LANDFILL TAX (SCOTLAND) BILL

DELEGATED POWERS MEMORANDUM

PURPOSE

1. This memorandum has been prepared by the Scottish Government in accordance with Rule 9.4A of the Parliament’s Standing Orders, in relation to the Landfill Tax (Scotland) Bill. It describes the purpose of each of the subordinate legislation provisions in the Bill and outlines the reasons for seeking the proposed powers. This memorandum should be read in conjunction with the Explanatory Notes and Policy Memorandum for the Bill.

2. The contents of this Memorandum are entirely the responsibility of the Scottish Government and have not been endorsed by the Scottish Parliament.

BACKGROUND

3. The Landfill Tax (Scotland) Bill is the second of three related Bills being brought forward as a consequence of measures enacted in the Scotland Act 2012 (c.11) (“the 2012 Act”) which received Royal Assent on 1 May 2012. Under the terms of the 2012 Act, the Scottish Parliament will have responsibility for taxes on disposal of material to land. This Bill deals with that responsibility and makes provisions for a Scottish tax on disposals to landfill, to be called Scottish Landfill Tax. The intention of the UK Government is that the provision in the 2012 Act disapplying the UK Landfill Tax regime from Scotland will be brought into force with effect from the end of March 2015 by a Treasury Order in the UK Parliament. To ensure consistency of tax revenues to government, it is intended that the legislative provisions for a Scottish Landfill Tax will come into force the day after the UK Landfill Tax is disapplied.

4. The Bill is intended to inter-operate with a further Bill (which may be called the Tax Management Bill) to be introduced to the Scottish Parliament in 2013. The Tax Management Bill will, subject to Parliamentary approval, establish the overall framework for tax administration in Scotland. A Tax Management consultation paper was issued in December 2012 and the consultation period concluded on 12 April 2013.

APPROACH TO USE OF DELEGATED POWERS

5. The Government has had regard, when deciding where and how provision should be set out in subordinate legislation rather than on the face of the Bill, to:

- the need to strike the right balance between the importance of the issue and providing flexibility to respond to changing circumstances (for example changing market conditions);
- the need to make proper use of valuable Parliamentary time; and
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- the need to anticipate the unexpected, which might otherwise frustrate the purpose of the provision in primary legislation approved by the Parliament (for example tax avoidance).

6.  Regard has also been had to the experience of the UK Government in administering UK Landfill Tax over the last seventeen years (UK Landfill Tax having been effective since 1 October 1996). The delegated powers provisions are listed below, with a short explanation of what each power allows, why the power has been taken in the Bill and why the selected form of Parliamentary procedure has been considered appropriate.

DELEGATED POWERS

Section 5(5) – Power to change the meaning of disposal of material by way of landfill.  
Power conferred on: The Scottish Ministers  
Power exercisable by: Order  
Parliamentary procedure: Provisional affirmative procedure (where section 41(4)(a) applies), affirmative procedure (where section 41(7)(a) applies), otherwise negative procedure

Provision

7.  This provision gives the Scottish Ministers the power to change the definition of disposal by way of landfill and modify any enactment

Reason for taking power

8.  Section 5 defines ‘disposal by way of landfill’. It may be necessary for the Scottish Ministers at some future date to fine tune Scottish Landfill Tax (for example excluding some activities as a disposal by way of landfill) or combat avoidance.

9.  A similar power is provided for in relation to UK Landfill Tax in section 65(5) of the Finance Act 1996.

Choice of procedure

10. An order under this section is subject to the provisional affirmative procedure if it provides for something to be a disposal by way of landfill which would otherwise not be.  
    Provisional affirmative procedure is relatively common in UK tax legislation but is relatively uncommon in legislation enacted by the Scottish Parliament. The exact form of the procedure can vary but its essence is that statutory instruments can be made to come into force very quickly and neither the 28 day rule applicable to negative instruments nor the 40 day rule applicable to standard affirmative instruments will apply. The form of provisional affirmative procedure for the purposes of the Bill is set out in section 41(3) – orders must be laid before the Scottish Parliament and they cease to have effect unless affirmed by resolution of the Parliament within 28 days.

