Passage of the

Landfill Tax (Scotland) Bill 2013

SPPB 195
Passage of the
Landfill Tax (Scotland) Bill 2013
SP Bill 28 (Session 4), subsequently 2014 asp 2
SPPB 195

EDINBURGH: APS GROUP SCOTLAND
## Contents

**Foreword**

*Introduction of the Bill*

<table>
<thead>
<tr>
<th>Document</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bill (As Introduced) (SP Bill 28)</td>
<td>1</td>
</tr>
<tr>
<td>Explanatory Notes (and other accompanying documents) (SP Bill 28-EN)</td>
<td>29</td>
</tr>
<tr>
<td>Policy Memorandum (SP Bill 28-PM)</td>
<td>59</td>
</tr>
<tr>
<td>Delegated Powers Memorandum (SP Bill 28-DPM)</td>
<td>77</td>
</tr>
</tbody>
</table>

**Stage 1**

<table>
<thead>
<tr>
<th>Document</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Stage 1 Report, Finance Committee</td>
<td>91</td>
</tr>
<tr>
<td>Extracts from the minutes of the Finance Committee</td>
<td>117</td>
</tr>
<tr>
<td>Oral evidence to the Finance Committee</td>
<td>118</td>
</tr>
<tr>
<td>Written evidence to the Finance Committee</td>
<td>171</td>
</tr>
<tr>
<td>Additional correspondence from Revenue Scotland to the Finance Committee</td>
<td>240</td>
</tr>
<tr>
<td>Report of the Delegated Powers and Law Reform Committee at Stage 1</td>
<td>243</td>
</tr>
<tr>
<td>Extract from the Minutes, Subordinate Legislation Committee, 21 May 2013</td>
<td>263</td>
</tr>
<tr>
<td>Official Report, Subordinate Legislation Committee, 21 May 2013</td>
<td>264</td>
</tr>
<tr>
<td>Extract from the Minutes, Public Audit Committee, 1 May 2013</td>
<td>266</td>
</tr>
<tr>
<td>Papers for the meeting of the Public Audit Committee, 12 June 2013, including correspondence considered by the Committee</td>
<td>267</td>
</tr>
<tr>
<td>Extract from the Minutes, Public Audit Committee, 12 June 2013</td>
<td>277</td>
</tr>
<tr>
<td>Official Report, Public Audit Committee, 12 June 2013</td>
<td>278</td>
</tr>
<tr>
<td>Correspondence from the Public Audit Committee to the Finance Committee, 12 June 2013</td>
<td>279</td>
</tr>
<tr>
<td>Response from the Cabinet Secretary for Finance, Employment and Sustainable Growth to the Public Audit Committee, 18 June 2013</td>
<td>282</td>
</tr>
<tr>
<td>Papers for the meeting of the Delegated Powers and Law Reform Committee on 24 September 2013, incorporating the Scottish Government response to the Committee’s report at Stage 1</td>
<td>283</td>
</tr>
<tr>
<td>Scottish Government response to the Finance Committee’s Stage 1 Report, 28 October 2013</td>
<td>285</td>
</tr>
<tr>
<td>Extract from the Minutes of the Parliament, 29 October 2013</td>
<td>296</td>
</tr>
<tr>
<td>Official Report, Meeting of the Parliament, 29 October 2013</td>
<td>297</td>
</tr>
</tbody>
</table>

**Stage 2**

<table>
<thead>
<tr>
<th>Document</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Marshalled List of Amendments for Stage 2 (SP Bill 28-ML)</td>
<td>321</td>
</tr>
<tr>
<td>Groupings of Amendments for Stage 2 (SP Bill 28-G)</td>
<td>323</td>
</tr>
<tr>
<td>Extract from the Minutes, Finance Committee, 20 November 2013</td>
<td>325</td>
</tr>
<tr>
<td>Official Report, Finance Committee, 20 November 2013</td>
<td>326</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Document</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bill (As Amended at Stage 2) (SP Bill 28A)</td>
<td>333</td>
</tr>
</tbody>
</table>
Supplementary Delegated Powers Memorandum (SP Bill 28A-DPM) 361

After Stage 2
Report on the Landfill Tax (Scotland) Bill as amended at Stage 2, Delegated Powers and Law Reform Committee 365

Stage 3
Marshalled List of Amendments selected for Stage 3 (SP Bill 28A-ML) 372
Extract from the Minutes of the Parliament, 17 December 2013 373
Official Report, Meeting of the Parliament, 17 December 2013 374
Foreword

Purpose of the series

The aim of this series is to bring together in a single place all the official Parliamentary documents relating to the passage of the Bill that becomes an Act of the Scottish Parliament (ASP). The list of documents included in any particular volume will depend on the nature of the Bill and the circumstances of its passage, but a typical volume will include:

- every print of the Bill (usually three – “As Introduced”, “As Amended at Stage 2” and “As Passed”);
- the accompanying documents published with the “AsIntroduced” print of the Bill (and any revised versions published at later Stages);
- every Marshalled List of amendments from Stages 2 and 3;
- every Groupings list from Stages 2 and 3;
- the lead Committee’s “Stage 1 report” (which itself includes reports of other committees involved in the Stage 1 process, relevant committee Minutes and extracts from the Official Report of Stage 1 proceedings);
- the Official Report of the Stage 1 and Stage 3 debates in the Parliament;
- the Official Report of Stage 2 committee consideration;
- the Minutes (or relevant extracts) of relevant Committee meetings and of the Parliament for Stages 1 and 3.

All documents included are re-printed in the original layout and format, but with minor typographical and layout errors corrected.

Where documents in the volume include web-links to external sources or to documents not incorporated in this volume, these links have been checked and are correct at the time of publishing this volume. The Scottish Parliament is not responsible for the content of external Internet sites. The links in this volume will not be monitored after publication, and no guarantee can be given that all links will continue to be effective.

Documents in each volume are arranged in the order in which they relate to the passage of the Bill through its various stages, from introduction to passing. The Act itself is not included on the grounds that it is already generally available and is, in any case, not a Parliamentary publication.

Outline of the legislative process

Bills in the Scottish Parliament follow a three-stage process. The fundamentals of the process are laid down by section 36(1) of the Scotland Act 1998, and amplified by Chapter 9 of the Parliament’s Standing Orders. In outline, the process is as follows:

- Introduction, followed by publication of the Bill and its accompanying documents;
- Stage 1: the Bill is first referred to a relevant committee, which produces a report informed by evidence from interested parties, then the Parliament debates the Bill and decides whether to agree to its general principles;
- Stage 2: the Bill returns to a committee for detailed consideration of amendments;
- Stage 3: the Bill is considered by the Parliament, with consideration of further amendments followed by a debate and a decision on whether to pass the Bill.

After a Bill is passed, three law officers and the Secretary of State have a period of four weeks within which they may challenge the Bill under sections 33 and 35 of the Scotland Act respectively. The Bill may then be submitted for Royal Assent, at which point it becomes an Act.

Standing Orders allow for some variations from the above pattern in some cases. For example, Bills may be referred back to a committee during Stage 3 for further Stage 2 consideration. In addition, the procedures vary for certain categories of Bills, such as Committee Bills or Emergency Bills. For some volumes in the series, relevant proceedings prior to introduction (such as pre-legislative scrutiny of a draft Bill) may be included.

The reader who is unfamiliar with Bill procedures, or with the terminology of legislation more generally, is advised to consult in the first instance the Guidance on Public Bills published by the Parliament. That Guidance, and the Standing Orders, are available free of charge on the Parliament’s website (www.scottish.parliament.uk).

The series is produced by the Legislation Team within the Parliament’s Chamber Office. Comments on this volume or on the series as a whole may be sent to the Legislation Team at the Scottish Parliament, Edinburgh EH99 1SP.

Notes on this volume

The Bill to which this volume relates followed the standard 3 stage process described above.

The Finance Committee’s Stage 1 Report did not include the oral and written evidence received by the Committee. This material was originally published on the web only, and is now included in full in this volume. For the purpose of this volume, the material is not set out in quite the same way as indicated in the original web publication. All the material from the report is, however, included.

The Delegated Powers and Law Reform Committee (formerly the Subordinate Legislation Committee) reported to the lead committee at Stage 1 on the delegated powers provisions in the Bill. That report is included in the Finance Committee’s Stage 1 Report. Relevant extracts of the minutes and Official Report of the meeting on 21 May 2013 at which the Subordinate Legislation Committee discussed the Bill were not included in the report and are now included in this volume.

The Public Audit Committee considered the audit arrangements for the Landfill Tax at its meetings on 1 May and 12 June 2013. Although not a formal part of Stage 1 of the legislative process, the correspondence relating to this consideration, along with relevant extracts from the minutes and the Official Report, are included in this volume.
The Scottish Government made a written response to the report of the Delegated Powers and Law Reform Committee at Stage 1, in addition to the Government’s response to the Stage 1 Report of the Finance Committee. At its meeting on 24 September 2013, the Delegated Powers and Law Reform Committee noted the response without debate. No extracts from the minutes or the Official Report of that meeting are, therefore, included in this volume. Relevant papers for that meeting, including the Scottish Government’s response, are, however, included.

The Delegated Powers and Law Reform Committee considered the delegated powers in the Bill after Stage 2, and agreed its report without debate. No extracts from the minutes or the Official Report of the relevant meeting of the Committee are, therefore, included in this volume.

At Stage 3 no Groupings of Amendments were produced as there was only one amendment lodged.

No amendments were agreed to at Stage 3. There was, therefore, no “As Passed” version of the Bill produced. The Bill was passed in its “As Amended at Stage 2” form.
Landfill Tax (Scotland) Bill
[AS INTRODUCED]

CONTENTS

Section

PART 1

SCOTTISH LANDFILL TAX

1 The tax
2 Overview

PART 2

KEY CONCEPTS

Taxable disposals

3 Charge to tax
4 Disposal of material as waste
5 Disposal by way of landfill
6 Prescribed landfill site activities to be treated as disposals

Exemptions

7 Material removed from water
8 Material resulting from mining and quarrying
9 Disposal of qualifying material at former quarries
10 Pet cemeteries

Power to vary what is a taxable disposal

11 Taxable disposals: power to vary

Landfill sites and operators of landfill sites

12 Landfill sites and operators of landfill sites

Calculation of tax

13 Amount of tax
14 Qualifying material: special provisions
15 Weight of material disposed of

Persons liable to pay tax

16 Liability to pay tax
17 Liability of controllers of landfill sites

Credit

18 Credit: general
19 Credit: bad debts
20 Credit: bodies concerned with the environment

**PART 3**

**ADMINISTRATION**

**Taxable activities**

21 Taxable activities

**Registration**

22 Registration
23 Information required to keep register up to date
24 Publication of the register

**Accounting for tax**

25 Accounting for tax and time for payment

**Time of disposal where invoice issued**

26 Time of disposal where invoice issued

**Adjustment of contracts**

27 Adjustment of contracts

**Evidence about tax status**

28 Evidence about tax status

**Recovery of overpaid tax**

29 Recovery of overpaid tax

**Information**

30 Information: material at landfill sites
31 Information: site restoration

**Record keeping**

32 Records: registrable persons
33 Records: material at landfill sites

**PART 4**

**GENERAL AND INTERPRETATION**

**The Tax Authority**

34 The Tax Authority
35 Delegation of functions to SEPA
36 Review and appeal

**Application of Act to partnerships, groups of companies etc.**

37 Partnership, bankruptcy, transfer of business etc.
38 Groups of companies
Interpretation

PART 5

FINAL PROVISIONS

Ancillary provision

Subordinate legislation

Crown application

Commencement and short title
Landfill Tax (Scotland) Bill

[AS INTRODUCED]

An Act of the Scottish Parliament to make provision about the taxation of disposals to landfill.

PART 1

SCOTTISH LANDFILL TAX

1 The tax

(1) A tax (to be known as Scottish landfill tax) is to be charged in accordance with this Act.

(2) The Tax Authority is to be responsible for the collection and management of the tax.

2 Overview

This Act is arranged as follows—

Part 2 contains provision for the key concepts underlying the tax including—

(a) what is a taxable disposal,
(b) what disposals are exempt from tax,
(c) how to calculate the amount of tax,
(d) who is liable to pay the tax,
(e) when credit is available in relation to the tax,

Part 3 contains provision about the administration of the tax,

Part 4 contains provision about the Tax Authority and definitions of expressions used in the Act,

Part 5 contains provision about subordinate legislation powers and commencement as well as other final provisions.
A disposal is a taxable disposal if—
(a) it is a disposal of material as waste (see section 4),
(b) it is made by way of landfill (see section 5), and
(c) it is made at a landfill site (see section 12).

For the purposes of subsection (2)(c), a disposal is made at a landfill site if the land on or under which it is made constitutes or falls within land which is a landfill site at the time of the disposal.

Disposal of material as waste

A disposal of material is a disposal of it as waste if the person making the disposal does so with the intention of discarding the material.

The fact that the person making the disposal or any other person could benefit from or make use of the material is irrelevant.

Where a person makes a disposal on behalf of another person, for the purposes of subsections (1) and (2) the person on whose behalf the disposal is made is to be treated as making the disposal.

The reference in subsection (3) to a disposal on behalf of another person includes references to a disposal—
(a) at the request of another person,
(b) in pursuance of a contract with another person.

Disposal by way of landfill

A disposal of material is a disposal of it by way of landfill if—
(a) it is deposited on the surface of land or on a structure set into the surface, or
(b) it is deposited under the surface of land.

Subsection (1) applies whether or not the material is placed in a container before it is deposited.

Subsection (1)(b) applies whether the material—
(a) is covered with earth after it is deposited, or
(b) is deposited in a cavity (such as a cavern or mine).

If material is deposited on the surface of land or on a structure set into the surface with a view to it being covered with earth, the disposal must be treated as made when the material is deposited and not when it is covered.

The Scottish Ministers may, by order, make provision varying the meaning of the disposal of material by way of landfill.

The order may modify any enactment (including this Act).

In this section, “land” includes land covered by water where the land is above the low water mark of ordinary spring tides.

In this section, “earth” includes similar matter (such as sand or rocks).
6 Prescribed landfill site activities to be treated as disposals

(1) The Scottish Ministers may, by order, prescribe a landfill site activity for the purposes of this section.

(2) A “landfill site activity” means any of the following descriptions of activity, or an activity that falls within any of the following descriptions—
   (a) using or otherwise dealing with material at a landfill site,
   (b) storing or otherwise having material at a landfill site.

(3) If a prescribed landfill site activity is carried out at a landfill site, the activity is to be treated—
   (a) as a disposal 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.

(4) An order under this section may prescribe a landfill site activity by reference to conditions.

(5) Those conditions may, in particular, relate to either or both of the following—
   (a) whether the landfill site activity is carried out in a designated area of a landfill site,
   (b) whether there has been compliance with a requirement to give information relating to—
      (i) the landfill site activity, or
      (ii) the material involved in the landfill site activity,
      including information relating to whether the activity is carried out in a designated area of a landfill site.

(6) In subsection (5), “designated area” means an area of a landfill site designated in accordance with—
   (a) an order under this section, or
   (b) regulations under section 30, 32 or 33.

(7) An order under this section may modify any enactment (including this Act).

Exemptions

7 Material removed from water

(1) A disposal is not a taxable disposal for the purposes of this Act if it is shown to the satisfaction of the Tax Authority that the disposal is of material all of which—
   (a) has been removed (by dredging or otherwise) from water falling within subsection (2), and
   (b) formed part of or projected from the bed of the water concerned before its removal.

(2) Water falls within this subsection if it is—
   (a) a river, canal or watercourse (whether natural or artificial), or
   (b) a dock or harbour (whether natural or artificial).
(3) A disposal is not a taxable disposal for the purposes of this Act if it is shown to the satisfaction of the Tax Authority that the disposal is of material all of which—

(a) has been removed (by dredging or otherwise) from water falling within the approaches to a harbour (whether natural or artificial),

(b) has been removed in the interests of navigation, and

(c) formed part of or projected from the bed of the water concerned before its removal.

(4) A disposal is not a taxable disposal for the purposes of this Act if it is shown to the satisfaction of the Tax Authority that the disposal is of material all of which—

(a) consists of naturally occurring mineral material, and

(b) has been removed (by dredging or otherwise) from the sea in the course of commercial operations carried out to obtain substances such as sand or gravel from the seabed.

(5) A disposal is not a taxable disposal for the purposes of this Act if it is shown to the satisfaction of the Tax Authority that the disposal is of material all of which comprises material falling within subsection (1) or (3) and other material which has been added to that material for the purpose of securing that it is not liquid waste.

8 Material resulting from mining and quarrying

(1) A disposal is not a taxable disposal for the purposes of this Act if it is shown to the satisfaction of the Tax Authority that the disposal is of material all of which fulfils each of the conditions set out in subsection (2).

(2) The material—

(a) must result from commercial mining operations (whether the mining is deep or open-cast) or from commercial quarrying operations,

(b) must be naturally occurring material extracted from the earth in the course of the operations, and

(c) must not have been subjected to, or result from, a non-qualifying process carried out at any stage between the extraction and the disposal.

(3) A non-qualifying process is—

(a) a process separate from the mining or quarrying operations, or

(b) a process forming part of those operations and permanently altering the material’s chemical composition.

9 Disposal of qualifying material at former quarries

(1) A disposal is not a taxable disposal for the purposes of this Act if it is—

(a) of material all of which is treated for the purposes of section 13 as qualifying material, and

(b) made at a qualifying landfill site.

(2) A landfill site is a qualifying landfill site for the purposes of this section if at the time of the disposal—

(a) the landfill site is or was a quarry,
(b) subject to subsection (3), it is a requirement of planning permission in respect of the land in which the quarry or former quarry is situated that it be wholly or partially refilled, and

(c) subject to subsection (4), the authorisation permitting disposals on or in the land comprising the site permits only the disposal of material which constitutes qualifying material.

(3) Where a quarry—

(a) was in existence before 1 October 1999, and

(b) quarrying operations ceased before that date,

the requirement referred to in subsection (2)(b) must have been imposed on or before that date.

(4) Where an authorisation permitting disposals on or in the land does not (apart from the application of this subsection) meet the requirements of subsection (2)(c) and an application has been made to vary the authorisation in order to meet them, it is to be deemed to meet them for the period before—

(a) the application is disposed of, or

(b) the second anniversary of the making of the application if it occurs before the application is disposed of.

(5) For the purposes of subsection (4), an application is disposed of if—

(a) it is granted,

(b) it is withdrawn,

(c) it is refused and there is no right of appeal against the refusal,

(d) a time limit for appeal against refusal expires without an appeal having been commenced, or

(e) an appeal against refusal is dismissed or withdrawn and there is no further right of appeal.

10 Pet cemeteries

(1) A disposal is not a taxable disposal for the purposes of this Act if—

(a) the disposal is of material consisting entirely of the remains of dead domestic pets, and

(b) the landfill site at which the disposal is made fulfils the condition set out in subsection (2).

(2) The condition is that during the relevant period—

(a) no landfill disposal was made at the site, or

(b) the only landfill disposals made at the site were of material consisting entirely of the remains of dead domestic pets.

(3) For the purposes of subsection (2), the relevant period—

(a) begins with the coming into force of this section or, if later, with the coming into force in relation to the site of the authorisation mentioned in section 12, and

(b) ends immediately before the disposal mentioned in subsection (1).
Power to vary what is a taxable disposal

11 Taxable disposals: power to vary
(1) The Scottish Ministers may, by order, make provision to produce the result that—
   (a) a disposal which would otherwise be a taxable disposal is not a taxable disposal,
   (b) a disposal which would otherwise not be a taxable disposal is a taxable disposal.
(2) The order may, in particular—
   (a) confer exemption by reference to certificates issued by the Tax Authority and to
       conditions set out in certificates,
   (b) allow the Tax Authority to direct requirements to be met before certificates can be
       issued.
(3) The order may modify any enactment (including this Act).

Landfill sites and operators of landfill sites

12 Landfill sites and operators of landfill sites
(1) Land is a landfill site at a given time if at that time an authorisation is in force in relation
    to the land and authorises disposals on or under the land.
(2) The operator of a landfill site at a given time is the person who is at the time concerned
    the holder of the authorisation.
(3) Land is to be treated as a landfill site at a given time if at that time—
    (a) disposals of material are made on or under the land,
    (b) an authorisation is required in relation to those disposals, and
    (c) no authorisation is in force.
(4) In determining for the purposes of subsection (3) whether an authorisation is required in
    relation to disposals of material, no account is to be taken of any prohibition or
    restriction under the Regulatory Reform (Scotland) Act 2013 that would prevent an
    authorisation being granted in relation to the disposal of the material by way of landfill.

Calculation of tax

13 Amount of tax
(1) The amount of tax charged on a taxable disposal is to be found by multiplying the
    standard rate by the weight in tonnes of the material disposed of.
(2) The standard rate is the sum specified for the purposes of this section in an order made
    by the Scottish Ministers.
(3) Where the material disposed of consists entirely of qualifying material, the amount of
    tax charged is to be found by multiplying the lower rate by the weight in tonnes of the
    material disposed of.
(4) Qualifying material is material listed (in one or more category) in an order made by the
    Scottish Ministers.
(5) The lower rate is the sum specified for the purposes of this section in an order made by
    the Scottish Ministers.
Landfill Tax (Scotland) Bill
Part 2—Key concepts

(6) An order under subsection (5) may set different lower rates for different categories of qualifying material.

(7) The Scottish Ministers must—
   (a) set criteria to be considered in determining from time to time what material is to be listed as qualifying material,
   (b) keep those criteria under review,
   (c) revise them whenever they consider they should be revised, and
   (d) publish the criteria (and any revised criteria).

(8) In determining from time to time what material is to be listed as qualifying material, the Scottish Ministers must have regard to—
   (a) the criteria (or revised criteria) published under subsection (7)(d), and
   (b) any other factors they consider relevant.

14 Qualifying material: special provisions

(1) This section applies for the purposes of section 13.

(2) The Tax Authority may direct that where material is disposed of it must be—
   (a) treated as qualifying material if it would in fact be such material but for a small quantity of non-qualifying material,
   (b) treated as qualifying material of one category if it would in fact be such material but for a small quantity of qualifying material of another category.

(3) The Tax Authority may at the request of a person direct that where there is a disposal in respect of which the person is liable to pay tax the material disposed of is to be—
   (a) treated as qualifying material if it would in fact be such material but for a small quantity of non-qualifying material,
   (b) treated as qualifying material of one category if it would in fact be such material but for a small quantity of qualifying material of another category.

(4) Whether a quantity of non-qualifying material or (as the case may be) qualifying material of another category is small is to be determined in accordance with the terms of the direction.

(5) A direction under subsection (3) may apply to all disposals in respect of which a person is liable to pay tax or to such of them as are identified in the direction.

(6) If a direction under subsection (3) applies to a disposal, any direction under subsection (2) is not to apply to it.

(7) The Scottish Ministers may, by order, provide that material must not be treated as qualifying material (or as qualifying material of a particular category) for the purposes of this section unless conditions specified in the order are fulfilled.

(8) A condition specified under subsection (7) may relate to any matter the Scottish Ministers think fit (such as the production of a document which includes a statement of the nature of the material).
15 **Weight of material disposed of**

(1) The weight of material disposed of on a taxable disposal is to be determined in accordance with regulations made by the Scottish Ministers.

(2) The regulations may—

(a) specify rules for determining the weight,

(b) authorise rules for determining the weight to be specified by the Tax Authority in a manner set out in the regulations,

(c) authorise rules for determining the weight to be agreed by the person liable to pay the tax and an authorised person.

(3) The regulations may, in particular, specify, or authorise the specification or agreement of, rules about—

(a) the method by which the weight is to be determined,

(b) the time by reference to which the weight is to be determined,

(c) the discounting of constituents (such as water).

(4) The regulations may include provision that a specification authorised under subsection (2)(b) 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 the Tax Authority is satisfied that such conditions as may be set out in the specification are met in relation to the disposals,

and the conditions may be framed by reference to such factors as the Tax Authority thinks fit (such as the consent of an authorised person to the specification having effect in relation to disposals).

(5) The regulations may include provision that—

(a) where rules are agreed as mentioned in subsection (2)(c), and

(b) the Tax Authority believes 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,

the Tax Authority may direct that the agreed rules are no longer to have effect.

(6) The regulations may be so framed that where in relation to a particular disposal—

(a) no specification of the Tax Authority has effect, and

(b) no agreed rules have effect,

the weight is to be determined in accordance with rules specified in the regulations.

---

16 **Liability to pay tax**

(1) The person liable to pay the tax charged on a taxable disposal made at an authorised landfill site is the landfill site operator.
(2) The reference in subsection (1) to the landfill site operator is to the person who is at the time of the disposal the operator of the landfill site which constitutes or contains the land on or under which the disposal is made.

(3) The person liable to pay the tax charged on a taxable disposal made at an unauthorised landfill site is any person who—
   (a) made the disposal, or
   (b) knowingly permitted the disposal to be made.

(4) Where two or more persons are liable under subsection (3), those persons are jointly and severally liable to pay the tax.

(5) In this section—
   (a) an “authorised landfill site” is land referred to in section 12(1),
   (b) an “unauthorised landfill site” is land referred to in section 12(3).

17 Liability of controllers of landfill sites

(1) The Scottish Ministers may, by regulations, make provision about the liability of controllers of landfill sites to pay the tax.

(2) A person is the controller of the whole, or a part, of a landfill site at a given time if the person determines, or is entitled to determine, what disposals of material (if any) may be made—
   (a) at every part of the site at that time, or
   (b) at that part of the site at that time,
   (as the case may be).

(3) But a person who determines or is entitled to determine what disposals may be made at a landfill site or any part of a landfill site only because the person is an employee or agent of another is not the controller of that site or (as the case may be) that part of that site.

(4) The regulations may, in particular, make provision (or further provision) about—
   (a) who is a controller of a landfill site for the purposes of this Act,
   (b) the circumstances in which a controller is liable to pay tax,
   (c) the amount of tax which a controller is liable to pay,
   (d) the entitlement of a controller to credit in respect of tax, and
   (e) the arrangements for payment of tax by a controller.

   (f) The regulations may modify any enactment (including this Act).

Credit

18 Credit: general

(1) The Scottish Ministers may, by regulations, provide that where—
   (a) a person has paid or is liable to pay tax, and
   (b) conditions specified in the regulations are fulfilled,
the person is to be entitled to credit of such an amount as is found in accordance with rules specified in the regulations.
(2) The regulations may make provision as to the manner in which a person is to benefit from credit, and may, in particular, make provision—

(a) that a person is to be entitled to credit by reference to accounting periods,

(b) that a person is to be entitled to deduct an amount equal to the person’s total credit for an accounting period from the total amount of tax due from the person for the period,

(c) that if no tax is due from a person for an accounting period but the person is entitled to credit for the period, the amount of the credit is to be paid to the person by the Tax Authority,

(d) that if the amount of credit to which a person is entitled for an accounting period exceeds the amount of tax due from the person for the period, an amount equal to the excess is to be paid to the person by the Tax Authority,

(e) for the whole or part of any credit to be held over to be credited for a subsequent accounting period,

(f) as to the manner in which a person who has ceased to be registrable is to benefit from credit.

(3) Regulations under subsection (2)(c) or (d) may provide that where at the end of an accounting period an amount is due to a person who has failed to submit returns for an earlier period as required by this Act, the Tax Authority may withhold payment of the amount until the person has complied with that requirement.

(4) Regulations under subsection (2)(e) may provide for credit to be held over either on the person’s application or in accordance with directions given by the Tax Authority from time to time; and the regulations may allow directions to be given generally or with regard to particular cases.

(5) The regulations may provide that—

(a) no benefit is to be conferred in respect of credit except on a claim made in such manner and at such time as may be determined by or under regulations,

(b) payment in respect of credit is to be made subject to such conditions (if any) as the Tax Authority thinks fit to impose, including conditions as to repayment in specified circumstances,

(c) deduction in respect of credit is to be made subject to such conditions (if any) as the Tax Authority thinks fit to impose, including conditions as to the payment to the Tax Authority, in specified circumstances, of an amount representing the whole or part of the amount deducted.

(6) The regulations may require a claim by a person to be made in a return required by provision made under section 25.

(7) Nothing in section 19 or 20 is to be taken to derogate from the power to make regulations under this section (whether with regard to bad debts, the environment or any other matter).

19 Credit: bad debts

(1) Regulations may be made under section 18 with a view to securing that a person is entitled to credit if—
(a) the person carries out a taxable activity as a result of which the person becomes entitled to a debt which turns out to be bad (in whole or in part), and
(b) such other conditions as may be specified in the regulations are fulfilled.

(2) The regulations may include provision under section 18(5)(b) or (c) requiring repayment or payment if it turns out that it was not justified to regard a debt as bad (or to regard it as bad to the extent that it was so regarded).

(3) The regulations may include provision for determining whether, and to what extent, a debt is to be taken to be bad.

20 Credit: bodies concerned with the environment

10 (1) Regulations may be made under section 18 with a view to securing that a person is entitled to credit if—
   (a) the person pays a sum to a body whose objects are or include such matters connected with the protection of the environment as are specified in regulations, and
   (b) such other conditions as are specified in the regulations are fulfilled.

15 (2) The regulations may, in particular, specify conditions—
   (a) requiring bodies to which sums are paid (“environmental bodies”) to be approved by the Tax Authority,
   (b) requiring such sums to be paid with the intention that they be expended on such matters connected with the protection of the environment as may be specified in the regulations.

