to be set out in guidance) and funding is available, the DEB would arrange for the distribution of funds to the projects as it considers appropriate.

Scottish Landfill Communities Fund Forum & SEPA

- The Scottish Landfill Communities Fund Forum will gather information from the DEBs and help to ensure compliance with the rules of the SLCF.
- SEPA will provide appropriate regulation to help ensure accountability, transparency and value for money. The regulator's main task would be to provide a safeguard that funds were being used properly and that administration costs are as low as reasonably achievable. SEPA and Revenue Scotland would then reconcile data from the Scottish Landfill Communities Fund Forum with the landfill site operators' tax returns.

Revenue Scotland

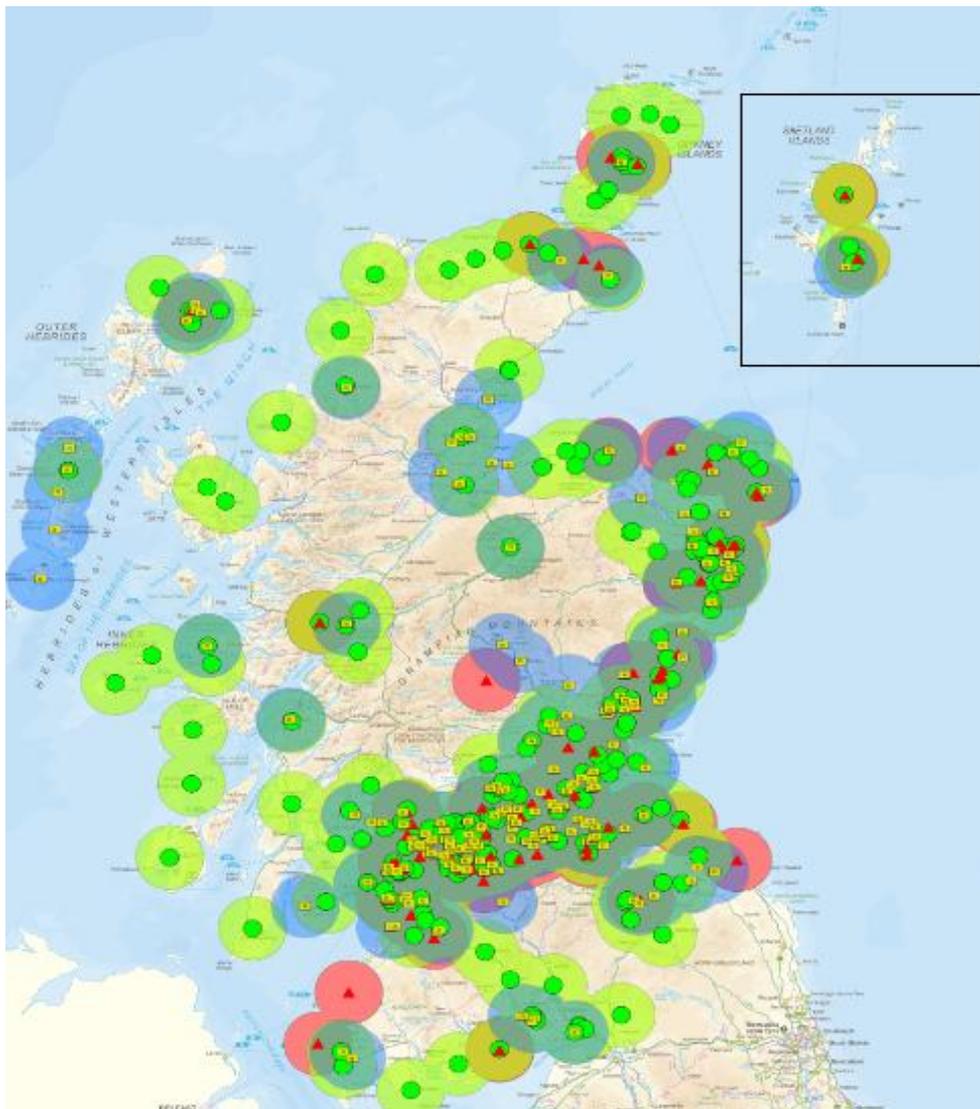
- Revenue Scotland would delegate its functions and day to day running of the scheme to SEPA but retains overall responsibility, oversight and a duty to report to the Scottish Parliament.

Guidance and vicinity rules

7.15. Further to the regulations 26-33 relating to the SLCF in Annex E, Revenue Scotland will produce guidance notes on the running and administration arrangements of the fund. The guidance will provide further explanation of the proximity/vicinity rule mentioned in the regulations.

7.16. The Scottish Government recognises that waste transfer stations, where taxable waste to be landfilled is often collected for forward transportation to a landfill site, can cause a dis-amenity to local communities. For this reason it is proposed that community and environmental projects in the vicinity of waste transfer stations should also be eligible to be considered for funding from the SLCF. The map in figure 7.2 below shows the geographic spread of potential eligible projects under the proposed SLCF, based on the location of landfill sites and waste transfer stations.

Figure 7.2: Location of projects eligible for funding from the SLCF



Legend

- Transfer Stations
- ▲ Operational Landfill Sites
- Closed Landfill Sites
- 10 Miles Buffer Around Transfer Station
- 10 Miles Buffer Around Closed Sites
- 10 Miles Buffer Around Operational Sites

Scottish Landfill Communities Fund

Q6 Do you agree with the Scottish Government’s proposed distribution mechanism for the Scottish Landfill Communities Fund?

Q7 Do you agree with the proposed objectives of the Scottish Landfill Communities Fund?

Q8 Do you agree that that the proximity rule of 10 miles should be extended to waste transfer stations?

CHAPTER 8

ACCOUNTING AND INVOICING PERIODS

Chapter summary

- SEPA's role in administering Scottish Landfill Tax enables new links to be made between SLfT and its existing permitting role for landfill sites.
- The Scottish Government is keen to reduce the administrative burden on landfill site operators where possible by, for example, using online systems to align environmental reporting requirements with SLfT returns and reporting.
- The main obstacle to aligning the two mechanisms is the 14 day invoicing period provision in S26 of the SLfT Act which changes the tax point to the invoice date. Removing this provision would allow for the reporting dates for the two systems to be aligned.
- We are seeking your views on any effects the removal of this provision may have on the operation of landfill sites.

8. Revenue Scotland will offer an innovative approach to the collection of taxation. It will work with two firmly established and highly respected organisations: SEPA to administer disposals to landfill and Registers of Scotland to administer the Land and Buildings Transaction Tax. These partnerships will offer further opportunities to customise tax collection arrangements that are specific to the Scottish situation, drawing on the relevant knowledge and expertise within SEPA and Registers of Scotland to simplify the approach to the collection and management of taxes where possible and to reduce the administrative burden on taxpayers.

8.1. The selection of SEPA to have a role in the collection and management of SLfT provides an opportunity to make links with SEPA's existing permitting role for landfill sites.

8.2. Revenue Scotland will ensure that clear advice and guidance is available to help taxpayers and their advisers to understand the new system and the processes for submitting tax returns and payments.

8.3. Conditions in a Waste Management Licence (WML) or Pollution Prevention and Control (PPC) permit require the provision of quarterly data to SEPA by landfill site operators on the types and quantities of waste managed (treated and/or disposed) at the facility.

8.4. Section 73 of the RSTP Bill allows the Scottish Ministers to set the 'filing date' (the date taxpayers have to complete self-assessed returns). The Scottish Government proposes that the filing date for the SLfT returns should be the same as the PPC Permit return at the end of every quarter. It is also the intention to align the two systems further by allowing 30 days for payment after the filing date.

8.5. Currently, section 26 of the SLfT Act allows landfill site operators to issue an invoice to the person who disposed of the waste 14 days after the disposal was made. The issue date of the invoice is then treated as the date that the tax is due. This moves the tax point from the date of the disposal of waste to the date that the invoice was issued by the landfill site operator.

8.6. However, the effect of the 14 day period in section 26 is that administrative dates for the environmental and tax systems are continually misaligned. For example, there are consequential effects on compliance investigations and the cross referencing of quarterly and annual data, as there is always a 14 day inconsistency between tax returns and environmental returns (see figure 8.1).

Figure 8.1 Comparison of due dates for environmental and SLfT returns



8.7. To align the administrative and reporting dates for the environmental and tax systems, the Scottish Government proposes to remove the provisions in section 26 of the SLfT Act and wishes to seek views on any implications that might have on landfill site operators.

Accounting and invoicing periods

Q9 Do you agree that the 14 day period provision in section 26 of the Landfill Tax (Scotland) Act 2014 should be removed to align the environmental and tax return periods?

ANNEX A

Draft Addition to the Business and Regulatory Impact Assessment

Title of Proposal

Draft Landfill Tax (Scotland) Regulations - Secondary Legislation

Purpose and intended effect

This document is an extension to the BRIA carried out for the Landfill Tax (Scotland) Bill 2014:

<http://www.scotland.gov.uk/Publications/2012/10/3524>.

Additional information can also be found a paper carried out by Eunomia Research called Landfill Tax An Economic Assessment:

<http://www.zerowastescotland.org.uk/LandfillTaxEconomicAssessment>

Background

The Scotland Act 2012, received Royal Assent on 31 May 2012 and gave the Scottish Parliament legislative competence over devolved taxation. The devolved taxes were defined as being taxes on transfers of interests in land and taxes on disposals to landfill. The existing Stamp Duty Land Tax (SDLT) and UK Landfill Tax (UK LFT) will be dis-applied in Scotland by a Treasury Order in the UK Parliament. It is anticipated that the two devolved taxes, Land and Buildings Transaction Tax (LBTT) and Scottish Landfill Tax (SLfT) will come into effect in Scotland from 1 April 2015. The Landfill Tax (Scotland) Act 2014 (SLfT Act) details this replacement tax and received Royal Assent on 21 January 2014.

The Revenue Scotland and Tax Powers Bill (RSTP Bill) makes provisions for a Scottish tax system to enable the collection and management of the devolved taxes. The RSTP Bill contains provisions that will establish Revenue Scotland as the tax authority responsible for the collection and management of Scotland's two devolved taxes.

Revenue Scotland will collect and administer the devolved taxes, supported by Registers of Scotland for Land and Buildings Transaction Tax and the Scottish Environment Protection Agency (SEPA) for SLfT.

Objective

We aim to implement SLfT on waste deposits to landfill in Scotland from 1 April 2015. We have proposed a legislative framework to enable the Scottish Government to administer SLfT. The overarching objectives are:

- To design the policy and rules for SLfT.

- To put in place the necessary legislative framework to enable the Scottish Government to administer SLfT.
- To tailor the SLfT system to better align it with Scots law and practice.