11. Provisional affirmative procedure is considered appropriate to ensure that the order comes into force immediately, whilst allowing for appropriate Parliamentary scrutiny afterwards. Where the order does not provides for something to be a disposal by way of landfill which would

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1The Scottish Government broadly endorses the definition of tax avoidance, —The hallmark of tax avoidance is that the taxpayer reduces his liability to tax without incurring the economic consequences that Parliament intended to be suffered by any taxpayer qualifying for such reduction in his [or her] tax liability. (Dicta of Lord Nolan in Inland Revenue Commissioners v Willoughby [1997] 4 All E.R. 65
otherwise not be, but the order amends primary legislation, affirmative procedure applies. Affirmative procedure is considered to be appropriate because the power allows for the amendment of primary legislation. Where neither of those considerations applies, the order is subject to negative procedure.

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

Power conferred on: The Scottish Ministers
Power exercisable by: Order
Parliamentary procedure: Provisional affirmative procedure (where section 41(4)(b) applies), affirmative procedure (where section 41(7)(b) applies), otherwise negative procedure

Provision

12. This provision allows the Scottish Ministers to prescribe a “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.

Reason for taking power

13. Section 6 of the Bill is roughly equivalent to Section 65A of the 1996 Finance Act, which was inserted by the Finance Act 2009. It 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. The power has been exercised in making the Landfill Tax (Prescribed Landfill Site Activities) Order 2009 (S.I. 2009/1929). This brought several uses of material at a landfill site within the scope of UK Landfill Tax. This was following a Court of Appeal judgment that led to the creation of section 65A. A similar set of powers to those in section 65A should be provided, and should be exercisable by the Scottish Ministers as regards Scottish Landfill Tax.

Choice of procedure

14. An order under this section is subject to the provisional affirmative procedure if it produces the result that something is a prescribed landfill site activity which would otherwise not be. That procedure is considered appropriate to ensure that the order comes into force immediately, whilst allowing for appropriate Parliamentary scrutiny afterwards. Where that is not the case, but the order amends primary legislation, affirmative procedure applies. Affirmative procedure is considered to be appropriate because the power allows for the amendment of primary legislation. Where neither of those considerations applies, the order is subject to negative procedure.

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

Power conferred on: The Scottish Ministers
Power exercisable by: Regulations
Parliamentary procedure: Provisional affirmative procedure (where section 41(4)(c) applies), affirmative procedure (where section 41(7)(c) applies), otherwise negative procedure

2Commissioners for Her Majesty’s Revenue and Customs v Waste Recycling Group Limited [2008] EWCA Civ 849 (the “WRG judgement”).
Provision

15. This provision allows the Scottish Ministers to vary what is categorised as a taxable disposal.

Reason for taking power

16. This power will allow for the Scottish Ministers to make certain materials exempt from Scottish Landfill Tax and for materials sub types of waste to be included in the tax. It may be that the Scottish Ministers wish to exempt, for example, hazardous material where landfill is the only possible destination, in order to encourage correct disposal methods. It is also possible that there may be sub-categories of materials that could be included in a blanket exemption and that this material would have a better value to society if recycled, as opposed to landfilled, and therefore should be encompassed in the tax.

17. This power will also allow the Scottish Ministers to provide that a disposal which is not considered as a taxable disposal to be treated as one. A similar power is contained in section 65(1) of the Finance Act 1996 – see the Landfill Tax (Contaminated Land) Order 1996 (S.I. 1996/1529), the Landfill Tax (Site Restoration and Quarries) Order 1999 (S.I. 1999/2075), the Landfill Tax (Site Restoration, Quarries and Pet Cemeteries) Order 2005 (S.I. 2005/725), the Landfill Tax (Material Removed from Water) Order 2007 (S.I. 2007/2909) and the Landfill Tax (Material from Contaminated Land) (Phasing out of Exemption) Order 2008 (S.I. 2008/2669).