20 (3) The regulations may include provision under section 18(5)(b) or (c) requiring repayment or payment if—
   (a) a sum is not in fact expended on matters specified under subsection (2)(b), or
   (b) a condition specified in the regulations turns out not to have been fulfilled.

25 (4) The regulations may include—
   (a) provision for determining the amount of credit (including provision for limiting it),
   (b) provision that matters connected with the protection of the environment include such matters as overheads (including administration) of environmental bodies,
   (c) provision for determining the amounts that may be spent on the administration of environmental bodies,
   (d) provision as to the matters by reference to which an environmental body can be and remain approved (including matters relating to the functions and activities of any such body),
   (e) provision for an environmental body to be and remain approved only if it complies with conditions imposed from time to time by the Tax Authority (including provision for the variation or revocation of such conditions),
   (f) provision allowing (whether prospectively or retrospectively) the withdrawal of approval of an environmental body by the Tax Authority,
(g) provision allowing the Tax Authority to delegate the exercise of any of its functions under section 18 or this section to another person,

(h) provision allowing the Tax Authority to disclose to any person to whom its functions are delegated by virtue of provision made under paragraph (g) information which relates to the tax affairs of persons carrying out taxable activities and which is relevant to the credit scheme established by the regulations.

**PART 3**

**ADMINISTRATION**

**Taxable activities**

21

(1) A person (P) carries out a taxable activity if—

(a) P makes a taxable disposal in respect of which P is liable to pay tax, or

(b) P permits another person to make a taxable disposal in respect of which P is liable to pay tax.

(2) Where—

(a) a taxable disposal is made, and

(b) it is made without the knowledge of the person who is liable to pay tax in respect of it,

the person is, for the purposes of this section, to be taken to permit the disposal.

**Registration**

22

(1) The Tax Authority must keep a register containing such information as the Tax Authority thinks is required for the purposes of the collection and management of the tax.

(2) A person who—

(a) carries out taxable activities, and

(b) is not registered,

is liable to be registered.

(3) Where—

(a) a person at any time forms the intention of carrying out taxable activities, and

(b) the person is not registered,

the person must notify the Tax Authority of that intention.

(4) A person who at any time ceases to have the intention of carrying out taxable activities must notify the Tax Authority of that fact.
(5) Where a person is liable to be registered by virtue of subsection (2), the Tax Authority must register the person with effect from the time when the person begins to carry out taxable activities (whether or not the person notifies the Tax Authority under subsection (3)).

(6) Where the Tax Authority is satisfied that a person has ceased to carry out taxable activities it may cancel the person’s registration with effect from the earliest practicable time after the person ceased to carry out taxable activities (whether or not the person notifies the Tax Authority under subsection (4)).

(7) Where—

(a) a person notifies the Tax Authority under subsection (4),
(b) it is satisfied that the person will not carry out taxable activities,
(c) it is satisfied that no tax which the person is liable to pay is unpaid,
(d) it is satisfied that no credit to which the person is entitled under regulations made under section 18 is outstanding, and
(e) subsection (8) does not apply,

the Tax Authority must cancel the person’s registration with effect from the earliest practicable time after the person ceases to carry out taxable activities.

(8) Where—

(a) a person notifies the Tax Authority under subsection (4), and
(b) it is satisfied that the person has not carried out, and will not carry out, taxable activities,

the Tax Authority must cancel the person’s registration with effect from the time when the person ceased to have the intention to carry out taxable activities.

(9) For the purposes of this section, the Scottish Ministers may, by regulations, make provision—

(a) as to the time within which a notification is to be made,
(b) as to the form and manner in which any notification is to be made and as to the information to be contained in or provided with it,
(c) requiring a person who has made a notification to notify the Tax Authority if any information contained in or provided in connection with the notification is or becomes inaccurate,
(d) as to the correction of entries in the register.

(10) References in this Act to a registrable person are to a person who—

(a) is registered under this section, or
(b) is liable to be registered under this section.

23 Information required to keep register up to date

(1) The Scottish Ministers may, by regulations, make provision requiring a registrable person to notify the Tax Authority of particulars of changes in circumstances relating to the registrable person (or any business carried on by the registrable person) which—

(a) appear to the Tax Authority to be required for the purpose of keeping the register kept under section 22 up to date, and
(b) are of a description specified in the regulations.

(2) The regulations may, in particular, make provision—

(a) as to the time within which a notification is to be made,

(b) as to the form and manner in which a notification is to be made,

(c) requiring a person who has made a notification to notify the Tax Authority if any information contained in or provided in connection with the notification is or becomes inaccurate.

24  **Publication of the register**

(1) The Tax Authority may publish, by such means as it thinks fit, information which—

(a) is derived from the register kept under section 22, and

(b) falls within any of the descriptions set out below.

(2) The descriptions are—

(a) the names of registered persons,

(b) the addresses of any sites or other premises at which they carry on business,

(c) the registration numbers assigned to them in the register,

(d) the fact (where it is the case) that the registered person is a body corporate which by virtue of section 38 is treated as a member of a group,

(e) the names of the other bodies corporate treated under that section as members of the group,

(f) the addresses of any sites or other premises at which those other bodies carry on business.

(3) Information may be published in accordance with this section notwithstanding any obligation not to disclose the information that would otherwise apply.

---

**Accounting for tax**

25  **Accounting for tax and time for payment**

The Scottish Ministers may, by regulations, provide that a registrable person must—

(a) account for tax by reference to such periods (“accounting periods”) as may be determined by or under the regulations,

(b) make, in relation to accounting periods, returns in such form and at such times as may be so determined,

(c) pay tax at such times and in such manner as may be so determined.

---

26  **Time of disposal where invoice issued**

(1) Where—

(a) a taxable disposal is in fact made on a particular day, and
(b) within the period of 14 days beginning with that day the person liable to pay tax in respect of the disposal issues a landfill invoice in respect of that disposal, for the purposes of this Act the disposal is to be treated as made at the time the invoice is issued.

(2) Subsection (1) does not apply if the person has notified the Tax Authority in writing that the person elects not to take advantage of that subsection.

(3) A landfill invoice is a document containing such particulars as the Scottish Ministers may, by regulations, prescribe for the purposes of subsection (1).

(4) The Tax Authority may at the request of a person direct that subsection (1) is to apply—

(a) in relation to disposals in respect of which the person is liable to pay tax, or

(b) in relation to such disposals as may be specified in the direction, as if for the period of 14 days there were substituted such longer period as may be specified in the direction.

Adjustment of contracts

15 27 Adjustment of contracts

(1) This section applies where—

(a) material undergoes a landfill disposal,

(b) a payment falls to be made under a disposal contract relating to the material, and

(c) after the making of the contract there is a change in the tax chargeable on the landfill disposal.

(2) In such a case, the amount of any payment mentioned in subsection (1)(b) is to be adjusted, unless the disposal contract otherwise provides, so as to reflect the tax chargeable on the landfill disposal.

(3) For the purposes of this section a disposal contract relating to material is a contract providing for the disposal of the material, and it is immaterial—

(a) when the contract was made,

(b) whether the contract also provides for other matters,

(c) whether the contract provides for a method of disposal and (if it does) what method it provides for.

(4) The reference in subsection (1) to a change in the tax chargeable is a reference to a change—

(a) to or from no tax being chargeable, or

(b) in the amount of tax chargeable.

Evidence about tax status

35 28 Evidence about tax status

(1) A certificate of the Tax Authority—

(a) that a person was or was not at any time registered under section 22, or
(b) that any return required by regulations made under section 25 has not been made or had not been made at any time, is sufficient evidence of that fact until the contrary is proved.

(2) A copy of any document provided to the Tax Authority for the purposes of this Act and certified by it to be such a copy is admissible in any proceedings, whether civil or criminal, to the same extent as the document itself.

(3) Any document purporting to be a certificate under subsection (1) or (2) is to be taken to be such a certificate until the contrary is proved.

\[\text{Recovery of overpaid tax}\]

\[\text{29}\] **Recovery of overpaid tax**

(1) Where a person has paid an amount to the Tax Authority by way of tax which was not tax due to it, it is liable to repay the amount to the person.

(2) The Tax Authority is only liable to repay an amount under this section on a claim being made for the purpose.

(3) It is a defence, in relation to a claim under this section, that repayment of an amount would unjustly enrich the claimant.

(4) The Tax Authority is not liable, on a claim made under this section, to repay any amount paid to it more than 4 years before the making of the claim.

(5) A claim under this section must be made in such form and manner and supported by such documentary evidence as the Scottish Ministers may, by regulations, prescribe.

(6) Except as provided by this section, the Tax Authority is not liable to repay an amount paid to it by way of tax by virtue of the fact that it was not tax due to it.

\[\text{Information}\]

\[\text{30}\] **Information: material at landfill sites**

(1) The Scottish Ministers may, by regulations, make provision about giving the Tax Authority information relating to material at a landfill site or part of a landfill site.

(2) The regulations may require a person to give information.

(3) The regulations may—

(a) require a person, or authorise an authorised person to require a person, to designate a part of a landfill site (a “non-disposal area”), and

(b) require material, or descriptions of material specified in the regulations, to be deposited in a non-disposal area.

(4) The regulations may make provision about information relating to what is done with material.

(5) Subsections (2) to (4) do not prejudice the generality of subsection (1).

\[\text{31}\] **Information: site restoration**

(1) Before commencing restoration of all or part of a landfill site, the operator of the site must—
(a) notify the Tax Authority in writing that the restoration is to commence, and
(b) provide such other written information as the Tax Authority may require.

(2) In this section “restoration” means work, other than capping waste, which is required by a relevant instrument to be carried out to restore a landfill site to use on completion of waste disposal operations.

(3) The following are relevant instruments—
(a) a planning permission,
(b) an authorisation.

Record keeping

32 Records: registrable persons

(1) The Scottish Ministers may, by regulations, require registrable persons to make records.

(2) The regulations may be framed by reference to such records as may be stipulated in any notice published by the Tax Authority in pursuance of the regulations and not withdrawn by a further notice.

(3) The regulations may—
(a) require registrable persons to preserve records of a description specified in the regulations (whether or not the records are required to be made in pursuance of regulations) for such period not exceeding 6 years as may be specified in the regulations,
(b) authorise the Tax Authority to direct that any such records need only be preserved for a shorter period than that specified in the regulations,
(c) authorise a direction to be made so as to apply generally or in such cases as the Tax Authority may stipulate.

(4) A duty under regulations under this section to preserve records may be discharged—
(a) by preserving them in any form and by any means, or
(b) by preserving the information contained in them in any form and by any means, subject to any conditions or exceptions specified in writing by the Tax Authority.

33 Records: material at landfill sites

(1) The Scottish Ministers may, by regulations, require a person to make records relating to material at a landfill site or part of a landfill site.

(2) The regulations may make provision about records relating to what is done with material.

(3) Subsections (2) to (4) of section 32 apply in relation to regulations under this section as they apply in relation to regulations under section 32.

(4) But, in the application of section 32(3)(a) in relation to regulations under this section, the reference to registrable persons has effect as a reference to persons.
34 **The Tax Authority**

(1) For the purposes of this Act, the Tax Authority is the Scottish Ministers.

(2) The Scottish Ministers may, by order, amend subsection (1) to provide that another person is the Tax Authority.

35 **Delegation of functions to SEPA**

(1) The Tax Authority may delegate the exercise of any of its functions under this Act to SEPA.

(2) But subsection (1) does not apply to any function of making an order or regulations.

(3) A delegation under this section may be varied or revoked at any time.

(4) A delegation under this section does not affect the Tax Authority’s responsibility for the exercise of any functions delegated or the Authority’s ability to carry out such functions.

(5) The Tax Authority may reimburse SEPA for any expenditure incurred which is attributable to the exercise by SEPA of functions delegated under this section.

36 **Review and appeal**

(1) The Scottish Ministers may, by regulations, make provision for—

   (a) the review by the Tax Authority, on the application of a specified person, of any specified kind of decision by the Tax Authority,

   (b) the appeal by a specified person to a tribunal or court against any specified kind of decision by the Tax Authority.

(2) The regulations may modify any enactment (including this Act).

(3) In this section, “specified” means specified in the regulations.

37 **Partnership, bankruptcy, transfer of business etc.**

(1) As regards any case where a business is carried on in partnership or by an unincorporated body, the Scottish Ministers may, by regulations, make provision for determining by what persons anything required by this Act to be done by a person is to be done.

(2) The registration under this Act of an unincorporated body may be in the name of the body concerned; and in determining whether taxable activities are carried out by such a body no account is to be taken of any change in its members.

(3) The registration under this Act of a body corporate carrying on a business in several divisions may, if the body corporate so requests and the Tax Authority thinks fit, be in the names of those divisions.
(4) As regards any case where a person carries on a business of a person who has died or become bankrupt or incapacitated or whose estate has been sequestrated, or of a person which is in liquidation or receivership or administration, the Scottish Ministers may, by regulations—

(a) require the person carrying on the business to inform the Tax Authority of the fact that the person is carrying on the business and of the event that has led to that person carrying it on,

(b) make provision allowing the person carrying on the business to be treated for a limited time as if the person were the other person,

(c) make provision for securing continuity in the application of this Act where the person carrying on the business is so treated.

(5) The Scottish Ministers may, by regulations, make provision for securing continuity in the application of this Act in cases where a business carried on by a person is transferred to another person as a going concern.

(6) Regulations under subsection (5) may, in particular—

(a) require the transferor to inform the Tax Authority of the transfer,

(b) provide for liabilities and duties under this Act of the transferor to become, to such extent as may be provided in the regulations, liabilities and duties of the transferee,

(c) provide for any right of either of them to repayment or credit in respect of tax to be satisfied by making a repayment or allowing a credit to the other.

(7) Regulations under subsection (5) may, in particular, provide that no such provision as is mentioned in subsection (6)(b) or (c) is to have effect in relation to any transferor and transferee unless an application to that effect has been made by them under the regulations.

38 Groups of companies

(1) Where any bodies corporate are treated as members of a group by virtue of this section, for the purposes of this Act—

(a) any liability of a member of the group to pay tax is to be taken to be a liability of the representative member,

(b) the representative member is to be taken to carry out any taxable activities which a member of the group would carry out (apart from this section) by virtue of section 21,

(c) all members of the group are jointly and severally liable for any tax due from the representative member.

(2) Two or more bodies corporate are eligible to be treated as members of a group if the condition mentioned in subsection (3) is fulfilled and—

(a) one of them controls each of the others,

(b) one person (whether a body corporate or an individual) controls them all, or

(c) two or more individuals carrying on a business in partnership control all of them.

(3) The condition is that the prospective representative member has an established place of business in the United Kingdom.
(4) Two or more bodies corporate eligible to be treated as members of a group may apply to the Tax Authority to be so treated.

(5) An application under subsection (4) must set out which of the bodies corporate is to be the representative member.

(6) Where an application referred to in subsection (4) is made—

(a) the bodies corporate are to be treated as a group from the beginning of an accounting period, and

(b) the body corporate set out in the application is to be the representative member, unless the Tax Authority refuses the application.

(7) Where any bodies corporate are treated as members of a group, an application may be made to the Tax Authority to the effect that—

(a) a further body eligible to be treated as a member of the group is to be included among the bodies so treated,

(b) a body corporate is to be excluded from the bodies so treated,

(c) another member of the group is to be substituted as the representative member, or

(d) the bodies corporate are no longer to be treated as members of a group.

(8) Where an application referred to in subsection (7) is made, the change is to have effect from the beginning of an accounting period unless—

(a) the application is to the effect mentioned in subsection (7)(a) or (c), and

(b) the Tax Authority refuses the application.

(9) The Tax Authority may refuse an application under subsection (4) or (7)(a) or (c) only if it appears to it necessary to do so for the protection of the revenue.

(10) Where—

(a) a body corporate is treated as a member of a group as being controlled by any person, and

(b) it appears to the Tax Authority that it has ceased to be so controlled, the Tax Authority must, by notice given to that person, terminate that treatment from such date as may be specified in the notice.

(11) An application under this section with respect to any bodies corporate—

(a) must be made by one of those bodies or by the person controlling them, and

(b) must be made not less than 90 days before the date from which it is to take effect, or at such later time as the Tax Authority may allow.

(12) For the purposes of this section—

(a) a body corporate is to be taken to control another body corporate if—

  (i) it is empowered by statute to control that body’s activities, or

  (ii) it is that body’s holding company within the meaning of section 1159 of and Schedule 6 to the Companies Act 2006,
(b) an individual is or individuals are to be taken to control a body corporate if the individual or individuals would be that body’s holding company within the meaning of the provisions mentioned in paragraph (a)(ii), were the individual or individuals a company.

Interpretation

39 Interpretation

In this Act—

“accounting period” is to be construed in accordance with section 25,
“authorisation” means an authorisation under regulations under section 10 of the Regulatory Reform (Scotland) Act 2013,
“authorised person” means any person authorised by the Tax Authority,
“material” means material of all kinds, including objects, substances and products of all kinds,
“operator” has the meaning given by section 12(2),
“planning permission” has the meaning given by section 277 of the Town and Country Planning (Scotland) Act 1997,
“registrable person” has the meaning given by section 22(10),
“SEPA” means the Scottish Environment Protection Agency,
“the tax” means Scottish landfill tax,
“the Tax Authority” has the meaning given by section 34,
“taxable activity” is to be construed in accordance with section 21,
“taxable disposal” has the meaning given by section 3.

Part 5

Final provisions

Ancillary provision

40 Ancillary provision

(1) The Scottish Ministers may, by order, make such incidental, supplementary, consequential, transitional, transitory or saving provision as they consider appropriate for the purposes of, in consequence of, or for giving full effect to, any provision made by or under this Act.

(2) An order under subsection (1) may modify any enactment (including this Act).

Subordinate legislation

41 Subordinate legislation

(1) Any power conferred by this Act on the Scottish Ministers to make an order or regulations includes the power to make—
(a) different provision for different cases or description of case or for different purposes,
(b) such incidental, supplementary, consequential, transitional, transitory or saving provision as the Scottish Ministers consider necessary or expedient.

(2) Orders under the following provisions are subject to the affirmative procedure—
(a) the first order under section 13(2) or (5),
(b) section 34(2).

(3) An order mentioned in subsection (4)—
(a) must be laid before the Scottish Parliament, and
(b) ceases to have effect at the expiry of the period of 28 days beginning with the date on which it was made unless, before the expiry of that period, the order has been approved by resolution of the Parliament.

(4) The orders are—
(a) an order under section 5(5) providing for anything which would otherwise not be a disposal of material by way of landfill to be such a disposal,
(b) an order under section 6(1) which produces the result that a landfill site activity which would otherwise not be prescribed for the purposes of section 6 is so prescribed,
(c) an order under section 11(1) which produces the result that a disposal which would otherwise not be a taxable disposal is a taxable disposal,
(d) a second or subsequent order under section 13(2) or (5),
(e) an order under section 13(4) providing for—
   (i) material which would otherwise be qualifying material not to be qualifying material, or
   (ii) material which would otherwise be qualifying material of one category to be qualifying material of another category,
(f) an order under section 14(7) other than one which provides only that an earlier order under section 14(7) is not to apply to material.

(5) In reckoning for the purposes of subsection (3)(b) any period of 28 days, no account is to be taken of any period during which the Scottish Parliament is—
(a) dissolved, or
(b) in recess for more than 4 days.

(6) Subsection (3)(b) is without prejudice to—
(a) anything previously done by reference to an order mentioned in subsection (4), or
(b) the making of a new order.

(7) Orders and regulations under the following provisions which add to, replace or omit the text of any Act (including this Act) are subject to the affirmative procedure—
(a) section 5(5) (except an order mentioned in subsection (4)(a)),
(b) section 6(1) (except an order mentioned in subsection (4)(b)),
(c) section 11(1) (except an order mentioned in subsection (4)(c)),
(d) section 14(7) (except an order mentioned in subsection (4)(f)).
(d) section 17(1),
(e) section 36(1), and
(f) section 40(1).

(8) All other orders and regulations under this Act are subject to the negative procedure.

(9) This section does not apply to an order under section 43(2).

Crown application

Nothing in this Act affects Her Majesty in Her private capacity.

Commencement and short title

(1) This section and sections 34, 35, 40, 41, 42 and 44 come into force on the day of Royal Assent.

(2) The other provisions of this Act come into force on such day as the Scottish Ministers may, by order, appoint.

(3) An order under subsection (2) may contain transitional, transitory or saving provision.

Short title

The short title of this Act is the Landfill Tax (Scotland) Act 2013.
Landfill Tax (Scotland) Bill
[AS INTRODUCED]

An Act of the Scottish Parliament to make provision about the taxation of disposals to landfill.

Introduced by: John Swinney
On: 17 April 2013
Bill type: Government Bill
LANDFILL TAX (SCOTLAND) BILL

EXPLANATORY NOTES
(AND OTHER ACCOMPANYING DOCUMENTS)

CONTENTS

As required under Rule 9.3 of the Parliament’s Standing Orders, the following documents are published to accompany the Landfill Tax (Scotland) Bill introduced in the Scottish Parliament on 17 April 2013:

- Explanatory Notes;
- a Financial Memorandum;
- a Scottish Government Statement on legislative competence; and
- the Presiding Officer’s Statement on legislative competence.

A Policy Memorandum is printed separately as SP Bill 28–PM.
EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes have been prepared by the Scottish Government in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Parliament.

2. The Notes should be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a section or schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.

BACKGROUND

3. The Landfill Tax (Scotland) Bill (“the Bill”) is one 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 land transactions and disposals to landfill. The Bill deals with the latter responsibility and makes provision for a tax on disposals to landfill in Scotland, to be called the Scottish Landfill Tax. Scottish Landfill Tax is based on UK Landfill Tax as enacted in Part 3 of the Finance Act 1996. The provisions of the 2012 Act disapplying the existing Landfill Tax regime in Scotland will be brought into force by a Treasury Order in the UK Parliament. The intention is that the provisions introducing Scottish Landfill Tax will come into force in April 2015, the day after the UK Landfill Tax is disapplied.

4. Discussion and debate on the provisions of this Bill began with the publication of a consultation document Protecting Our resources – a Consultation on Scottish Landfill Tax1 on 25 October 2012.

5. The consultation document was published to allow a wide range of people and representative bodies with an interest in and experience of tax matters to comment. A total of 68 responses were received from individuals and organisations. Copies of the non-confidential responses will shortly be accessible through the Scottish Government’s Library (0131 244 4565) or website. Zero Waste Scotland was appointed by the Scottish Government to undertake an analysis of the responses received to the consultation and its report will be published on the Scottish Government’s website.

6. The Bill is intended to inter-operate with a Tax Management Bill to be introduced to the Scottish Parliament in 2013, providing for special powers of the Tax Authority, appeals and other matters of common relevance to devolved taxes. The Scottish Government published a consultation document on Tax Management matters in mid-December 20122 which has now closed.

---

1 http://www.scotland.gov.uk/Publications/2012/10/3524
2 http://www.scotland.gov.uk/Publications/2012/12/5404
THE BILL

OVERVIEW

7. The Bill comprises 44 sections and is divided into five parts as follows:

- **PART 1** establishes that the tax is to be called the Scottish Landfill Tax to avoid potential confusion with references to the tax in any UK legislation and gives an overview of the tax.

- **PART 2** contains the key concepts underlying the tax including, defining what a taxable disposal is, what disposals are exempt from the tax, how to calculate tax, who is liable to pay tax and when credit is available in relation to tax.

- **PART 3** contains the administrative provisions of the bill, including the registration requirements, the accounting periods, the overpayment of tax, defining the location of specified material on landfill sites, restoration issues and outlines the requirements for record keeping.

- **PART 4** defines the Tax Authority and establishes how functions may be delegated to SEPA and how directions may be made. It also outlines the rights of appeal.

- **PART 5** of the Bill sets out the procedure for a series of subordinate legislation to be made under this Bill. This includes:
  - setting the rates of the tax,
  - ability to change the materials taxed (setting qualifying material types),
  - ability to create new material types (due to new technologies or wanting to subdivide existing materials),
  - ability to add or remove exempted material types,
  - ability to change how the tax due is calculated,
  - methodologies for determining weight of material at a site,
  - ability to change credit/rebate qualifications (e.g. the removal of material from a site that has already been taxed gets credited to the landfill site operator etc),
  - procedures for overpaid tax,
  - procedures for administering bad debt including bad debt relief (if a landfill operator’s customer becomes insolvent or bankrupt),
  - orders that can change any part of the Act,
  - functions of a Tax Authority,
  - procedures for writing off bad debts,
  - what information must be on Scottish Landfill Tax invoices.
8. Scottish Landfill Tax is a tax on taxable disposals. A “taxable disposal” is waste material which has been disposed of by way of a landfill.

PART 1 – SCOTTISH LANDFILL TAX


Section 1 – The tax

10. Section 1 introduces Scottish Landfill Tax as the replacement for UK Landfill Tax in Scotland. Scottish Landfill Tax is a tax which is charged on taxable disposals. It clarifies that Scottish Landfill Tax will be managed by the Tax Authority.

11. Defined terms used in this section:
    “taxable disposal” section 3
    “Tax Authority” section 34

Section 2 – Overview

12. Section 2 provides an overview of the Bill.

PART 2 – KEY CONCEPTS

13. Part 2 makes provision for the key concepts underlying the tax including:
    • taxable disposals,
    • exemptions,
    • powers to vary,
    • landfill sites and operators of landfill sites,
    • calculation of tax,
    • persons liable to pay tax,
    • credit.

Taxable disposals

Section 3 – Charge to tax

14. Section 3 defines “taxable disposal”. If a disposal involves something other than the disposal of waste by way of landfill or at a landfill site then it is not a taxable disposal and falls outwith the scope of Scottish Landfill Tax. At the time when the disposal occurs the land must be a landfill site or the disposal must have been carried out as if by way of landfill.
Section 4 – Disposal of material as waste

15. Section 4 provides that a disposal of material as waste is when a person disposes of material with the intention of discarding the material. It does not matter if the material could be beneficial; it is the act of discarding by way of landfill which makes the material taxable. If somebody carries out the disposal on behalf of another, either by being asked or as part of a contract, then the person on whose behalf the disposal is carried out is treated as making the disposal.

Section 5 – Disposal by way of landfill

16. Section 5 sets out what disposal by way of landfill is. It includes material on the surface of land, under the surface of land, in containers or on structures set into the surface of the land. The material can be covered after disposal or deposited in a cavity. If material is covered the deposit takes place when it is deposited not when it is covered. The Scottish Ministers may, by order, vary the meaning of disposal by landfill to amend any enactment or this Bill. This gives flexibility to define novel disposal techniques or unauthorised activities.

Section 6 – Prescribed landfill site activities to be treated as disposals

17. Section 6 gives the Scottish Ministers the power to prescribe activities which are to be treated as disposals. Such prescribed activities may have conditions attributed to them to define where the activity is carried out, for example in a designated area of the landfill, or that information regarding the activity or the material involved is provided. This section effectively gives the Scottish Ministers the power to define what type of activity involving certain materials may take place at particular locations on a landfill site in order to practically clarify taxable deposits.

Exemptions

Section 7 – Material removed from water

18. Section 7 ensures that necessary dredging operations and extraction operations are not hindered by the applicability of a tax to deposit the material. It provides that material removed from a river, canal, watercourse, dock or harbour is not a taxable deposit. It also exempts material removed from harbours, navigational interests, or parts of or projections from water beds, naturally occurring mineral material from commercial marine operations to obtain sand or gravel and other material added to such dredging and excavations to ensure that it is not a liquid waste.

Section 8 – Material resulting from mining and quarrying

19. Section 8 allows for naturally occurring material from mines and quarries to be exempt from Scottish Landfill Tax. This encourages suitable landfill cover material to be used at landfill sites. If the material has been altered chemically after extraction, or is from a process separate to the mining or quarrying operations, then it does not qualify for this exemption.

Section 9 – Disposal of qualifying material at former quarries

20. Section 9 exempts the disposal of qualifying material (defined in sections 13 and 14) in a quarry in respect of which it is a requirement of planning permission for the quarry to be refilled, either partially or fully, and which has a license or permit which allows only the disposal of
These documents relate to the Landfill Tax (Scotland) Bill (SP Bill 28) as introduced in the Scottish Parliament on 17 April 2013

qualifying material. This allows for the reinstatement of quarries which planning authorities have required to be reinstated without the burden of tax being imposed. Quarries that ceased operating before 1 October 1999 must have had the requirements to infill imposed on or before this date. This is to prevent the misuse of this exemption on old quarries with no reinstatement requirements.

Section 10 – Pet cemeteries

21. Section 10 provides for pet cemeteries to be exempt from Scottish Landfill Tax. Animal corpses are regarded as waste and cemeteries for pets require a permit as a landfill site. This exemption defines the disposal of dead domestic pets as a non-taxable disposal and allows for the activity to continue without the need to pay landfill tax.

Power to vary what is a taxable disposal

Section 11 – Taxable disposals: power to vary

22. Section 11 provides that the Scottish Ministers may make orders to change what activities are taxable. Existing taxable activities may be ordered to cease being taxable or non-taxable activities may be ordered to be taxable. The Tax Authority can issue certificates of exemption and make conditions prior to certificates being issued. This ensures that the process of exempting or removing exemptions from Scottish Landfill Tax is simple and efficient to adjust.

Landfill sites and operators of landfill sites

Section 12 – Landfill sites and operators of landfill sites

23. Section 12 provides that a landfill site is land which is covered by an authorisation under the Regulatory Reform (Scotland) Bill, currently being considered by the Parliament (an “authorised landfill site”), and that an operator of a landfill at a given time is the person who is considered to be the holder of the authorisation. The Regulatory Reform (Scotland) Bill will enable the integration of the permission arrangements of SEPA’s four main regimes (water, waste, radioactive waste and pollution prevention and control) and simplify the regulatory procedures.