To introduce SLfT from 1 April 2015, the Scottish Government intends to bring forward orders and regulations under many of the delegated powers within the SLfT Act to the Scottish Parliament. The orders and regulations cover various matters relating to the tax:

Section of the Act	Regulation and Order making Powers	Action required
6(1)	To prescribe activities at a landfill site to be treated as taxable disposals	Order required – see the draft Scottish Landfill Tax (Prescribed Landfill Site Activities) Order 2014
11(1)	To vary what is a taxable disposal	Order may be required
13(2)	To specify the standard and lower rates of tax	Order required
13(4)	To determine what material qualify for the lower rate(s) of tax	Order required - see the draft Scottish Landfill Tax (Prescribed Landfill Site Activities) Order 2014
14(7)	To set out conditions that material must meet to be treated as qualifying material	Order required - see the draft Scottish Landfill Tax (Prescribed Landfill Site Activities) Order 2014
15(1)	To determine how a taxable disposal is weighed	Regulation required – see draft Part 9 of the draft Scottish Landfill Tax (Administration) Regulations 2014.
17(1)	To make provision about the liability of controllers of landfill sites to pay tax	Regulation required draft The Scottish Landfill Tax (Liability of Controllers) Regulations 2014.
18, 19 & 20	To make provision about a credit scheme	Regulation required – see Parts 4, 5, 6 & 7 of the draft Scottish Landfill Tax (Administration) Regulations 2014.
22(9) & 23(1)	Requiring a person to register and keep Tax Authority updated of changes if they are carrying out a taxable activity	Regulations required draft Part 2 of the draft Scottish Landfill Tax (Administration) Regulations 2014.
25	To set accounting periods and tax	Regulation required draft

	returns to be submitted for those accounting periods	Part 3 of the draft Scottish Landfill Tax (Administration) Regulations 2014.
26(3)	To define what information is required to be contained in a landfill invoice	Regulation required draft Part 8 of the draft Scottish Landfill Tax (Administration) Regulations 2014.
30(1)	Allowing the Tax Authority to collect information on material at landfill sites and for landfill site operators to supply information	Regulation required draft Parts 3 Regulation 12 of the draft Scottish Landfill Tax (Administration) Regulations 2014.
34(2)	To provide that a person other than the Scottish Ministers is the Tax Authority	Order required
40	To make ancillary provisions	Order required

Rationale for Government intervention

These proposals are being implemented as a consequence of the Scotland Act 2012. The Scotland Act 2012 provides that UK LFT will be dis-applied in Scotland as well as devolving power to the Scottish Parliament to tax waste deposits to landfill. As set out in the BRIA that accompanied the SLfT Bill, the framework for the devolved SLfT is broadly similar to the current arrangements for UK LFT, however, there are some distinctions.

1) *Illegal dumping.*

The overwhelming consultation response from operators was that illegal dumping is a huge concern in the industry. This manifests itself in both areas of land being used as landfill sites without any environmental controls or permits and also incorrect type, quality or quantity of material being utilised in activities registered as exempt from environmental licensing. The general consensus is that it is unfair that legal sites must pay SLfT while illegal sites can undercut them with lower gate fees because they do not have to pay any tax or install expensive environmental controls. Taxing illegal deposits combined with tighter regulation is required to support legitimate businesses, encourage alternative waste utilisation and prevent environmental harm.

The SLfT Act incorporates provisions that will allow a wide range of unauthorised waste deposits to be captured by the tax regime. Defining illegal disposals as unauthorised and taxable within the SLfT will help to rebalance these concerns

2) *A Scottish Communities Fund.*

Sections 18 and 20 of the Act set up the credit scheme that will be the working basis of the Scottish Landfill Communities Fund (SLCF).

The credit rates and details of the administrative arrangements underpinning a

SLCF are not specified in the Act. Instead, powers under sections 18 and 20 will be used by Scottish Ministers to make provision through subordinate legislation.

The regulations outlining the detail of the SLCF are still to be developed and will be consulted on in due course. It is anticipated a simpler scheme involving more self-regulation is likely to be preferred by all stakeholders. The current scheme is generally seen as being very successful but a few issues have been identified:

- Environmental projects may be deterred by excessive 'red tape'.
- The distribution model of the fund is complex.
- Most of the funds (97%) are utilised in just 3 of the objectives;

Regulation of the Scottish Landfill Communities Fund

The existing fund is currently regulated by Entrust on behalf of HMRC. It is anticipated that there will be a two year wind down period for funds already allocated by the existing scheme, to continuing projects in Scotland, this process will continue to be regulated by Entrust. The Scottish Government has asked SEPA to regulate the SLCF and SEPA has agreed to do this on a cost neutral basis to SEPA.

SEPA will continue to liaise with the Scottish Government while the subordinate legislation is being developed and throughout the consultation period for the regulations. This will enable SEPA to develop systems and procedures relating to regulatory issues, in conjunction with the policies and guidance of the SG and Tax Authority for the SLCF.

3) Link with Wider Policy Initiatives

The introduction of SLfT will contribute to the achievement of the Scottish Government National Outcome: "We reduce the local and global environmental impact of our consumption and production."

It will also contribute towards the achievement of the Scottish Government Objective to create a Wealthier and Fairer Scotland - including creating a competitive tax regime which incentivises legitimate business growth.

We also recognise there are longer-term opportunities to ensure the tax is more aligned with Scottish Government objectives for policy on economic growth and climate change.

At this stage, aspects of SLfT legislation are being finalised through secondary procedure. Without this secondary legislation, the SLfT framework would be incomplete.

Consultation

Within Government

Preparatory work for the consultation paper involved discussions across a wide range of Scottish Government interests including:

- Fiscal Responsibility Division
- Environmental Quality Division
- Constitutional Change
- Scottish Government Legal Directorate
- Better Regulation and Industry
- Analytical services & Economics (Environment)
- Her Majesties Revenue and Customs (HMRC) (UK Government)

Extensive discussions are taking place with the Scottish Environment Protection Agency (SEPA). Whilst acting as the Scottish environment regulator, SEPA also has an interest as a delegated agency for SLfT, on behalf of Revenue Scotland.

Public Consultation

The consultation, 'Protecting Our Resources - Consultation on a Scottish Landfill Tax', ran from October 2013 to January 2014. Sixty eight responses were received and analysis is available at:

<http://www.zerowastescotland.org.uk/content/landfill-tax-scotland-0>

Scottish Government ran workshops to discuss the future of the Landfill Tax Communities Fund on the 14 January 2013 and the 20th October 2013.

Business

Eight interviews with waste management organisations from the private and public sector were conducted during the 12 week consultation period as part of the Scottish Firms Impact Test. The results of this can be found in the Final Business and Regulatory Impact Assessment for the Landfill Tax (Scotland) Bill at: <http://www.scotland.gov.uk/Publications/2013/06/8957>. A meeting to discuss Landfill Tax in Scotland and the Bill was also held with the Scottish Environmental Services Association (SESA) on the 17 January 2013.

Landfill Tax Bill Stakeholder Group

Three Stakeholder events were held, one just prior to the consultation on the 7 August 2012, one immediately following the consultation period on the 28 January 2013 and the last one concentrated on the LCF on the 20th October 2013. Members of the Group include:

William Beattie, C/O Scottish Landfill Communities Forum (EB Scotland)
John Brewster, C/O CIWM, (Waste & Recycling Group)

Alistair Brown, SG, Fiscal Responsibility
Tommy Cockburn, Avondale Environmental
John Conaghan, Fife Council
Catherine Donnelly, CIWM
John Ferguson, Binn Eco Park
Stuart Fraser, C/O SESA (William Tracey Group)
Stephen Freeland, SESA
Formerly Rona Gold - tbc, COSLA
Darren Greedy, HMRC
Stuart Greig, Zero Waste Delivery Team – Waste Management - Chair
Gareth Heavisides, SG Biodiversity
John Kenny, SEPA
Dave Kerrouchi, SG, Zero Waste Delivery Team & Fiscal Responsibility
Neil Langhorn, Forestry Commission
John Paul Liddle, Revenue Scotland
Max McGill, Scottish Parliament Counsel
Ian Moules, SG, Fiscal Responsibility
Ronnie Robinson, SEPA
Frazer Scott, Zero Waste Scotland
Gary Torbet, Scottish Enterprise
Edward Turner, SEPA
Greig Walker, SG Legal Directorate
Gregg Wilkie, C/O Scottish Environmental Link (RSPB)
Claire Williams, HMRC

2014 Consultation & Engagement

It is intended that a number of engagement activities will be conducted over the consultation period including a workshop open to all landfill site operators in Scotland, a workshop for environmental bodies associated with the Landfill Communities Fund, local authority engagement and meetings with waste and resource industry.

The secondary legislation specifically impacts on the following areas:

To prescribe activities at a landfill site to be treated as taxable disposals – Section 6 (1)

Section 6 (1) of the SLfT Act provides for Scottish Ministers to prescribe a specific landfill site activity, with the effect that it will constitute a taxable disposal. It also allows for certain conditions to be set before an activity is considered a landfill site activity or a disposal

Benefits

- Clarification for operators of landfill sites as a set of rules and definitions of activities that are subject to the tax, and by default what activities are not.

Costs

- Similar rules already exist in the Landfill Tax (Prescribed Landfill Site Activities) Order 2009 and therefore no additional costs are likely. Illegal waste deposits will, however, be defined as a taxable disposal and therefore illegal operators will incur significant tax liabilities.

To vary what is a taxable disposal – Section 11(1)

Section 11(1) of the SLfT Act provides for the Scottish Ministers to vary what is categorised as a taxable disposal, what is not a taxable disposal and what is exempt.

Provisions have already been provided on the face of the SLfT Act, sections 7, 8, 9 and 10. This will be consulted on over the summer and further exemptions may be considered by utilising this order if deemed necessary.

To specify the standard and lower rates of tax – Section(13)2

Section (13) 2 & 5 of the SLfT Act provides for a power to set the rate of tax for taxable deposits and a separate rate for materials that fall under the Qualifying Materials Order. Both standard rate material and qualifying material will be charged on a per tonne basis, and a proportionate amount for any additional part of a tonne or if less than one tonne is disposed of.

Tax rates for SLfT will be announced in the Autumn Budget and that an Order will be laid in the first calendar quarter of 2015

To determine what material qualify for the lower rate(s) of tax – Section(13)4

Section (13) 4 of the SLfT Act provides a power to allow the materials qualifying for the lower rate of tax to be defined, by way of a list. The proposal is to initially replicate the existing list contained in the Landfill Tax (Qualifying Material) Order 2011 as amended.

Benefits

- Keeping a list of qualifying material similar to the Landfill Tax (Qualifying Material) 2011, ensures consistency and aids implementation for the SLfT tax regime in Scotland for operators and regulators. This would be a stabilising factor for the industry in the short term. Flexibility to review once the SLfT is established means other materials highlighted in the consultation could then be considered, which could be subjected to different rates of tax.

Costs

- As identical rules are already contained in the Landfill Tax (Qualifying Material) Order 2011 as amended, no additional cost implications are perceived.

To set out conditions that material must meet to be treated as qualifying material – Section (14)7

Section (14)7 of the SLfT Act provides conditions to be set that must be met before material can be treated as qualifying material (or qualifying material of a particular category). This includes paper work and information that has to accompany the material and levels of contamination that bar the deposit as qualifying

As outlined for the 13(4) power above, to ensure consistency, ease implementation and give industry certainty. To achieve this, the existing qualifying material Order for UK LFT has been replicated, with an aim of reviewing it in the future.

Benefits

- As per 13 (4) above

Costs

- As identical rules are already contained in the Landfill Tax (Qualifying Material) Order 2011 as amended, no additional cost implications are perceived.

To determine how a taxable disposal is weighed – Section(15)1

Section (15)1 of the SLfT Act provides that SLfT will be levied on material going for disposal by way of a landfill site. It is calculated based on the mass of material; therefore stringent weighing methodologies are required to ensure consistency, openness and fairness.

A similar power already exists in section 68 (1)-(6) of the Finance Act 1996 which has led to Part X of the Landfill Tax Regulations 1996 41-44. However, we propose to remove the ability to discount water and to emphasise the need to use a weighbridge.