Choice of procedure

18. An order under this section is subject to the provisional affirmative procedure if it produces the result that a disposal which would otherwise not be a taxable disposal is a taxable disposal. That procedure is considered appropriate to ensure that the order comes into force immediately, whilst allowing for appropriate Parliamentary scrutiny afterwards. Where that is not the case, but the order amends primary legislation, affirmative procedure applies. Affirmative procedure is considered to be appropriate because the power allows for the amendment of primary legislation. Where neither of those considerations applies, the order is subject to negative procedure.

Section 13(2) and (5) – Power to specify the standard and lower rates of tax
Power conferred on: The Scottish Ministers
Power exercisable by: Order
Parliamentary procedure: first order affirmative procedure (section 41(2)(a)), second and subsequent orders provisional affirmative procedure (section 41(4)(d))

Provision

19. These provisions allow the Scottish Ministers to set out the standard and lower rates of Scottish Landfill Tax. There may be different lower rates for different categories of qualifying material.

Reason for taking power

20. This power will allow the Scottish Ministers to set the rates of Scottish Landfill Tax. As a green tax, the Scottish Ministers may want to influence the waste market and behaviours by altering the tax rates or may wish to change the revenue received. Under the UK tax system,
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Rates of UK Landfill Tax and other taxes may change very quickly under authority of the Provisional Collection of Taxes Act 1968.

Choice of procedure

21. Affirmative procedure is considered appropriate for the first exercise of the power to set the rates of Scottish Landfill Tax prior to the introduction of the tax. Once the tax has been established, it will be necessary to ensure that tax rates can be changed quickly. It is considered that provisional affirmative procedure provides that flexibility while providing an appropriate level of Parliamentary scrutiny afterwards. Provisional affirmative procedure, in this context, is broadly comparable to the changing of UK tax rates under the Provisional Collection of Taxes Act 1968.

Section 13(4) – Power to determine what materials qualify for the lower rate(s) of tax.

Power conferred on: The Scottish Ministers

Power exercisable by: Order

Parliamentary procedure: Provisional affirmative procedure (where section 41(4)(e) applies), otherwise negative procedure

Provision

22. This provision allows for the Scottish Ministers to make an order setting out what materials qualify at the lower rate(s). As for UK Landfill Tax we envisage that a Scottish System will initially have two rates, one for ‘active’ materials that break down in landfill sites and one for ‘inert’ material that largely remain the same once landfilled.

Reason for taking power

23. This provision allows for the Scottish Ministers to set what materials should be taxed at the lower rate. The provision is similar to the power in section 42(3) of the Finance Act 1996. See the Landfill Tax (Qualifying Material) Order 1996 (S.I. 1996/1528), the Landfill Tax (Qualifying Material) Order 2011 (S.I. 2011/1017) and the Landfill Tax (Qualifying Material) (Amendment) Order 2012 (S.I. 2012/940).

Choice of procedure

24. An order under this section is subject to the provisional affirmative procedure if it removes something from the list of qualifying material or moves material from one category of qualifying material to another. That procedure is considered appropriate to ensure that the order comes into force immediately, whilst allowing for appropriate Parliamentary scrutiny afterwards. Where that is not the case, negative procedure applies. Negative Procedure is considered appropriate for a technical and administrative matter.

Section 14(7) – Power to set out conditions that material must meet to be treated as qualifying material (or as qualifying material of a particular category) for the lower tax rate.

Power conferred on: The Scottish Ministers

Power exercisable by: Order

Parliamentary procedure: Provisional affirmative procedure (where section 41(4)(f) applies), otherwise negative
This document relates to the Landfill Tax (Scotland) Bill (SP Bill 28) as introduced in the Scottish Parliament on 17 April 2013

Provision

This provision allows the Scottish Ministers to set certain conditions in order for material to qualify for the lower rate(s) of Scottish Landfill Tax.