24. Land is also a landfill site if an authorisation is required in relation to disposals on the land but no authorisation is in force (an “unauthorised site”).

Calculation of tax

Section 13 – Amount of tax

25. Section 13 provides that the Scottish Ministers may specify by order what the standard rate for Scottish Landfill Tax is and that they may also make orders to outline which material may be charged at a lower rate; these materials are referred to as “qualifying material”. The lower rate may also be specified by the Scottish Ministers by order. Both standard rate material and qualifying material are 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. The Scottish Ministers must set the criteria for determining qualifying material and review, revise and publish them from time to time. This ensures that the system for defining the rates of tax and qualifying material is flexible, adaptable and kept up to date.
Section 14 – Qualifying material: special provisions

26. Section 14 provides that the Tax Authority may direct that a deposit may be treated as qualifying material if it is qualifying material that is contaminated with a small amount of non-qualifying material. The direction may apply to all deposits by a person, or a quantity of the deposits and the quantity of non-qualifying material may be determined in the terms of the direction. The direction may be instigated by the Tax Authority or by request from a person. If a person requests the direction which is granted regarding a disposal then other directions regarding the disposal do not apply. The Scottish Ministers may, by order, ensure that conditions are met prior to material being treated as qualifying material. Such conditions may relate to whatever the Scottish Ministers think fit and can include documents stating the nature of the material. This section allows for small amounts of contamination to be contained in qualifying material but ensures that adequate controls are in place to prevent misuse.

Section 15 – Weight of material disposed of

27. Section 15 sets out that the Scottish Ministers may make regulations to define how the weight of taxable disposals is to be determined. Rules for determining weight may be prescribed to define the method of calculation, the time-scale for determining weight and what materials, such as water, are to be discounted. The rules may apply to only certain wastes or activities. The Tax Authority may remove rules when it is believed that they no longer give an accurate indication of weight.

Persons liable to pay tax

Section 16 – Liability to pay tax

28. Section 16 provides that the person who is liable to pay tax on a taxable disposal made at an authorised site is the person who is at the time of disposal the operator of the landfill site which constitutes or contains the land under which the disposal is made. In the case of an unauthorised site, both the person who made the disposal and anyone who knowingly permitted the disposal is jointly and severally liable.

Section 17 – Liability of controllers of landfill sites

29. Section 17 provides that the Scottish Ministers may, by regulations, make provisions for the controllers of landfill sites to pay the tax. A controller is a person who can determine what disposals may be made at a site or part of a site at that time, but who is not an employee or agent of another. The regulations may make provisions for who is a controller, when the controller is liable to pay tax, the amount of tax the controller is liable to pay, entitlement to credit in respect of tax and the arrangements for payment by a controller.

Credit

Section 18 – Credit: general

30. Section 18 provides that the Scottish Ministers may, by regulations, provide for a tax credit system, in so far as a person who has paid or is liable to pay tax may be entitled to credit providing prescribed conditions are fulfilled. The regulations may make provision for the manner in which a
These documents relate to the Landfill Tax (Scotland) Bill (SP Bill 28) as introduced in the Scottish Parliament on 17 April 2013

person is to benefit from credit. Over a defined accounting period a person can deduct the credit from the amount of tax due and may receive payment if the credit is greater than the amount of tax due. Tax credits may be carried over to a subsequent accounting period and the regulations may define how a person who ceased to be registrable can benefit from credit. Where a person fails to submit a return, the Tax Authority may withhold payment of credits until the person has complied with the requirement to submit a return. Regulations may provide the Tax Authority with the power to impose conditions with regard to payment or repayment as it sees fit. Regulations may require a person to make a claim in a return as required by section 25.

Section 19 – Credit: bad debts

31. Section 19 provides that the Scottish Ministers may, by regulations and subject to prescribed conditions, allow for a person who carries out a taxable activity for which the person has not been paid to be entitled to credit for that activity. It also provides that any credit should be repaid if the debt was not justified as being bad. Regulations may make provisions for determining whether, and to what extent, a debt is taken to be bad.

Section 20 – Credit: bodies concerned with the environment

32. Section 20 provides that regulations may be made to ensure that a person can be entitled to credit if the person pays a sum to a body whose objects are to protect the environment or other conditions as prescribed in the regulations. Regulations may require the bodies to which sums are paid, “environmental bodies”, to be approved by the Tax Authority. The sums which are paid are to be spent on matters which are prescribed by the regulations. Regulations can define the amount of credit available, including limitations to the amount of credit and may define the overheads associated with prescribed activities. They may make provisions for determining the allowable administration spends by environmental bodies and make provisions for an environmental body to remain approved only if it complies with conditions imposed by the Tax Authority. Provisions may also be made to withdraw approval of an environmental body by the Tax Authority. Regulations can provide for the Tax Authority to share the tax affairs of persons carrying out taxable activities which are relevant to the credit scheme. This section ensures that the funding of environmental bodies by the Landfill Tax Communities Fund can continue to operate in Scotland under a replacement fund.

PART 3 – ADMINISTRATION

33. Part 3 makes provision for—

- registration,
- administration arrangements for accounting for tax, and
- other matters relating to the administration of the tax.

Taxable activities

Section 21 – Taxable activities

34. Section 21 provides that a person carries out a taxable activity if that person carries out a taxable disposal in respect of which that person is liable or permits somebody to carry out a taxable
disposal in respect of which that person is liable. When a taxable disposal is made without the knowledge of the person who is liable to pay tax, then the person is taken to have permitted the disposal. This provision ensures that a landfill operator is responsible for all taxable disposals on their site.

Registration

Section 22 – Registration

35. Subsection (1) provides that the Tax Authority must maintain a register containing whatever information the Tax Authority deems necessary for the purposes of the collection and management of the tax. Subsections (2) to (8) set out the registration duties placed on the Tax Authority and a person who carries out taxable activities (described at section 21) as well as the notification duties placed on a person who forms the intention of carrying out taxable activities.

36. Subsection (9) contains a regulation-making power to allow the Scottish Ministers, if they so wish, to: state the timeframe within which a notification should be made to the Tax Authority; provide details on the format, content and method of sending the notification to the Tax Authority; place a duty on a person who has sent a notification to the Tax Authority to tell the Tax Authority if any of the information in the notification needs to be updated; set out how corrections will be made to entries in the register. Such regulations will be subject to the negative procedure (see section 41).

37. Subsection (10) provides that references in this Bill to a registrable person are to a person who is registered under or liable to be registered under this section.

Section 23 – Information required to keep register up to date

38. Section 23 contains a regulation-making power to allow the Scottish Ministers to require a registrable person to tell the Tax Authority of any change in that person’s circumstances (or any business carried on by the registrable person) which will enable the Tax Authority to ensure the register kept under section 22 is up to date. Such regulations will be subject to the negative procedure (see section 41).

Section 24 – Publication of the register.

39. Section 24 enables the Tax Authority to publish, by such means as it sees fit, information which is derived from the register kept under section 22 and which falls within any of the descriptions listed at subsection (2).

Accounting for tax

Section 25 – Accounting for tax and time for payment

40. Section 25 contains a regulation-making power to allow the Scottish Ministers to set out the format, frequency and manner of returns to be submitted by the registrable person. Such regulations will be subject to the negative procedure (see section 41).
These documents relate to the Landfill Tax (Scotland) Bill (SP Bill 28) as introduced in the Scottish Parliament on 17 April 2013

Time of disposal where invoice issued

Section 26 – Time of disposal where invoice issued

41. Section 26 provides that the Scottish Ministers may, by way of regulations, define what information is required to be contained in a landfill invoice and that 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 at the time of disposal. The Tax Authority may, if requested by a person, agree to a longer invoicing period. This allows for timely information to be collected with regard to taxable deposits.

Adjustment of contracts

Section 27 – Adjustment of contracts

42. Section 27 provides that, when a contract is in place for the disposal of a waste in a landfill and the tax changes with regard to that waste, then the payment for that waste in the contract must increase to reflect the tax increase. This ensures that contractors do not suffer as a result of tax increases not being reflected in historical contracts.

Evidence about tax status

Section 28 – Evidence about tax status

43. Section 28 provides that a certificate (described at subsection (1)) issued by the Tax Authority is deemed to be sufficient evidence about a person’s tax status until the contrary is proved.

Recovery of overpaid tax

Section 29 – Recovery of overpaid tax

44. Section 29 sets out the conditions whereby the Tax Authority is liable to repay overpaid tax. Subsection (5) contains a regulation-making 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. Such regulations will be subject to the negative procedure (see section 41).

Information

Section 30 – Information: material at landfill sites

45. Section 30 contains a regulation-making power to allow the Scottish Ministers to make provision for the Tax Authority to obtain information relating to material at a landfill site or part of a landfill site. The regulations may: require a person to give information; make provision for “information areas” and the type of material that can be deposited in said areas; make provision about information relating to what is done with material.

Section 31 – Information: site restoration

46. Section 31 requires that before starting to restore all or part of a landfill site, the site operator must notify the Tax Authority in writing that restoration is to commence and further that the site
operator must provide any other written information the Tax Authority may ask for. Subsection (2) defines what the term “restoration” means in the context of this section and subsection (3) lists what are “relevant instruments” in the context of subsection (2).

**Record keeping**

**Section 32 – Records: registrable persons**

47. Section 32 contains a regulation-making power to allow the Scottish Ministers to require registrable persons, as defined in section 22(10), to make records. Registrable persons will be required to keep a record of the taxable activities they carry out. The regulations will prescribe the information that is required to be included in the record. Such regulations will be subject to the negative procedure (see section 41).

48. Subsection (4) provides that the duty to preserve records can be discharged by holding the records, or the information in them, in any form or by any means, in order to allow the records to be held in an electronic format.

**Section 33 – Records: material at landfill sites**

49. Section 33 contains a regulation-making power to allow the Scottish Ministers to require a person to make records relating to material at a landfill site. The regulations can make provision for records to be made about the nature of the material, or what is done with the material. Such regulations will be subject to the negative procedure (see section 41). Subsections (3) and (4) of section 32 are also applicable to regulations made under this section.

**PART 4 – GENERAL AND INTERPRETATION**

50. Part 4 contains general provisions, including provision about the Tax Authority and definitions of expressions used in the Bill.

*The Tax Authority*

**Section 34 – The Tax Authority**

51. Section 34 defines the Tax Authority as the Scottish Ministers. The Tax Authority has responsibility for the collection and management of Scottish Landfill Tax (see section 1(2)).

52. Subsection (2) confers a power on the Scottish Ministers to provide by order that another person is the Tax Authority. This provision could be used to allow for Revenue Scotland to become the Tax Authority, at a future point when Revenue Scotland has a legal personality separate to that of the Scottish Ministers and subject to parliamentary agreement of provisions for Revenue Scotland. Such an order will be subject to the affirmative procedure (see section 41).
Section 35 – Delegation of functions to SEPA

53. Section 35 allows for the delegation of Tax Authority functions to the Scottish Environment Protection Agency (SEPA). The administration and collection of Scottish Landfill Tax will be undertaken by SEPA.

Section 36 – Review and appeal

54. Section 36 confers a power on the Scottish Ministers to make provision by regulations for the review and appeal of Tax Authority decisions. Such regulations will be subject to the affirmative procedure if they modify the Bill itself. Otherwise, they will be subject to the negative procedure (see section 41).

Application of act to partnerships, groups of companies etc.

Section 37 – Partnership, bankruptcy, transfer of business etc.

55. Section 37 provides that the Scottish Ministers may, by regulations, make provision for determining the requirements of a partnership to comply with the tax. The Tax Authority may determine what divisions of a corporate body are registrable and liable for Landfill Tax, as well as named unincorporated bodies regardless of any changes of membership. The Scottish Ministers may make 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 on the business and of the event that led to them carrying it on. For a limited time such a person can be treated as the original registered person to ensure continuity of the Landfill Tax applicability. The Scottish Ministers may also make regulations to ensure continuity during the transfer of a business as a going concern, including requiring the transferor to inform the Tax Authority of the transfer, providing for any liabilities and duties under the Act to become those of the transferee and providing for any right to repayments or credit to be satisfied by making a repayment or allowing credit.

Section 38 – Groups of companies

56. Section 38 provides for how groups of companies and members of groups are to be treated with regard to tax liabilities. This includes providing that groups of companies are liable through their representative member carrying out taxable activities (section 21) and that two or more corporate bodies can be considered a group as long as one or two persons (corporate or individuals) control them all, and they have an established place of business in the United Kingdom.

57. Subsections (4) to (9) set out the conditions of the application for group treatment and that a successful application will take effect from the following accounting period. Subsection (10) states that if a group stops being controlled by the persons then the group will no longer be treated as a group. Subsection (11) states that an application must be made by the bodies or person controlling them and that the application should be made 90 days before the group status is to take effect. Subsection (12) sets out the conditions by which a corporate body or individuals will be deemed to control another corporate body, mainly if the corporate body is the latter body’s holding company within the meaning of section 1159 and Schedule 6 of the Companies Act 2006 or, in the case of individuals, would be were the individuals a company.
These documents relate to the Landfill Tax (Scotland) Bill (SP Bill 28) as introduced in the Scottish Parliament on 17 April 2013

Interpretation

Section 39 – Interpretation

58. Section 39 sets out certain definitions used in the Bill.

PART 5 – FINAL PROVISIONS

59. Part 5 contains provisions on subordinate legislation powers and commencement as well as other final provisions.

Ancillary provision

Section 40 – Ancillary provision

60. Section 40 empowers the Scottish Ministers to make ancillary provision by order concerning Scottish Landfill Tax. Orders under this section will be subject to the affirmative procedure if they modify an Act.

Subordinate legislation

Section 41 – Subordinate legislation

61. Section 41 sets out general provisions for subordinate legislation under the Bill.

Crown application

Section 42 – Crown application

62. Section 42 provides that the Bill does not apply to Her Majesty in Her private capacity. By virtue of section 20 of the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10), the Bill otherwise applies to the Crown.

Commencement and short title

Section 43 – Commencement

63. Section 43 provides for the commencement of the Bill.

Section 44 – Short title

64. Section 44 sets out the short title of the Bill.
INTRODUCTION

1. This document relates to the Landfill Tax (Scotland) Bill (“the Bill”) introduced in the Scottish Parliament on 17 April 2013. It has been prepared by the Scottish Government, to satisfy Rule 9.3.2 of the Parliament’s Standing Orders. It does not form part of the Bill and has not been endorsed by the Parliament.

BACKGROUND

The Scotland Act 2012 and Landfill Tax

2. The Bill is the second of three related Bills being brought forward as a consequence of measures enacted in the Scotland Act 2012 (“the 2012 Act”). The Bill follows the Land and Buildings Transaction Tax (Scotland) Bill in the current session, and precedes the Tax Management Bill that will introduce arrangements for tax management. The Bill makes provisions for a Scottish tax on disposals to landfill, to be called the Scottish Landfill Tax (a distinction has been given to the Scottish tax to avoid confusion in any UK legislation which might list the Scottish tax alongside the continuing Landfill Tax for England and Wales and Northern Ireland). The 2012 Act allows for the disapplication of the UK Landfill Tax in Scotland from a date to be set by the Treasury by order. The present policy of the UK Government is that this order will take effect from April 2015. The order-making power is set out in section 31(4) of the 2012 Act.

3. The intention is that the provisions introducing the Scottish Landfill Tax will come into force as soon as the UK system is dis-applied. At that point, in order to ensure the continued collection of tax receipts, the Scottish Government wishes to have in place arrangements for the management and collection of the Scottish Landfill Tax. From that day on, the Scottish Consolidated Fund (“SCF”) will receive all receipts raised in respect of the tax on disposals to landfill in Scotland.

4. There will be a loss of receipts to the UK Government from the withdrawal of UK Landfill Tax in Scotland. The UK Government will consequently make a corresponding adjustment to the Scottish block grant. These arrangements are explained in pages 30 and 31 of the Command Paper, issued by the UK Government when the Scotland Bill was introduced in Westminster on 30 November 2010. Neither this Bill nor this Memorandum deal with adjustments to the Scottish block grant. The block grant adjustment was discussed by the Scottish and UK Governments prior to the passing by the Scottish Parliament of the Legislative Consent Motion for the (then) Scotland Bill in April 2012. The agreement reached on the process for arriving at block grant adjustments and other matters was set out in an exchange of published letters between the Cabinet Secretary for

---

These documents relate to the Landfill Tax (Scotland) Bill (SP Bill 28) as introduced in the Scottish Parliament on 17 April 2013

Parliamentary Business and Government Strategy and the Secretary of State for Scotland, on 20 and 21 March 2012.

5. The relevant passage says:

“We will seek the Scottish Parliament's agreement to changes to Scotland's funding arrangements, now and in the future, in order to provide democratic oversight and assurance that Scotland's interests are being properly considered.”

6. The formula for calculating the adjustment in respect of UK Landfill Tax is under discussion between Ministers of the Scottish and UK Governments and is due to be agreed in the first half of 2013.

Overview of landfill impacts and costs

7. UK Landfill Tax was the first ‘green tax’ in the UK. The original aim of the tax, as set out in the UK Waste Strategy was:

“to ensure that landfill costs reflect environmental impact thereby encouraging business and consumers, in a cost effective and non-regulatory manner, to produce less waste; to recover value from more of the waste that is produced; and to dispose of less waste in landfill sites.”

8. As with other environmental taxes, it also aims to ensure that the environmental impacts of disposing of waste to landfill are captured within the market prices of landfill.

9. More specifically, the tax reflects the significant impact that landfilling has on the environment – greenhouse gas (GHG) emissions, risk of soil and water pollution through chemical leaching and general dis-amenity including noise, odour and dust. By ensuring that waste producers incorporate the full cost of waste disposal into business decisions, UK Landfill Tax encourages the development of sustainable waste management options, including waste prevention, reuse, recycling and anaerobic digestion. Since 1997, the tax has contributed to a 32% reduction in the proportion of waste sent to landfill and a similar increase in recycling. Across the UK, the tax is estimated to save in the region of 0.7 million tonnes of carbon dioxide equivalent emissions a year.

10. The pattern of historic receipts reflects a number of important trends in disposals to landfill, as well as past policies. The most significant of these was the introduction of the UK Landfill Tax escalator by the UK Government on 1 April 2011. This escalator has raised the standard rate of UK Landfill Tax by £8 per tonne each year since introduction. The escalator will result in the tax rate reaching £80 per tonne in 2014-15, at which point the UK policy is that tax rates will be stabilised. The escalator has reduced the amount of materials landfilled and has helped create a viable market for alternatives to landfill, including recycling, waste prevention and energy from waste. Although the escalator has increased revenue for the tax in the short term, it has resulted in a significant reduction in the amount of material landfilled and so, over time, tax revenues are expected to decline.

4 http://www.scottish.parliament.uk/S4_PublicAuditCommittee/Meeting%20Papers/Joint_Exchequer.pdf
5 http://www.scotland.gov.uk/Publications/2012/10/3524/14
These documents relate to the Landfill Tax (Scotland) Bill (SP Bill 28) as introduced in the Scottish Parliament on 17 April 2013

Table 1  Historic receipts, Office of Budget Responsibility (OBR)\(^7\)

<table>
<thead>
<tr>
<th>Date</th>
<th>2006-07</th>
<th>2007-08</th>
<th>2008-09</th>
<th>2009-10</th>
<th>2010-11</th>
</tr>
</thead>
<tbody>
<tr>
<td>UK (£ million)</td>
<td>825</td>
<td>897</td>
<td>863</td>
<td>944</td>
<td>1095</td>
</tr>
<tr>
<td>Scotland (£ million)</td>
<td>78</td>
<td>90</td>
<td>82</td>
<td>85</td>
<td>97</td>
</tr>
<tr>
<td>Scottish Share</td>
<td>9.50%</td>
<td>10.00%</td>
<td>9.50%</td>
<td>9.00%</td>
<td>8.90%</td>
</tr>
</tbody>
</table>

11. The financial savings that can be made through adopting alternatives to landfill are now central to the economics of waste management, and the tax has helped establish the stable policy landscape needed to underpin long-term investment decisions on alternatives to landfill, including recycling collection systems and residual waste treatment infrastructure such as fuel production plants and incineration.

12. By raising the costs of landfill to a figure that better reflects the true costs to the environment, UK Landfill Tax has helped to realise the following wider benefits to Scotland’s environment and economy:

- climate change mitigation;
- reducing dependence on raw materials in an increasingly cost volatile market;
- creating investment in infrastructure, jobs and skills;
- providing new recycled materials for use in sustainable manufacturing outlets.
- driving efficiencies across supply chains by designing out waste.

13. All methods of waste disposal result in environmental and social impacts. Economic costs of these impacts are often not reflected in the financial costs charged by waste disposal facilities. Therefore the environmental and social costs can be described as being external to the main financial costs; they can thus be referred to as externalities.

14. Greenhouse gas emissions are formed when organic materials break down to form carbon dioxide (CO2) and methane (CH4). Placing a monetary value on these CO2 and CH4 emissions is done by reference to a wide body of work on the damage costs to climate/social costs. These depend upon the material landfilled (how much methane is generated), the efficiency with which this is captured for flaring/energy generation, and the extent to which the landfill cap oxidises the methane, converting it to carbon dioxide. The carbon effects of landfill can be valued using Guidance from DECC/HM Treasury.\(^8\)

---


15. A further environmental impact comes from pollutants associated with landfill emissions and the combusted biogas. These impacts are generally regarded as small in comparison to the impact of methane, and are mitigated by the adoption of stringent environmental permitting and the adoption of best practice operations by landfill operators. The Intergovernmental Panel on Costs and Benefits agrees damage costs for key pollutants for use in policy appraisal.

16. A 2003 study\(^9\) found firm evidence of a statistically significant impact on house prices within a half-mile of a landfill site. Scotland saw house price reductions of 41.3% within a 0.25 mile radius of a landfill, compared to a Great Britain average of 7%. Residents living in close vicinity to landfill sites experience general dis-amenity including noise, odour, dust and the impacts of increased heavy vehicle movements. The tax credit scheme that accompanies the UK Landfill Tax creates a mechanism to help offset these local impacts by directing toward local environmental projects contributions from landfill operators which earn credit against UK Landfill Tax liabilities. The Bill includes provision to establish a similar tax credit scheme in Scotland, and to direct proceeds toward local projects (paragraphs 47 and 48 provide further details).

17. Lastly, landfill locks away valuable material resources (including plastics, textiles, metals, organics) that when channelled into alternative recycling, recovery and reprocessing routes have real world value and support jobs, infrastructure and the development of the burgeoning resource management sector in Scotland.

18. It is difficult to accurately assess the overall impacts of landfill as the amount and composition of materials sent to landfill continually change as a consequence of UK Landfill Tax and zero waste policies. To provide an indication of the wider costs and benefits of landfill (above and beyond tax receipts) and the contribution of UK Landfill Tax to the Scottish economy, the Scottish Government commissioned work to examine the implications of not replacing UK Landfill Tax in 2015 when the UK system is dis-applied from Scotland. This work drew on recognised methods of monetising environmental impacts, social impacts (for example the impact of landfill on house prices), information on the value of recyclable materials, as well as the costs of alternatives to landfill. The results indicated that between 2015 and 2025 the establishment of a Scottish Landfill Tax (set at similar rates to the current UK tax) will contribute in the region of £2.79 billion over the first 10 years of the tax compared to a scenario where a replacement Landfill Tax is not established.

19. Further details of this work and the costs and benefits of the Scottish Landfill Tax to the Scottish economy are provided in the Partial Business and Regulatory Impact Assessment that accompanies this Bill.\(^10\) The Final Business and Regulatory Impact Assessment will be published at the end of April 2013.

GENERAL

20. The financial implications of this Bill have been considered under the following headings:

   I The financial implications for the Scottish Administration (paragraphs 21-49).
   II The costs on local authorities and other public bodies (paragraphs 50-57).

---


\(^10\) http://www.scotland.gov.uk/Publications/2012/10/3524/12
These documents relate to the Landfill Tax (Scotland) Bill (SP Bill 28) as introduced in the Scottish Parliament on 17 April 2013

III The costs on landfill operators (paragraphs 58-61).
IV The costs on other bodies, individuals and businesses (paragraphs 62-67).

I FINANCIAL IMPLICATIONS FOR THE SCOTTISH ADMINISTRATION

21. The financial implications for the Scottish Administration have been considered under three sub-headings:

A. Implications for the Scottish budget of Scottish Landfill Tax from Scottish Landfill Tax receipts. Tax receipts will vary depending on the amount and composition of material sent to landfill and the tax rates set. Rates will be set by subordinate legislation by way of an Order, prior to the introduction of the tax in April 2015 (see paragraphs 24-36);

B. The costs to the Scottish Government of setting up and running a new Scottish tax administration function (“Revenue Scotland”). The Bill defines the “Tax Authority” as the Scottish Ministers but will allow them, through an order, to name another body as the Tax Authority. The intention is that this provision will be used to establish Revenue Scotland (currently part of the Scottish Government) as the Tax Authority, subject to Parliamentary agreement to the necessary provisions, which will be set out in the Tax Management Bill (see paragraphs 37-43); and

C. The administrative and compliance costs which will arise as a result of the Scottish Environment Protection Agency (“SEPA”) taking on operational responsibility for the collection of Scottish Landfill Tax (see paragraphs 44-49).

22. The estimated costs cover the implementation of Bill from 2013; they do not include the costs of legislating to bring Scottish Landfill Tax into existence. In practice, costs of legislating will be borne within the existing administration budgets of the Scottish Government and the Scottish Parliament. Nor do the costs include the anticipated one-off costs associated with the “switch-off” of the UK taxes in Scotland which will be incurred by HMRC and charged to the Scottish Government. Further planning work needs to be undertaken before estimates are available. HMRC has indicated that it will be able to provide cost estimates by summer 2013. It should be noted that these “switch-off” costs are not a result of this Bill and would be applicable in any case.

23. There will be some minor on-going administrative costs on the Scottish Government as a result of this Bill - for example, to provide Ministers with advice on Scottish Landfill Tax policy. The Scottish Government considers that these costs, which will be met from existing administration cost budgets, are not material.

A. **Implications for the Scottish budget from Landfill Tax receipts**

24. The net effect on the total Scottish budget depends on tax receipts offset by the block grant adjustment. As explained above, this Memorandum does not discuss the block grant adjustment. However, without this Bill and a corresponding replacement tax on disposals to landfill, the Scottish Government would lose tax revenue.

25. In most respects, the Scottish system will be similar in form and function to the current UK system. The tax rates will be set in subordinate legislation, with the approval of the Scottish
Parliament. Scottish Ministers have indicated that they intend to initially set rates at a level that is no lower than the UK tax rate in 2015.

26. The proposal to initially set rates to closely mirror the UK landfill tax system was made following feedback from stakeholders, who saw it as important in maintaining the basis on which investment decisions have been and are being made at a time when Scotland is making progress in implementing its Zero Waste Policy intentions. It is also likely that differential landfill tax rates with the rest of the UK would encourage waste to move across the Scottish border.

27. Tax rates will be set by order made by the Scottish Government with the approval of the Scottish Parliament later in the process before the tax comes into force. In line with the announced intention of the Scottish Government, this Financial Memorandum assumes that the Scottish tax rates will mirror UK rates in 2015-16 meaning that the standard rate, for active materials, would be set at £80 a tonne, and the lower rate, for inactive material, would be set at £2.50 a tonne.

28. The Office of Budget Responsibility (OBR) forecasts the following tax receipts for Scotland based on a continuation of the UK landfill. These are based on an assumption that Scottish receipts form 9.1% of total UK receipts (Dec 2012):

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>£ million</td>
<td>98</td>
<td>97</td>
<td>96</td>
<td>105</td>
<td>107</td>
<td>107</td>
<td>110</td>
</tr>
</tbody>
</table>

29. The OBR forecast does not take into account Scottish-specific policies that will affect the amount of material disposed of to landfill, including the Scottish Zero Waste targets (70% recycling) and the recent Waste Regulations (Scotland) 2012. Relevant measures introduced by the Regulations include:

- a requirement for businesses to present dry recyclables (metals, plastics, paper, card and glass) and food waste of more than 50 kg/week for collection from the end of 2013, with those producing less than 50kg/week exempt until the end of 2015;
- a requirement on local authorities to provide householders with a collection service for dry recyclables (end 2013) and food waste (end 2015);
- a ban on materials collected separately for recycling going to landfill or incineration (end 2013); and
- a ban on biodegradable municipal waste going to landfill, thus helping to substantially reduce harmful emissions of methane (end 2020).

30. The Scottish Government expects the net effect will be for landfill tonnages in Scotland to significantly decrease over the coming decade with a corresponding reduction in receipts. The Scottish Government’s analysis of these trends suggests that 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.
31. The Bill includes provisions that will allow the tax collection authority to pursue taxes evaded through illegal dumping of waste. Making the illegal disposal of material taxable will act as a significant deterrent to illegal activity, and will support reputable organisations that uphold Duty of Care guidelines and abide by the Pollution Prevention and Control Regulations. The Government’s intentions are explained further at paragraph 42 of the Policy Memorandum.

32. Some increase in revenue should arise from taxing illegal dumping of waste. Given the nature of illegal disposals it is not possible to estimate the likely level of additional receipts. However, SEPA estimates that in a recent case resulting in a conviction for illegal dumping of waste, around £3 million in tax may have been evaded.