Benefits

- Properly weighed material leads to accurate tax returns.
- All but very small landfill sites are already required by environmental permits to have a weighbridge. Alternative methods can be agreed when a nearby weighbridge is unavailable or in the event of breakdowns.
- Liquid waste was banned from going to Landfill in 2003, this would support that ban.
- Less water in a landfill would help to generate less leachate, pollution risks

and minimise resource use to treat the resultant leachate.

- Simpler tax returns as all material weighed regardless of water content is taxable, saving time and resources.

Costs

- Existing weighing requirements are already in place and have been replicated with an emphasis on weighbridge utilisation as a preference before alternative agreed measures.
- The cost implications for not allowing the existing water discounting agreements to continue are ongoing and will be determined in conjunction with the consultation process. It is the intention that these will be costed in the final addition to the BRIA, prior to the regulations being laid in Parliament (October 2014).

To make provision about the liability of controllers of landfill sites to pay tax – Section(17)1

Section 17 (1) of the SLfT Act provides for a power to allow for situations when the authorisation holder of a landfill site has no direct involvement in operating the site and allows for the “controller” of a site to be liable for the payment of the tax.

The existing law covering controllers is in paragraphs 48-61 of schedule 5 of the Finance Act 1996.

Benefits

- For situations when the authorisation holder of the site has no direct control of the site, tax can still be attributed to the, “controller”.

Costs

- As identical rules are already contained in Finance Act 1996 as amended, no additional cost implications are perceived.

Requiring a person to register and keep Tax Authority updated of changes if they are carrying out a taxable activity – Section 22(9) & 23(1)

Section 22(9) & 23(1) of the SLfT Act requires a person to register and keep the Tax Authority updated of changes if they are carrying out a taxable activity. An existing power is already contained in the Finance Act 1996 sections 47(9) and 48(1) & (2) and the regulation details are contained in the Landfill Tax Regulations 1996 regulation 4 & 5. Regulation 4 refers to particular forms specified in the schedule to the regulations which must be used.

Benefits

- It is hoped to develop an online form to ease operator returns. Details on this will be developed between Revenue Scotland and SEPA over the Summer and Autumn. Return and updating requirements will remain the same.

Costs

- As a largely unchanged process is being proposed no addition costs to the operator are envisaged.

To set accounting periods and tax returns to be submitted for those accounting periods – Section (25)

Section 25 of the SLfT Act provides for a power allowing for accounting periods and tax returns to be submitted for those accounting periods in a defined format.

The existing section 49 of the Finance Act 1996 contains similar powers and these powers are expanded upon in regulations 11 and 15 of the Landfill Tax Regulations 1996. Similar provision will be provided but the accounting periods will be fixed to calendar months to allow comparison with environmental data already collected by SEPA

Benefits

- Correlation of tax data with environmental data by SEPA who will be collecting the tax on behalf of Revenue Scotland and already collect waste data returns will aid the auditing of tax returns.

Costs

- Operators may have to alter their existing tax return periods which could incur extra administrative costs to set up. However, the same information will be required so the on-going costs will be identical.

Allowing the Tax Authority to collect information on material at landfill sites and for landfill site operators to supply information – Section 30(1)

Section 30(1) of the SLfT Act provides for defining which areas of a landfill site involve taxable disposals and which areas are for non-taxable uses of waste.

A similar power is outlined in paragraph 1A of Schedule 5 of the Finance Act 1996 and this power has been utilised in regulation 16A of the Landfill Tax Regulations 1996, to define information areas and what information is required of them.

Benefits

- To avoid confusion the areas formally referred to as '*information areas*' are now referred to as '*non-disposal*' areas in the SLfT Act.

Costs

- As existing provisions are being replicated no addition costs to the operator are envisaged.

To provide rules that must be followed if a taxable person becomes bankrupt, incapacitated, dies or their business is sold as a going concern – Section 37(1, 4 & 5)

Section 37(1, 4 & 5) of the SLfT Act provides a power is to ensure, amongst other things, that liability of a landfill operation continues under set conditions should the business continue to operate after the original registered person is no longer the operator.

Benefits

- Allows for landfill tax to be collected in circumstances were the registered person is no longer the authorised operator.

Costs

- As existing provisions are being replicated no addition costs to the operator are envisaged.

Scottish Firms Impact Test

We intend conducting our Scottish Firms Impact Test during the consultation process. A full addition to the BRIA would be published following the consultation and this would contain the results from this Impact Test.

Competition Assessment

In assessing how the SLfT Act will impact competitiveness in Scotland, the Scottish Government has given consideration to whether the policies contained in the SLfT Act will directly or indirectly limit the number or range of suppliers.

The Scottish Government does not consider that the replacement tax will directly alter number or range of suppliers of any kind in Scotland. The replacement tax is broadly akin to UK LfT and is applicable to all taxpayers who deposit waste by way of landfill in Scotland. This includes private individuals and commercial entities. It will also impact upon the agents of these parties, including the legal profession and tax accountants. However, the SLfT Act will apply equally to all concerned and it will be rolled out across Scotland simultaneously.

It is unlikely that SLfT will have an impact on Scotland's competitiveness as a whole given that SLfT will operate in a way that is broadly similar to UK LfT. Given that the tax rates and bands will be set separately at a later stage as part of the Budget process in autumn 2014, the impact of tax rates is not in scope for this Impact Assessment. The proposed tax rates and bands will be subject to consultation and Parliamentary scrutiny through the Draft Budget process, led

by the Finance Committee.

The introduction of SLfT will impact on the legal profession and tax accountants. Consequently building good working relationships has been key to enable the effective dissemination of information on SLfT. Revenue Scotland is liaising with SEPA to aid delivery of an online tax filing system which will be fully tested prior to our go live date.

Legal Aid Impact Test

The Legal Aid Team has confirmed that it does not expect any impact on the legal aid fund as a result of this secondary legislation.

Enforcement, sanctions and monitoring

Revenue Scotland will ultimately have powers to enforce the collection of SLfT and the Revenue Scotland and Tax Powers Bill (RSTP Bill) establishes Revenue Scotland and provides for its general and particular functions. The RSTP Bill sets out the tax management system that will underpin devolved taxes in Scotland. It sets out the powers and duties of taxpayers and Revenue Scotland and outlines the investigatory powers of Revenue Scotland. The RSTP Bill also sets out the process for issuing penalties in respect of non-compliant behaviour and contains provisions for debt enforcement.

The RSTP Bill also provides for the establishment of the Scottish Tax Tribunals to hear appeals against devolved taxes, which will ultimately become part of the unified Scottish Tribunals from 2016/17 and sets out the reviews and appeals process.

Implementation and delivery plan

The collection of SLfT will be undertaken by Revenue Scotland, under powers for the delegation of Revenue Scotland's functions as set out in the RSTP Bill, SEPA will assist Revenue Scotland as delegated by them. Revenue Scotland will be established on a statutory basis as a non-ministerial department accountable to the Scottish Parliament. The Scottish Government, Revenue Scotland and SEPA are working closely together to ensure that SLfT is implemented by 1 April 2015.

Summary and recommendation

In passing the SLfT Act, the Scottish Parliament has endorsed the Scottish Government's approach. The Scottish Government has dismissed the option of not having a SLfT. If there is no replacement to UK LfT, there would be an impact on the Scottish Government's budget and more waste would go to landfill. This would have an adverse impact on the delivery of public services in Scotland, impact on climate change through generation of more methane from

landfills and undermine the Scottish Governments Zero Waste Policy.

Therefore, the SLfT Act as passed by the Scottish Parliament takes forward the options to maintain a similar landfill tax system as the rest of the UK, set at similar tax rates. This partial BRIA forms part of the secondary legislation process that will lead to the completion of the legislation required to bring forward the SLfT.

Post-implementation review

The regulations will be formally reviewed within ten years of the commencement date of the Landfill Tax (Scotland) Act (2014), as passed by the Scottish Parliament.

Declaration & Publication

I have read the impact assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options. I am satisfied that business impact has been assessed with the support of businesses in Scotland.

Signed:



JOHN SWINNEY, CABINET SECRETARY FOR FINANCE AND SUSTAINABLE GROWTH

Date: 30 April 2014

BUSINESS REGULATORY IMPACT ASSESSMENT

Q11 Do you have any comments on the draft Business Regulatory Impact Assessment?

ANNEX B

DRAFT EQUALITY IMPACT ASSESSMENT

DRAFT PARTIAL EQUALITY ASSESSMENT

While the main purpose of this Equality Impact Assessment (EQIA) on the proposed implementation of a Landfill Tax for Scotland to replace the existing UK Landfill Tax system in Scotland is to identify any potential adverse impact, it also offers the opportunity to consider how this work can better promote equality of opportunity and good relations.

The public sector equality duty requires the Scottish Government to pay "due regard" to the need to:

- eliminate discrimination, victimisation, harassment or other unlawful conduct that is prohibited under the Equality Act 2010;
- Advance equality of opportunity between people who share a protected characteristic and those who do not; and
- Foster good relations between people who share a relevant protected characteristic.

These three requirements apply across the "protected characteristics" of age; disability; gender reassignment; pregnancy and maternity; race; religion and belief; sex and sexual orientation.

In effect, this means that equality considerations are integrated into all the functions and policies of Scottish Government Directorates and Agencies.

The Equality Impact Assessment (EQIA) enables us to consider how our policies (by policy we mean activities, functions, strategies, programmes and services or processes) may impact, either positively or negatively, on different sectors of the population in different ways.

We are now requesting comments on this partial EQIA. The comments received will be used to complete the full assessment and to determine if any further work in this area is needed.

Step 1: Define the aims of your policy

Title of Policy	Introduction of a Scottish Landfill Tax
Name of Branch or Division	Fiscal Responsibility Division
Department or Agency	Finance

What is the purpose of the proposed policy (or changes to be made to the policy)?

Currently, Landfill Tax operates throughout the United Kingdom, with policy responsibility for it reserved to the UK Government. Following agreement between the UK and Scottish Governments, the Scotland Act 2012 includes powers for the Scottish Parliament to legislate on Landfill Tax in Scotland.

The UK Government plans to "switch off" the UK Landfill Tax system in Scotland from April 2015. This means the Scottish Government will need to bring forward legislative proposals for the Scottish Parliament to consider and prepare for the implementation of the new tax arrangements for an April 2015 commencement date. The consultation on **Landfill Tax** is a key stage in this process.

Who is affected by the policy or who is intended to benefit from the proposed policy and how?

Primarily for landfill site operators but will also be of interest to waste producers, others involved in the waste management industry and environmental bodies under the Landfill Communities Fund.

How have you, or will you, put the policy into practice, and who is or will be responsible for delivering it?

Legislation will be required to set out the structure Landfill Tax for Scotland. As a stepping stone towards this, the consultation paper sets out proposals for key aspects of the Scottish tax. The consultation touches on provisions for tax collection, enforcement and appeals. However, a number of these provisions are likely to be set out in separate legislation on Taxes Management, which will be consulted on separately (with an associated Equality Impact Assessment).

How does the policy fit into our wider or related policy initiatives?

Initially, the Scottish Government wishes to ensure that the transition to the Landfill Tax is administered in an efficient and effective manner. This is part of the preparations to enable the Scottish Government to take on further tax powers in the event of support from the people of Scotland in the planned referendum on independence.