Reason for taking power

25. This power is necessary for the Scottish Ministers to prevent the lower rate(s) encouraging unwanted practices in the waste industry and material being treated for the sole purpose of qualifying for the lower rate(s) and encouraging avoidance. For example the Scottish Ministers may want to set conditions preventing higher rate material being contaminated on purpose with lower rate material in order to qualify for lower rate(s) of tax.

26. The power is similar to the power in section 63(5) of the Finance Act 1996. See the orders cited immediately above in relation to the section 13(4) power.

Choice of procedure

27. An order under this section is subject to the provisional affirmative procedure unless all it does is to provide that an earlier order under this section is not to apply to material. That procedure is considered appropriate to ensure that the order comes into force immediately, whilst allowing for appropriate Parliamentary scrutiny afterwards. Where that is not the case, negative procedure applies. Negative Procedure is considered appropriate for a technical and administrative matter.

Section 15 (1) – Power to determine how a taxable disposal is weighed.

Power conferred on: The Scottish Ministers
Power exercisable by: Regulations
Parliamentary procedure: Negative procedure

Provision

28. This provision allows for the Scottish Ministers to determine in regulations how material is weighed. This will be key to the calculation of the amount of tax chargeable (see section 13).

Reason for taking power

29. This section is comparable to Section 68(1) of the 1996 Finance Act that provides a regulation making power to assist in determining the weight of material disposed of for the purposes of UK Landfill Tax.

30. The power has been exercised in Part X of the Landfill Tax Regulations 1996 (S.I. 1996/1527) (regulations 41 to 44). The basic rule is that weight is determined by weighing the material at the time of its disposal. The Scottish Ministers will need to keep a degree of flexibility as to how material is weighed, for example prescribing agreed methods for sites without a weighbridge.

Choice of procedure

31. Negative Procedure is considered appropriate for a technical and administrative matter. The provision does not allow for the amendment of the Bill or other primary legislation.
Section 17(1) – Power to make provision about the liability of controllers of landfill sites to pay tax.
Power conferred on: The Scottish Ministers
Power exercisable by: Regulations
Parliamentary procedure: Affirmative procedure (if amending primary legislation), otherwise negative procedure

Provision

32. The provision allows the Scottish Ministers to make provision (or further provision) about who a ‘controller’ of a site is, the circumstance in which they have to pay Scottish Landfill Tax, the amount of tax which a controller has to pay, their entitlement to the credit scheme and the arrangements by which the controller can pay the tax they are liable for.

Reason for taking power

33. These enabling provisions are to allow the Scottish Ministers to determine secondary liability, payment of secondary liability and the administrative arrangements managing this. In some cases, the license or permit holder for the landfill site has no direct involvement in operating the site. Where this is the case, the liability to pay tax is extended to the ‘controller’ of the site. This means that if the person named on the license or permit fails to pay the tax, the controller will be jointly and severally liable for the debt.

34. The controller of a landfill site is a person, other than the holder of an authorisation, who determines what materials are disposed of at the site, or part of the site. A person who is purely acting as an agent or employee of someone else is not a controller.

Choice of procedure

35. Affirmative procedure is considered to be appropriate to the extent that the power allows for the amendment of primary legislation. For other provision made, negative procedure is appropriate.

Section 18 (read with sections 19 and 20) – Power to make provision about a credit scheme.
Power conferred on: The Scottish Ministers
Power exercisable by: Regulations
Parliamentary procedure: Negative procedure

Provision

36. Section 18 (read with sections 19 and 20) allow the Scottish Ministers to set up a credit scheme and to regulate how that is managed including the rate of the credit and conditions for eligibility. The provisions also allow for regulations to take account of bad debt, the criteria which the money can be spent on and allow for regulation of the scheme and for the Tax Authority to delegate regulation.