33. Based on the above information, the Scottish Government estimates that this Bill will generate revenue of around £107m in 2015-2016, dropping to around £40.5m in 2025. As outlined above, these estimates are based on a number of assumptions on tax rates and future trends in how waste is managed in Scotland, which introduce considerable uncertainties in forecasting tax revenue.

34. As a landfill tax already exists in Scotland under the UK system, there will be no significant immediate changes in revenue for the Scottish Budget from this Bill. Longer-term, if tax rates are changed, or new rates are introduced, then there would be consequent effects on the revenue generated from this tax.

35. The Partial Business and Regulatory Impact Assessment provides a fuller analysis of the economic implications of a Scottish Landfill Tax. This includes a macroeconomic assessment of the implications of the tax on economic development and protecting scarce resources, as well as an analysis of the externalities (environmental and social costs) of landfill.

36. The Scottish Government will track the impacts of its Scottish Landfill Tax policy, landfill trends, alternatives to landfill (including energy from waste), activities exempt from waste permitting, recyclate markets, fuel markets, commodity markets and the way materials flow through the Scottish economy. The Scottish Government will use this information to inform future policies for Scottish Landfill Tax, including policy on tax rates.

B. Costs to the Scottish Government of establishing and running Revenue Scotland

37. The Cabinet Secretary for Finance, Employment and Sustainable Growth indicated in his statement to the Parliament on 7 June 2012\(^{11}\) that the Government intended to establish a tax administration function (Revenue Scotland) to administer both Land and Buildings Transaction Tax (“LBTT”) and Landfill Tax in Scotland. The Cabinet Secretary stated that:

“We will establish a tax administration function for assessing and collecting both taxes here in Scotland. The function, which I propose to name Revenue Scotland, will be established this year. By 2015, in line with international best practice, it will be operationally independent and its governance enshrined in legislation.”

\(^{11}\)http://www.scottish.parliament.uk/parliamentarybusiness/28862.aspx?r=7311&mode=html
38. Revenue Scotland has been set up as an administrative entity within the Scottish Government. The first Head of Revenue Scotland was appointed in October 2012. Legislation to place Revenue Scotland on a statutory footing will be made, subject to the agreement of the Parliament, in the Tax Management Bill, to be introduced later in 2013. As the Cabinet Secretary announced, Revenue Scotland will have a structure and constitution designed so that it is operationally independent of Scottish Ministers.

39. The Scottish Government will meet the costs of establishing and running Revenue Scotland. The estimated costs given below for both Revenue Scotland and SEPA are as provided to the Scottish Parliament in June 2012. These estimated costs reflected work done on the various functions needed to operate the taxes. More detailed planning is now underway on administrative systems needed to operate both LBTT and the Scottish Landfill Tax and on the allocation of tasks between Revenue Scotland and SEPA. This work includes development of a more detailed timetable for the tasks required and of a profile for estimated expenditure. Updated costs and timescales will be provided to the Parliament when they are available.

40. Staff costs are based on average costs for Scottish Government staff in summer 2012 and take account of average basic salary for the grades in question, Accruing Superannuation Liability Charge, Earnings-Related National Insurance Contribution and any non-consolidated award.

41. As noted, Revenue Scotland will oversee the administration of both LBTT and the Scottish Landfill Tax. The administration costs attributable to the Scottish Landfill Tax and, therefore, to this Bill will arise both in Revenue Scotland and SEPA. At this stage in planning there is insufficient information to support an attribution of Revenue Scotland costs between LBTT and the Scottish Landfill Tax. While total estimated costs for Revenue Scotland are given in tables 3 to 6 below, only a proportion of these costs will be attributable to the administration of the Scottish Landfill Tax.

42. Revenue Scotland costs have been broken down under two headings: set-up costs and running costs, split between staff and non-staff costs. Set-up costs are those estimated to be incurred from June 2013 to March 2015 in respect of both devolved taxes (tables 3 and 4). Costs are rounded to the nearest £5,000. Note that planning work is already underway so some modest staff and other costs have been incurred before April 2013:

**Table 3 Summary of Revenue Scotland set-up costs (staff)**

<table>
<thead>
<tr>
<th>Function</th>
<th>Cost per year (£000)</th>
<th>Period</th>
<th>Total cost (£000)</th>
<th>Assumptions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Senior Management</td>
<td>130</td>
<td>June 2013 to March 2015</td>
<td>240</td>
<td>Head of Revenue Scotland (0.3 fte SCS Pay Band 2), Chief Operating Officer (SCS Pay Band 1)</td>
</tr>
<tr>
<td>Tax Administration</td>
<td>116</td>
<td>June 2013 to March 2015</td>
<td>210</td>
<td>Programme Manager (Band C) and Programme Officer (Band B)</td>
</tr>
<tr>
<td>Revenue Scotland</td>
<td>232</td>
<td>June 2013 to</td>
<td>425</td>
<td>2 Teams, each 1 Band C and 1</td>
</tr>
</tbody>
</table>

---

This information was originally lodged with SPICe, on behalf of the Cabinet Secretary for Finance, Employment and Sustainable Growth on 14 June 2012.
These documents relate to the Landfill Tax (Scotland) Bill (SP Bill 28) as introduced in the Scottish Parliament on 17 April 2013

<table>
<thead>
<tr>
<th>Development</th>
<th>March 2015</th>
<th>Band B, developing internal systems, procedures, policies, capacity and communications.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Revenue Scotland Appeals, Disputes &amp; Compliance</td>
<td>October 2014 to March 2015</td>
<td>240</td>
</tr>
<tr>
<td>Administrative support</td>
<td>June 2013 to March 2015</td>
<td>85</td>
</tr>
</tbody>
</table>

**Total** | **1200** |

**Table 4 Summary of Revenue Scotland set-up costs (non-staff)**

<table>
<thead>
<tr>
<th>Function</th>
<th>Set-up Costs (£000)</th>
<th>Assumptions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Systems</td>
<td>80</td>
<td>This cost includes the hardware set-up costs for the staff together with the costs of establishing the website but assumes a tax collection system design which does not require central database development at Revenue Scotland. A different design may be chosen and costs will only be known following detailed design and procurement.</td>
</tr>
<tr>
<td>Communications and branding</td>
<td>75</td>
<td>Need to promote awareness of Revenue Scotland and devolved taxes.</td>
</tr>
<tr>
<td>Standard running costs for unit from June 2013 - 31 March 2015.</td>
<td>200</td>
<td>Training, travel and subsistence and accommodation costs for staff.</td>
</tr>
<tr>
<td>Contingency</td>
<td>100</td>
<td>Allowance for underestimates in above figures.</td>
</tr>
<tr>
<td><strong>Totals</strong></td>
<td><strong>455</strong></td>
<td>No VAT chargeable on this</td>
</tr>
</tbody>
</table>

43. Total annual running costs estimated from April 2015 onwards for all Revenue Scotland functions, including Scottish Landfill Tax and LBTT (rounded to the nearest £5,000) are shown in Tables 5 and 6.

**Table 5 Summary of annual Revenue Scotland running costs (staff)**

<table>
<thead>
<tr>
<th>Function</th>
<th>Running Cost (£000)</th>
<th>Assumptions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Senior Management</td>
<td>220</td>
<td>Chief Executive SCS Pay Band 2, Chief Operating Officer SCS Pay Band 1</td>
</tr>
<tr>
<td>Compliance</td>
<td>350</td>
<td>Team of 8 staff, assume 2 band C, 6 band B</td>
</tr>
<tr>
<td>Disputes and Appeals</td>
<td>280</td>
<td>2 band C solicitors plus band B support</td>
</tr>
<tr>
<td>Communications and complaints</td>
<td>240</td>
<td>Band C plus 5 band B staff to manage web and print communications, limited helpline and complaints. This may need to be revised once further development work is done on communications.</td>
</tr>
</tbody>
</table>
These documents relate to the Landfill Tax (Scotland) Bill (SP Bill 28) as introduced in the Scottish Parliament on 17 April 2013

<table>
<thead>
<tr>
<th>Planning and Development</th>
<th>125</th>
<th>Band C plus 2 band B staff covering planning and reporting and further system development</th>
</tr>
</thead>
<tbody>
<tr>
<td>Administrative support</td>
<td>100</td>
<td>4 Band A staff supporting all above teams</td>
</tr>
<tr>
<td>Contingency</td>
<td>155</td>
<td>Allowance for underestimates in all above figures</td>
</tr>
<tr>
<td>Total</td>
<td>1470</td>
<td>No VAT charged on this</td>
</tr>
</tbody>
</table>

Table 6 Summary of annual Revenue Scotland running costs (non-staff)

<table>
<thead>
<tr>
<th>Function</th>
<th>Running Cost (£000)</th>
<th>Assumptions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Standard running costs</td>
<td>170</td>
<td>Travel training and accommodation.</td>
</tr>
<tr>
<td>IT systems support</td>
<td>50</td>
<td>Assume that receipts will be remitted direct to Scottish Government by collection agents; systems required for case management, appeals administration, performance management of contracts</td>
</tr>
<tr>
<td>Website maintenance and production and updating of on-line guidance,</td>
<td>50</td>
<td></td>
</tr>
<tr>
<td>Appeals against LBTT charges</td>
<td>120</td>
<td>Costed on a basis comparable to SEPA costing for Scottish Landfill Tax appeals; assumption of up to 20 appeals per year. Non-staff cost</td>
</tr>
<tr>
<td>Legal outsourcing/debt recovery contracts</td>
<td>100</td>
<td>Non-staff cost</td>
</tr>
<tr>
<td>Contingency</td>
<td>250</td>
<td>Allowance for underestimates in all above figures</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>740</strong></td>
<td>No VAT charged on this</td>
</tr>
</tbody>
</table>

C. Costs to the Scottish Government of SEPA collecting Landfill Tax

44. The Scottish Government has announced its intention that Revenue Scotland will delegate operational responsibility for the collection of Scottish Landfill Tax to SEPA. SEPA’s estimated costs, like those for Revenue Scotland, have been broken down under two headings, set-up costs (incurred from April 2013 to March 2015) and running costs (i.e. the on-going costs of collecting Scottish Landfill Tax from 1 April 2015). The estimated costs identified by SEPA have been prepared on the following assumptions:

13 [http://www.scotland.gov.uk/Publications/2012/10/3524](http://www.scotland.gov.uk/Publications/2012/10/3524)
These documents relate to the Landfill Tax (Scotland) Bill (SP Bill 28) as introduced in the Scottish Parliament on 17 April 2013

- that it will have a collection and compliance role. (Further planning work is required to decide on the respective roles that Revenue Scotland and SEPA will have in relation to compliance activity);
- that the tax will be introduced as planned in 2015 and as described in the public consultation documents that have been published.

45. SEPA is partially self-financing from the income it receives for the environmental protection services it provides. The additional costs of administering the Scottish Landfill Tax will be agreed with and met by the Scottish Government. Tables 7 and 8 set out the estimated set-up and running costs (incurred from 1 April 2015 onwards) for SEPA. The estimates have been rounded to the nearest £5,000.

Table 7 Estimated set-up costs: Scottish Environment Protection Agency

<table>
<thead>
<tr>
<th>Function</th>
<th>Set-up Cost (£000)</th>
<th>Assumptions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Staff training</td>
<td>25</td>
<td>1 month training for x members of SEPA staff involved in this work</td>
</tr>
<tr>
<td>Develop guidance for staff</td>
<td>75</td>
<td></td>
</tr>
<tr>
<td>Costs to SEPA of setting up IT systems</td>
<td>350</td>
<td></td>
</tr>
<tr>
<td>Contribution to policy and legislative development in 2013-14</td>
<td>50</td>
<td>Includes development of landfill communities fund or equivalent</td>
</tr>
<tr>
<td>Costs associated with promoting new Scottish Landfill Tax arrangements</td>
<td>15</td>
<td>Shared among existing staff – allowance for modest increase in staff on fixed term basis (0.5 post for 6 months)</td>
</tr>
<tr>
<td>Training for landfill operators staff</td>
<td>25</td>
<td>Assumes 1 day per landfill site plus development time.</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>540</strong></td>
<td>Excluding VAT – chargeable and recoverable</td>
</tr>
</tbody>
</table>
Table 8  Annual running costs: Scottish Environment Protection Agency

<table>
<thead>
<tr>
<th>Function</th>
<th>Running Cost (£000)</th>
<th>Assumptions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Additional registration work</td>
<td>10</td>
<td>Shared among existing staff – allowance for modest increase in staff (1 post) for registration and declaration work</td>
</tr>
<tr>
<td>Additional declaration work</td>
<td>50</td>
<td>Shared among existing staff – allowance for modest increase in staff (1 post) for registration and declaration work</td>
</tr>
<tr>
<td>Risk assessment, compliance activity, ensuring debt collection</td>
<td>75</td>
<td></td>
</tr>
<tr>
<td>Appeals against tax charges</td>
<td>30</td>
<td>Assumes administration required of 5 to 10 appeals a year</td>
</tr>
<tr>
<td>General enquiries from taxpayers / helpdesk</td>
<td>35</td>
<td>1 additional administrative member of staff</td>
</tr>
<tr>
<td>Management and liaison with RS</td>
<td>50</td>
<td>1 additional executive member of staff</td>
</tr>
<tr>
<td>Systems, travel</td>
<td>50</td>
<td>Likely to be absorbed within existing work; allowance made for possible increase in IT system maintenance etc work</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>300</strong></td>
<td>Excluding VAT chargeable and recoverable.</td>
</tr>
</tbody>
</table>

46. By drawing on SEPA’s existing knowledge and expertise in regulating landfill sites, there are opportunities to deliver significant efficiencies and other operational benefits. For instance, SEPA will be able to draw on existing enforcement staff and site visits to streamline processes and reduce administrative burdens on landfill operators. Furthermore, it should be possible for SEPA to build tax return systems with existing permitting and data returns.

**Tax credit scheme**

47. The UK Landfill Tax Communities Fund (LCF) is a tax credit scheme that enables operators of landfill sites to contribute money to enrolled environmental bodies to carry out projects that meet environmental and community based objectives, and to offset their landfill tax liabilities up to a maximum of 6.8% of these liabilities. The scheme is intended to offset the dis-amenity of living within close proximity of a landfill site (for example see paragraph 16). The exiting scheme is part of the UK Landfill Tax arrangements and will cease to exist in Scotland from 1 April 2015.

48. The Scottish Government has announced its intention to establish a replacement for the landfill communities fund in Scotland, with operators able to offset their tax liabilities by contributing to the fund. It is intended that the proportion of an operator’s liabilities that can be offset will be increased by 10% from current levels, meaning that the existing UK cap of 5.6% of total liabilities will rise to 6.16% of liabilities. Rates will be set in subordinate legislation. If all landfill operators took full advantage of the proposed Scottish tax credit scheme, the effect would be to reduce revenues to the Scottish Government by £6.16 million for every £100 million of gross...
revenues. Under existing arrangements, revenues to the UK Exchequer would be reduced by a maximum of £5.6 million.

Cost Summary

49. Revenue Scotland and the Scottish Environment Protection Agency (SEPA) will collect, enforce and regulate the tax. Their total estimated costs, summarised from tables 3 to 8 above, are set out in Tables 9 and 10:

Table 9 Revenue Scotland costs (for both devolved taxes: Land and Buildings Transaction Tax and Scottish landfill Tax)

<table>
<thead>
<tr>
<th>Revenue Scotland</th>
<th>£</th>
</tr>
</thead>
<tbody>
<tr>
<td>Set-up costs</td>
<td>1.65m</td>
</tr>
<tr>
<td>Annual running costs</td>
<td>2.21m</td>
</tr>
</tbody>
</table>

Table 10 Collection and enforcement of Scottish Landfill Tax

<table>
<thead>
<tr>
<th>SEPA</th>
<th>£</th>
</tr>
</thead>
<tbody>
<tr>
<td>Set-up costs</td>
<td>540,000</td>
</tr>
<tr>
<td>Annual running costs</td>
<td>300,000</td>
</tr>
</tbody>
</table>

II. COSTS ON LOCAL AUTHORITIES AND OTHER PUBLIC BODIES

50. Local authorities and other public bodies, as organisations who produce waste and must contract to have it collected and treated or disposed of, are subject to UK Landfill Tax at present and will be subject to Scottish Landfill Tax under the Scottish system.

51. The costs of dealing with their waste depend on a number of factors, including:
   - how much materials can be diverted to recycling or reuse;
   - how much waste can be prevented; and
   - for waste that can’t be avoided or recycled or reused, the availability and costs of alternatives to landfill (e.g. incineration).

52. Costs will also be dependent on the rates set for Scottish Landfill Tax. Rates and bands will not be set until closer to the time at which they will come into force.

53. Across the public sector estate, local authorities are the largest UK Landfill Tax payer. This is simply because they must deal with Scotland’s household waste.

54. The Scottish Government does not currently hold any direct information on UK Landfill Tax paid by LA's or the public sector estate. To give an estimate of the amount paid by local authorities, the Scottish Government has used official waste reporting figures to assess the amount of waste landfilled by local authorities across Scotland and to estimate the tax receipts. Simple assumptions on the split between standard and lower tax rates have been used. Applying this approach, the Scottish Government estimates that around £86 million of the estimated £97 million paid in
Scotland in UK Landfill Tax in the 2010-11 financial year was paid by Scottish local authorities. The remainder is paid by other public sector bodies that generate waste, and by private sector operators.

55. Employing the same assumptions set out in Section A, the Scottish Government estimates that this Bill will cost local authorities in the region of £94m in tax in 2015-16, dropping to around £35m in 2025. However, as the tax already exists, there will be no significant change in net tax costs to local authorities or the wider public sector from this Bill.

56. As outlined at paragraph 29, estimating future Scottish Landfill Tax receipts is challenging due to the number of variables influencing waste behaviours, including the impact of improvements in recycling services, the impact of work to prevent waste and promote reuse, and the availability and costs of alternatives to landfill. This introduces significant uncertainties in forecasting tax receipts.

57. In terms of any net administrative and compliance costs, the Scottish Government does not expect that there will be a material change in costs falling on these bodies as a result of removing the UK tax system and introducing a Scottish system. The Scottish Government expects that Revenue Scotland and SEPA will consult end-users of the replacement tax system, as part of its development of the online system and that it will seek to provide systems that minimise administrative effort and costs.

III Costs on landfill operators

58. Landfill site operators will be responsible for paying the Scottish Landfill Tax. However, operators pass the cost on to businesses and local councils on top of normal landfill gate fees. VAT is charged on the landfill fees and on UK Landfill Tax. In future it will be charged on the Scottish Landfill Tax.

59. It is the Scottish Government’s intention to retain many elements of the administration procedures of the current UK tax as the system is well understood and has high compliance rates. With SEPA operating the tax there will be opportunities for some of the administrative burden on landfill operators to be reduced as elements of the environmental reporting system and taxation system are harmonized (paragraphs 56-57 of the Policy Memorandum provide further information on this).

60. There may be a small additional administrative burden on landfill operators who run sites both in Scotland and the rest of the UK. The Scottish Government does not foresee any significant additional administration costs of submitting returns and data to two systems. Furthermore, the Scottish Government expects that any additional burdens will be largely offset by the introduction of an electronic reporting system in respect of the Scottish Landfill Tax. This will have advantages over the current paper based system including:

- Extended deadlines – as the information can be compiled centrally faster,
- Faster repayments and credits,
- Easier for operators to keep track of their Scottish Landfill Tax account,
These documents relate to the Landfill Tax (Scotland) Bill (SP Bill 28) as introduced in the Scottish Parliament on 17 April 2013

- Instant online confirmation from Revenue Scotland,
- Personalised tax forms – reducing errors and confusion, for example removing irrelevant sections automatically.

61. Illegal dumping can produce a risk to human health, is bad for the environment and undercuts reputable organizations that uphold Duty of Care guidelines and abide by the Pollution Prevention and Control regulations. Taxing illegal disposals will act as a deterrent to such operations and drive material to legitimate businesses and reputable operators. By tackling the distorting effect of illegal operators in the waste and resources market, the long-term aim is to support continued investment by reputable companies to secure a sustainable network of facilities and infrastructure to provide alternatives to landfill and maximise the value of materials to Scotland’s economy.

IV COSTS ON OTHER BODIES, INDIVIDUALS AND BUSINESSES

62. When businesses (non-household waste producers) dispose of their waste they are subject to UK Landfill Tax. These UK Landfill Tax costs are passed on to waste producers through the costs charged by companies (or local authorities) collecting and disposing of their waste.

63. In terms of waste producers, there are two main sectors: commercial and industrial, and construction and demolition. Using the same data outlined in paragraph 54, the Scottish Government estimates that these sectors represent around 12% (or £11.64m) (2010-11) of the total tax take in Scotland. Construction and demolition waste is by far the largest waste stream in Scotland by weight. However, this waste stream is typically charged at the lower landfill tax rate, and its total tax contribution is less than for the commercial and industrial sector.

64. As outlined earlier, the Scottish Landfill Tax system will be broadly similar to the UK Landfill Tax. Employing the same assumptions set out in Section A, the Scottish Government estimates that this Bill will cost waste producers in the region of £13m in 2015-16, dropping to around £5m in 2025. However, as the tax already exists, there will be no significant change in net tax costs for businesses (waste producers) from this Bill.

65. As outlined in paragraphs 55 and 60, the Scottish Government does not expect the Scottish Landfill Tax to create any significant additional administrative costs for landfill operators that would be passed on to waste producers.

66. Other factors that will affect the amount of tax paid include changes in costs and availability of recycling services available to business, improvement in action to reduce waste, including those supported by bodies like Resource Efficient Scotland. The costs of managing waste will also change as alternative outlets to landfill become more readily available across Scotland. Finally, wider changes in the composition of waste, including the composition of packaging will affect the costs of waste for businesses.

14 Resource Efficient Scotland provides advice to businesses to help them save money by extracting maximum value from all the resources they consume- water, energy and materials.
67. In line with the principles of the tax, the revenue generated from dealing with the waste produced by businesses will instead support companies and industries that provide services to prevent waste, reuse products and materials, recycle materials back into the economy or recover energy from materials that can’t be recycled. The expectation is for the costs of these alternatives to landfill to diminish as the value of secondary materials increases, and as competition for these materials increases. For instance, the value of recycled plastic has increased from £107 (per tonne) in 2000 to £185 in 2011 and the value of recycled paper has increased from £32 (per tonne) in 2001 to £127 in 2011. Further information on trends in waste and resource management is provided in the Partial Business and Regulatory Impact Assessment.

**SUMMARY OF COSTS ARISING FROM THE BILL**

<table>
<thead>
<tr>
<th></th>
<th>Set-up costs £M</th>
<th>Annual running costs £M</th>
<th>Tax revenue 2015-16 £m**</th>
<th>Tax paid 2015-16 £m**</th>
</tr>
</thead>
<tbody>
<tr>
<td>Revenue Scotland *</td>
<td>1.65</td>
<td>2.21</td>
<td></td>
<td></td>
</tr>
<tr>
<td>SEPA</td>
<td>0.54</td>
<td>0.3</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Scottish Government</td>
<td></td>
<td></td>
<td>107</td>
<td></td>
</tr>
<tr>
<td>Local authorities</td>
<td></td>
<td></td>
<td></td>
<td>94</td>
</tr>
<tr>
<td>Other waste producers</td>
<td></td>
<td></td>
<td></td>
<td>13</td>
</tr>
</tbody>
</table>

* Includes both devolved taxes: Land and Buildings Transaction Tax and Scottish Landfill Tax
** Predicted tax revenue based on the assumptions outlined in Section A on tax rates and trends in waste. The estimated costs on local authorities and other waste producers are comparable with the costs under the current UK landfill tax.
These documents relate to the Landfill Tax (Scotland) Bill (SP Bill 28) as introduced in the Scottish Parliament on 17 April 2013

SCOTTISH GOVERNMENT STATEMENT ON LEGISLATIVE COMPETENCE

On 17 April 2013, the Cabinet secretary for Finance, Employment and Sustainable Growth (John Swinney MSP) made the following statement:

“In my view, the provisions of the Landfill Tax (Scotland) Bill would be within the legislative competence of the Scottish Parliament.”

PRESIDING OFFICER’S STATEMENT ON LEGISLATIVE COMPETENCE

On 17 April 2013, the Presiding Officer (Rt Hon Tricia Marwick MSP) made the following statement:

“In my view, the provisions of the Landfill Tax (Scotland) Bill would be within the legislative competence of the Scottish Parliament.”
LANDFILL TAX (SCOTLAND) BILL

POLICY MEMORANDUM

INTRODUCTION

1. This document relates to the Landfill Tax (Scotland) Bill (“the Bill”) introduced in the Scottish Parliament on 17 April 2013. It has been prepared by the Scottish Government to satisfy Rule 9.3.3 of the Parliament’s Standing Orders. The contents are entirely the responsibility of the Scottish Government and have not been endorsed by the Parliament. Explanatory Notes and other accompanying documents are published separately as SP Bill 28–EN.

POLICY OBJECTIVES

Overview

2. The Bill is one of three related Bills being brought forward as a consequence of measures enacted in the Scotland Act 2012 (“the 2012 Act”). Under the terms of the 2012 Act, the Scottish Parliament has responsibility for taxes on land transactions and disposals to landfill. This Bill deals with the latter responsibility and makes provisions for a Scottish tax on disposals to landfill, to be called the 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.

3. The Scottish Government intends to replace the UK Landfill Tax regime with legislative provisions for a Scottish Landfill Tax that will come into force the day after the UK Landfill Tax is disapplied from Scotland. It is intended that the Land and Buildings Transaction Tax (“LBTT”) will come into force at the same time. The administrative arrangements for both the Scottish Landfill Tax and LBTT will be set out in the proposed Bill on tax management, planned for introduction later in 2013. Details of the proposals were outlined in a consultation on tax management which has now closed. The UK Government will make a reduction to the Scottish block grant to offset the expected income from the two devolved taxes so that the Scottish Government’s budget will remain broadly as it would have been.

4. The Bill makes provision for the Scottish Ministers to be the Tax Authority for the purposes of Scottish Landfill Tax, but also enables Ministers to make an Order designating another Tax Authority. The Cabinet Secretary for Finance, Employment and Sustainable Growth indicated in a statement to the Parliament on 7 June 2012 that a new body, Revenue

1 http://www.scotland.gov.uk/Publications/2012/12/5404.
Scotland, would be established as Scotland’s Tax Authority for devolved taxation. Revenue Scotland now exists as an administrative function within the Scottish Government. The Government is consulting on provisions to establish Revenue Scotland on a statutory footing. Once Revenue Scotland has been given a statutory basis and a separate legal identity, the intention is that Ministers will nominate Revenue Scotland as the Tax Authority for Scottish Landfill Tax by using subordinate legislation powers provided by section 34(2) of the Bill. The Scottish Government has also indicated that it intends that the administration and collection of the Scottish Landfill Tax will be undertaken by the Scottish Environment Protection Agency (“SEPA”) on behalf of Revenue Scotland. SEPA already visits and inspects landfill sites as part of its environmental regulation duties, but landfill tax administration and collection will be a new function.

5. By drawing on SEPA’s existing knowledge and expertise in regulating landfill sites, this approach to administration offers opportunities for significant efficiencies and other operational benefits. For instance, SEPA will be able to draw on existing enforcement staff and site visits to streamline processes and reduce administrative burdens on landfill operators. Furthermore, it should be possible for SEPA to build tax return systems with existing permitting and data returns.

6. The Scottish Landfill Tax will result in tax revenue that will be used to further the Scottish Government’s purpose – to create a more successful country with opportunities for all of Scotland to flourish, through increasing sustainable economic growth. In keeping with these ends, this Bill provides for a tax which will:

- establish a tax system that supports the rationale for the use of taxes and charges in environmental policy so as to compensate for the impacts on the environment (and perhaps people), which are side-effects of processes of production and consumption, and the costs of which would not otherwise enter into the calculations of those responsible for the processes;
- ensure the tax aligns with the aims of the Zero Waste Plan, including promoting high levels of recycling and diverting material/resources from landfill into more sustainable forms of use or treatment;
- help ensure that market distortions caused by illegal operations through which tax is evaded do not undermine legitimate business ventures;
- establish a tax that is simple and efficient for landfill operators to understand and comply with, including for those operating landfill sites across the UK, and which is transparent to operators and to wider stakeholders;
- establish a system of collection and enforcement that is aligned with the principles of better regulation;
- incorporate a tax credit scheme that provides an incentive to operators of landfill sites to contribute financially to projects that meet environmental and social objectives;
- create a system that is cost effective to operate in relation to the revenues generated.

---

2 http://www.scotland.gov.uk/News/Speeches/taxation07062012.
This document relates to the Landfill Tax (Scotland) Bill (SP Bill 28) as introduced in the Scottish Parliament on 17 April 2013

7. The current UK Landfill Tax reflects the significant impact that landfilling has on the environment – greenhouse gas emissions, risk of soil and water pollution through chemical leaching and general disamenity including noise, odour and dust. Across the UK, the tax saves in the region of 0.7 million tonnes of carbon dioxide equivalent emissions a year.3

8. By ensuring that waste producers incorporate the full cost of waste disposal into business decisions, UK Landfill Tax encourages the development of sustainable waste management options, including recycling and anaerobic digestion. Since 1997, the tax has contributed to a 32% reduction in the proportion of waste sent to landfill and a similar increase in recycling. An increase in landfill costs has encouraged innovation in the waste management industry and created the market conditions needed to drive investment in alternatives to landfill. The Landfill Tax escalator, introduced in 2007, has seen the standard rate of UK Landfill Tax rise by £8 per tonne each year to a maximum of £80 in 2014/15. This approach has provided industry with a long-term investment horizon to encourage investment in alternative treatment technologies, including recycling, reuse and facilities to recover energy and heat from waste.