Landfill Tax is a cornerstone of Scotland's Zero Waste Plan making alternatives to landfill financially viable. More detail can be found in the Partial Business and Regulatory Impact Assessment.

Do you have a set budget?

A provisional budget for implementation of the tax will be agreed with the tax authorities and further details will be provided in time for introduction of the Scottish Landfill Tax.

Do you have information on:

Age	Yes	No	x
Disability	Yes	No	x
Gender	Yes	No	x
Sexual Orientation	Yes	No	x
Race	Yes	No	x
Religion and Belief	Yes	No	x
Gender reassignment	Yes	No	x
Pregnancy and maternity	Yes	No	x

Age

Evidence - We currently have no information to suggest that the proposed implementation of a Landfill Tax will have any significant impact on this criterion.

Disability

Evidence - We currently have no information to suggest that the proposed implementation of a Landfill Tax will have any significant impact on this criterion.

Gender

Evidence - We currently have no information to suggest that the proposed implementation of a Landfill Tax will have any significant impact on this criterion.

Sexual Orientation

Evidence - We currently have no information to suggest that the proposed implementation of a Landfill Tax will have any significant impact on this criterion.

Race

Evidence - We currently have no information to suggest that the proposed implementation of a Landfill Tax will have any significant impact on this criterion.

Religion and Belief

Evidence - We currently have no information to suggest that the proposed implementation of a Landfill Tax will have any significant impact on this criterion.

Gender reassignment

Evidence - We currently have no information to suggest that the proposed implementation of a Landfill Tax will have any significant impact on this criterion.

Pregnancy and maternity

Evidence - We currently have no information to suggest that the proposed implementation of a Landfill Tax will have any significant impact on this criterion.

Consultation - to be added following this consultation

EQUALITY IMPACT ASSESSMENT

Q12

A. Please tell us about any potential impacts, either positive or negative, you feel any of the ideas in this consultation may have on particular groups of people?

B. Please also tell us what potential there may be within these ideas to advance equality of opportunity between different groups and to foster good relations between different groups?

Order made by the Scottish Ministers laid before the Scottish Parliament under sections 41(3) and (4)(d) and (e) of the Landfill Tax (Scotland) Act 2014 for approval by resolution of the Scottish Parliament within 28 days beginning with the day on which the Order was made, not taking into account periods of dissolution or recess for more than 4 days.

SCOTTISH STATUTORY INSTRUMENTS

2014 No.

LANDFILL TAX

The Scottish Landfill Tax (Qualifying Material) Order 2014

<i>Made</i>	- - - -	2014
<i>Laid before the Scottish Parliament</i>		2014
<i>Coming into force</i>	- -	

The Scottish Ministers, in exercise of the powers conferred by sections 13(4) and 14(7) of the Landfill Tax (Scotland) Act 2014(a), make the following Order following compliance by them with the requirements of section 13(8) of that Act.

Citation and commencement

1. This Order may be cited as the Scottish Landfill Tax (Qualifying Material) Order 2014 and comes into force [] [and has effect in relation to disposals made or treated as made on or after that day].

Qualifying material

2.—(1) Subject to paragraphs (2) to (4) of this article, the material(b) listed in column 2 of the Schedule is qualifying material for the purposes of section 13(4) of the Landfill Tax (Scotland) Act 2014.

(2) The Schedule is to be construed in accordance with the notes contained in it.

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

(4) Where the owner of the material immediately prior to the disposal and the operator(c) of the landfill site at which the disposal is made are not the same person, material must not be treated as qualifying material unless it meets the relevant condition referred to in paragraph (5).

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

(a) accords with its description in column 2 of the Schedule;

(a) 2014 asp 2.

(b) “material” is defined in section 39 of the Landfill Tax (Scotland) Act 2014.

(c) “operator” is defined in section 12(2) of the Landfill Tax (Scotland) Act 2014.

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

(6) In paragraph (5), “transfer note” means a transfer note within the meaning of regulation 3 of the Environmental Protection (Duty of Care) (Scotland) Regulations 2014^(a).

St Andrew’s House,
Edinburgh
2014

A member of the Scottish Government

(a) S.S.I. 2014/4.

SCHEDULE 1

Article 2

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

Notes

(1) Group 1 comprises only—

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

(2) Group 2—

- (a) comprises only—
 - (i) glass, including fritted enamel;
 - (ii) ceramics, including bricks, bricks and mortar, tiles, clay ware, pottery, china and refractories; and
 - (iii) concrete, including reinforced concrete, concrete blocks, breeze blocks and aircrete blocks; and
- (b) does not include—
 - (i) glass fibre and glass-reinforced plastic; or
 - (ii) concrete plant washings.

(3) Group 3—

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

EXPLANATORY NOTE

(This note is not part of the Order)

Article 2 of this Order provides that, subject to the conditions in that article, the material listed in column 2 to the Schedule is qualifying material for the purposes of the lower rate of Scottish landfill tax. The Schedule lists, in 8 groups, the description of the qualifying materials with any conditions listed alongside. Notes to the Schedule amplify the descriptions.

In making this Order, the Scottish Ministers had regard to the criteria published under section 13(7)(d) of the Landfill Tax (Scotland) Act 2014 and to other factors they considered relevant. The criteria were published by the Scottish Ministers on [date] and can be found at [hyperlink].

Order made by the Scottish Ministers laid before the Scottish Parliament under sections 41(3) and (4)(b) of the Landfill Tax (Scotland) Act 2014 for approval by resolution of the Scottish Parliament within 28 days beginning with the day on which the Order was made, not taking into account periods of dissolution or recess for more than 4 days.

SCOTTISH STATUTORY INSTRUMENTS

2014 No.

LANDFILL TAX

**The Scottish Landfill Tax (Prescribed Landfill Site Activities)
Order 2014**

<i>Made</i>	- - - -	<i>2014</i>
<i>Laid before the Scottish Parliament</i>		<i>2014</i>
<i>Coming into force</i>	- -	

The Scottish Ministers make the following Order in exercise of the powers conferred by section 6(1) of the Landfill Tax (Scotland) Act 2014(a) and all other powers enabling them to do so.

Citation and commencement

1. This Order may be cited as the Scottish Landfill Tax (Prescribed Landfill Site Activities) Order 2014 and comes into force [].

Interpretation

2. In this Order—

- “cell bund” means a structure within a disposal area which separates units of waste;
- “disposal area” means any area of a landfill site where any landfill disposal takes place;
- “hard standing” means a base within a landfill site on which any landfill site activity(b) such as sorting, treatment, processing, storage or recycling is carried out;
- “haul road” means any road within a landfill site which gives access to a disposal area;
- “screening bund” means any structure on a landfill site (whether below or above ground) put in place to protect or conceal any landfill site activity or to reduce nuisance from noise; and
- “the 2014 Act” means the Landfill Tax (Scotland) Act 2014.

(a) 2014 asp 2.
(b) “landfill site activity” is defined in section 6(2) of the 2014 Act.

Prescribed landfill site activities

3.—(1) The following landfill site activities are prescribed for the purposes of section 6 of the 2014 Act (prescribed landfill site activities to be treated as disposals)—

- (a) the use of material^(a) to cover the disposal area during a short term cessation in landfill disposal activity;
- (b) the use of material to create or maintain a temporary haul road;
- (c) the use of material to create or maintain temporary hard standing;
- (d) the use of material to create or maintain a cell bund;
- (e) the use of material to create or maintain a temporary screening bund except where the material so used is naturally occurring material extracted from the landfill site in which the temporary screening bund is located;
- (f) the temporary storage of ashes (including pulverised flue ash and furnace bottom ash);
- (g) the use of material placed against the drainage layer or liner of the disposal area to prevent damage to that layer or liner; and
- (h) any other landfill site activity if in relation to that activity—
 - (i) section 31 of the 2014 Act requires a person to notify or give information, or a person is required under regulations under section 30 of the 2014 Act to designate a part of a landfill site as a non-disposal area^(b), give information or maintain a record in respect of the area; and
 - (ii) that requirement is not complied with.

(2) Paragraph (1) does not apply to any landfill site activity if, or to the extent that, it involves material that is or has been otherwise chargeable to Scottish landfill tax or exempted from that tax.

A member of the Scottish Government

St Andrew's House,
Edinburgh
2014

(a) "material" is defined in section 39 of the 2014 Act.
(b) "non-disposal area" is defined in section 30(3)(a) of the 2014 Act.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order prescribes certain activities which take place on a landfill site for the purposes of section 6 of the Landfill Tax (Scotland) Act 2014 (asp 2) (“the 2014 Act”). The effect of this is that the prescribed activities will be treated as disposals and will be subject to Scottish landfill tax.

2014 No.

LANDFILL TAX

The Scottish Landfill Tax (Administration) Regulations 2014

Made - - - - 2014

Laid before the Scottish Parliament 2014

Coming into force - -

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The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 15(1), 18(1), 19(1), 20(1), 22(9), 23(1), 26(3), 30(1) 37(1),(4) and (5) of the Landfill Tax (Scotland) Act 2014^(a) and all other powers enabling them to do so.

PART 1

Preliminary

Citation and commencement

1.—(1) These Regulations may be cited as the Scottish Landfill Tax (Administration) Regulations 2014.

(2) These Regulations come into force [].

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 Revenue Scotland, 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 10 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 Landfill Tax (Scotland) Act 2014;

“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 taxable disposal (which expression has the meaning given in section 3(2) of the Act) made on or after 1st April 2015 and “disposed of” shall be construed accordingly;

“effective date of registration” means the date determined in accordance with section 22 of the Act upon which the person was or should have been registered;

“landfill invoice” means an invoice of the description in regulation 34;

“landfill site” has the meaning given in section 12(1) of the Act;

“the landfill tax bad debt account” has the meaning in regulation 22(3);

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

“the RSTP Act” means the Revenue Scotland and Tax Powers Act 2014;

“registered person” means a person who is registered under section 22 of the Act and “register” and “registration” shall be construed accordingly;

“registrable person” has the meaning given in section 22(10) of the Act;

“registration number” means the identifying number allocated to a registered person and notified to him by Revenue Scotland;

“return” means a return which is required to be made in accordance with regulation 10;

“taxable business” means a business or part of a business in the course of which taxable activities (which expression has the meaning given in section 21(1) of the Act) are carried out;

(a) 2014 asp. 2.

“transfer note” is a transfer note within the meaning of the Environmental Protection (Duty of Care) (Scotland) Regulations 2014.

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

(2) In these Regulations any question whether a person is connected with another shall be determined in accordance with section 1122 of the Corporation Tax Act 2010(a).

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

PART 2

Registration and provision for special cases

Notification of liability to be registered

3.—(1) A person who is required by section 22(3) of the Act to notify Revenue Scotland of his intention to carry out taxable activities shall do so in accordance with Revenue Scotland administrative arrangements including the formatting of the notification .

(2) The notification referred to in this regulation shall be made within 30 days of the earliest date after 1st April 2015 on which the person either forms or continues to have the intention to carry out taxable activities.

Changes in particulars

4.—(1) A person who has made a notification under regulation 3, whether or not it was made in accordance with paragraph (2) 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 Revenue Scotland 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 Revenue Scotland 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 Revenue Scotland 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;

(a) 2010 c.4.

- (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 under section 150 of the RSTP Act.

(6) Where in relation to a registered person Revenue Scotland 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 Revenue Scotland of any change which has occurred in accordance with paragraphs (1) to (3) above.