Reason for taking power

37. These provisions largely mirror sections 51 to 53 of the 1996 Finance Act. See regulations 17 to 36 of the Landfill Tax Regulations 1996. The Landfill communities fund (LCF) was set up to provide funding for community or environmental projects in the vicinity of landfill
sites. Landfill operators can give a percentage of UK Landfill Tax to community projects through the LCF and currently receive a 90% tax credit in return. The Scottish Ministers will need these powers to set, control and administer the credit scheme in order to set up a similar system in Scotland. We also require these provisions to enable the regulations to ensure that a person is only entitled to credit if they meet certain conditions i.e. to pay a sum to a body whose objects include the protection or enhancement of the environment.

Choice of procedure

38. Negative Procedure is considered appropriate for a technical and administrative matter. The provision does not allow for the amendment of the Bill or other primary legislation.

Sections 22(9) & 23(1) – Power requiring a person to register and keep the Tax Authority updated of changes if they are carrying out a taxable activity.

Power conferred on: The Scottish Ministers

Power exercisable by: Regulations

Parliamentary procedure: Negative procedure

Provision

39. These provisions concern the register referred to in section 22(1) and allow the Tax Authority to specify what information should be provided to them, in what form.

Reason for taking power

40. This is to allow the Tax Authority the means by which to keep a register of taxable persons that is accurate. The legislation is designed to put the onus on the operator to notify the Tax Authority of changes. Specifically, regulation powers are required to ensure that registered persons notify changes in circumstances; provide other information for the purposes of keeping the register up to date, the time within which notifications must be made; the form and manner by which a notification is made, and its content; and a system for dealing with corrections if information is inaccurate.

41. Similar powers are contained in sections 47 and 48 of the Finance Act 1996. See regulations 4 to 6 of the Landfill Tax Regulations 1996.

Choice of procedure

42. Negative Procedure is considered appropriate for a technical and administrative matter. The provision does not allow for the amendment of the Bill or other primary legislation.

Section 25 – Power to set accounting periods and tax returns to be submitted for those accounting periods.

Power conferred on: The Scottish Ministers

Power exercisable by: Regulations

Parliamentary procedure: Negative procedure

Provision

43. This power allows the Scottish Ministers to set accounting periods and to require self-assessed Scottish Landfill Tax returns to be submitted.
Reason for taking power

44. The power is required to allow the Scottish Ministers to set out the format, frequency and manner of returns to be submitted by the registered person. A similar power is contained in section 49 of the Finance Act 1996. See regulations 11 and 15 of the Landfill Tax Regulations 1996.

Choice of procedure

45. Negative Procedure is considered appropriate for a technical and administrative matter. The provision does not allow for the amendment of the Bill or other primary legislation.

Section 26(3) – Power to define what information is required to be contained in a landfill invoice.
Power conferred on: The Scottish Ministers
Power exercisable by: Regulations
Parliamentary procedure: Negative procedure

Provision

46. The Scottish Ministers can decide and regulate what information is required to be contained in a landfill invoice.

Reason for taking power

47. A landfill invoice must be issued with regard to a particular deposit within 14 days. Providing this happens the disposal is to be treated as made at the time of the invoice issue and not the time of disposal. The Tax Authority may if requested by a person agree to a longer invoicing period. These provisions alongside the power to determine the information to be contained in the invoice allows for timely and accurate information to be collected with regard to taxable deposits that can be later audited by the Tax Authority.


Choice of procedure

49. Negative Procedure is considered appropriate for a technical and administrative matter. The provision does not allow for the amendment of the Bill or other primary legislation.

Section 29(5) – Power to set the evidence required, form and manner for a person to claim a repayment of overpaid tax.
Power conferred on: The Scottish Ministers
Power exercisable by: Regulations
Parliamentary procedure: Negative procedure
Provision

50. This provision allows the Scottish Ministers to determine what documentary evidence is required to claim a repayment of overpaid Scottish Landfill Tax and the manner in which the claimant must do so.