9. In his statement to the Parliament on 7 June 2012, the Cabinet Secretary for Finance, Employment and Sustainable Growth described four principles underlying the Government’s approach to taxation – certainty, convenience, efficiency and proportionate to the ability to pay. The Scottish Government has sought to ensure that these principles are reflected throughout the provisions in the Bill. A Scottish Landfill Tax will deliver certainty because it has been designed to be as simple as possible and to better reflect Scots law and practice, including distinctive environmental law and regulatory arrangements.

10. To prepare for the management of the Scottish Landfill Tax - and to make provision for any further taxes which could be devolved in the future - arrangements need to be made for the administration and collection of the tax, for compliance, for appeals against decisions of the Tax Authority and for other elements of operating taxes such as tackling tax avoidance and dealing with taxpayers’ information. Much of the legislation relating to collection, compliance and appeals will be common to LBTT, to the Scottish Landfill Tax and to any further taxes devolved to Scotland in future, as provided for in the 2012 Act. To ensure that these common provisions are coherent and accessible and, where possible, to promote simpler and more user-friendly tax legislation, the Scottish Government intends to introduce a Tax Management Bill in autumn 2013 to establish the overall framework for tax administration in Scotland (subject to Parliamentary approval).

Background on landfill operations

11. Landfill is the depositing of unwanted or discarded material in or on the ground, which is then normally covered over with soil. The material then starts to break down, releasing polluting gas to the atmosphere and a liquid, referred to as leachate, which can enter watercourses, the groundwater or contaminate surrounding soil. Modern landfill sites have engineered facilities to control these pollutants. The landfill is lined to collect the leachate which is then treated and the landfill is capped to prevent water ingress to reduce leachate formation. Gas is usually collected

This document relates to the Landfill Tax (Scotland) Bill (SP Bill 28) as introduced in the
Scottish Parliament on 17 April 2013

from a landfill to produce electricity and/or heat. The management of landfill sites is controlled
by Pollution Prevention Control permits issued by SEPA. Such permits stipulate conditions
which must be met in order to mitigate and prevent pollution of the environment and harm to
people.

12. The EU Landfill Directive (1999/31/EC) includes targets for the reduction of the
landfilling of biodegradable municipal waste; requirements for the pre-treatment of waste prior
to landfilling; a ban on landfilling certain wastes (notably liquid wastes and tyres); and provides
tight definitions of wastes which may, in certain circumstances, be considered to be inert.

13. All but the smallest and remotest landfills have been brought within the full controls
introduced by the EU Integrated Pollution Prevention and Control (IPPC) Directive (96/61/EC).

14. The EU Council Decision on Waste Acceptance Criteria (WAC) in 2002 has set out the
standards that waste must meet to be accepted at the three classes of landfill - landfill for
hazardous waste, landfill for non-hazardous waste, and landfill for inert waste.

15. The European Waste Catalogue (EWC) introduced in 2002 has allocated to each waste a six
digit code based on either the source that generated the waste or the type of waste.

16. In Scotland, a system to regulate, prevent and control pollution through permits is in
place. This system imposes specific requirements regarding landfill management. For example,
the permit will specify standards that must be achieved to reduce or prevent pollution. It will
identify requirements for the site’s design, construction, operation and aftercare.

17. The Regulatory Reform (Scotland) Bill will, subject to parliamentary approval, replace
the current regulatory regime under the Pollution Prevention and Control Act 1999, and is also
intended to replace the waste management licensing regime in Part 2 of the Environmental
Protection Act 1990. Unlike the 1999 Act which has a single class of authorisation – the
“permit” – the Bill will provide for tiered regulation by way of permit, registration, notification
or general binding rules, with “authorisation” used as a term to cover all of these tiers.

18. It is expected that landfill operations will be regulated at the top tier, through a
requirement for permits.

19. The Waste (Scotland) Regulations 2012 (S.S.I. 2012/148) have brought in substantive
changes to how waste and materials are collected, processed and recycled back into the
economy. Specific regulatory measures include:

- a ban on materials collected separately for recycling going to landfill or incineration
  (from 1 Jan 2014); and

- a ban on biodegradable municipal waste going to landfill, thus helping to substantially
  reduce harmful emissions of methane (from 1 Jan 2021).

20. These Regulations will, over time, significantly change the amount and composition of
waste going to landfill in Scotland. Less material will go to landfill, and the reduced amounts
going to landfill will be biologically-stabilised materials that cannot be recycled or industrial wastes for which there is currently no alternative treatment.

21. Landfill sites are likely to be fewer in the future, although some sites will remain open for longer so that they can complete their full cycle to restoration and closure. To meet the reduced need for landfill in future, the Scottish Government is working with SEPA to review future provision as many landfills cease to operate or otherwise become unviable.

22. There have also been many developments in how landfill sites are operated. For example, there are now advanced containment systems and new systems for landfill gas control and recovery. Technological advances are also continually providing alternatives to landfill - for instance, food waste and other organic materials can be processed into fertilisers while also creating energy, and even disposable nappies can now be recycled into plastics and a card substitute.

ZERO WASTE POLICY - AN ECONOMIC OPPORTUNITY FOR SCOTLAND

23. Secure access to reliable and economical supplies of resources is essential for the Scottish economy to prosper, and this means finding new and innovative ways to conserve materials while also finding ways to cycle materials efficiently back into supply chains and the economy.

24. The Zero Waste agenda, as enshrined in the Zero Waste Plan⁴ and the Waste (Scotland) Regulations 2012, is an ambitious programme of change that aims to create an environment where the best use is made 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.

25. Preventing and designing out waste is also a vital step in Scotland’s journey toward a low carbon economy. A recent UK study⁵ estimated that 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 waste. Where waste cannot be prevented, creating efficient routes to cycling 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 economic growth.

26. The Scottish Government is, therefore, committed to supporting the shift toward ‘closed loop systems’ that maintain and enhance the value of the resources that flow through the economy. This is about much more than simply minimising landfill and getting better at end-of-life recycling. It is about creating efficient ways to recycle materials back into our economy, whether it be through reuse, refurbishment, remanufacturing, recycling or the recovery of energy (for instance, through the anaerobic digestion of food waste).

27. 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, a loan fund, and large and small-scale capital grants to stimulate investment and innovation across the sector.

28. The Scottish Landfill Tax will play a vital role in maintaining the economic stimulus required to harness these opportunities and steer the Scottish economy toward a prosperous future with secure access to resources.

Alternative approaches

29. The main alternative option to introducing the proposed Scottish Landfill Tax is to do nothing – i.e. not to replace UK Landfill Tax when it is disapplied in Scotland at the end of March 2015. This would mean that, from April 2015, taxpayers would no longer need to pay Landfill Tax in Scotland. However, as there would still be an adjustment in the Scottish block grant to reflect the fact that UK Landfill Tax was no longer being collected in Scotland, this would result in a reduction in the Scottish budget and damage to public services in Scotland.

30. The Scottish Government has decided to maintain the economic, environmental and budgetary effects of UK Landfill Tax by bringing forward proposals for the Scottish Landfill Tax. Some of the characteristics of the provisions in the Bill are very similar to the existing UK Landfill Tax legislation. In other areas, changes are proposed that will better serve the interests of Scotland - for instance, the creation of a Tax Authority and delegation of powers in sections 34 and 35 of the Bill and the definitions of landfill sites and operators of landfill sites in section 12 of the Bill. When a policy decision was required either to continue characteristics of the existing tax or to change them, careful consideration has been given to alternatives and decisions made on the basis of the available evidence. At the appropriate points, this Memorandum refers to these alternative approaches and explains the Scottish Government’s chosen position.

CONSULTATION

31. Discussion and debate on the provisions of this Bill began with the publication of a consultation document Protecting our resources – a consultation on the Scottish Landfill Tax on 25 October 2012. The consultation document included 17 questions, as follows:

- Questions 1 and 2 covered the role of environmental taxes generally, the promotion of sustainable growth and the opportunities for other environmental taxes such as the Aggregates Levy.

- Questions 3-10 related to the general approach and the structure of the tax. The questions looked at refinements to the list of lower tax-rated material and any materials which could be rated differently, and also asked for suggestions for any changes to exempt material. Tax measures to help address illegal dumping were also discussed. Clarity was sought on the benefits of linking definitions of taxable material and activities to existing waste management terms. The consultation also sought views on the benefits of an assessed tax system and the scope of the Tax Authority’s audit powers.

6 http://www.scotland.gov.uk/Publications/2012/10/3524
This document relates to the Landfill Tax (Scotland) Bill (SP Bill 28) as introduced in the Scottish Parliament on 17 April 2013

- Questions 11-15 sought views on maintaining and extending the Landfill Communities Fund (“LCF”). This included seeking views on alternative delivery or funding approaches, the benefits of an independent LCF regulator, maintaining or altering the eligibility criterion (currently within a 10 mile radius of a landfill site) and using a portion of the fund to support strategic environmental goals.

- Questions 16-17 covered business and regulatory, and equalities, draft impact assessments.

32. The consultation allowed a wide range of people and representative bodies with an interest in and experience of tax and environmental matters to comment. A total of 68 responses were received from individuals and organisations. Copies of the non-confidential responses will shortly be accessible through the Scottish Government’s Library (0131 244 4565) or website. Zero Waste Scotland was appointed by the Scottish Government to undertake an analysis of the responses received to the consultation and its report will be published on the Scottish Government’s website.

33. The Scottish Government worked with a range of organisations, bodies and groups to develop the proposals contained in the Bill. During the consultation period, public discussion group events were held in Stirling, Edinburgh and Glasgow to enable stakeholders with an interest in this matter to communicate their views. Two stakeholder liaison meetings were also held, and have included the Scottish Environmental Services Association, SEPA, HMRC, Scottish Environment Link, local authorities, COSLA, the Chartered Institute of Waste Management, Forestry Commission, Scottish Landfill Communities Fund Forum, SCORE (a Distributive Environmental Body which is registered to give grants to Environmental Bodies), landfill operators and waste management companies, and Revenue Scotland.


35. Extensive discussions have taken place with SEPA. As well as acting as the Scottish environment regulator, SEPA also has an interest as the proposed collection agency for the Scottish Landfill Tax, with powers that the Scottish Ministers intend Revenue Scotland to delegate. The Scottish Government has also worked closely with HMRC on current arrangements for UK Landfill Tax and on the proposed ‘switch-off’ of the UK Landfill Tax in 2015. Zero Waste Scotland has also been in close liaison with the Scottish Government as a consultative body.

Summary of responses

36. Issues raised during the consultation that are relevant to specific measures in the Bill are discussed in more detail below, including alternative approaches that were considered. The consultation generated a wide range of views. However, not all were directly relevant to the Bill and so not all of them are referenced here. A summary of responses to the consultation is set out below:
The tax system and taxable disposals

- The overwhelming majority of respondents confirmed that environmental tax policy is important in contributing to the sustainable growth of Scotland’s economy.
- Most respondents were happy with the existing list of materials subject to the lower rate of tax, but some suggested that these materials should be reviewed, or linked to other environmental legislation. Having clear definitions was seen as important.
- There were varying views on whether there should be more than two rates for taxing materials going to landfill. Several respondents suggested that asbestos should be subject to a reduced tax rate, or be exempt, to encourage safe and proper disposal to landfill. Some respondents also suggested that it might be desirable to apply higher tax rates to waste streams such as drill cuttings and air pollution control residues, such as fly ash, with a view to driving these further up the ‘waste hierarchy’, and away from landfill.
- The majority of respondents felt that tax should be applied to illegal dumping as a way of discouraging further this damaging activity, by providing that the tax was payable on unauthorised disposals. Some noted that tax receipts could be used to fund better enforcement.
- Most respondents agreed that making a clear distinction between taxable and non-taxable activities on landfill sites was important. Some wished to define taxable activities while others preferred to define all deposits as taxable and list exempt activities.
- The majority of respondents wished to see the current self-assessment system maintained.

Tax credit scheme

- Overwhelmingly, respondents supported a Landfill Communities Fund for Scotland under the new arrangements. There was support for increasing the maximum proportion of tax liabilities that an operator could offset by contributions to the fund.
- Most respondents thought that administration costs could be reduced, with the savings reinvested in good causes.
- Some respondents wanted a proportion of tax credits to be used to support strategic environmental outcomes, while others pointed out that outcomes such as attenuating climate change and promoting renewables are already supported by other funds.
- Generally respondents supported retaining the Distributive Environmental Bodies who distribute monies on behalf of landfill operators, but wanted more flexibility in the way they are regulated.
- Most respondents agreed that an independent regulator of the Landfill Communities Fund was important but there were many views on who this should be - Entrust, SEPA, Zero Waste Scotland, Audit Scotland and Revenue Scotland were all suggested.
- The majority of respondents supported retaining the qualifying criterion of a maximum 10 mile radius from a landfill site. However, it was noted that this
eligibility was a guideline. Some respondents thought that it should not apply to biodiversity projects.

**BRIA and EIA**

- Those who responded on the Business Regulatory Impact Assessment supported option 2 - maintaining a self-assessed tax.
- Respondents offered little in the way of a response to the Equalities Impact Assessment (EQIA). A further EQIA will be undertaken ahead of subordinate legislation to establish a replacement Landfill Communities Fund.
- Respondents to the consultation process helped significantly to shape the content of the Bill. The Scottish Government is grateful to all who contributed their time, energy and knowledge to the process.

**BILL CONTENTS**

37. The Bill makes substantive provision in five areas:

- **PART 1** establishes that the tax is to be called the Scottish Landfill Tax. This is intended to avoid confusion with references to the tax in any UK legislation and gives an overview of the tax.
- **PART 2** contains the key concepts underlying the tax, including defining what a taxable disposal is, which disposals are exempt from the tax, how to calculate the tax due, who is liable to pay tax and when credit is available in relation to tax.
- **PART 3** covers administrative requirements, including registration, accounting periods, dealing with overpayment, defining the location of specified material on landfill sites, restoration issues and the requirements for record keeping and the registration of persons carrying out taxable activities.
- **PART 4** defines the Tax Authority and establishes how functions may be delegated to SEPA and how directions may be made. It also establishes the right of appeal.
- **PART 5** of the Bill provides the parliamentary procedure to which subordinate legislation made under the Bill will be subject in due course and sets out other final provisions.

38. A number of policy decisions will be set out in subordinate legislation, including tax rates, adding further materials to the current UK exempt list (for example, asbestos, to encourage legal disposal) and the administrative arrangements for the replacement Landfill Communities Fund in Scotland.

**PART 1: THE TAX AND OVERVIEW**

39. Part 1 of the Bill defines the tax as the Scottish Landfill Tax, to avoid confusion with the UK Landfill Tax in other parts of the United Kingdom. It also introduces the four other parts of the Bill.
PART 2: KEY CONCEPTS

Taxable disposals

40. What constitutes a chargeable disposal of material is central to the effective operation of the Scottish Landfill Tax. A clear definition will prevent uncertainty and ensure clarity and fairness for all operators. The Scottish Government has, therefore, drawn on the approach from the existing UK Landfill Tax to create the basic framework for what constitutes a taxable disposal. Taxes should only be charged on taxable disposals, with a taxable disposal being a disposal of material as waste by way of landfill and at a landfill site.

41. UK Landfill Tax is currently charged by weight on the basis of two rates - a standard rate and a lower rate for certain qualifying materials. Qualifying materials are listed in the Landfill Tax (Qualifying Material) Order 2011 (S.I. 2011/1017 as amended by S.I. 2012/940). They are generally considered to be ‘inert materials’ — materials that have a minor environmental impact (for example, non biodegradable) and their inclusion is based on a set of criteria defined by the Treasury and published by HMRC.

42. The Scottish Government has announced that it will set tax rates at a level no lower than those in place for the UK Landfill Tax. However, the tax rates will not be specified on the face of the Bill, to allow flexibility and so that changes to rates can be made in future without the need for primary legislation. The Bill provides for the Scottish Ministers to specify tax rates by way of an order. (By 2015 the standard rate is expected to be £80 per tonne and the rate applying to ‘qualifying’ material is expected to be £2.50 per tonne.)

43. The Bill proposes that the Scottish Ministers should have power to identify materials subject to the lower tax rate by order, and to vary the list (or lists) of material qualifying for different tax rates. It is expected that, at least initially, the same list of qualifying materials as is specified in the Landfill Tax (Qualifying Material) Order 2011 will be used. The Bill permits Ministers to establish more than two rates in subordinate legislation. This means that in future Ministers could introduce a third tax band for “stabilised” materials at a tax rate that was between the two current rates.

44. The Scottish Government wishes to retain the requirement to set, publish and consider criteria for identifying material qualifying for a lower rate of tax. This approach can be simplified by giving the Scottish Ministers the responsibility to set, review, revise and publish criteria that are to be used in identifying materials qualifying for a lower rate of tax rather than the standard rate. The Scottish Ministers should have regard to these criteria in making an order relating to lists of materials to be subject to the lower and standard tax rates.

45. Recent prosecutions and on-going investigations indicate that unauthorised landfill sites continue to operate in Scotland on a large scale. While SEPA has power to instigate enforcement action on these sites, currently HMRC does not have power to collect tax from unauthorised operators as the sites are not licensed or permitted. This means that unauthorised dumping results in evasion of UK Landfill Tax. The related court fines, which are usually smaller than the tax evaded, make unauthorised activity financially attractive.
46. These unauthorised sites increase the risk of pollution of the environment, create an unfair commercial environment for reputable operators, remove potential recyclates out of the economy, undermine the aim of achieving a sustainable Scotland and reduce the amount of tax revenue raised. Defining illegal disposals as unauthorised and taxable within the Scottish Landfill Tax will help to rebalance this.

47. The Bill incorporates provisions that will allow a wide range of unauthorised waste deposits to be captured by the tax regime. This includes large-scale operations involving thousands of tonnes of waste, disposals which should have a permit or license but do not, and disposal activities which would never be given a permit or license due to their hazardous nature. It will also include activities that misuse regulatory landfill exemptions, for example very large amounts of material being deposited to form “recreational activities” for which exemptions from licensing are claimed, but which are never actually established.

48. The Bill includes provisions to enable Ministers to make it clear that littering, domestic disposals and other small-scale activities do not incur tax.

49. The Bill defines the taxable person who is liable to pay the tax. For licensed or permitted sites, defining the taxable person is straightforward: it is the holder of the license or permit. For unlicensed or unpermitted sites, where disposal is likely to be unauthorised, the taxable person should be the person who is carrying on, causing or knowingly permitting an activity and who would be required to seek a license or permit were the activity to be regulated normally. This should help to ensure that Revenue Scotland and SEPA can identify a person or entity responsible for paying tax on unauthorised or unregulated disposals. The Scottish Government will also ensure that terminology originating from the Pollution Prevention and Control (Scotland) Regulations 2012 and the Waste Management Licensing (Scotland) Regulations 2011, such as “licensed, permitted or authorised”, reflect those changes proposed by the Regulatory Reform (Scotland) Bill and are incorporated into the Bill.

50. The UK Landfill Tax regime sets out activities and materials that are exempt and are, therefore, not taxable disposals. The Scottish Landfill Tax will start with an identical set of exemptions but will have a simpler and more efficient system for adjusting and removing exemptions thereafter. This approach will support the transition to a Scottish system, while allowing flexibility to adapt swiftly to changes in industry practices or Scottish circumstances.

51. Landfill is an environmentally damaging activity, and can affect adversely those living close to landfill sites. Detrimental impacts can affect wildlife, air quality (noise and odour), watercourses as well as producing unsightly litter from wind-blown and vermin problems. Methane emissions from landfill sites also contribute to climate change, something that affects us all. The Landfill Communities Fund was set up in 1996 to provide funding for community or environmental projects in the vicinity of landfill sites. The fund is created by payments under a tax credit scheme through which landfill operators can give a maximum percentage of their UK Landfill Tax liabilities (currently 6.8%) to community projects through the Landfill Tax Communities Fund and receive a 90% tax credit in return.

52. The Landfill Communities Fund has been established as an effective tool for delivering benefits to communities affected by the proximity of landfill operations since 1996. The Bill
provides for this approach to continue by closely following the existing UK Landfill Tax credit system. Maintaining this credit scheme will allow environmental bodies to continue to operate in Scotland and will maintain systems for funding existing projects, as well as supporting new projects going forward.

53. The credit rates and details of the administrative arrangements underpinning a Scottish Landfill Communities Fund will not be specified in the Bill. Instead, powers will be established under which the Scottish Ministers may make provision through subordinate legislation. The Scottish Government intends to consult widely before using these powers to make subordinate legislation.

54. The Bill stipulates that environmental bodies receiving funding must be approved by the Tax Authority. The intention is to ensure that the money they receive is spent appropriately on activities to protect the environment or on other prescribed activities approved by the Tax Authority, and that monies may be recovered if not spent on prescribed activities. The Scottish Government intends to set out details of prescribed activities through subordinate legislation, and in close consultation with organisations in Scotland that currently receive support from the UK fund. The details of the regulatory regime will be set out in subordinate legislation, and the Scottish Government intends to consult on its proposals.

Alternative approaches

55. The UK Landfill Tax system has been in place since 1996 and is well established and understood by operators and clients of landfill sites. The tax has not only proven successful in changing attitudes and behaviour toward waste, but has also helped establish the stable policy landscape that underpins long-term investment decisions on infrastructure and collection systems. An alternative approach would be to not replace UK Landfill Tax in Scotland in April 2015. This approach would however encourage significant volumes of waste to flow from elsewhere in the UK to Scotland where there would be no Landfill Tax and the costs of landfill would be substantially lower. Although this could be mitigated to some degree through tighter controls on landfill operations, Scotland would risk becoming the UK home of landfill. Without a Landfill Tax in Scotland, the market condition needed to stimulate investment in recycling and infrastructure to provide alternatives to landfill would be undermined, significantly slowing progress toward Scotland Zero Waste aims.

56. Drawing on the existing UK Landfill Tax provisions while accommodating specific changes for Scotland is the preferred option. The UK Landfill Tax is well understood and operates well and as intended (driving material away from landfill and up the waste hierarchy). The Scottish Government, in introducing the new Scottish tax regime, does not, therefore, intend to pursue significant changes to the form or structure of the existing tax regime. This will ensure that the stable market conditions needed to support long-term investment are maintained. However, in establishing the Scottish Landfill Tax, the Scottish Government will pursue refinements or enhancements to support effective operation in Scotland.

57. The Scottish Government is committed to delivering the replacement tax regime on time and in a way that supports regulatory stability following the withdrawal of the UK system in Scotland. In establishing administrative arrangements, the Scottish Government is also
committed to ensuring that all guidance, policy and statutes on the operation of the tax are developed and issued in close liaison with industry and other stakeholders and are brought in with sufficient lead times for the industry and operators to respond effectively.

Consultation

58. The majority of respondents supported proposals for a Scottish Landfill Tax that is similar in structure and form to the existing UK Landfill Tax, but with key revisions to suit conditions in Scotland. Many respondents supported including unauthorised landfill sites within the scope of the new tax to ensure legitimate businesses were not undercut by unauthorised disposals.

59. All respondents supported the proposal to maintain a tax credit scheme to support local communities affected by landfill operations and to carry out projects to offset the environmental damage caused by landfill operations.

PART 3: ADMINISTRATION OF THE TAX

Overview

60. The Scottish Landfill Tax will be administered by Revenue Scotland. While Revenue Scotland has been set up administratively within the Scottish Government, by 2015, in line with international best practice, it is expected to have a separate formal statutory basis under legislation to be included in the proposed Tax Management Bill. This will establish the body’s operational independence from the Scottish Ministers and will set its governance, accountability arrangements and structure, subject to Parliamentary approval.

61. It is proposed that Revenue Scotland will work with SEPA, Scotland’s environmental regulator, on the administration of the Scottish Landfill Tax. This offers advantages in terms of flexibility and greater scope for efficiencies which can reduce costs both for operators and for the public sector.

62. SEPA already collects data from all landfill sites in Scotland as part of the permitting process and is knowledgeable about the type and quantity of material being deposited and likely to incur tax. This knowledge can be utilised to achieve efficiencies and reduce the burden on operators. SEPA is committed to developing e-registration systems to enable the majority of transactions to be submitted electronically. Working with Revenue Scotland, SEPA will also develop an electronic system to register, receive payments and administer tax returns. This will enable SEPA to use the synergies available from combining payment and registration into one system, eliminating duplication and unnecessary effort to create a simpler, end-to-end approach to processing the Scottish Landfill Tax to the advantage of both taxpayers and government.

63. Working with SEPA and Revenue Scotland, the Scottish Government will ensure that the Scottish Landfill Tax is delivered on time and supported by a smooth transition from the current UK Tax. Improvements to the operation of the tax will be made by means of this Bill, while others may be brought in through the Tax Management Bill or through the design of the administration and IT arrangements for collecting and enforcing the tax.
Alternative approaches

64. Several options were considered for the administration of the Scottish Landfill Tax. The three principal options were: contracting the task to HMRC; administration by a new Tax Authority; or using an existing Scottish body. The Scottish Government examined the option of contracting the work to HMRC carefully and concluded (as confirmed to the Scottish Parliament Finance Committee) that using HMRC would be more expensive than using existing Scottish agencies to collect the two devolved taxes on behalf of Revenue Scotland. The Scottish Government also noted that delegating administration to HMRC would be likely to restrict the Scottish Government’s ability to introduce devolved Scottish taxes that were in any material respect different from the existing UK taxes, or that at least such changes would increase costs. The Scottish Government’s decision was announced in the Cabinet Secretary’s statement on 7 June 2012.

Tax returns and payment arrangements

65. The Bill makes provision for a tax which will be as simple as possible to understand and pay, and which will place the minimum administrative burden on taxpayers, their agents and the Tax Authority.

66. The Scottish Government intends that, as far as possible, all tax returns for the Scottish Landfill Tax should be submitted and tax paid electronically. Submitting returns and payments online will combine and speed up processes and allow the collection process to operate more efficiently by minimising errors or omissions in tax returns (for example, the online system could be designed so as to require all relevant fields to be completed, and could query out-of-range values in these fields). An increasing proportion of tax has been collected electronically in the UK in recent years. The Scottish Government’s proposals do not, therefore, represent a significant change from the existing arrangements. The general scheme proposed is that a person who carries out taxable activities must be registered, and registered persons must submit accounts in such periods as are determined by Ministers in regulations. Supporting provisions that are similar to the existing UK Landfill Tax regime have been incorporated into the Bill, including the ability to return overpaid taxes, and a power for Ministers in regulations to require the provision of a ‘non disposal area’ within a registered landfill site for storage of material falling within prescribed descriptions that is not for disposal in the landfill site.

Consultation

67. The consultation responses indicated a strong preference from landfill operators to maintain many of the operational aspects of the current UK tax regime. The UK Landfill Tax has been in place since 1996 and the system has evolved over this time into one that appears to be well understood by those involved. Over this time, a number of refinements have been made to the tax, some in response to legal cases and others to close actual or potential loopholes. In these circumstances, it is appropriate for the Bill to maintain many aspects of the existing regime.

This document relates to the Landfill Tax (Scotland) Bill (SP Bill 28) as introduced in the Scottish Parliament on 17 April 2013

PART 4: GENERAL AND INTERPRETATION

Policy objectives

68. The Bill enables the Scottish Ministers as the Tax Authority to collect Scottish Landfill Tax, and provides for Ministers to be able to transfer these Tax Authority powers to another body, such as Revenue Scotland once it is a separate entity. The Bill also provides powers for the Tax Authority to delegate functions to SEPA.

69. The Scottish Government has decided that Revenue Scotland will work with two well-established and respected organisations to administer the initial two devolved taxes: SEPA to administer disposals to landfill and Registers of Scotland to administer LBTT.

70. These partnerships will offer further opportunities for Scotland to make tax collection arrangements that respond to needs and priorities in Scotland, drawing on the relevant knowledge and expertise within SEPA and Registers of Scotland to maximise efficiency and deliver greater simplicity. Using SEPA to administer the Scottish Landfill Tax will enable SEPA to link its existing regulatory role for landfill sites with tax collection duties. This could include using existing enforcement staff to carry out combined site visits to streamline processes and reduce administrative burdens on landfill operators. Furthermore, SEPA is already responsible for data returns from landfill sites. Revenue Scotland working with SEPA and Registers of Scotland will also ensure that clear advice and guidance, tailored to Scottish circumstances, is available to help taxpayers and their advisers understand the new system and any changes in processes for submitting tax returns and payments.

Alternative approaches

71. The Scottish Government examined carefully the different options for administering Scottish Landfill Tax and other devolved taxes, including the option of contracting the work to HMRC. The Scottish Government has concluded that using HMRC would be a more expensive option than using existing Scottish agencies to collect the two devolved taxes. Concerns over the ability of HMRC to provide the necessary degree of flexibility to make changes to taxes in the future were also an important consideration. In June 2012, the Cabinet Secretary for Finance and Sustainable Growth announced the establishment of Revenue Scotland to oversee the administration of the devolved taxes in Scotland. In line with international best practice, Revenue Scotland will be operationally independent and its governance enshrined in legislation by 2015.