Notification of cessation of taxable activities

5. A person who is required by section 22(4) of the Act to notify Revenue Scotland of the person's having ceased to have the intention to carry out taxable activities shall, within 30 days of the person's so having ceased, notify Revenue Scotland in writing and shall therein inform them of—

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

Transfer of a going concern

6.—(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 in respect of the transfer by both the transferor and the transferee,

Revenue Scotland 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 7.

(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

7.—(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 3 to 5, 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

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

(2) Any person carrying on such business as aforesaid shall, within 30 days of commencing to do so, inform Revenue Scotland 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 Revenue Scotland 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 the registrable person;
- (b) the bankruptcy is discharged or the incapacity ceases; or
- (c) the 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 entering administration; and references to the incapacity ceasing shall be construed accordingly.

PART 3

Accounting, payment, and non-disposal areas

Interpretation

9. In this Part, “accounting period” has the meaning given in regulation 2(1).

Making of returns

10.—(1) Subject to paragraph (3) below and save as Revenue Scotland may otherwise allow, a registrable person shall, in respect of each accounting period, make a return to Revenue Scotland.

(2) Subject to paragraph (3) below, a registrable person shall make each return not later than 30 days following the end of the period to which it relates.

(3) Where Revenue Scotland 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 Revenue Scotland give any direction such as is referred to in this regulation shall comply therewith.

Payment of tax

11.—(1) Where a return is to be made under regulation 10, the tax or additional tax payable must be paid to Revenue Scotland at the same time as the return is made.

(2) Tax payable as a result of the amendment of a return must be paid at the same time as the amendment is made.

(3) For the purposes of subsections (1) and (2), tax is treated as paid if arrangements satisfactory to Revenue Scotland are made for payment of the tax.

(4) A return under regulation 10 must also include a declaration by the taxpayer that the return is, to the best of the taxpayer’s knowledge, correct and complete.

(5) However, where the taxpayer authorises an agent to complete the return, the agent must certify in the return that the taxpayer has declared that the information provided in the return is to the best of the taxpayer’s knowledge, correct and complete.

(6) Revenue Scotland shall not be obliged to reimburse any tax owed by it to an operator (as defined in section 12(2) of the Act) until any outstanding tax return has been made by the operator and tax in respect of the return has been made to Revenue Scotland.

(7) See section 74 of the RSTP Act for the taxpayer’s right to amend return and sections 100 to 103 of that Act in respect of defences by Revenue Scotland of unjustified enrichment in respect of a claim by the taxpayer for reimbursement in respect of an overpayment of tax.

Non-disposal areas

12.—(1) An officer of Revenue Scotland is authorised to require a person to designate a part of a landfill site (an “non-disposal area”), and a person must designate a non-disposal area if so required.

(2) Where material at a landfill site is not going to be disposed of as waste and Revenue Scotland consider, or an officer of theirs considers, there to be a risk to the revenue—

- (a) the material must be deposited in a non-disposal area; and

- (b) a registrable person must give Revenue Scotland, or an officer of theirs, information and maintain a record in accordance with paragraph 4 below.
- (3) A designation ceases to have effect if a notice in writing to that effect is given to a registrable person by Revenue Scotland.
- (4) A registrable person must maintain a record in relation to the non-disposal area of the following information, and give this information to or an officer of theirs if requested--
 - (a) the weight and description of all material deposited there;
 - (b) the intended destination or use of all such material and, where any material has been removed or used, the actual destination or use of that material;
 - (c) the weight and description of any such material sorted or removed.

PART 4

Credit: general

Interpretation

13. 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

14.—(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

15.—(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 27.”

(3) Revenue Scotland 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

16.—(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 the person for the accounting period, Revenue Scotland shall pay to the person an amount equal to the excess.

(2) Where Revenue Scotland have cancelled the registration of a person in accordance with section 22(6) of the Act, and the person is not a registrable person, the person 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 Revenue Scotland 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 Revenue Scotland are satisfied that a person who has made a claim in accordance with paragraphs (2) and (3) above is entitled to credit, and that the person has not previously had the benefit of that credit, they shall pay to the person an amount equal to the credit.

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

PART 5

Credit: permanent removals etc

Entitlement to credit

17.—(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, the registered person 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; or
 - (iii) removed for use in restoration of a relevant site and the material involved has previously been used to create or maintain temporary hard standing, to create or maintain a temporary screening bund or to create or maintain a temporary haul road;
- (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 Revenue Scotland in writing that the registered person 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 permit, 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 the Scottish Environment Protection Agency and the registered person 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, the registered person has paid to the site operator an amount representing that tax.
- (5) 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.
- (6) In this Regulation—
- “disposal area” means any area of a landfill site where any disposal takes place;
 - “haul road” means any road within the landfill site which gives access to a disposal area;
 - “hard standing” means a base within a landfill site on which any landfill site activity such as sorting, treatment, processing, storage or recycling is carried out;
 - “screening bund” means any structure on a landfill site (whether below or above ground) put in place to protect or conceal any landfill site activity or to reduce nuisance from noise.

PART 6

Credit: bad debts

Interpretation

18. 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 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); and

- (b) in relation to England, Wales and Northern Ireland, any mortgage, charge, lien or other security.

Scope

19. 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 the registered person is not connected;
- (b) the registered person 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 the registered person's accounts as a bad debt;
- (d) the registered person 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 Revenue Scotland made under section 26(4) 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

20. 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

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

- (a) a copy of the landfill invoice issued by the claimant;
- (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 the claimant's accounts as a bad debt.

Records required to be kept

22.—(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

23.—(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

24.—(1) Where a claimant—

- (a) has benefited from an amount of credit to which the claimant 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 23, treated as attributed to the relevant disposal,

the claimant shall repay to Revenue Scotland 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 22; or
- (b) in relation to the documents mentioned in that regulation, fails to comply with either—
 - (i) section 69(1); or
 - (ii) any obligation arising under 115(1)(a) of the RSTP Act,

the claimant shall repay to Revenue Scotland the amount of the claim to which the failure to comply relates.

Writing off debts

25.—(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) the claimant has made an entry in relation to that activity in the landfill tax bad debt account in accordance with regulation 22 (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 7

Credit: bodies concerned with the environment

Interpretation and general provisions

26.—(1) In this Part—

“approved body” means a body approved for the time being under regulation 31;

“approved object” has the meaning given in regulation 29;

“contributing third party” means a person who has made or agreed to make (whether or not under a legally binding agreement) a payment to a registered person to secure the making by him of a qualifying contribution or to reimburse him, in whole or in part, for any such contribution he has made;

“income” includes interest; or

- (a) the proportion of any proceeds attributable to the initial acquisition and disposal of an asset (or part of an asset) purchased with a qualifying contribution (or part of a qualifying contribution), or
- (b) the proportion of any proceeds attributable to any subsequent acquisition and disposal of an asset (or part of an asset) purchased with the proceeds (or part of the proceeds) of—
 - (i) the initial acquisition and disposal representing the original qualifying contributions, or
 - (ii) any subsequent acquisition and disposal representing the original qualifying contributions,through any number of transactions;

“qualifying contribution” has the meaning given in regulation 28;

“the regulatory body” means such body, if any, as in relation to which an approval of Revenue Scotland under regulation 32 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 (provided that the body has the object contained in regulation 29(5)(f) and is enrolled with the regulatory body (the Scottish Landfill Communities Fund Forum)), 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 Revenue Scotland 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 Revenue Scotland or, as the case may be, the regulatory body may specify in it.

Entitlement to credit

27.—(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 one accounting period;
- (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 [] per cent of the person's relevant tax liability.

(4) For the purpose of paragraphs (2) and (3) the contribution year of a person is the person's first contribution year and then each period of 12 months beginning on 1st April.

(5) The reference in paragraph (4) to the first contribution year of a person is a reference to the period beginning with the person's effective date of registration and ending on the day immediately preceding the first day of the next contribution year.

(6) Where one contribution year ends and another contribution year begins in an accounting period, the amount of any qualifying contribution which, by virtue of paragraph (2), is treated as made in that period shall be apportioned, in accordance with paragraph (7), between those contribution years.

(7) The apportionment shall be on the basis of either—

- (a) the number of days of the accounting period that fall before 1st April and the number of days that fall on and after that day; or
- (b) the amount of tax charged on taxable disposals made in the accounting period before 1st April and the amount of tax charged on taxable disposals made in that period on and after that day,

whichever the registered person may choose.

(8) Subject to paragraph (9) 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 the person, if any, in respect of the accounting period in relation to which that liability falls to be determined; and
- (b) the tax payable by the person, 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 16 the aggregate of the tax payable by him in respect of the accounting periods mentioned in subparagraphs (a) and (b) above shall be reduced by the amount of that payment.

(9) For the purposes of paragraph (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

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

- (a) it is made by a registered person to an approved body (provided that the body has the object contained in regulation 29(5)(f) and is enrolled with the regulatory body (as approved by Revenue Scotland under regulation 32(1)(a)));
- (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 paragraphs (2) to (5) below have been complied with in relation to that payment; and
- (d) it is not repaid to the registered person, or a contributing third party, 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;
- (c) the name and address of any contributing third party; and
- (d) the amount of the payment made or to be made by the contributing third party and the date, or as the case may require, dates on which payment of the whole or any part of that amount—
 - (i) was received, or
 - (ii) is expected to be received.

(3) A person claiming credit under this Part for a contribution in relation to which there is a contributing third party shall have provided to the regulatory body or, if they are performing the functions specified in regulation 31(1) below, to Revenue Scotland the following information—

- (a) the name and address of the contributing third party;
- (b) the amount of the payment made or to be made by the contributing third party and the date, or as the case may require, dates on which payment of the whole or any part of that amount—
 - (i) was received, or
 - (ii) is expected to be received;
- (c) the enrolment number of the approved body to whom the contribution was made.

(4) A person claiming credit under this Part for a contribution in relation to which there is a contributing third party shall have informed the approved body to which the contribution is made of the name and address of the contributing third party.

(5) For the purposes of this Part where any qualifying contribution or income derived therefrom is transferred to a body as described in regulation 26(2)(d)—

- (a) the body to whom the sum is transferred shall be treated as having received qualifying contributions of the amount concerned; and
- (b) that body shall be treated as having received those qualifying contributions from the registered person or persons who originally paid them (but this shall not give rise to any further entitlement to credit in respect of those contributions).

Bodies eligible for approval

- 29.**—(1) A body is eligible to be approved 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 (5) 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—
 - (i) who have made qualifying contributions to it, or
 - (ii) who were a contributing third party in relation to such contributions,except that such persons may benefit where they belong to a class of persons that benefits generally;
 - (f) it is not controlled by one or more of the persons and bodies listed in paragraphs (2) and (3) below;
 - (g) none of the persons or bodies listed in paragraph (2) below is concerned in its management; and
 - (h) it pays to the regulatory body an application fee of £100 or such lesser sum as the regulatory body may require.
- (2) The persons and bodies mentioned in paragraph (1)(f) above are:—
- (a) a local authority;
 - (b) a body corporate controlled by one or more local authorities;
 - (c) a registered person;
 - (d) a person connected with any of the persons or bodies mentioned in sub-paragraphs (a) to (c) above.
- (3) The persons and bodies mentioned in paragraph (1)(f) and (g) above are:—
- (a) a person who controlled or was concerned in the management of a body the approval of which was revoked otherwise than under regulation 31(1)(e);
 - (b) a person who has been convicted of an indictable offence;
 - (c) a person who is disqualified from being a charity trustee under the Charities and Trustee Investment (Scotland) Act 2005 (or any analogous disqualification provision);
 - (d) a person connected with any of the persons or bodies mentioned in sub-paragraphs (a) to (c) above;
 - (e) a person who is incapable by reason of mental disorder.
- (4) For the purpose of paragraph (3)(e) above, a person shall be treated as incapable by reason of mental disorder where—
- (a) in Scotland, the person is incapable within the meaning of section 1(6) of the Adults with Incapacity (Scotland) Act 2000;
 - (b) in England and Wales, the person lacks capacity within the meaning of the Mental Capacity Act 2005 to administer and manage his property and affairs; or
 - (c) in Northern Ireland, the court has exercised any of its powers under Part VIII of the Mental Health (Northern Ireland) Order 1986 (whether or not by virtue of Article 97(2) of that Order),

but shall cease to be so treated where the judge or court concerned has made a finding that he is not or is no longer incapable of managing and administering his property and affairs.