Reason for taking power

51. Section 29 sets out the conditions whereby the Tax Authority is liable to repay overpaid tax. Subsection (5) contains a power to allow the Scottish Ministers to prescribe the form and manner of a claim made under this section and the documentary evidence required in support of said claim. This will allow the Tax Authority to make fair and timely decisions on repayments of overpaid tax.

52. A similar power is contained in paragraph 14 of Schedule 5 to the Finance Act 1996. See regulations 13 and 14 of the Landfill Tax Regulations 1996.

Choice of procedure

53. Negative Procedure is considered appropriate for a technical and administrative matter. The provision does not allow for the amendment of the Bill or other primary legislation.

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

Power conferred on: The Scottish Ministers
Power exercisable by: Regulations
Parliamentary procedure: Negative procedure

Provision

54. This provision allows for regulations in order for the Tax Authority to establish an area of a landfill site that is not subject to the Scottish Landfill Tax.

Reason for taking power

55. The provision allows the Tax Authority to regulate, requiring a person to give information on the material deposited in the ‘non-disposal areas’ (known as ‘information areas’ in practice) and what happens at material at the site. The Tax Authority needs to be able to distinguish between those activities on a landfill site which constitute a taxable disposal and those which are non-taxable uses of waste. To help the Tax Authority to do this, we may require that non-taxable uses of waste take place in a designated area off the site.

Choice of procedure

56. Negative Procedure is considered appropriate for a technical and administrative matter. The provision does not allow for the amendment of the Bill or other primary legislation.
Sections 32 and 33 – Powers to determine the types of records to be kept and how long records must be kept.

Power conferred on: The Scottish Ministers
Power exercisable by: Regulations
Parliamentary procedure: Negative procedure

Provision

57. This provision allows the Scottish Ministers to determine what information must be kept ‘on site’, how it is stored and how long it must be stored for.

Reason for taking power

58. This provision is required to allow the Tax Authority to audit the landfill site. Information may include: business and accounting records; waste transfer notes and other records of materials brought onto or removed from the landfill site; all credit or debit notes, and similar documents, issued or received by the landfill operator.

59. Similar powers are contained in paragraphs 2 and 2A of Schedule 5 to the Finance Act 1996. See regulations 12 and 16 of the Landfill Tax Regulations 1996.

Choice of procedure

60. Negative Procedure is considered appropriate for a technical and administrative matter. The provision does not allow for the amendment of the Bill or other primary legislation.

Section 34(2) – Power to provide that a person other than the Scottish Ministers is the Tax Authority.

Power conferred on: The Scottish Ministers
Power exercisable by: Order
Parliamentary procedure: Affirmative procedure (section 41(2)(b))

61. Section 34 provides that the Tax Authority, as referred to throughout the Bill, is the Scottish Ministers. The power in subsection (2) is intended to allow for the Tax Authority to be Revenue Scotland, at a future point when Revenue Scotland has a legal personality separate to that of the Scottish Ministers. This is of course subject to Parliamentary agreement of provisions for Revenue Scotland; Government proposals for Revenue Scotland will be set out in the forthcoming Tax Management Bill.

Reason for taking power

62. The Scottish Ministers have decided to establish a Scotland-specific body to administer Scottish taxes - namely Revenue Scotland. SEPA, acting as delegate of Revenue Scotland under section 35, will be tasked with much of the day to day administration of Scottish Landfill Tax. Revenue Scotland does not yet exist as a legal person separate to the Scottish Ministers so the power allows for Revenue Scotland to become the Tax Authority in due course without there being a need for further primary legislation.

Choice of procedure

63. Affirmative procedure is considered to be appropriate because the decision as to who is the Tax Authority is particularly important and the power allows for the amendment of primary legislation.
Section 36(1) – Power to make provision about review and appeal of Tax Authority decisions.