Consultation

72. Some respondents raised concern regarding SEPA acting as a regulator and a tax collector, suggesting that this could result in conflicts of interest. The Scottish Government does not believe that a material conflict of interest is likely to arise. SEPA already regulates many different regimes on sites without conflict. The Scottish Government, along with the majority of respondents, is attracted by the potential for savings, greater efficiency, and greater clarity through combining the roles of the independent regulator with that of a tax collection agency. This is especially so since SEPA already has skills and expertise in dealing with landfill sites, data returns and tackling illegal activities. The Bill reflects these considerations.
This document relates to the Landfill Tax (Scotland) Bill (SP Bill 28) as introduced in the Scottish Parliament on 17 April 2013

EFFECTS ON EQUAL OPPORTUNITIES, HUMAN RIGHTS, ISLAND COMMUNITIES, LOCAL GOVERNMENT, SUSTAINABLE DEVELOPMENT ETC.

Equal opportunities

73. A draft partial EQIA was included in the Scottish Landfill Tax consultation document Protecting our resources – a consultation on the Scottish Landfill Tax published in October 2012. A final EQIA will be published separately by the Scottish Government in due course.

74. The Scottish Government considers that the Bill does not have an adverse impact on the basis of age, sex, race, gender reassignment, pregnancy and maternity, disability, marital or civil partnership status, religion or belief or sexual orientation.

Human rights

75. Taxation is concerned with the public nature of the relationship between the taxpayer and the Tax Authority and not with civil property rights (see Ferrazzini v. Italy [GC] 2001-VII, paras. 24-31), and hence ECHR is not engaged. The only point on which the Scottish Government believes that ECHR might be relevant is in relation to penalties that might not be classed as criminal for domestic purposes. No provision for penalties is made in the Bill. The Scottish Government, therefore, considers that the provisions of the Bill have no effect on human rights. Penalties will be considered in the proposed Tax Management Bill. Due consideration has been given to balancing the compelling and obvious general interest in minimising landfill with the interests of operators.

Island communities

76. The Bill is expected to have no disproportionate effect on island communities. The Scottish Government is keen to promote a digital first approach to the submission of tax returns by electronic means but is aware that some remote and island communities may not have appropriate access. This and other similar considerations have led the Scottish Government not to propose mandatory submission of tax returns by electronic means.

Local government

77. Local authorities and other public bodies, as organisations who produce waste and must contract to have it collected and treated or disposed of, are subject to UK Landfill Tax at present and will be subject to Scottish Landfill Tax under the Bill.

78. The costs of dealing with their waste depend on:
   • how much materials can be diverted to recycling,
   • how much waste can be prevented,
   • the availability and costs of alternatives to landfill (for example, incineration).

---

8 [http://www.scotland.gov.uk/Publications/2012/10/3524](http://www.scotland.gov.uk/Publications/2012/10/3524)
79. Costs will also be dependent on the rates set for Scottish Landfill Tax. Local authorities are the largest payer of Landfill Tax in Scotland, simply because they must deal with Scotland’s household waste. Scottish Government estimates that around £86 million of the estimated £97 million paid in Scotland in UK Landfill Tax in the 2010/11 financial year was paid by Scottish local authorities.

80. The remainder is paid by other public sector bodies that generate waste, and by private sector operators. Assuming that the Scottish Government’s Zero Waste targets are met, then less than 5% of Scotland waste will go to landfill by 2025 and, as a consequence of the ban on biodegradable municipal waste landfill (2020), what does go to landfill will be largely inert and charged at the lower Scottish Landfill Tax rate. On this basis, the amount paid in Scottish Landfill Tax by the public sector will reduce substantially in the years ahead. In terms of any net administrative and compliance costs, the Scottish Government does not expect that there will be a material change in costs falling on these bodies as a result of removing the UK tax system and introducing a Scottish system.

81. The Scottish Government expects that Revenue Scotland and SEPA will consult end-users of the replacement tax system (for example local authorities and the NHS), as part of its development of the online system and that it will seek to provide systems that minimise administrative effort and costs.

82. The Bill has no disproportionate effect on local government in Scotland. The Financial Memorandum and the Business and Regulatory Impact Assessment discuss further the expected financial effects of the Bill on local authorities.

Sustainable development

83. The Bill seeks to ensure that Scottish Landfill Tax reflects the significant impact that landfilling has on the environment – greenhouse gas emissions, risk of soil and water pollution through chemical leaching and general dis-amenity including noise, odour and dust. By ensuring that waste producers incorporate the full cost of waste disposal into business decisions, Landfill Tax encourages the development of sustainable waste management options, including waste prevention, reuse, recycling and anaerobic digestion. The financial savings that can be made through adopting alternatives to landfill are now central to the economics of waste management, and the tax has helped establish the stable policy landscape needed to underpin long-term investment decisions on alternatives to landfill, including recycling collection systems and residual waste treatment infrastructure such as fuel production plants and incineration.

84. By raising the costs of landfill to a figure that better reflects the true costs to the environment, the UK Landfill Tax has helped to realise the following wider benefits to Scotland’s environment and economy: climate change mitigation; reducing dependence on raw materials in an increasingly cost volatile market; creating investment in infrastructure, jobs and skills; providing new recycled materials for use in sustainable manufacturing outlets and driving efficiencies across supply chains by designing out waste. The Bill will ensure that this continues.
85. Residents living in close vicinity to landfill sites experience general dis-amenity including noise, odour, dust and the impacts of increased heavy vehicle movements. The tax credit scheme that accompanies the UK Landfill Tax creates a mechanism to help offset these local impacts by directing toward local environmental projects contributions from landfill operators which earn credit against UK Landfill Tax liabilities. The Bill includes provision in sections 18-20 to establish a similar tax credit scheme in Scotland, and to direct proceeds toward local projects.

86. Landfill locks away valuable material resources (plastics, textiles, metals, organics, etc.) that, when channelled into alternative recycling, recovery and reprocessing routes, have real world value and support jobs, infrastructure and the development of the burgeoning resource management sector in Scotland.

87. The Bill will help drive waste away from landfill and, combined with the Scottish Government’s Zero Waste policy and the Waste (Scotland) Regulations 2012, encourage ‘closed loop’ recycling, alternative treatment technologies and sustainable ways to manage resources within the Scottish Economy.

88. The Scottish Government carried out a screening to establish if a Strategic Environmental Assessment was required for the Bill. The screening process established that a Strategic Environmental Assessment was not required. The report on the screening can be accessed via the SEA Gateway. The case number is SEA/00734.

---

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
This document relates to the Landfill Tax (Scotland) Bill (SP Bill 28) as introduced in the Scottish Parliament on 17 April 2013

- 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

---

1 The 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”).
This document relates to the Landfill Tax (Scotland) Bill (SP Bill 28) as introduced in the Scottish Parliament on 17 April 2013

Provision

15. This provision allows for 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,
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.
This document relates to the Landfill Tax (Scotland) Bill (SP Bill 28) as introduced in the Scottish Parliament on 17 April 2013

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
This document relates to the Landfill Tax (Scotland) Bill (SP Bill 28) as introduced in the Scottish Parliament on 17 April 2013

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

64. 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 being consulted on in connection with the Tax Management Bill. A regulation making power is included in the Bill.

Reason for taking power

65. 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.

66. 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

67. 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

68. 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
This document relates to the Landfill Tax (Scotland) Bill (SP Bill 28) as introduced in the Scottish Parliament on 17 April 2013

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.
Finance Committee

6th Report, 2013 (Session 4)

Stage 1 Report on the Landfill Tax (Scotland) Bill

Published by the Scottish Parliament on 12 September 2013
# Remit and membership

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Report</td>
<td>1</td>
</tr>
<tr>
<td>Introduction</td>
<td>1</td>
</tr>
<tr>
<td>Tax Framework</td>
<td>2</td>
</tr>
<tr>
<td>Unauthorised Disposals to Landfill</td>
<td>10</td>
</tr>
<tr>
<td>The role of Revenue Scotland and SEPA</td>
<td>12</td>
</tr>
<tr>
<td>Block Grant Adjustment</td>
<td>14</td>
</tr>
<tr>
<td>Landfill Communities Fund</td>
<td>16</td>
</tr>
<tr>
<td>Conclusion</td>
<td>20</td>
</tr>
</tbody>
</table>
Finance Committee

Remit and membership

Remit:

1. The remit of the Finance Committee is to consider and report on-

   (a) any report or other document laid before the Parliament by members of the Scottish Executive containing proposals for, or budgets of, public expenditure or proposals for the making of a tax-varying resolution, taking into account any report or recommendations concerning such documents made to them by any other committee with power to consider such documents or any part of them;

   (b) any report made by a committee setting out proposals concerning public expenditure;

   (c) Budget Bills; and

   (d) any other matter relating to or affecting the expenditure of the Scottish Administration or other expenditure payable out of the Scottish Consolidated Fund.

2. The Committee may also consider and, where it sees fit, report to the Parliament on the timetable for the Stages of Budget Bills and on the handling of financial business.

3. In these Rules, "public expenditure" means expenditure of the Scottish Administration, other expenditure payable out of the Scottish Consolidated Fund and any other expenditure met out of taxes, charges and other public revenue.

(Standing Orders of the Scottish Parliament, Rule 6.6)

Membership:

Gavin Brown
Malcolm Chisholm
Kenneth Gibson (Convener)
Jamie Hepburn
John Mason (Deputy Convener)
Michael McMahon
Jean Urquhart

Committee Clerking Team:

Clerk to the Committee
Jim Johnston

Senior Assistant Clerk
Catherine Fergusson

Assistant Clerk
Alan Hunter

Committee Assistant
Parminder Kaur
INTRODUCTION

1. The Landfill Tax (Scotland) Bill (“the Bill”) was introduced on 17 April 2013 by John Swinney MSP, Cabinet Secretary for Finance, Employment and Sustainable Growth (“the Cabinet Secretary”). The Finance Committee was designated lead committee by the Parliamentary Bureau. The role of the Committee at Stage 1 is to consider and report on the general principles of the Bill.

2. The Committee issued a general call for evidence on 24 April 2013 and all submissions received are available on the Committee’s web pages on the Scottish Parliament website¹. The Committee also heard oral evidence at its meetings on 5, 12 and 19 June 2013. The Committee would like to thank all those who provided evidence to the inquiry.

3. The Committee also received a report from the Delegated Powers and Law Reform Committee (DPLRC) on the delegated powers provisions within the Bill², some of the findings of which are considered below.

Bill Purpose

4. The Policy Memorandum (PM) accompanying the Bill states that it “makes provisions for a Scottish tax on disposals to landfill, to be called the Scottish Landfill Tax.”³ This will replace the UK Landfill Tax regime and will come into force the day after the UK Landfill Tax is disapplied from Scotland. The Financial Memorandum (FM) accompanying the Bill states that this date is “to be set by the Treasury by order”, and that “the present policy of the UK Government is that this order will take effect from April 2015.”

¹ Scottish Parliament, Finance Committee, Written submissions
² Scottish Parliament Delegated Powers and Law Reform Committee, 34th Report, 2013 (Session 4)
³ Landfill Tax (Scotland) Bill, Policy Memorandum, paragraph 2
5. The Bill is the second of three bills to be introduced by the Scottish Government (“the Government”) as a consequence of measures enacted in the Scotland Act 2012. The Land and Buildings Transaction Tax (Scotland) Bill (“LBTT Bill”) received royal assent on 31 July and the Government has announced that a Revenue Scotland and Tax Powers Bill will be introduced later in the autumn. The PM states that the LBTT and the Landfill Tax Bills “will come into force at the same time” and that “the administrative arrangements for both the Scottish Landfill Tax and LBTT will be set out in the proposed Bill on tax management.”

Structure of the Report
6. The Committee considered a number of issues in relation to the following aspects of the proposed tax—

- Tax Framework;
- Unauthorised disposals to landfill;
- The role of Revenue Scotland and SEPA;
- The block grant adjustment;
- The Landfill Communities Fund

7. The Committee also considered a number of issues in relation to the FM and these are discussed throughout this report.

TAX FRAMEWORK

Tax Rates
8. The Government has announced that it will not set the tax rates lower than those in place for the UK Landfill Tax. The FM assumes that, “in line with the announced intention” of the Government, “the Scottish tax rates will mirror the UK rates in 2015-16.” This would mean £80 a tonne for active materials and £2.50 a tonne for inactive material. However, the PM states that “the tax rates will not be specified on the face of the Bill, to allow flexibility and so that changes to rates can be made in future without the need for primary legislation.”

Uncertainty
9. A number of witnesses raised concerns regarding the uncertainty about the tax rates. North Ayrshire Council, for example, noted that “there is still no confirmation of what the rates will be beyond 2014/15 which doesn’t help in giving certainty for financial planning.”

10. The Scottish Environmental Services Association (SESA) stated that the Government —

“appears to have drafted the Bill as an enabling framework, with specific detail on how the new tax regime might apply in practice to follow later in
secondary legislation. As the Bill offers the industry little in the way of certainty then we would have to argue that it is not consistent with the principles described above...We would much prefer to see greater clarity and detail in primary legislation to inform the democratic process. The Bill instead seeks wide executive powers where the likely character of their execution remains opaque.\(^8\)

11. Whilst COSLA, stated—

“It is essential that certainty exists and where it does not, that the financial risk to local authorities is appropriately mitigated by Scottish Government. It is essential that any future increases in landfill tax are provided to local authorities well in advance of any change being due and COSLA would suggest that five years in advance would be most appropriate.”\(^9\)

12. When questioned with regard to the timing of the announcement of rates, North Ayrshire Council suggested that this should be done “at least three years in advance” or as “as soon as practicably possible.”\(^10\)

13. Making a similar point from a slightly different perspective, SESA explained to the Committee—

“We represent an industry that is looking to make investment decisions for alternative non-landfill infrastructure, the viability of which will depend on what landfill tax will be, so it would have been nice to have an indication of what that tax will be. Similarly, for the differential rates - the potential third rate of tax - it would be interesting to know what that might be and to what materials it might apply.”\(^11\)

14. In its oral evidence session, the Bill team agreed that “it is vital that the industry has as much certainty as we can provide” and undertook to work with SESA “to give it as much certainty as we can, as soon as we can”. It went on to state, however, that “It is appropriate to reserve a number of policy matters to subordinate legislation, as that will allow the Parliament to adjust critical aspects of the tax to bring it into line with shifts in policy and external circumstances, which is essential.”\(^12\)

15. The Bill team, however, also made the point that “waste management companies have no certainty about what the UK Government’s position on landfill tax will be post next year.” Whilst acknowledging the fact that such companies would understandably seek certainty on the volumes of waste which they would handle and therefore profit from, it pointed out that, partly as a result of the Government’s attempts to drive down the amount of waste in our economy, “we cannot give 100 per cent certainty.”\(^13\)

---

\(^8\) The Scottish Environmental Services Association. Written submission, paragraph 6
\(^9\) COSLA. Written submission, paragraph 13
16. The Cabinet Secretary stated that he was keen to announce the rates “in a timescale that is of assistance to industry”, but explained—

“I have not stated at what stage we will set the rates. I am certainly considering whether it would be relevant to do that at around budget time in September 2014, but I have yet to make a final decision. We can consider that further as part of the committee proceedings.”

17. When questioned about the length of time for which the rates, when set, would apply the Cabinet Secretary stated “I certainly accept that, if there is to be an escalator, for example, having knowledge of that has been helpful, I am mindful of that point in determining how much detail we will set out when we set the rates in the first instance.”

18. In response to questioning relating to the desire for certainty on levels of taxation in order to encourage the development of alternatives to landfill, the Cabinet Secretary stated that—

“those are long-term investment decisions that will be influenced not by what the landfill tax rates are this year or next year, but by whether, as a country, we will dispose of materials that such companies can utilise and make an economic return from. That should not be confused with the setting of the landfill tax rates in any given year.”

19. He also stated that the Government’s Zero Waste Plan along with “the fact that the Parliament unanimously passed the Climate Change (Scotland) Act 2009” demonstrated the Government’s commitment to a zero waste objective, and “that gives a reliable framework within which operators can make their plans.”

20. The Committee notes that the FM assumes on the basis of the “announced intention” of the Government that the rates for 2015-16 will mirror the UK rates of £80 a tonne for the standard rate and £2.50 a tonne for the lower rate.

21. The Committee notes the concerns of witnesses regarding the desire for greater certainty in relation to the setting of future tax rates and invites the Government to clarify the reasons why there is a need to wait until around September 2014 to set future rates.

22. The Committee also asks the Government to provide greater clarity regarding the period to be covered when the rates are announced and whether there will be an escalator.

---

18 Landfill Tax (Scotland) Bill. Financial Memorandum, paragraph 27
Waste Tourism

23. A number of witnesses raised the issue of “waste tourism” if the rate or structure of the tax is different to the rest of the UK. The Bill team stated that part of the reason why the Scottish rates will be no lower than in the rest of the UK is to “minimise cross-border movement”\textsuperscript{19} of waste. The Bill team went on to state that the Committee “would be surprised at how small the differential in tax rates would be for it to be cost effective to move waste” and that, “initially, we would want to mirror the UK structure and rates closely.”

24. This approach was generally welcomed in evidence to the Committee. For example, RSPB Scotland stated:

>“Altering rates may encourage the cross-border transfer of waste. Depending on how the rates were set, this would either lead to a loss of revenue from Scotland or an increase in the amount of landfill waste within Scotland.”\textsuperscript{20}

25. SEPA stated in oral evidence—

>“We would like the rates of landfill tax to remain the same as they are in the rest of Britain to encourage certainty in disposal. However, we believe that certain waste streams would benefit from a slight change and that it is worth discussing that further and consulting on the issue. Any of the proposals to change the rates could bring about quite complex changes to the movement of material backwards and forwards. It is therefore only fair to consult industry openly if any changes are to be made.”\textsuperscript{21}

26. SESA explained that “any marked difference between England and Scotland could increase fly-tipping in Scotland if businesses in Scotland take umbrage at having to pay higher disposal charges on their waste.”\textsuperscript{22}

27. The Chartered Institute of Waste Management (Scotland) (CIWM) explained that it was natural and even beneficial in some cases for waste to be transported around Europe (for example, with hazardous wastes which require specialist facilities for their safe disposal). However, it went on to suggest that the creation of “a big differential - say, £10 a tonne…might lead to movement that we do not really want.”\textsuperscript{23}

28. The Cabinet Secretary acknowledged that “relatively small cost differentials could encourage cross-border activity” but stated that he was “adamant that the setting of rates must be compatible with and should in no way undermine the Government’s…zero-waste strategy.”\textsuperscript{24}

\textsuperscript{20} RSPB Scotland. Written submission, paragraph 6
29. The Committee notes that the Government’s scope to make substantial changes to the rates and structure of landfill tax in Scotland is limited by the implications for waste tourism. The Committee asks whether the Government has commissioned any research or conducted any analysis on the likely impact of any changes to the structure and rates of landfill tax in Scotland on waste moving between Scotland and England.

30. The Committee also invites the Government to provide details of what discussions have taken place with the UK Environment Agency on the implications of any changes to landfill tax on waste moving between Scotland and England.

Level of Scrutiny

31. Section 41 of the Bill provides that the first order to set the tax rates will be subject to the affirmative procedure and, thereafter, will be subject to a form of “provisional affirmative procedure.” The DPLRC stated in its report that this provisional procedure allows the instruments to come into force immediately but that they cannot remain in force unless the Parliament agrees to that within 28 days. The DPLRC states that the “intention behind creating this procedure is that the Ministers should be able to make instruments and bring them into force very quickly, while allowing for a greater degree of Parliamentary control than would be the case with the negative procedure.”

32. The DPLRC also considered the appropriate level of scrutiny for the setting of tax rates in relation to the LBTT Bill. The LBTT Bill initially provided that the first order to set the tax rates would be subject to the affirmative procedure and that subsequent orders would be subject to the negative procedure. The DPLRC recommended that these powers should always be subject to a form of affirmative procedure with a suitable form of emergency affirmative procedure being made available to Ministers if there was a need to exercise the power when the Parliament was not sitting. The Government subsequently lodged an amendment at Stage 2 introducing the “provisional affirmative procedure” for subsequent orders setting the tax rates for LBTT. This amendment was agreed by the Committee.

33. The Cabinet Secretary confirmed in evidence to the Committee that the new procedure was intended to give “the Government the opportunity to take forward tax changes and tax measures when we consider it necessary for them to have immediate effect.”

34. The Committee welcomes the introduction of the “provisional affirmative procedure” for the changing of tax rates for both Landfill Tax and LBTT where there is a need to make these changes with immediate effect.

35. However, it is not clear why the Bill also provides for this procedure to be used when there is not a need for Ministers to act quickly. The Committee, therefore, invites the Government to explain why the affirmative

25 Scottish Parliament Delegated Powers and Law Reform Committee. 34th Report, 2013 (Session 4)
procedure should not apply to an order changing the tax rates for both LBTT and Landfill Tax other than in cases where there is a need to introduce the tax changes with immediate effect.

**Taxable Disposals**

36. The PM states that “what constitutes a chargeable disposal of material is central to the effective operation”\(^{27}\) of the tax. The Bill draws on the existing UK Landfill Tax to “create the basic framework for what constitutes a taxable disposal.” The tax is charged at a standard rate and at a lower rate for certain qualifying materials. However, the Bill also allows Ministers to introduce additional rates in subordinate legislation and these could include a third rate for “stabilised” materials.

37. The majority of respondents to the call for evidence agreed with this approach with the Chartered Institute of Taxation welcoming the provision for more than one rate of tax as being more in keeping with Scotland’s Zero Waste Plan. It noted the “considerable difference between the rate that is applied to inert material and other waste, despite the fact that some of the other waste taxed at the standard rate may create minimal environmental impact.”\(^{28}\) East Dunbartonshire Council went further by stating that “the proposal of different tax rates for different materials should be introduced.”\(^{29}\) CIWM agreed that this was “a reasonable approach” as it would give the Government “some flexibility to consider how best to manage waste that has not been thermally treated (for example)”. It stated that for the moment it “would support the ability to introduce a third rate, and will respond to any resultant consultation.”\(^{30}\)

38. Similarly, Comhairle nan Eilean Siar suggested that there was “potential to consider an additional rate for materials which are close to inert specification but have no route for reuse or recycling.”\(^{31}\) Suggestions were also made that “useful waste” should be taxed at higher rates to encourage its use and/or recycling with SEPA, for example, recommending that “wastes which could be put to productive use, such as incinerator bottom ash could be brought into the standard rate of tax instead of the lower rate.”\(^{32}\) In oral evidence, however, SESA sounded a note of caution, stating “we need to understand better the economic impacts and consequences of such a move.”\(^{33}\)

39. CIWM reminded the Committee that the primary purpose of the tax was to tax methane, stating “if we start to deviate towards having rates for special waste, hazardous waste, bottom ash and so on, we will drift away from the fundamental principles of the tax. I am not commenting on whether that is bad or good but we should note that that is what we are doing.”\(^{34}\) Expanding on the need to maximise the benefit from “useful waste”, it explained that “people might want to take that

---

\(^{27}\) Landfill Tax (Scotland) Bill. Policy Memorandum, paragraph 40
\(^{28}\) Chartered Institute of Taxation. Written submission, paragraph 17
\(^{29}\) East Dunbartonshire Council. Written submission, paragraph 5
\(^{30}\) The Chartered Institution of Wastes Management. Written submission, paragraph 7
\(^{31}\) Comhairle nan Eilean Siar. Written submission, paragraph 6
\(^{32}\) SEPA. Written submission, paragraph 8
material and recover energy from it. We need to consider energy security, so we must not use the taxation powers to allow biodegraded waste to slip into landfill and undermine our ability to generate energy."  

40. SEPA, whilst asserting its desire for rates “to remain as they are in the rest of Britain, to encourage certainty”, suggested that “certain waste streams would benefit from a slight change and that it is worth discussing that further and consulting on the issue.”  

41. The Committee recommends that the introduction of any additional rates is subject to the affirmative procedure.  

Exemptions  

42. The PM states that whilst the tax will have an identical set of exemptions to the UK Landfill Tax it “will have a simpler and more efficient system for adjusting and removing exemptions thereafter.”  

43. Suggestions for materials that should be exempted from tax were received in response to the call for evidence and these can be broadly broken down into two types of materials: “aggregates” used on landfill sites for engineering purposes such as the construction of roads; and hazardous materials, which some respondents feared might be more likely to be disposed of illegally.  

44. In its written submission, Glasgow City Council noted that aggregates used for engineering purposes in landfill had previously been exempt from landfill tax and suggested that this exemption should be reintroduced. It stated that aggregates were used to create on-site roads on which vehicles could safely operate and that such materials were also used “as daily cover to ensure compliance with the site’s Pollution Prevention Control Permit.” With regard to hazardous wastes, it suggested that “it would be likely to be of assistance to offer a limited exemption for problematic material such as asbestos, to encourage their proper disposal and reduce the risk of illegal dumping.” Similarly, SEPA noted that “there is an argument that wastes for which landfill is the only legitimate waste management option (e.g. asbestos) should be charged at the lower rate. There are unlikely to be many such wastes.”  

45. North Ayrshire Council noted the importance of ensuring that cost did not become a deterrent, explaining that as “landfill is probably one of the few options for such waste, we should not move people towards fly-tipping.” SEPA agreed that “reducing the tax liability for asbestos would encourage the proper and safe disposal of the material”, but noted the context and scale of the problem, explaining “there is a considerable tonnage (of asbestos) still to be disposed of but, in comparison with the waste stream in Scotland as a whole, it is small.”  

---

37 Landfill Tax (Scotland) Bill. Policy Memorandum, paragraph 50  
38 Glasgow City Council. Written submission, paragraph 4  
39 SEPA. Written submission, paragraph 8  
46. The Bill team agreed that the proposed exemptions and the reasons for them were “good and valid points” but sounded a note of caution about “potential ramifications.” For example, if the rate of tax for asbestos was reduced it could result in more of that material being moved from England to Scotland. The Bill team explained, therefore, that “we would not want to have too many radical changes at the point of implementation but, as we move forward post-2015, such things might be considered.”

47. The DPLRC suggested that “the lead committee may wish to consider whether reduction in liability or the provision of exemptions for certain types of activity might be sufficiently controversial as to merit the affirmative procedure rather than the negative procedure provided for in the Bill.”

48. In response to questioning on this point, the Cabinet Secretary explained that his view was “based on the fact that a reduction of burden is envisaged in such circumstances and I assume that that would be less controversial, which is why it would be considered appropriate to use the negative procedure.”

49. However, he went on to state—

“Chewing that over, I suppose that there could be perspectives within the Parliament that would consider a reduction of burden to be controversial or unwelcome. Therefore, there may be a necessity for wider scrutiny, so if the committee has further reflections on that point or is concerned by the approach that we are taking, I am happy to consider that.”

50. The Committee recommends that any adjustment or removal of exemptions is subject to the affirmative procedure.

Island Communities

51. Comhairle nan Eilean Siar, in its written evidence, drew attention to the different challenges faced by island communities in comparison to mainland Scotland stating that “disproportionate costs of haulage” placed “unfair limitations on the economic sustainability of alternatives to landfill disposals.” It suggested “that the rate of Landfill Tax applied to Island wastes disposed of to landfill should be at a lower rate for specific types of materials where no viable recycling or recovery routes are available.”

52. However, SEPA stated that “there are regulatory mechanisms in place that allow exemptions and certain less strict standards for islands. That is a better way

---

46 Comhairle nan Eilean Siar. Written submission, paragraph 5
to address the problem than having differential rates, which could lead to the perverse tourism of stuff coming back from the mainland to the islands.\textsuperscript{47}

53. The Bill team acknowledged the “unique challenges that exist in island areas” but suggested that other measures “have provided much greater flexibility for the island communities, so that they can adapt them.”\textsuperscript{48}

54. The Cabinet Secretary confirmed that he was “certainly happy to consider further the issues that are raised to ensure that the island communities are being treated fairly, given the facts with which they are wrestling.”\textsuperscript{49}

55. The Committee invites the Government to respond to the suggestion that there should be a lower rate of tax on island wastes for materials for which no viable recycling or recovery routes are available.

UNAUTHORISED DISPOSALS TO LANDFILL

56. The PM states that “unauthorised landfill sites continue to operate in Scotland on a large scale” and notes that at present, “HMRC does not have powers to collect tax from unauthorised operators.” In addition to the environmental impact of unauthorised landfill, the PM states that it also results in tax evasion before noting that “the related court fines, which are usually smaller than the tax evaded, make unauthorised activity financially attractive.”\textsuperscript{50} The Bill provides for the imposition of both fines and taxes on unauthorised operators in order to reduce this financial incentive.

57. The Bill team confirmed that this provision was “intended to be another strong tool in the armoury to tackle illegal waste dumping”, explaining “we are not talking about small-scale fly tipping but about large-scale organised crime…evading tax of the order of £5 million plus.”\textsuperscript{51}

58. The written evidence received was very supportive of this approach in principle. East Ayrshire Council, for example, stated that it would “act as a significant deterrent to illegal activity.”\textsuperscript{52} Renfrewshire Council stated that it would “ensure that the punishment is more expensive than the savings made from continuing to commit environmental crime.”\textsuperscript{53}

59. SESA welcomed “the addition of powers in the Bill to recover avoided tax from illegal sites.”\textsuperscript{54} CIWM referred to a recent case in West Lothian stating that “had the individuals…also been required to pay landfill tax on that waste, the fines that they received would have been three or four times higher.”\textsuperscript{55}

\textsuperscript{50} Landfill Tax (Scotland) Bill. Policy Memorandum, paragraph 45
\textsuperscript{52} East Ayrshire Council. Written submission, paragraph 5
\textsuperscript{53} Renfrewshire Council. Written submission, paragraph 11
60. Revenue Scotland also welcomed the proposed powers as “an important issue of principle” which would “send the signal that tax will still be collected from everyone who ought to have paid it. Regardless of whether we collect a large amount of money, we will follow the important principle of not allowing people simply to duck the tax.”