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

- (a) in relation to any land in Scotland 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 (7) below;
- (b) in relation to any land in Scotland 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 (7) below;
- (c) where it is for the protection of the environment, the provision, maintenance or improvement of—
 - (i) a public park in Scotland; or
 - (ii) another public amenity in Scotland,in the vicinity of a landfill site, provided the conditions in paragraph (6) below are satisfied;
- (d) where it is for the protection of the environment, and subject to paragraph (8) below, the conservation or promotion of biological diversity through—
 - (i) the provision, conservation, restoration or enhancement of a natural habitat in Scotland; or
 - (ii) the maintenance or recovery of a species in its natural habitat in Scotland, on land or in water situated in the vicinity of a landfill site;
- (e) where it is for the protection of the environment, the maintenance, repair or restoration of a building or other structure in Scotland 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.

(6) In paragraph (5)(d) above “biological diversity” has the same meaning as in the United Nations Environmental Programme Convention on Biological Diversity of 1992.

(7) An object shall not be, or shall no longer be, regarded as falling within paragraph (5)(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.

(8) An object shall not be, or shall no longer be, regarded as falling within paragraph (5)(d) above if it involves works which—

- (a) are required to be carried out by a notice or order within paragraph (9) below;
 - (b) are required to be carried out in accordance with an agreement made under section 16 of the National Parks and Access to the Countryside Act 1949;
 - (c) are required to be carried out in accordance with an agreement made under section 15 of the Countryside Act 1968;
 - (d) give effect to any provision of a management scheme under section 28J of the Wildlife and Countryside Act 1981 or are required to be carried out by a notice served under section 28K of that Act;
 - (e) are wholly or partly required to be carried out by a relevant condition; or
 - (f) are carried out with a view to profit.
- (9) The notices and order mentioned in paragraph (8) above are—
- (a) a remediation notice served under section 78E of the Environmental Protection Act 1990;
 - (b) a notice served under regulation 32(2) of the Water Environment (Controlled Activities) (Scotland) Regulations 2011;
 - (c) an enforcement notice served under regulation 55 of the Pollution Prevention and Control (Scotland) Regulations 2012;
 - (d) a suspension notice given under regulation 56 of those Regulations; and
 - (e) an order under regulation 70 of those Regulations.
- (10) The conditions mentioned in sub-paragraphs (d) and (e) of paragraph (5) 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.
- (11) Where the objects of a body are or include any of the objects set out in paragraph (5) 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 (12) below;
 - (b) the use of qualifying contributions in paying a contribution to the running costs of the regulatory body.
- (12) The use of qualifying contributions in paying the running costs of the body shall only be regarded as an approved object if the running costs of the body attributable to funds applied by the body to the object do not exceed ten per cent of the funds so applied.
- (13) For the purposes of paragraph (1) above a body or person (in either case, for the purposes of this paragraph, “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 the person is that body’s holding company within the meaning of section 1159 of and Schedule 6 to the Companies Act 2006, and an individual shall be taken to control a body corporate if the individual, were the individual 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 the person, 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.

(14) For the purposes of paragraphs (7), (8) and (10) 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 75 of the Town and Country Planning (Scotland) Act 1997,

to which such a person is a party.

Obligations of approved bodies

30.—(1) An approved body shall—

- (a) continue to meet all the requirements of regulation 29 above;
- (b) comply with such conditions as the regulatory body may impose from time to time under regulation 31(1)(b) (including any conditions varied under regulation 31(1)(c));
- (c) apply qualifying contributions and any income derived therefrom only to approved objects;
- (d) not apply any of its funds for the benefit of any of the persons who have made qualifying contributions to it or who were contributing third parties in relation to such contributions (except to the extent that they benefit by virtue of belonging to a class of persons that benefits generally);
- (e) make and retain records of the following—
 - (i) the name, address and registration number of each registered person making a qualifying contribution to the body;
 - (ii) the name and address of any contributing third party in relation to a qualifying contribution received by the body;
 - (iii) the amount and date of receipt of each qualifying contribution and the amount and date of receipt of any income derived therefrom;
 - (iv) in the case of a transfer of the whole or part of any qualifying contribution or income derived therefrom to or from the body, the date of the transfer, the amount transferred, the name and enrolment number of the body from or, as the case may require, to which it was transferred, the name, address and registration number of the person who made the qualifying contribution and the name and address of any contributing third party in relation to the qualifying contribution;
 - (v) in respect of each qualifying contribution and any income derived therefrom, including any such amount transferred to the body by another approved body, the date of and all other details relating to its expenditure;
- (f) provide the following information to the regulatory body or, if they are performing the functions specified in regulation 31(1) below, to Revenue Scotland within 7 days of the receipt by it of any qualifying contribution—
 - (i) the amount of the contribution;
 - (ii) the date it was received;
 - (iii) the name and registration number of the person making the contribution;
 - (iv) the name and address of any contributing third party in relation to the contribution notified to it by virtue of regulation 28(4) above;
- (g) notify the regulatory body within seven days of any transfer by that approved body of qualifying contributions or of income derived therefrom of—
 - (i) the date of the transfer;
 - (ii) the enrolment number of the approved body by which the transfer was made;
 - (iii) the amount transferred;

- (iv) the name and registration number of the person who made the qualifying contribution;
 - (v) the name and address of any contributing third party in relation to the contribution; and
 - (vi) the approved objects to which the transferred funds are to be applied;
- (h) provide the regulatory body or, if they are performing the functions specified in regulation 31(1) below, Revenue Scotland with information from or access to the records referred to in sub-paragraph (e) above within 14 days (or such longer period as the regulatory body or, as the case may require, Revenue Scotland may allow) of a request being made for such information or access;
 - (i) submit to the regulatory body or, if they are performing the functions specified in regulation 31(1) below, to Revenue Scotland within 28 days of the end of the relevant period determined in accordance with paragraph (2) below details of—
 - (i) qualifying contributions and any other income or profit whatsoever received by it,
 - (ii) any expenditure made by it during the period, and
 - (iii) any balances held by it at the end of the period
 - (j) submit to the regulatory body at its request, not later than the day specified in paragraph (3), so many of the following details as it requires at any time during the relevant period—
 - (i) qualifying contributions and any other income or profit whatsoever received by it during the period,
 - (ii) any expenditure made by it during the period, and
 - (iii) any balances held during the period;
 - (k) if Revenue Scotland are performing the functions specified in regulation 34(1) instead of the regulatory body, submit, at their request, not later than the day specified in paragraph (3), so many of the following details as they may require at any time during the relevant period—
 - (i) qualifying contributions and any other income or profit whatsoever received by it during the period,
 - (ii) any expenditure made by it during the period, and
 - (iii) any balances held during the period;
 - (l) submit to the regulatory body at its request, not later than the fourteenth day following the day on which the request is made, independently audited financial accounts for the approved body's last financial year; but such a request may not be made earlier than 10 months following the end of that financial year; and
 - (m) pay to the regulatory body an amount equal to 5 per cent of each qualifying contribution it receives, or such lesser amount as the regulatory body may require, towards its running costs within 14 days of receipt of a demand for payment.
- (2) For the purposes of paragraphs (1)(i), (1)(j) and (1)(k) the relevant period in respect of an approved body is—
- (a) in the case of the first such period, the period commencing with the date on which the body was approved and ending on the following 31st March; and
 - (b) in the case of subsequent periods, the period of 12 months commencing with the day after the end of the first or, as the case may require, a subsequent period.
- (3) The day referred to in paragraphs (1)(j) and (1)(k) is the twenty-eighth day following the day on which a request is made.
- (4) Where an approved body submits details in accordance with a request made under paragraph (1)(j) or paragraph (1)(k) the requirement in paragraph (1)(i) shall not apply in respect of those details.

Functions of the regulatory body

31.—(1) The regulatory body—

- (a) shall, on application being made to it by a body which is eligible to be approved under regulation 30 above, approve that body;
- (b) may—
 - (i) at the time a body is approved, or
 - (ii) subsequently, by notice delivered to that body, impose such conditions as it sees fit;
- (c) may, by notice delivered to a body, vary or revoke any condition of the approval;
- (d) shall revoke the approval of any body which applies for its approval to be revoked;
- (e) shall maintain a roll of bodies which it has approved;
- (f) shall allocate an identifying number (the enrolment number) to each such body;
- (g) shall remove from the roll any body whose approval has been revoked under sub-paragraph (d) or regulation 32(1)(i);
- (h) 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;
- (i) shall publish information regarding which bodies it has approved and which approvals has been revoked under sub-paragraph (d) or regulation 32(1)(i);
- (j) shall, when notified by an approved body of the transfer to or by it of the whole or part of a qualifying contribution or of income derived therefrom, notify the registered person who made the qualifying contribution, and any contributing third party in relation to it, of—
 - (i) the date of the transfer,
 - (ii) the name and enrolment number of the body by or, as the case may require, to whom the transfer was made;
 - (iii) the amount transferred; and
 - (iv) the approved objects to which the transferred funds are to be applied; and
- (k) shall comply with such conditions as Revenue Scotland may impose from time to time under regulation 32(1)(b) (including any conditions varied under regulation 32(1)(c)).

(2) Where—

- (a) Revenue Scotland 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 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 Revenue Scotland revoked their approval.

Functions of Revenue Scotland

32.—(1) Revenue Scotland—

- (a) may approve a body to carry out the functions prescribed by regulation 31(1) above;
- (b) may—
 - (i) at the time the body is approved, or
 - (ii) subsequently, by notice delivered to that body, impose such conditions as they see fit;

- (c) may, by notice delivered to the body, vary or revoke any condition of the approval;
- (d) may revoke the approval;
- (e) 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;
- (f) for any time as regards which no approval has effect, may perform any of the functions specified in regulation 31(1);
- (g) may disclose to the regulatory body information which relates to the tax affairs of registered persons and which is relevant to the credit scheme established by this Part; . . .
- (h) having regard to any information received from the regulatory body, may serve notices under regulation 33; and
- (i) may, with respect to the approval of a body approved under regulation 31(1)(a), revoke that approval if the approved body fails to comply with any requirement of regulation 30(1).

(2) Without prejudice to the generality of paragraph (1)(d) above, Revenue Scotland may revoke their approval of the regulatory body where it appears to them necessary to do so for the proper operation of the credit scheme established by this Part.