**Power conferred on:** The Scottish Ministers

**Power exercisable by:** Regulations

**Parliamentary procedure:** Affirmative procedure if amending primary legislation (section 41(7)(e)), otherwise negative procedure

**Provision**

This power sets up the principle of appeal in Scottish Landfill Tax and allows the Scottish Ministers to specify the process in regulations. The Bill generally does not make provision for decisions of the Tax Authority against which it might be appropriate to allow for review or appeal. Reviews and appeals are matters that are to be consulted on in connection with the Tax Management Bill. A regulation making power is included in the Bill.

**Reason for taking power**

This power sets the principle that decisions by the Tax Authority are subject to review either by the Tax Authority itself or by a tribunal or court. It is considered appropriate that decisions by the Tax Authority on Scottish Landfill Tax are open and transparent and that individuals have the right to appeal against decisions they think are incorrect and have a financial cost.

65. Given that the consultation on a Tax Management Bill (including provisions as to review and appeal) has only just concluded, it would be premature to set out detailed provision in this Bill concerning review and appeal. Inclusion of the power demonstrates that the Government is minded to allow review and appeal of certain Tax Authority decisions, the details of which will be provided for following consultation.

**Choice of procedure**

Affirmative procedure is considered to be appropriate to the extent that the power allows for the amendment of primary legislation. For other provisions made, negative procedure is appropriate.

Section 37(1), (4) and (5) – Power to determine rules that must be followed if a taxable person becomes bankrupt, incapacitated, dies or their business is sold as a going concern.

**Power conferred on:** The Scottish Ministers

**Power exercisable by:** Regulations

**Parliamentary procedure:** Negative procedure

**Provision**

Section 37 provides that the Scottish Ministers may provide by regulations how to determine the requirements of a partnership to comply. The Tax Authority may determine that divisions of a corporate body are registrable and liable for Landfill Tax, as may named unincorporated bodies regardless of any change of membership. The Scottish Ministers may provide regulations to require the person carrying on the business after a death, bankruptcy, sequestration, liquidation, receivership or administration, to inform the Tax Authority who is carrying out the business and of the event that led to them carrying it on. The Scottish
Ministers may also make regulations to ensure continuity during the transfer of a business as a going concern, including powers to inform the Tax Authority of the transfer, include transfer of any liabilities and the right for repayments or credit.

Reason for taking power

69. This 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.

70. A similar power is contained in section 58 of the Finance Act 1996. See regulations 7 to 9 of the Landfill Tax Regulations 1996.

Choice of procedure

71. Negative procedure is considered appropriate for a technical and administrative matter. The provision does not allow for the amendment of the Bill or other primary legislation.

Section 40 – Power to make ancillary provision.
Power conferred on: The Scottish Ministers
Power exercisable by: Order
Parliamentary procedure: Affirmative procedure if amending primary legislation (section 41(7)(f)), otherwise negative

Provision

72. This provision enables the Scottish Ministers to make such incidental, supplementary, consequential, transitory, transitional or saving provision as they consider appropriate for the purposes of, in consequence of, or for giving full effect to, any provision of the Bill or made under the Bill.

Reason for taking power

73. The reason for taking the power is to enable the Scottish Ministers to adequately give effect to the provisions of the Bill. Whilst the power is wide-ranging, it is vital that Scottish Landfill Tax interacts well with Scots law and practices, including the distinctive environmental law regime. The power will enable unforeseen situations to be addressed as soon as it is practical for the Scottish Ministers to bring forward an order.

Choice of procedure

74. An order made under this section which contains a provision which adds to, omits or replaces any part of an Act is subject to the affirmative procedure. Any other order made under this section is subject to the negative procedure. These procedures are typical for ancillary powers.

Section 43 – Power to commence Bill
Power conferred on: The Scottish Ministers
Power exercisable by: Order
Parliamentary procedure: No procedure
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Provision

75. Power to commence other provisions in the Act.

Reason for taking power

76. It is standard for the Scottish Ministers to have control over the commencement of Bills.

Choice of procedure

77. No procedure is provided for, which is typical for commencement powers.
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