61. However, several respondents suggested that, in order to maximise the benefits of this approach there was a need to provide greater resources for enforcement. SESA, for example, stated that the problem required “strong leadership and resources sufficient to create a climate where the fear of being caught is high.” Whilst unauthorised disposals were already illegal, CIWM suggested that “SEPA would require additional resources in order to bring such activities into the tax regime and to apply any criminal sanctions.”

62. Some local authorities sought assurances that any increased enforcement costs would not fall on them with North Lanarkshire Council, for example, seeking “further guidance that this pursuit of offenders would not become a burden or strain on the resources of the local authority in pursuing the issue.” North Ayrshire Council stated in oral evidence that “we want a more joined up approach between SEPA, the police and local authorities”, but acknowledged “I do not know whether SEPA needs additional resources from the Scottish Government.”

63. CIWM suggested that “perhaps SEPA needs more resources in order to manage, watch, inspect, engage and deal with reported incidents.” In oral evidence, SEPA confirmed that the estimated £300,000 in its annual costs did not include “enforcement around illegal dumping” as “discussions have still to take place about the enforcement role and who will be best placed to undertake it.”

64. SEPA confirmed that it had “put a massive amount of resource” into identifying and dealing with illegal waste sites and that it worked with “partners through the environmental crime task force.”

65. On the issue of whether additional resources to identify illegal landfill operators might be required the Cabinet Secretary stated that he would expect SEPA to tackle examples of illegal dumping “in a focussed and effective way”, but that he did “not think that that automatically requires us to consider increasing the resources that are available to SEPA. It has always worked collaboratively at a local level.” When asked to expand on this point he stated—

“The law provides for a tax to be applied on illegal dumping. Therefore I would expect SEPA to pursue that as part of its activities. As part of the arrangements that I have put in place, operating under the umbrella of

---

57 The Scottish Environmental Services Association. Written submission, paragraph 16
58 The Chartered Institute of Waste Management. Written submission, paragraph 8
59 North Lanarkshire Council. Written submission, paragraph 6
Revenue Scotland, there will be compliance support and assistance for SEPA in doing that.”\(^{65}\)

66. The Cabinet Secretary also drew attention to the fact that SEPA “is already able to fine illegal dumpers and indeed does so, but the Bill provides for a tax charge to be applied into the bargain.”\(^{66}\)

67. The Committee welcomes the introduction of landfill tax on unauthorised disposal to landfill.

68. The Committee asks the Government to clarify whether the resources which have been allocated to Revenue Scotland for compliance activity include additional resources for SEPA to identify and deal with illegal sites.

69. The Committee invites the Government to clarify whether any extra revenues raised as a result of the power to impose tax on illegal landfill sites might be used to assist SEPA in identifying illegal sites.

THE ROLE OF REVENUE SCOTLAND AND SEPA

70. The PM states that, like LBTT, “the Scottish Landfill Tax will be administered by Revenue Scotland”, a body to be created on a statutory basis by the proposed tax management bill. The Bill proposes that Revenue Scotland will work with SEPA on the administration of the tax in a similar way to that in which it will work with Registers of Scotland with regard to LBTT. The PM outlines some of the anticipated advantages of this partnership, given SEPA’s existing knowledge of landfill in Scotland, and predicts that “this knowledge can be utilised to achieve efficiencies and reduce the burden on operators.”\(^{67}\)

71. The PM states that the Government “is attracted by the potential for savings, greater efficiency, and greater clarity through combining the roles of the independent regulator with that of a tax collection agency”, particularly given SEPA’s existing “skills and expertise in dealing with landfill sites, data returns and tackling illegal activities.”\(^{68}\)

72. The majority of respondents supported the involvement of SEPA in the administration of the tax. Comhairle nan Eilean Siar stated that it was “considered potentially advantageous to have a single body administering environmental compliance and Landfill Tax.”\(^{69}\)

73. SEPA highlighted the importance of a clearly defined division of responsibilities between Revenue Scotland and agencies collecting tax on its behalf. The Bill team stated in oral evidence that the expectation was that “the precise division of responsibilities will be worked out between the two organisations.” Revenue Scotland explained that the division of powers and


\(^{67}\) Landfill Tax (Scotland) Bill. Policy Memorandum, paragraph 62

\(^{68}\) Landfill Tax (Scotland) Bill. Policy Memorandum, paragraph 72

\(^{69}\) Comhairle nan Eilean Siar. Written submission, paragraph 11
responsibilities would be discussed further during the passage of the proposed tax management bill and noted that “a formal agreement between Revenue Scotland and SEPA” would be required. It was then confirmed that this “would be a public document that the Committee will have an opportunity to scrutinise.”

Compliance Activity

74. The FM states that “further planning work is required to decide on the respective roles that Revenue Scotland and SEPA will have in relation to compliance activity.” The FM includes £350,000 in annual running costs for compliance activity within the estimated running costs for Revenue Scotland. These costs relate to the collection of both LBTT and Landfill Tax. The FM also includes £75,000 in annual running costs for risk assessment, compliance activity and ensuring debt collection for SEPA. The FM also points out that SEPA will be able to draw on existing enforcement staff.

75. The Bill team explained that, with regard to the predicted costs relating to Revenue Scotland, “we have not been able to separate the costs of administering land and buildings transaction tax and landfill tax at this stage”, and therefore “we have not differentiated compliance for landfill and compliance for LBTT.”

Delegation of Functions

76. The DPLRC noted that the Bill would allow the tax authority to delegate any of its functions to SEPA. Its report stated that, whilst it agreed that this provision was “sensible”, “no provision for the publication of such delegations is provided in the Bill.” The report went on to “strongly recommend” that the Government “improve the transparency and accountability of the delegation of functions…by requiring publication of any such delegation.” In response to questioning on this recommendation, the Cabinet Secretary stated “I certainly give the Committee the assurance that I will look very carefully at the issue that has been raised…We will certainly explore the issue and respond to the questions in the Delegated Powers and Law Reform Committee’s report.”

Possible Skills Gap

77. North Ayrshire Council, in its written evidence suggested that as SEPA was “an experienced environmental regulator rather than a tax assessor”, there might be “a potential skills gap” to address. Renfrewshire Council also suggested that “sufficient funding and expertise” should be provided to SEPA to support its revised role.

71 Landfill Tax (Scotland) Bill. Financial Memorandum, paragraph 44
73 Scottish Parliament Delegated Powers and Law Reform Committee. 34th Report, 2013 (Session 4)
75 North Ayrshire Council. Written submission, paragraph 12
76 Renfrewshire Council. Written submission, paragraph 15
78. CIWM stated that the proposed change to SEPA’s role raised the question of whether it had the expertise to undertake “a tax-policing and revenue-raising role.” SESA also expressed concerns that the “bolting on” of tax raising powers might divert SEPA from its primary focus of protecting the environment.

79. SEPA acknowledged in oral evidence that there was the potential for a skills gap to exist but confirmed that it had made allowances for the development of guidance and staff training to “plug that gap.” It stated that “there is a bit more to do before we can audit tax returns. The base is there and there is funding in place to upskill staff as required.” It went on to confirm that it was confident that the skills gap would not exist by April 2015.

80. The Committee recognises that Landfill Tax is not due to be implemented until April 2015 but is nevertheless concerned about the current lack of clarity regarding the respective roles of Revenue Scotland and SEPA and recommends that this be addressed as a matter of urgency.

81. The Committee intends to monitor and scrutinise the implementation and delivery of Landfill Tax and invites Revenue Scotland and SEPA to report to it both orally and in writing on a six-monthly basis.

82. The Committee supports the recommendation of the DPLRC in relation to the publication of the delegation of functions.

**BLOCK GRANT ADJUSTMENT**

83. The FM states that “there will be a loss of receipts to the UK Government from the withdrawal of UK Landfill Tax in Scotland. The UK Government will consequently make a corresponding adjustment to the Scottish block grant.”

84. The Office for Budget Responsibility (OBR) forecasts tax receipts for landfill tax in Scotland based on a continuation of the UK landfill tax regime. The OBR has published three forecasts as follows—

### March 2012

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Landfill Tax (£ million)</td>
<td>115</td>
<td>123</td>
<td>132</td>
<td>145</td>
<td>151</td>
<td>157</td>
</tr>
</tbody>
</table>

### December 2012

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Landfill Tax (£ million)</td>
<td>98</td>
<td>97</td>
<td>96</td>
<td>105</td>
<td>107</td>
<td>107</td>
<td>110</td>
</tr>
</tbody>
</table>

---

80. Landfill Tax (Scotland) Bill. Financial Memorandum, paragraph 4
85. However, the FM states that the OBR “does not take into account Scottish-specific policies that will affect the amount of material going to landfill” when forecasting tax receipts. The Government expects “landfill tonnages in Scotland to significantly decrease over the coming decade with a corresponding reduction in receipts.”81 Consequently, the Government estimates that landfill tax receipts will fall from £107m in 2015-16 to around £40.5m in 2025.

86. The Bill team stated that broadly speaking “the OBR sees tax revenue from landfill tax staying level in cash terms from 2015 onwards, whereas we project a significant reduction.” On this basis the Government aims “to achieve a block grant adjustment that is as low as possible so that we minimise the risk of the Scottish budget losing when the devolved taxes start up in April 2015.”82

87. CIWM suggested, however, that it was possible that the amount of waste disposed of to landfill (and therefore the income generated by the tax) might not continue to decrease as predicted. It stated that “the yearly increase in recycling has been decreasing year on year as it becomes harder to extract more material for recycling”83 and there was therefore a risk of recycling rates plateauing.

88. The Cabinet Secretary explained that his “expectation is that, in the coming period, we will see a long-term reduction in the revenue from landfill tax.”84 He also questioned the initial OBR forecast in March 2012 that landfill tax receipts would rise from £115m in 2011-12 to £157m in 2016-17. He stated: “The only people on the planet who thought that must have been the OBR, because nobody else would ever come to that conclusion.”85 However, he also recognised that subsequent forecasts were much more sensible.

89. The Cabinet Secretary went on to suggest that “the way to address the issue is to have a discussion and an agreement that relates to all the devolved small taxes, taking into consideration the fact that there is likely to be a loss of revenue on landfill tax, and come to a reasonable position on the totality of block grant adjustment that should be taken into account.”86

90. The Committee is currently considering the block grant adjustment in relation to all financial powers arising from the Scotland Act and will submit its views to the Government.

---

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Landfill Tax (£ million)</td>
<td>98</td>
<td>99</td>
<td>95</td>
<td>104</td>
<td>105</td>
<td>105</td>
<td>108</td>
</tr>
</tbody>
</table>

---

81 Landfill Tax (Scotland) Bill. Financial Memorandum, paragraph 30
91. The Committee invites the Government to provide a year-on-year breakdown of the estimated decline in landfill tax receipts between 2015 and 2025 and asks whether the possibility of recycling rates plateauing was considered during the forecasting exercise.

LANDFILL COMMUNITIES FUND (LCF)

92. The PM states that the LCF “was set up in 1996 to provide funding for community or environmental projects in the vicinity of landfill sites.”\(^{87}\) It explains that the Fund allows landfill operators to give a maximum percentage (currently 6.8\%) of their UK tax liabilities to such projects in return for a 90\% tax credit. The Bill “provides for this approach to continue by closely following the existing UK Landfill Tax credit system.”\(^{88}\) The PM further states that the credit rates and details of the administrative arrangements underpinning a Scottish LCF will not be specified in the Bill, but will instead by established through secondary legislation. The Government has indicated that it intends to “consult widely before using these powers to make subordinate legislation.”\(^{89}\)

Regulation

93. While the evidence received by the Committee strongly supported the continuation of the LCF in Scotland there were a number of concerns regarding the existing regulation of the Fund. The Fund is currently regulated by ENTRUST on behalf of HMRC which has ultimate responsibility for governing the regulations. ENTRUST registers all organisations that wish to receive funding and carries out administrative checks on each project to ensure compliance with the regulations prior to any funds being released. The regulator also undertakes site inspection visits once funds have been allocated. It is funded by a combination of a levy of 2\% on monies received from the Fund in support of environmental projects and of fees charged for registration.

94. The RSPB argued that the current regulatory model is excessive and burdensome and suggested that significant savings could be made by aligning the reporting of the landfill tax and the credit system to the same body. The view of the Scottish Wildlife Trust (SWT) was that the regulatory model was “expensive, duplicated information gathering” and “over-regulates the scheme.” It suggested that ENTRUST’s scrutiny of applications to the LCF was “arguably superfluous.” Alternatively, environmental bodies could report contributions from Distributive Environmental Bodies (DEBs) direct to Revenue Scotland which could then reconcile them with contributions paid by landfill site operators, thereby creating “a more efficient regulatory process.”\(^{90}\)

95. The Scottish Landfill Communities Fund Forum (SLCFF) stated in oral evidence that the current regulatory “requirements are extremely onerous and time

---

\(^{87}\) Landfill Tax (Scotland) Bill. Policy Memorandum, paragraph 51
\(^{88}\) Landfill Tax (Scotland) Bill. Policy Memorandum, paragraph 52
\(^{89}\) Landfill Tax (Scotland) Bill. Policy Memorandum, paragraph 53
\(^{90}\) Scottish Wildlife Trust. Written submission, paragraph 11
and suggested that this could deter some applicants from bidding for funding. SEPA acknowledged the concerns that the regulation of the Fund was “slightly top heavy” and could be streamlined. SEPA stated that whilst there were ongoing discussions regarding its possible involvement in regulating the process this was “only one of several options being discussed.” When questioned further on whether it sought to administer the Fund it stated “Our view was not that SEPA should be doing it; it was that SEPA could be doing it, if that was the best thing for the tax and the fund.”

96. The Bill team stated that its aim was to implement a system that was “as cost effective as possible” and that it was considering “a couple of models”. These are broadly based on “self-regulation, which would take out a tier of administration, and simplification of the number of bodies that are involved, whereby there could be one overarching body that helps to administer the funds.” Whilst acknowledging the complexity of the issue, it confirmed that the Government would work with “the industry, community groups and people with environmental interests to develop proposals that will then be reflected in subordinate legislation that will come to Parliament for approval.” As a result of this process it had “no doubt that we will have a good idea on the table in six or 12 months.”

97. In response to questioning as to whether ENTRUST or an equivalent was needed to regulate the Fund the Cabinet Secretary stated that: “there is a lot of work to be done on the most efficient way of delivering the fund.” His view was that “we can do that admin in more efficient ways, and we will explore those.”

Distribution

98. Much of the LCF is currently distributed by a number of DEBs with smaller amounts being distributed by the landfill operators themselves. The evidence suggested that this system was largely considered to work well. For example, the SWT stated that DEBs “know their operational area and project client base well” and “provide good value for money.”

99. The SLCFF stated that it “would not support at all the notion of SEPA centralising the fund; in fact, our position is quite the reverse, in that we think that the fund should remain the way that it is and should be distributed locally, because it empowers communities.” The SWT agreed with this approach stating that it was “recommending not a centralised fund as such but an element of flexibility about how the funds are distributed and continued focus on the communities that are at disbenefit from the landfill operations.”

---

97 Scottish Wildlife Trust. Written submission, paragraph 5
The 10-Mile Eligibility Radius

100. The guidance for the existing LCF states that an environmental project should be no more than 10 miles from a landfill site (whether active or not) in order to be eligible to receive funding. The Committee heard conflicting views as to whether this criterion should be maintained.

101. A number of organisations proposed amending the 10-mile eligibility status including SEPA which pointed out that there were fewer landfill sites and that waste was also being “transported larger distances to facilities to be treated, rather than going to a nearby landfill site.” \(^\text{100}\) SEPA suggested that “rather than having a fixed area, the principle should be that those who are directly affected should get the first call on the benefit of the fund.” \(^\text{101}\)

102. COSLA, along with a number of local authorities also argued for changing the criterion. Suggestions were made that it could be widened to include the whole local authority area or areas from where the waste arises. It was also pointed out that a case could be made for the provision of compensation to communities through which waste was transported.

103. Community Resources Network Scotland proposed a two-tiered approach aimed at maintaining “environmental impact mitigation around a landfill site” \(^\text{102}\) whilst also creating a centralised fund on which national projects intended to reduce the amount of waste going to landfill could draw. It suggested that “a proportion of the money - and that proportion needs to be debated - needs to be focused on a national strategic objective.” \(^\text{103}\)

104. SESA, however, did not support any extension of the 10-mile limit or of using part of the Fund to support the Government’s strategic environmental objectives. It stated in oral evidence that “from an environmental justice perspective, our view is that the Fund should be for areas in close proximity to the landfill site and that the 10-mile radius should remain in place, because extending it would leave less money available for the people who are most directly impacted by landfill.” \(^\text{104}\)

105. In oral evidence, the Bill team agreed that it would “probably need to look hard at the 10-mile radius rule” \(^\text{105}\) stating that “something a little more sophisticated” was needed. It went on to suggest that guidance was the best way of achieving this as it “can be a little more flexible and accommodating in the more complex circumstances” and undertook “to consider that with everyone who is involved in the fund over the next 18 months, before the legislation is implemented.”

106. The Bill team further stated that its aim was “to ensure that the people who are affected by landfill sites are the first port of call for compensation for that damage. They will be either the people right beside a landfill site or people who are affected by transportation of the waste to the site.”

107. When questioned on the 10-mile limit, the Cabinet Secretary stated that he was not “persuaded at this stage by the view that, because the waste is put into landfill sites locally, the scheme should be handled locally. However, I am open to discussion on that question.”

Level of Credit Limit

108. The Bill team, in oral evidence, stated that the amount available to the Fund was expected to diminish, “which is why the minister said that he would increase the fund by around 10 per cent.”

109. In its written evidence, Falkirk Council welcomed the proposed increase in the cap whilst SESA stated that “the Fund’s widely acknowledged success can be further built up with the proposed extension of the credit limit.” Similarly, the SWT stated that any moves to extend the limit “should be encouraged” whilst CIWM welcomed proposals to increase by 10% the limit for contributions to the scheme.

110. The FM states that “the existing UK cap of 5.6% of total liabilities will rise to 6.16%.” However, the PM states that the current UK cap is 6.8% meaning that a 10% increase on this figure would give a new cap of 7.48%.

111. The Committee welcomes the retention of the existing landfill tax credit system, supports the 10% increase and invites the Government to confirm that this will result in a new cap of 7.48%.

112. The Committee is supportive of the principle that those communities most affected by landfill sites should be the ones to benefit most from the fund.

113. The Committee recommends that the subordinate legislation detailing the Fund’s regulatory and administrative arrangements should be subject to the affirmative procedure.

114. The Committee invites the Government to provide it with regular updates of its progress with regard to the Scottish LCF.

---

109 Scottish Environmental Services Association. Written submission, paragraph 19
110 Scottish Wildlife Trust. Written submission, paragraph 4
111 Landfill Tax (Scotland) Bill. Financial Memorandum, paragraph 48
112 Landfill Tax (Scotland) Bill, Policy Memorandum, paragraph 51
CONCLUSION

115. The Committee supports the general principles of the Bill and emphasises that it will seek to monitor closely the implementation and delivery of the Scottish Landfill Tax.
EXTRACTS FROM THE MINUTES OF THE FINANCE COMMITTEE

12th Meeting, 2013 (Session 4) Wednesday 24 April 2013

Landfill Tax (Scotland) Bill (in private): The Committee considered and agreed its approach to the scrutiny of the Bill at Stage 1.

17th Meeting, 2013 (Session 4) Wednesday 5 June 2013

Landfill Tax (Scotland) Bill: The Committee took evidence from—

Alistair Brown, Deputy Director, Fiscal Responsibility Division, Stuart Greig, Bill Team Leader and Head of Zero Waste, Fiscal Responsibility and Environmental Quality Divisions, David Kerrouchi, Policy Adviser, and John St Clair, Senior Principal Legal Officer, Scottish Government.

Landfill Tax (Scotland) Bill (in private): The Committee further considered and agreed its approach to the scrutiny of the Bill at Stage 1.

18th Meeting, 2013 (Session 4) Wednesday 12 June 2013

Landfill Tax (Scotland) Bill: The Committee took evidence on the Bill at Stage 1 from—

Professor Jim Baird, Glasgow Caledonian University, The Chartered Institution of Wastes Management; Stephen Freeland, Policy Executive, Scottish Environmental Services Association; Craig Hatton, Corporate Director, North Ayrshire Council; Lloyd Austin, Head of Conservation Policy, RSPB Scotland; Willie Beattie, Member, The Scottish Landfill Communities Fund Forum; Lucy Graham, Head of Development, Scottish Wildlife Trust; Paul Johnston, Chair, Community Resources Network Scotland.

19th Meeting, 2013 (Session 4) Wednesday 19 June 2013

Landfill Tax (Scotland) Bill: The Committee will took evidence from—

Eleanor Emberson, Director of Financial Strategy and Head of Revenue Scotland, and Nicky Harrison, Chief Operating Officer, Revenue Scotland, Scottish Government; John Kenny, Head of National Operations, and Ronnie Robinson, Principal Policy Officer, National Operations Waste Unit, Scottish Environment Protection Agency; John Swinney, Cabinet Secretary for Finance, Employment and Sustainable Growth, Alistair Brown, Deputy Director, Fiscal Responsibility Division, John St Clair, Senior Principal Legal Officer, and Stuart Greig, Bill Team Leader and Head of Zero Waste, Fiscal Responsibility and Environmental Quality Divisions, Scottish Government.
INDEX OF ORAL EVIDENCE SESSIONS

17th Meeting, 2013 (Session 4) Wednesday 5 June 2013
Alistair Brown, Deputy Director, Fiscal Responsibility Division, Stuart Greig, Bill Team Leader and Head of Zero Waste, Fiscal Responsibility and Environmental Quality Divisions, David Kerrouchi, Policy Adviser, and John St Clair, Senior Principal Legal Officer, Scottish Government.

18th Meeting, 2013 (Session 4) Wednesday 12 June 2013
Professor Jim Baird, Glasgow Caledonian University, The Chartered Institution of Wastes Management; Stephen Freeland, Policy Executive, Scottish Environmental Services Association; Craig Hatton, Corporate Director, North Ayrshire Council; Lloyd Austin, Head of Conservation Policy, RSPB Scotland; Willie Beattie, Member, The Scottish Landfill Communities Fund Forum; Lucy Graham, Head of Development, Scottish Wildlife Trust; Paul Johnston, Chair, Community Resources Network Scotland.

19th Meeting, 2013 (Session 4) Wednesday 19 June 2013
Eleanor Emberson, Director of Financial Strategy and Head of Revenue Scotland, and Nicky Harrison, Chief Operating Officer, Revenue Scotland, Scottish Government; John Kenny, Head of National Operations, and Ronnie Robinson, Principal Policy Officer, National Operations Waste Unit, Scottish Environment Protection Agency; John Swinney, Cabinet Secretary for Finance, Employment and Sustainable Growth, Alistair Brown, Deputy Director, Fiscal Responsibility Division, John St Clair, Senior Principal Legal Officer, and Stuart Greig, Bill Team Leader and Head of Zero Waste, Fiscal Responsibility and Environmental Quality Divisions, Scottish Government.
The Convener: Item 2 is to take evidence from the Scottish Government bill team as part of our stage 1 scrutiny of the Landfill Tax (Scotland) Bill. I welcome to the meeting Alistair Brown, David Kerrouchi, John St Clair and Stuart Greig, and invite one of the witnesses to give a short opening statement.

Alistair Brown (Scottish Government): I will make an opening statement on the taxation elements of the bill. If it is all right with the committee, I will then invite Stuart Greig to say a few words about the environmental context.

Thank you for the opportunity to give evidence to the committee on the bill. As the committee knows, the bill is the second of two bills to establish devolved taxes in Scotland following the devolution of legislative competence to Scotland in the Scotland Act 2012. The committee is already very familiar with the Land and Buildings Transaction Tax (Scotland) Bill; indeed, your further examination of that bill at stage 2 will follow this evidence session. As the committee is also well aware, a third bill is in preparation for the 2013-14 legislative programme to provide for tax management arrangements. All, of course, are subject to the Parliament’s agreement.

With your permission, convener, I would like to invite Stuart Greig to set the environmental policy context for the Landfill Tax (Scotland) Bill.

Stuart Greig (Scottish Government): Good morning. Actually, I will set the economic context for the bill.

Over the past 10 to 12 years, we have seen around 100 years of commodity price reductions wiped out, as we have moved beyond the simple efficiencies that we have managed to create in manufacturing processes, and as access to raw materials and critical resources has become more costly and expensive. At the same time, as a nation, we landfill around 16.5 million to 17 million tonnes of waste each year. We are becoming much better at recycling, but there is an opportunity to make a much deeper shift in our economy around these things.

There is currently around £5 billion-worth of gold in the waste chain and there are other critical raw materials. There are vital electronics components and so on. The real shift is in getting those things back into supply chains. It is about creating remanufacturing opportunities, potentially reinstating a manufacturing base, and being part of global supply chains, which are about reverse...
logistics for things. It is not just about recycling. There is a big long-term opportunity for everyone. We are saying that everything around us—everything in this room and outside—is a critical resource asset that we need to become much better at putting back into our economy rather than into low-grade outlets or landfill.

On what the Landfill Tax (Scotland) Bill will do, landfill tax has existed in the United Kingdom for a number of years and has helped in the transition. It has created a price point for landfill that makes other options, such as recycling or investment in more innovative technologies, real market opportunities. It creates jobs and a shift in our economy. That is the context. Although the tax is about protecting our environment and reducing carbon, it is also about stimulating a change in economic conditions that will allow innovation. The bill is one step of probably many more steps to come in the future.

Alistair Brown: May I continue for another two minutes, convener? Is that acceptable?

The Convener: Seeing as it is you.

Alistair Brown: I thought that it might be helpful for the committee to compare and contrast the landfill tax provisions with the provisions on land and buildings transaction tax, which the committee is more familiar with. There are many similarities. This bill defines the taxable event or taxable transaction—in this case, it is disposal to landfill—and specifies the point in time when the tax becomes due, which is when the disposal is made. It makes provision for who is liable to pay the tax—the landfill site operator—and it sets out how the tax due is to be calculated. In each case, you will find parallel provisions in land and buildings transaction tax.

However, the landfill tax is a good deal simpler than LBTT. The transaction itself is a physical transaction rather than a legal or financial one, so it is easier to define and recognise and it is harder to avoid. There is only one type of taxable transaction in the bill before the committee and we do not have the complication that we have in LBTT of taxing leases, for example, as well as property purchases.

In landfill tax, we do not need to differentiate between the different bodies that make the transactions, unlike in LBTT, where we differentiate—for example, when a charity is involved in a transaction, or a partnership or a trust. Landfill tax does not have the same complicated reliefs—LBTT has a schedule of 19 reliefs. The same situation does not arise in relation to the landfill tax. There are important points of similarity to and difference from LBTT.

The committee might find an update on the financial impact of the bill on the Scottish budget helpful. As the Scottish Parliament information centre briefing says, the impact on the budget depends on two things: on receipts from the Scottish landfill tax from April 2015 onwards and the offsetting block grant adjustment. Projections of receipts depend on a number of factors—including the success of the policies that Stuart Greig referred to, to divert waste to streams other than landfill.

It is also necessary for us to differentiate between Scottish and non-Scottish receipts in the UK tax receipt figures produced by Her Majesty's Revenue and Customs. Scottish receipts are not measured at the moment—we have an estimate and further work is in hand with UK Government officials to improve our understanding of current and forecast receipts from landfill tax in Scotland. In the meantime—as the committee knows—we have forecasts that are prepared by the Office for Budget Responsibility. As the SPIces briefing notes, those forecasts were revised downwards in December 2012 and again at the time of the budget in March 2013. The block grant adjustment is a work in progress and continues to involve officials and ministers in the Treasury and the Scottish Government in discussion.

I hope that those remarks are helpful in setting the scene.

The Convener: Yes, thank you very much, Alistair. As always, I will start off with some questions—I will try not to steal all the juicy ones right at the start so that my colleagues around the table will have a few to follow on with. You said that one of the points of the tax is that it is harder to avoid, but the Scottish Environment Protection Agency said:

”HMRC cannot collect tax from operators whose sites are not permitted. This loophole encourages large scale illegal dumping as the tax avoided and the relatively small fines imposed by the courts make the activity financially attractive.”

The Law Society of Scotland is of the view that that

”means that compliant operators may be at a competitive disadvantage”.

SEPA and revenue Scotland both talk about how tackling illegal dumping is important. How will the bill impact on that issue?

Alistair Brown: The policy intention in the bill, which differs quite markedly from the policy of the UK landfill tax that is already in place, is that illegal disposals to landfill should be subject to tax. That is provided for in the bill by allowing the tax authority to deem an area that has been used for disposals as an authorised landfill site for tax purposes. The legislation is drafted with a view to taxing the situation that SEPA had in mind. Stuart
Greig and John St Clair can add some more details.

**Stuart Greig:** I will be brief. The bill is introducing a unique policy that does not exist at a UK level at the moment. It is intended to be another strong tool in the armoury to tackle illegal waste dumping. That is a criminal offence and it should be a taxable offence. To be frank, we need to clamp down on the people who are getting away with it at the moment. The bill is a critical action to allow us to do that.

**The Convener:** Will the financial penalties that will be imposed through the bill ensure that we eliminate or significantly reduce illegal dumping?

**Stuart Greig:** They will be another significant deterrent. I will put the measure in context and then we can talk about specific cases. We are talking not about small-scale fly tipping but about large-scale organised crime and the illegal dumping of materials that is evading tax of the order of £5 million plus. They are isolated activities, but they are not small scale at times. The financial penalties will help us to start to tackle that.