Repayment of credit

33.—(1) Where a person has benefited from an amount of credit to which the person was entitled under this Part and Revenue Scotland serve upon the person 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,

the person shall repay to Revenue Scotland 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 23(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 the person 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 the person or a person who was a contributing third party in relation to the qualifying contribution,

the person shall pay to Revenue Scotland an amount equal to 90 per cent of the amount repaid to the person or, as the case may require, to the contributing third party.

- (4) Paragraph (5) below applies where—
- (a) a person has benefited from an amount of credit to which the person was entitled under this Part; and
 - (b) the person is entitled to a payment under regulation 16 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 Revenue Scotland an amount equal to the difference between—
- (a) the aggregate of—
 - (i) the amount of the credit from which the person has benefited, and
 - (ii) any other amounts of credit arising under this Part which the person is or was entitled to claim,
 in respect of that contribution year; and
 - (b) the amount of credit which the person would have been entitled to claim if the person 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 16.
- (6) Where—
- (a) a person has benefited from an amount of credit to which the person was entitled under this Part;
 - (b) the person acquires an asset from a body to which the person has made a qualifying contribution for—
 - (i) no consideration, or
 - (ii) a consideration which is less than the open market value of the asset,
 the person shall pay to Revenue Scotland 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 Revenue Scotland 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 the person 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 28(5) as having been received by that body from him.

PART 8

Landfill invoices

Contents of a landfill invoice

34.—(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.

PART 9

Determination of weight of material disposed of

Scope

35. 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

36.—(1) Except where regulation 3 or 4 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 26 of the Act requires the disposal to be treated as made shall be disregarded.

Specified methods

37.—(1) Except where regulation 4 applies, this regulation applies where Revenue Scotland have specified rules for determining weight in a notice published by them and not withdrawn by a further notice.

(2) A specification made by Revenue Scotland 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 Revenue Scotland 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 Revenue Scotland 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 2).

Agreed methods

38.—(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 2 or specified under regulation 3; 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.

(3) Where rules have been agreed under this regulation and Revenue Scotland 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 give a direction (which may be contained in guidance) 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 2 or 3).

Weigh Bridges

39.—(1) Where a weigh bridge is available either on landfill site or within close enough proximity of a site so as not to incur unreasonable extra costs on the taxpayer, then it must be used to weigh all disposals.

(2) Paragraph (1) shall not apply in the case of a weigh bridge at a landfill site has broken down or when an alternative weigh bridge is not available within a close proximity.

(3) Any weigh bridge used for the purposes of these Regulations must comply with the relevant weights and measures legislation.

(4) Where paragraph (2) applies, any alternative weigh bridge must be agreed by Revenue Scotland.

(5) A valid tax return cannot be made in respect of material not weighed in accordance with these Regulations.

Water not to be discounted

40. In the weighing of any material for the purposes of these Regulations, water content of the material is not to be discounted.

A member of the Scottish Government

St Andrew's House,
Edinburgh

2014

EXPLANATORY NOTE

(This note is not part of the Regulations)

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

- Part I provides for the Regulations to come into force on 1st April 2015 and defines expressions used in them.
- 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 Revenue Scotland.
- Part VIII specifies what information a landfill invoice must contain.
- Part IX sets out the basic method of determining the weight of material disposed of, and provides for specified and agreed methods to be used instead.

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2014 No.

LANDFILL TAX

**The Scottish Landfill Tax (Liability of Controllers) Regulations
2014**

Made - - - - - 2014

Coming into force - - -

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The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 17(1) of the Landfill Tax (Scotland) Act 2014^(a) and all other powers enabling them to do so. In accordance with section 41(2) and (8) of that Act, a draft of this instrument has been laid before and approved by resolution of the Scottish Parliament.

(a) 2014 asp. 2.

Citation and commencement

1.—(1) These Regulations may be cited as the Scottish Landfill Tax (Liability of Controllers) Regulations 2014.

(2) These Regulations come into force [].

Interpretation

2.—(1) In these Regulations—

“the Act” means the Landfill Tax (Scotland) Act 2014;

“authorised landfill site” has the meaning given in section 12(1) of the Act;

“controller of a landfill site” has the meaning given in section 17(2) of the Act;

“disposal” means a taxable disposal (which expression has the meaning given in section 3(2) of the Act) made on or after 1st April 2015 and “disposed of” shall be construed accordingly;

“landfill site” has the meaning given in section 12(1) of the Act;

“operator of a landfill site” has the meaning given in section 12(2) of the Act;

“the RSTP Act” means the Revenue Scotland and Tax Powers Act 2014;

“return” means a return which is required to be made in accordance section 68(1)(c) of the RSTP Act

Secondary liability: Controllers of landfill sites

Secondary liability: Controllers of landfill sites

3.—(1) Where—

(a) a taxable disposal is made at a landfill site;

(b) at the time when that disposal is made a person is the operator of the landfill site by virtue of section 12(2) of the Act; and

(c) at that time a person other than the operator mentioned in paragraph (b) above is the controller of the whole or a part of the landfill site,

the controller shall be liable to pay to Revenue Scotland an amount of the landfill tax chargeable on the disposal.

(2) The amount which the controller is liable to pay shall be determined in accordance with the following provisions of this regulation.

(3) In a case where the whole of the landfill site is under the control of the controller, he shall be liable to pay the whole of the landfill tax chargeable.

(4) In a case where a part of the landfill site is under the control of the controller, he shall be liable to pay an amount of the landfill tax calculated in accordance with paragraphs (5) and (6) below.

(5) The amount of landfill tax which the controller is liable to pay is the amount which would have been chargeable had a separate taxable disposal consisting of the amount of material referred to in paragraph (6) below been made at the time of the disposal mentioned in sub-paragraph (1)(a) above.

(6) That amount of material is the amount by weight of the material comprised in the disposal mentioned in sub-paragraph (1)(a) above which was disposed of on the part of the landfill site under the control of the controller.

(7) If the amount mentioned in paragraph (6) above is nil, the controller shall have no liability under paragraph (1) above in relation to landfill tax chargeable on the disposal.

- (8) For the purposes of sub-paragraph (1)(b) and (c) above—
- (a) section 26 of the Act; and
 - (b) any regulations made under section 11 of the Act,
- shall not apply for determining the time when the disposal in question is made.

Operator entitled to credit

- 4.—(1) This regulation applies where—
- (a) the operator of a landfill site is liable to pay landfill tax on a taxable disposal by reference to a particular accounting period;
 - (b) a controller of the whole or a part of that site is (apart from this regulation) liable under regulation 3 above to pay an amount of that tax; and
 - (c) for the accounting period in question the operator is entitled to credit under regulations made under section 18 of the Act.
- (2) The amount of the tax which the controller is (apart from this paragraph) liable to pay shall be reduced by the amount calculated in accordance with the following formula—

$$\frac{A \times C}{G}$$

where—

- A is the amount of tax mentioned in sub-paragraph (1)(b) above;
- C is the amount of credit mentioned in sub-paragraph (1)(c) above; and
- G is the operator’s gross tax liability for the accounting period in question.

(3) For the purposes of paragraph (2) above, the operator’s gross tax liability for the accounting period in question is the gross amount of landfill tax—

- (a) which is chargeable on disposals made at all landfill sites of which he is the operator; and
- (b) for which he is required to account by reference to that accounting period.

(4) In paragraph (3) above, the gross amount of landfill tax means the amount of tax before any credit or any other adjustment is taken into account in the period in question.

(5) If the amount calculated in accordance with the formula in paragraph (2) above is greater than the amount of tax mentioned in subparagraph (1)(b) above, the amount of the tax which the controller is liable to pay shall be reduced to nil.

Payment of secondary liability

5.—(1) This regulation applies where a controller is liable under regulation 3 above (after taking account of any reduction under regulation 4 above) to pay an amount of landfill tax (“the relevant amount”).

(2) The controller is required to pay the relevant amount to revenue Scotland only if—

- (a) a notice containing the required information is served on him; or
- (b) other reasonable steps are taken with a view to bringing the required information to his attention,

before the end of the period of two years beginning with the day immediately following the relevant accounting day.

(3) The relevant accounting day is the last day of the accounting period by reference to which the landfill site operator liable to pay the landfill tax in question is required to account for that tax.

(4) If the controller is required to pay the relevant amount by virtue of this regulation, the amount shall be paid before the end of the period of thirty days beginning with the day immediately following the notification day.

- (5) The notification day is—
- (a) in a case where notice is served on a controller as mentioned in sub-paragraph (2)(a) above, the day on which the notice is served; or
 - (b) in a case where other reasonable steps are taken as mentioned in sub-paragraph (2)(b) above, the day on which the last of those steps is taken.
- (6) For the purposes of paragraph (2) above the required information is the relevant amount and, if that amount is one reduced in accordance with regulation [b] above, also—
- (a) the amount of the controller’s liability under regulation 3 above apart from the reduction;
 - (b) the amount of credit to which the operator is entitled; and
 - (c) the operator’s gross tax liability.

Determinations and Assessments

- 6.—(1) Where an amount of landfill tax is—
- (a) determined or assessed under sections 78, 86,89 or 90 of the RSTP Act; and
 - (b) notified to an operator of a landfill site,

Revenue Scotland may also determine that a controller of the whole or a part of any landfill site operated by the licensed operator shall be liable to pay so much of the amount assessed as they consider just and equitable.

- (2) A controller is required to pay an amount determined under paragraph (1) above only if—
- (a) a notice stating the amount is served on him; or
 - (b) other reasonable steps are taken with a view to bringing the amount of the liability to his attention,

before the expiry of the period of two years beginning with the day immediately following the assessment day.

(3) The assessment day is the day on which the assessment in question is notified to the operator of the landfill site.

(4) If a controller is required to pay an amount by virtue of this regulation, it shall be paid before the end of the period of thirty days beginning with the day immediately following the notification day.

- (5) The notification day is—
- (a) in a case where notice is served on a controller as mentioned in sub-paragraph (2)(a) above, the day on which the notice is served; or
 - (b) in a case where other reasonable steps are taken as mentioned in sub-paragraph (2)(b) above, the day on which the last of those steps is taken.

Assessment withdrawn or reduced

- 7.—(1) Where—
- (a) a controller is liable to pay an amount determined under regulation 6 above; and
 - (b) the assessment notified to the operator of the landfill site is withdrawn or reduced,

Revenue Scotland may determine that the controller’s liability is to be cancelled or to be reduced to such an amount as they consider just and equitable.

(2) Paragraphs (3) to (5) below apply where Revenue Scotland make a determination under paragraph (1) above that the controller’s liability is to be reduced (but not cancelled).

- (3) In such a case Revenue Scotland shall—
- (a) serve the controller with notice stating the amount of the reduced liability; or
 - (b) take other reasonable steps with a view to bringing the reduced amount to the controller’s attention.

(4) If the controller has already been served with notice of the amount determined under regulation 6 above, or if other steps have already been taken to bring that amount to his attention—

- (a) Revenue Scotland shall serve the notice mentioned in subparagraph (3)(a) above, or take the steps mentioned in subparagraph (3)(b) above, before the end of the period of thirty days beginning with the day immediately following that on which they make the determination under paragraph (1) above; and
- (b) the reduced amount shall be payable, or treated as having been payable, on or before the day on which the amount referred to in sub-paragraph (1)(a) above would have been payable apart from this paragraph.

(5) In a case where the controller has not been served with notice of the amount determined under regulation 6 above, or no other steps have been taken to bring that amount to the controller's attention, the controller shall be liable to pay the reduced amount only if—

- (a) the notice mentioned in sub-paragraph (3)(a) above is served; or
- (b) the other steps mentioned in sub-paragraph (3)(b) above are taken,

before the expiry of the period of two years beginning with the day immediately following that on which the Commissioners make the determination under paragraph (1) above.

(6) Paragraph (7) below applies where—

- (a) Revenue Scotland make a determination under paragraph (1) above that the controller's liability is to be cancelled; and
- (b) the controller has already been served with notice of the amount determined under regulation 6 above, or other steps have already been taken to bring that amount to the controller's attention.

(7) In such a case Revenue Scotland shall—

- (a) serve the controller with notice stating that the liability has been cancelled; or
- (b) take other reasonable steps with a view to bringing the cancellation to the controller's attention,

before the end of the period of thirty days beginning with the day immediately following that on which Revenue Scotland make the determination that the liability is to be cancelled.

Adjustments

8.—(1) This regulation applies in any case where the liability of an operator of a landfill site to pay landfill tax is adjusted otherwise than by—

- (a) the operator's being entitled to credit under regulations made under section 18(1) of the Act;
- (b) the operator's being notified of an amount assessed under provisions referred to in regulation 6 (1)(a); or
- (c) the withdrawal or reduction of an assessment or determination referred to in regulation 6(1)(a) which was notified to the operator.

(2) In such a case Revenue Scotland may determine that a controller of the whole or any part of a landfill site operated by the operator of the landfill site—

- (a) shall be liable to pay to Revenue Scotland such an amount as Revenue Scotland consider just and equitable; or
- (b) shall be entitled to an allowance of such an amount as Revenue Scotland consider just and equitable.

(3) A controller is required to pay an amount determined under subparagraph (2)(a) above only if—

- (a) a notice stating the amount is served on the controller; or

- (b) other reasonable steps are taken with a view to bringing the amount of the liability to the controller's attention,

before the end of the period of two years beginning with the day immediately following the relevant accounting day.

(4) The relevant accounting day is the last day of the accounting period of the operator within which the adjustment in question was taken into account.

(5) If a controller is required to pay an amount by virtue of paragraph (3) above, it shall be paid before the end of the period of thirty days beginning with the day immediately following the notification day.

(6) The notification day is—

- (a) in a case where notice is served on a controller as mentioned in sub-paragraph (3)(a) above, the day on which the notice is served; or
- (b) in a case where other reasonable steps are taken as mentioned in sub-paragraph (3)(b) above, the day on which the last of those steps is taken.

(7) Revenue Scotland may determine in what manner a controller is to benefit from an allowance determined under sub-paragraph (2)(b) above.

Amounts payable to be treated as tax

9. An amount which a controller is required to pay under regulations 6, 7 or 8(2)(a) above or under regulation 11 below shall be deemed to be an amount of tax due from the controller and shall be recoverable accordingly.

Controller not carrying out taxable activity

10. A controller is not to be treated for the purposes of these Regulations as carrying out a taxable activity by reason only of any liability under these Regulations.

Joint and several liability

11.—(1) In any case where the condition in paragraph (4), (5) or (6) below is satisfied, the controller and the operator shall be jointly and severally liable for the principal liability.

(2) But the amount which may be recovered from the controller in consequence of such liability shall not exceed the amount of the secondary liability.

(3) For the purposes of this regulation—

- (a) the principal liability is the amount referred to in sub-paragraph (4)(a), (5)(a) or (6)(a) below, as the case may be; and
- (b) the secondary liability is the amount referred to in sub-paragraph (4)(b), (5)(b) or (6)(b) below, as the case may be.

(4) The condition in this sub-paragraph is satisfied if—

- (a) the operator of a landfill site is liable under section 16(1) of the Act for landfill tax; and
- (b) a controller is liable under regulation 3 above, after taking account of any reduction under regulation 4 above, to pay an amount of that tax.

(5) The condition in this paragraph is satisfied if—

- (a) the operator of a landfill site is notified of the amount of an assessment or determination made under provisions referred to in in regulation 6(1)(a); and
- (b) in consequence of a determination made under regulation 6 above by Revenue Scotland in connection with the assessment, a controller is liable to pay an amount (after taking account of any reduction under regulation 7 above).

(6) The condition in this paragraph is satisfied if—

- (a) the liability of the operator of a landfill site to pay landfill tax is adjusted in such a way that regulation 8 above applies; and
- (b) in consequence of a determination made under regulation 8(2)(a) above by Revenue Scotland in connection with the adjustment, a controller is liable to pay an amount.

Interest payable by a controller

12.—(1) This paragraph applies where—

- (a) the operator of a landfill site and the controller of the whole or a part of that site are by virtue of regulation 11 above jointly and severally liable for an amount; and
- (b) that amount carries interest by virtue of any provision of the RSTP Act.

(2) The controller and the operator shall be jointly and severally liable to pay the interest.

(3) But the amount which may be recovered from the controller in consequence of such liability shall not exceed the amount calculated in accordance with the following formula—

$$\frac{(I - [A + B]) \times S}{P}$$

where—

I is the total amount of interest in question;

A is the amount of interest carried for the period which—

- (a) begins with the first day of the period for which interest is carried, and
- (b) ends with the day on which the controller becomes liable to pay the secondary liability;

B is the amount of interest carried for any day falling after that on which the secondary liability is met in full;

S is the amount of the secondary liability;

P is the amount of the principal liability.

In this paragraph secondary liability and principal liability have the same meaning as in regulation 11 above.

(4) The controller is liable for an amount of interest only if—

- (a) a notice stating the amount is served on him; or
- (b) other reasonable steps are taken with a view to bringing the amount of the liability to his attention,

before the end of the period of two years beginning with the day immediately following the final day.

(5) The final day is the last day of the period for which the interest in question is carried.

(6) If the controller is required to pay an amount in accordance with this regulation, it shall be paid before the end of the period of thirty days beginning with the day immediately following the notification day.

(7) The notification day is—

- (a) in a case where notice is served on a controller as mentioned in sub-paragraph (4)(a) above, the day on which the notice is served; or
- (b) in a case where other reasonable steps are taken as mentioned in sub-paragraph (4)(b) above, the day on which the last of those steps is taken.

Reviews and Appeals

13. Section 198 of the Act shall apply to a decision of Revenue Scotland under these Regulations—

- (a) that a person is a controller;
- (b) that a person is liable under these Regulations to pay any amount (including a penalty under regulation 14 below);
- (c) that a person is not entitled any reduction of penalty under section 156(1) of the RSTP Act; or
- (d) as to the amount of any liability or any reduction under section 156(1) of the RSTP Act, as it applies to the other decisions of Revenue Scotland specified in subsection (1) of that section.

Notice that person is, or is no longer, a controller

14.—(1) This regulation applies where—

- (a) on the date when this regulation comes into force, a person is a controller of the whole or a part of a landfill site; or
- (b) after that date, a person becomes or ceases to be a controller of the whole or a part of a landfill site.

(2) The controller, and the operator of the landfill site in question, shall be under a duty to secure that notice which complies with the requirements of paragraph (3) below appropriate to the case in question is given to Revenue Scotland.

(3) The requirements of this paragraph are that the notice—

- (a) states that a person is, has become or has ceased to be a controller;
- (b) identifies that person and the site under his control or formerly under his control;
- (c) states the date when he became or ceased to be the controller; and
- (d) is given within the period of thirty days beginning with the day immediately following—
 - (i) the day when this paragraph comes into force, in a case falling within sub-paragraph (1)(a) above; or
 - (ii) the day when the person in question becomes or ceases to be the controller, in a case falling within sub-paragraph (1)(b) above.

(4) If a person fails to comply with paragraph (2) above, the person is liable to a penalty of £250.

(5) Regulation 13 above applies to a penalty under paragraph (4) as to the other decisions of Revenue Scotland specified in section 156(1) of the RSTP Act.

Extension of time limits where notice not served

15.—(1) This regulation applies where—

- (a) a person is liable under regulation 3 above to pay an amount of landfill tax or liable under regulation 12 above to pay interest; or
- (b) Revenue Scotland are entitled under regulations 6, 7 or 8 above to determine an amount which a person is liable to pay.

(2) The reference to two years in regulations 5(2), 6(2), 7(5), 8(3) or 12(4) above (as the case may be) shall be treated as a reference to twenty years if the requirement of regulation 14(2) above to give notice to Revenue Scotland in relation to the person mentioned in paragraph (1) above being or becoming a controller has not been complied with.

JOHN SWINNEY

A member of the Scottish Government

St Andrew's House,
Edinburgh

2014

EXPLANATORY NOTE

(This note is not part of the Order)

These regulations extend liability for payment of landfill tax to controllers of landfill sites. Primary liability is with the operators of authorised landfill sites. The regime applicable to operators is broadly replicated in relation to controllers.

USEFUL LINKS

The Scottish Government's Approach to Taxation, Statement to the Scottish Parliament by the Cabinet Secretary for Finance, Employment and Sustainable Growth, 7 June 2012, available at: <http://www.scotland.gov.uk/News/Speeches/taxation07062012>

Business and Regulatory Impact Assessment: Landfill Tax (Scotland) Act:
<http://www.scotland.gov.uk/Publications/2013/06/8957>

Landfill Tax Scotland Act (2014) Bill documentation and progress through Parliament:
<http://www.scottish.parliament.uk/parliamentarybusiness/Bills/62160.aspx>

Parliamentary Briefing by Scottish Parliament Information Centre:
http://www.scottish.parliament.uk/ResearchBriefingsAndFactsheets/S4/SB_13-32.pdf

Protecting Our Resources; A Consultation on a Scottish Landfill Tax (2012):
<http://www.scotland.gov.uk/Publications/2012/10/3524>

Eunomia Research & Zero Waste Scotland - Landfill Tax An Economic Assessment:
<http://www.zerowastescotland.org.uk/LandfillTaxEconomicAssessment>

Eunomia Research & Zero Waste Scotland Understanding the Policy Options for Implementing a Scottish Specific Landfill Tax:
www.zerowastescotland.org.uk/ScottishSpecificLandfillTax

Scotland's Zero Waste Plan: www.scotland.gov.uk/Topics/Environment/waste-and-pollution/Waste-1/wastestrategy

Waste (Scotland) Regulations 2012:
<http://www.zerowastescotland.org.uk/category/subject/waste-scotland-regulations>

Scotland's Digital Future: A Strategy for Scotland, Scottish Government, March 2011, available at: <http://www.scotland.gov.uk/Publications/2011/03/04162416/0>

HMRC Qualifying Materials Order 2011: www.hmrc.gov.uk/briefs/excise-duty/brief0811-annexb.pdf

HMRC Notice LFT1 - A general guide to Landfill Tax May 2012:
http://customs.hmrc.gov.uk/channelsPortalWebApp/channelsPortalWebApp.portal?_nfpb=true&_pageLabel=pageLibrary_ShowContent&propertyType=document&id=HMCE_CL_000509

SEPA Guidance on Waste Management Licence Exemptions :
http://www.sepa.org.uk/waste/waste_regulation/application_forms/exempt_activities.aspx

EU Waste Framework Directive : <http://ec.europa.eu/environment/waste/framework/index.htm>

Landfill (Scotland) Regulations 2003 : <http://origin-www.legislation.gov.uk/ssi/2003/235/contents/made>

EU Waste Data Catalogue : <http://www.environment-agency.gov.uk/business/topics/waste/31873.aspx>



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