**John St Clair (Scottish Government):** You asked about the effect on the illegal dumper, convener. He will be subject to a range of sanctions. Currently, he is subject to criminal sanctions but, once we decide to tax the activity, he will also be liable for tax evasion and liable for the cost of dumping his waste properly. Therefore, he will be taxed for the illegal dumping and there will be another penalty when he has to take the waste to a proper site because, in effect, there will be two disposals. We think of that as quite a powerful battery of sanctions against illegal dumping and hope that even the message about that going out might help to reduce such activity.

**The Convener:** A number of respondents have raised the issue of waste tourism. For example, Scottish Borders Council warns that, if there is a change in the list of materials that are exempted, it may lead to an influx from elsewhere in the United Kingdom. Funnily enough, North Ayrshire Council, which covers my area, seemed concerned about the border, we talk and we understand the direction of travel for the tax.

**Stuart Greig:** In the eyes of waste legislation, the border with England is not a border. There is no legal issue with waste movement across the country, but we are an island and it is a genuine concern, so we have focused in on the matter.

The committee would be surprised at how small the differential in tax rates would be for it to be cost effective to move waste. Companies can do back hauling and so forth to reduce their fuel costs. We need to be aware of that and have stated that, initially, we would want to mirror the UK structure and rates closely. I will not get into the details of precisely what the threshold is at which waste might start to be moved, but it is much smaller than the committee might imagine. We want to work closely with the UK Government to try to ensure that, if any moves are afoot or there is any consideration either south or north of the border, we talk and we understand the direction of travel for the tax.

09:45

**The Convener:** The bill has to be consistent with the four principles that have been established, which are certainty, convenience, efficiency and a tax being proportionate to the ability to pay. The
Scottish Environmental Services Association states in its submission:

“The Scottish Government appears to have drafted the Bill as an enabling framework, with specific detail on how the new tax regime might apply in practice to follow later in secondary legislation. As the Bill offers the industry little in the way of certainty then we would have to argue that it is not consistent with the principles described above.”

North Ayrshire Council states:

“There remains uncertainty over the rate of Landfill Tax which will be charged which has an impact on financial planning for the Council.”

Obviously, the plans are long term. It continues:

“Although it states that rates will closely align to UK rates we still don’t know for sure what this rate will be beyond £80 in 14/15.”

When is the Scottish Government likely to look at setting the rates, given the long-term planning that local authorities are undertaking?

**Alistair Brown:** I will begin to answer that, and I will then invite Stuart Greig to comment further on certainty about which materials are taxed at which rates.

I am not aware that Mr Swinney has publicly given any indication of the timing of the setting of tax rates for landfill tax. The committee knows from its discussion with the minister on land and buildings transaction tax that he is listening carefully to representations that are made to him about the timing of the setting of rates for that tax. I expect that he will want to take into account both the written representations that the committee has received and the oral evidence that it takes in considering the issue that you raise.

The issue that arises in relation to the property markets from setting rates very early or very late do not seem to me to be quite so applicable to landfill tax. People are not going to stockpile waste while waiting for a reduction in tax rates or whatever—that is unlikely. However, the committee might want to return to the issue when it takes evidence from the minister in two weeks’ time.

The subject of the first part of your question, and certainly the burden of the point that was made by SESMA and North Ayrshire Council, was certainty about the range of materials that are covered by the tax and whether there will be a lower or higher rate. I invite Stuart Greig to offer the committee a response on that.

**Stuart Greig:** We are well aware of the concern. It is not just about the rates but applies across the board to the administrative system, the qualifying materials and so on. It is vital that the industry has as much certainty as we can provide. It is appropriate to reserve a number of policy matters to subordinate legislation, as that will allow the Parliament to adjust critical aspects of the tax to bring it into line with shifts in policy and external circumstances, which is essential.

We have asked SESA—it is working on something for us—to identify all the points on which it needs most certainty. Some things can be covered in guidance and some will be in the subordinate legislation, but that will give us a hit list of things on which we need to work closely with SESA to give it as much certainty as we can as soon as we can. That has been our approach, and we will continue to pursue that over the coming months as the bill moves through Parliament.

**The Convener:** You mentioned the adjustment to the block grant. I know that discussions are continuing on that. SEPA states:

“We trust that any adjustment will allow for the proposed Revenue Scotland, Registrars of Scotland and SEPA set up and running costs.”

Do we know whether that will be the case? In the financial memorandum, the running costs from April 2015 are estimated to be £2.2 million, although I am pleased to see that the 26 full-time equivalent staff will be employed here in Scotland rather than our paying for them to be employed south of the border by HMRC.

**Alistair Brown:** I have a great deal of sympathy with SEPA’s comment, but the policy of the UK Government is that the costs of administering devolved taxes—and devolved anything else—should fall on the Scottish Government’s budget. That is more than an expectation; it is an explicit policy of the UK Government. The block grant adjustment would not, therefore, include an allowance for the costs of administering landfill tax or land and buildings transaction tax in Scotland. It is similar to the situation with the Scottish rate of income tax. The Scottish Government is being invoiced for the costs of establishing that tax, and from 2016 onwards we expect to have to pay the cost of running it.

**The Convener:** I know that you have said that to the Finance Committee on several occasions, but it is important to get that kind of thing on the record.

I have one last question to ask before I invite colleagues to come in. South Ayrshire Council has said:

“inert materials could perhaps be better used in the production of aggregates, building blocks, filtration equipment or landscaping, than going for landfill disposal”.

Two other written responses have suggested that asbestos should be moved on to the list, including the response from Viridor, which states:

“a lower tax on asbestos may encourage less environmental crime resulting from the illegal disposal of this form of waste. Such a move would balance the increased costs of treating this form of waste and combined
would encourage more responsible disposal of asbestos in Scotland.”

What is your comment on that?

Alistair Brown: I invite Stuart Greig to respond to that.

Stuart Greig: Those are good and valid points, but we need to be careful that we work through all the potential ramifications. For instance, if we reduce the rate for asbestos, will a lot more of that material be moved to Scotland from England? We need to understand the full implications of that proposal.

The purpose of the tax is to drive more recycling, and I am sure that ministers will be open to considering those sorts of options as the tax is implemented. We would not want to have too many radical changes at the point of implementation but, as we move forward post-2015, such things might be considered. That is one of the reasons why we have created a slightly more flexible system in the bill to allow ministers and the Parliament to bring things into the tax or adjust it to make things simpler.

The Convener: Thank you. I open it up to questions from the committee.

Malcolm Chisholm (Edinburgh Northern and Leith) (Lab): You have gone through the differences between landfill tax and LBTT. When I thought about it beforehand, one of the differences that struck me was the Government’s clear commitment to achieving revenue neutrality on LBTT. I presume that that is not relevant in this context, as the landfill tax is one of those strange taxes for which we want the yield to be as low as possible, although that might create some problems when it comes to the block grant adjustment. What is the Scottish Government’s thinking on the landfill tax? The estimate that we have been given is that it will generate £107 million in 2015-16—although you emphasise that that is only an estimate—falling to £40.5 million in 2025. What is the Scottish Government’s attitude to the block grant adjustment if those are the guiding figures that we have?

Alistair Brown: There are two points to make in response to Mr Chisholm’s question. First, tax revenues are normally broadly pegged to economic activity and, as the economy grows or stagnates, tax revenues behave similarly. However, an environmental tax whose policy intention is measured by a reduction in revenues is quite unlike any other tax that we have to deal with. For the UK Government, looking at a very broad basket of 30-odd taxes, a reduction in the income stream from one of those taxes is something to be balanced against the income streams from many others. However, because the landfill tax is one of only two devolved taxes—three if you include the Scottish rate of income tax—the reduction is of particular concern for the Scottish Government. How it deals with that forecast reduction in the context of agreeing a block grant adjustment method with the UK Government, and with the Treasury in particular, is a significant issue that we have been discussing at official level. It is in Mr Swinney’s mind too, given his position in all this. It is a real issue, but we do not yet have an answer to it. However, I can safely say that Mr Swinney expects us to define an answer that he can bring to the Parliament in due course.

Secondly, how good we are at forecasting these things is a slightly more academic point. As the committee will be aware from the SPICe briefing, the OBR currently produces a set of tax receipts projections, the most recent of which was published for the budget in March 2013. Broadly speaking, I would say that the OBR sees tax revenue from landfill tax staying level in cash terms from 2015 onwards, whereas we project a significant reduction, as you have just quoted, of more than 60 per cent by 2025. Further work needs to be done on that, so we are engaged in conversation with officials south of the border on exploring further the best way to project or forecast the tax receipts.

Malcolm Chisholm: Is the expectation that there will be a one-off block grant adjustment for landfill tax as for LBTT? Obviously, the Scottish Government will argue for as high an adjustment as possible, so I presume that it will start by arguing for £107 million. I suppose that, in principle, there is almost an argument for having a running adjustment that would vary with the overall UK take over a period of years. Otherwise, the Scottish Government will presumably need to try and argue for the £107 million, but the OBR projections obviously offer a strong counterargument to that.

Alistair Brown: That is very much the substance of our discussions with the Treasury. The UK Government’s policy on the issue was originally set out in the November 2010 command paper, which put together the two devolved taxes that we now call land and buildings transaction tax and Scottish landfill tax. In discussing the block grant adjustment, the UK Government has not differentiated between the two taxes.

The Convener: Malcolm Chisholm said that the Scottish Government would argue for as high a block grant adjustment as possible. Would it not argue for as low an adjustment as possible?

Alistair Brown: Yes. In our discussions with the Treasury, we want to achieve a block grant adjustment that is as low as possible, so that we minimise the risk of the Scottish budget losing when the devolved taxes start up in April 2015.
Malcolm Chisholm: I thank the convener for that. I was thinking that we would gain £107 million, but obviously we would lose £107 million. As ever, the convener is right—I bow to him on that.

Dave Thompson (Skye, Lochaber and Badenoch) (SNP): Good morning, gentlemen. As director of protective services for Highland Council many years ago, one of my responsibilities was waste disposal so I wonder whether the following situation that used to arise is considered in the bill. Where someone was developing a piece of land that had perfectly good topsoil or general spoil that was not contaminated in any way, it was sometimes useful to allow that material into our site to help us to create bunds that could line the site. The legislation was structured in such a way that we were prevented from using the dilute and dispersal method that we had used successfully for a long time, so we did not get a lot of material. We could not even arrange to purchase the material because, as the developer’s intention was to dispose of the material as a by-product from developing land for housing, it could not be sold—I cannot quite remember all the details. I think that we need a mechanism that allows the developer to give away at low cost material whose disposal would incur landfill tax, or which would be kept on site through the creation of artificial bunds around the housing estate, which might not be desirable. Has any thought been given to how we might help developers and landfill operators to find a mutually beneficial way of dealing with such material?

Stuart Greig: I am not sure how long ago you were involved in the area.

Dave Thompson: It was about 15 to 20 years ago, right enough.

10:00

Stuart Greig: The legislation has probably changed fairly substantially since then. At present, there are a number of exemptions that allow developers to move material around and use it in certain ways on site. You have entered a fairly controversial area, as that is one of those classic ways in which people can hide some of the more illegal aspects of waste activity. Something might be sold as good-quality soil but, under the top layer, there is a host of sins. We need to strike a balance between allowing flexibility to get good use of the topsoil and so on, and not creating an open avenue for people to abuse the system and avoid the landfill tax by disposing of things that they should not dispose of in such areas.

The system has changed, however. If you would like more information on it, that is not a problem—we can give you an update.

Dave Thompson: I just wanted to tease out the issue. You are obviously thinking about the issues and what could be mutually beneficial. I understand the points about people perhaps abusing or misusing the situation. I apologise for my out-of-date information.

I have a second point, which is on the landfill communities fund. I seek information on where the fund can be distributed. In the past, if a local authority had a landfill site in its boundaries, the fund that was built up could be distributed to local communities. Perhaps that has changed, too, since I worked in the area but, as landfill reduces, fewer and fewer communities will have landfill sites in the immediate vicinity. Will it be only communities that are close to landfill sites that will benefit from the fund and, if so, what is the definition of “close”? Alternatively, is there a plan to broaden out the scheme to create a Scotland-wide fund into which communities can bid?

Alistair Brown: I ask Dave Kerrouchi to respond to Mr Thompson.

David Kerrouchi (Scottish Government): We are listening to the landfill communities fund forum and environmental bodies about how to do that. The guidance has a 10-mile radius rule and there is the objective of environmental improvement, although that does not always happen within 10 miles of a landfill site. Further down the road, when we come to producing the guidelines under subordinate legislation, we will listen to community and environmental groups about how best we can apply the depreciating returns to the funds.

Dave Thompson: It would be unfortunate if areas that got rid of their landfill sites did not benefit while those that kept sites benefited. There is a case for ensuring that the whole of Scotland can access the fund, rather than just communities that are close to landfill sites. It might be useful to have a two-tier system so that communities that are close to sites get an additional benefit but other communities can benefit, too.

Alistair Brown: It might be worth saying, in addition to Dave Kerrouchi’s response to Mr Thompson, that there is a regulation-making power in section 18 to deal with what are called tax credits—the landfill communities fund to which Mr Thompson refers is funded by payments from landfill operators who then achieve a credit on the tax that is due. The bill does not bind the regulations to deal only with uses for environmental purposes within a certain radius of a landfill site. The regulations can make broader provision than that. As Dave Kerrouchi said, in making the regulations, the Scottish Government will consult closely those who are affected, including the environmental bodies, which are pretty effective at getting their points across.
Stuart, is that a fair representation?

Stuart Greig: Yes.

Jean Urquhart (Highlands and Islands) (Ind): The submission from Comhairle nan Eilean Siar—or Western Isles Council—raises an issue about the cost of transporting stuff for recycling. That is of course relevant to any island or island group. Although we encourage people to recycle as much as possible and we have a zero waste policy, clearly councils in such areas are at a disadvantage, given the transportation cost.

Stuart Greig mentioned a programme of reverse logistics. Will that be run at the same time as we look at what we do with landfill waste? There are community groups in Shetland, for example, that do not transport glass; they use it for road repairs and for making tiles and bricks—all kinds of things. They have to apply to different funding organisations to keep schemes going, so they might have a short shelf life. Do you think that such schemes are practical?

Stuart Greig: Yes, absolutely. There are lots of really good examples of how the island communities and more remote areas rise to the challenge of trying to close the loop with those materials. They have a different set of circumstances, some of which are similar to those of Scotland as a whole, in that Scotland is off the coast of mainland Europe.

On reverse logistics, some councils are backhauling materials with other loads on ships that are returning to shore. Some interesting work is being done on community anaerobic digestion for food waste and other things. We appreciate the unique challenges that exist in island areas. Some of our other policies have provided much greater flexibility for the island communities, so that they can adapt them. It would be challenging to do something very specific with landfill tax; it is more about our other support mechanisms, such as zero waste Scotland, helping to give communities access to funding and technical support to put those creative mechanisms in place.

Jean Urquhart: I have a supplementary question. You talked about the penalties that would apply to illegal dumping. Apart from tax avoidance, there is the fact that that such dumping constitutes a criminal offence—indeed, we can throw the book at the perpetrators. How will we know who they are? They should rightly be charged; that sounds like a practical solution. How successful are we in bringing criminal proceedings against people who do illegal dumping? How do we resolve such situations? How will we get the tax?

Stuart Greig: We are quite successful. SEPA has a number of initiatives in its environmental crime task force work. There have been a number of recent high-profile prosecutions for some quite large-scale activities. The proposed tax will give us another tool to use in that context. SEPA will be able to play a joint role: it can use the information from its environmental enforcement work to inform the tax administration side of things as well, which will bring real strength. Although there is more to be done, adding the tax is another thing that will help. Once the tax is in place, we will look to SEPA and others to focus in on the issue with the new tool at their disposal.

John St Clair: It might be worth mentioning that two parties can be involved in illegal dumping if there is a fly-by-night incident. One is the illegal dumper, and the second is the landowner—if they are complicit. That is why section 16(3) says that where there is unauthorised dumping, it is not only the person who makes the disposal who is liable, but anybody who knowingly was in on it. That would catch cases where the landlord must have known that a truck was dumping stuff.

Gavin Brown (Lothian) (Con): The Chartered Institute of Taxation stated in its written evidence that the current rates structure does not really "fit with the objectives of the tax."

Does the Scottish Government have any views at this stage on what the rates structure ought to look like?

We have two rates at present. Is the bill an opportunity for us to change the rates structure to reflect what we are trying to achieve? In particular, is there potential for changing the definition of inert waste to reflect the fact that some such items could be recycled more easily than others? Can you expand on the Government’s thinking at present?

Alistair Brown: I will start with a brief response and then invite Stuart Greig to come in.

On the structure, we have read the Chartered Institute of Taxation’s response carefully, and there are other arguments for increasing the number of tax rate bands. At present, there are two. There is a very low rate of £2.50 a tonne for inert material, which consists of smashed-up masonry, aggregate and whatnot, and there is a rate of £72 a tonne for active waste, which is generated from households and collected by local authorities.

There are arguments for having a rate in the middle—for example, for materials that are less environmentally harmful than others but not completely inert. However, the more rates we have, the more complicated the tax is to administer, not only for the tax authority and SEPA, but for the waste contractors and local authorities that have to stream waste and separate it into its different taxable components.
I am speaking as a bit of a tax man, so I will let Stuart Greig give his view.

**Stuart Greig:** To be honest, I do not have too much more to add. As with anything, we could make the system far more sophisticated than it is at present by adding extra rates and so forth, but every time we did so we would introduce another potential loophole and another complexity in administering the tax.

However, that is not to say that such things are off the table in any sense. The critical point is that if at some stage we were to look at introducing something new, we would need to ensure that industry had the appropriate lead-in time and understood that the change was coming so that people could change their investment plans appropriately. We need to consider the full implications of introducing a new rate.

**Gavin Brown:** That is helpful.

You have had a couple of questions already about illegal operators, and most people would welcome the provisions that allow SEPA and others to clamp down on them. One question that has come up in the written submissions is whether there will be additional resources for SEPA and other organisations to enforce their new powers, or whether the Government takes the view that they do not need additional resources.

**Alistair Brown:** I will begin and then invite Stuart Greig to come in.

As the committee knows, the Government has provided estimates in the financial memorandum of the costs of administering landfill tax and land and buildings transaction tax. Those can be broken down into several components. At the revenue Scotland level, we have not been able to separate the costs of administering land and buildings transaction tax and landfill tax at this stage. As the design of revenue Scotland and its staffing structure become clearer, it will be possible for it to estimate its costs in running the two taxes.

We have also provided in the financial memorandum an estimate of SEPA’s costs for setting up systems, recruiting and training staff and so on, and running landfill tax. An element has been included in revenue Scotland’s costs for compliance, and we have not differentiated between compliance for landfill and compliance for LBTT.

We expect that those estimates will be sufficient to cover the full range of compliance activity. We also expect the actual costs to be scrutinised post 2015 and compared with our forecasts. If SEPA, in operating the tax, made a particular proposition about the way in which compliance was operating, for example, the Scottish Government would listen to that. However, our present forecasts include compliance costs.

I invite Stuart Greig to add anything that he wants to on the way in which SEPA operates.

10:15

**Stuart Greig:** It is just a minor point. We are working on the issue with SEPA, which is already looking at the opportunities that it can seize off the back of taking responsibility in this area. For example, it is looking at some of the environmental crime task force work and at the Regulatory Reform (Scotland) Bill. I think that we will undoubtedly see a push by SEPA on this front as we move towards 2015 and in subsequent years.

**Gavin Brown:** My next question was going to be about how much of revenue Scotland’s costs could be attributed to landfill tax, but Alistair Brown has pre-empted it.

I have a final question. You have had a couple of questions about the landfill communities fund and, in particular, the 10-mile radius issue. With regard to any regulations that you might introduce, does the Government have an estimate of the cost of the landfill communities fund? We have estimates for how much the tax will collect. Presumably, some money will be taken from that to fund the landfill communities fund. Is there such an estimate, albeit that it cannot be accurate at this stage? Do you have a best estimate?

**Alistair Brown:** I will begin and then ask Dave Kerrouchi to come in. Our starting point is that there is already a landfill communities fund at the UK level. As I recollect, the amount of tax credit that operators can get back from contributions to the landfill communities fund is 5.6 per cent of their contribution.

**The Convener:** It is 6.8 per cent.

**Alistair Brown:** Stuart?

**Stuart Greig:** It is 6.8 per cent.

**Alistair Brown:** It is 6.8 per cent—thank you, convener.

For every £100 million of tax due, those who pay the tax—the landfill operators—can earn credit of £6.8 million by making contributions to the landfill communities fund. We have not specified in the bill the parameters for the landfill communities fund going forward, but Dave Kerrouchi can perhaps provide more information.

**David Kerrouchi:** I have not much more to add, except that the credit scheme has a high take-up rate and is quite successful. On the tax due to Government, I imagine that, on implementation of the bill, over 90 per cent of it will be diverted away.
from Scottish Government coffers to environmental bodies.

Stuart Greig: Just to give the committee a feel for that, the most recent figures, which are from 2011, show that about £4.5 million has been distributed through the landfill communities fund. That figure will diminish, which is why the minister said that he would increase the fund by around 10 per cent. However, it is valid to ask how we make best use of a diminishing pot of money—money that has been really valuable for organisations such as the RSPB in funding its work and in helping to mitigate the impacts of landfill sites. That is a real challenge for us in the years ahead.

John Mason (Glasgow Shettleston) (SNP): I will probably touch on issues that have already been addressed. Waste tourism has been mentioned, particularly with reference to England. The point was made that it can be sometimes worth while to take waste a long way away, but there are stories of western companies dumping stuff in Africa. How do we prevent that from happening?

Alistair Brown: Your question rather goes beyond my knowledge, so I ask Stuart Greig to answer it.

Stuart Greig: There are international agreements and Europe-wide legislation on waste. We are not allowed to export traditional waste—the stuff in our black bins. There is a transfrontier shipment regime, so that waste does not get exported, other than in some very illegal circumstances. A number of materials are not now considered to be waste—for example, the recyclate in our recycling bins—some of which go to China, Indonesia and other places, and some of which stay here and are turned into plastics for use in food-grade containers and so forth. There is also a grey area in the middle on which SEPA is very focused at the moment—it is clamping down on the movement of waste through abuse of transfrontier shipment.

John Mason: We do not need to worry too much that, if the tax rate increases, that will push waste overseas, for example. That should not be a factor.

Stuart Greig: That is a genuine concern. Whatever we do to try to ensure that we drive waste out of the bin and into other avenues, there will always be people who will try to see that as an opportunity to circumvent the system and make some money out of it. Whatever is done with the tax, it is essential that we ensure that the legislation and its enforcement are as tight as possible. We have a good regime in place, and we will add what we can to it through the bill.

John Mason: Okay. Thanks.

SESA was critical of the fact that we are talking about closely following the UK rates. It felt that that is “rather ambiguous” and does not provide the “certainty or clarity” that it would like. It seems to me that it wants 100 per cent clarity and certainty. How do we get the balance between certainty and uncertainty?

Alistair Brown: As we said earlier, Mr Swinney has said—that is not in the bill—that he intends to invite Parliament to agree rates for the Scottish landfill tax that are no lower than the rates that are applied in the rest of the UK from 2015 onwards. In that respect, I think that he was concerned about providing as much certainty as possible to the industry. He was not fettering his discretion to propose higher rates than those that might apply in the UK in future.

John Mason: Are you saying that the industry really does not need any more certainty other than a floor?

Alistair Brown: The industry might feel that it would like to have certainty about the ceiling as well as the floor, but at this stage we are offering certainty about the floor, which we believe is important. It is particularly important for the investment plans that companies that are active in the sector have made, which depend on the cost of landfilling.

John Mason: In that case, am I right to say that it is the minimum cost that matters, because that makes it worth while to invest, and that if the rate of tax was higher, that would be even more of a bonus, in a sense?

Stuart Greig: Waste management companies are now quite diverse organisations. They will deal with recycling, but they might also deal with black-bag residual waste and electronics. If one thing is changed, that will disincentive their involvement in one of area of work but create an opportunity in one of the other areas. The floor and ceiling will therefore be relevant to them.

The really important point is that waste management companies have no certainty about what the UK Government’s position on landfill tax will be post next year, so the situation that they are in in Scotland is basically the same as the situation in the rest of the UK. Waste management companies make a great contribution to our economy and are vital in the shift to handling waste as a resource, but their current business model is based on handling volumes of waste. If you make money from a volume of material, you will want certainty about how much of that might be around in the future. We cannot give 100 per cent certainty. We are always trying to drive down the amount of waste that flows through our economy, and landfill tax will always be used to try
to drive down the amount of waste in our economy.

We have said that we will provide as much certainty as we can in a way that is very similar to the position in the rest of the UK in the first instance, but we continue to be open to ideas about where we will go in the future.

**John Mason:** Okay. Thanks.

The Chartered Institute of Taxation says in paragraph 18 of its submission that

“the resource that is being protected is land”.

I am not sure that I agree with that. I thought that we were trying more to protect resources with a wider remit, especially in light of what Mr Greig said earlier. Do you agree that

“the resource that is being protected is land”?

The Chartered Institute of Taxation built on that by saying that the tax should be based not on weight but on some other “fairer measure”, although I do not think that it suggested what that might be. What is your response to that?

**Alistair Brown:** If Mr Mason is content for me to do so, I will invite Stuart Greig to comment on the statement that

“the resource that is being protected is land”.

Other resources are being protected through the landfill tax. Stuart, will you comment on that?

**Stuart Greig:** I will try, although I might be as confused as you are on this point. I am struggling to understand how the tax will protect land. The focus is on getting the stuff out of the sites. At the moment, we have 78 landfill sites but at some point there will be significantly fewer, and some may offer opportunities for redevelopment. The Scottish Government building is on a landfill site. I can see the value of the land in that sense.

**John Mason:** The logic of the statement struck me as strange when I read it. I just wanted a bit of reassurance that I had not misunderstood it. By the chartered institute’s logic, if we dig a deep enough hole, that would not use up very much land and any amount of stuff could be put in. However, you said at the beginning that we are trying to save resources on a wider scale.

**Alistair Brown:** As the committee will know, the Chartered Institute of Taxation has been very helpful to us in our work on devolved taxes, particularly the land and buildings transaction tax. Through the contact that we have with the chartered institute, we can make sure that we fully understand the point that it is making. There is an opportunity for us to have a conversation with the chartered institute about the point that you have raised.

**John Mason:** Thanks.

In its written submission, the Convention of Scottish Local Authorities talks generally about the new taxes and the importance of their having a local dimension. I am sympathetic to that. However, am I right to say that you would not even consider the landfill tax being a local tax because it needs to be a national tax?

**Alistair Brown:** I will respond to that and invite Stuart Greig to come in if he wishes.

First, we have a Scotland-wide network of landfill sites and waste companies that operate them. Local authorities dispose of their waste to landfill in local authority areas other than their own—there is a lot of cross-boundary operation in that respect. Secondly, I would have thought that, were the tax to be devolved to the local level, there would be considerable difficulty if different local authority areas set different rates. Thirdly, there is a coherent Scottish policy on waste disposal that diverts waste from landfill, which would be supported by a Scotland-wide approach to the landfill tax.

**John Mason:** Glasgow City Council makes the point that, if there were two different tax regimes, that could add bureaucracy for companies that operate across the UK. Are we talking about companies that operate only in the UK, which might be a case of adding one extra tax to 25 or two, or are we talking about companies that operate internationally, which would be moving from, say, 20 tax regimes to 21?

**Alistair Brown:** We recognise that several companies in the waste management sector operate across the UK and that they will move from having to deal with one UK-level landfill tax regime to having to deal with two—one for Scotland and one for the rest of the UK. Stuart Greig can perhaps provide further information about the degree to which those companies operate internationally. In the financial memorandum, we make the point that we believe that the increased burden on companies that will move from operating within one tax regime to operating within two will be relatively small.

Stuart, do you have anything to add on the international dimension?

**Stuart Greig:** A couple of companies that operate landfill sites have an international dimension, and Mr Mason is right to say that it might be a case of adding one extra tax to 25 others that they are dealing with. We are doing everything that we can to simplify the system for Scotland and, with SEPA and revenue Scotland, we will seek to introduce an electronic returns system. We are trying to minimise the burden of administration on operators in Scotland and, by
doing so, to make it as easy as possible for them to adapt to having two tax systems.

**John Mason:** On the landfill communities fund, the 10-mile radius has been mentioned. In Dave Thompson’s constituency 10 miles is quite a short distance, but in my constituency 10 miles is absolutely mega-huge; it is far too great a radius. Has consideration been given to changing the measure? Could the landfill communities fund apply to the ward that the landfill site is in and the adjoining wards, which would be more compact in urban areas and much wider in rural areas?

10:30

**Stuart Greig:** Yes—we will probably need to look hard at the 10-mile radius rule. There are other ways to achieve the same thing.

There is also the issue that the material that gets to a landfill site travels along our roads, which causes disruption to people and communities not only in the close vicinity of the site.

There are good reasons for the radius to be smaller and closer around the landfill site in some circumstances, but there are other justifications for broadening it out across transport networks. There is also a good justification for coverage outside an urban area if we want to counter the environmental damage of landfill sites.

We need something a little more sophisticated for the future, which is why we think that guidance is the way to deal with the matter. Measures that are set in guidance can be more flexible and accommodating in the more complex circumstances about which we are all talking. Undoubtedly, we will consider that with everyone who is involved in the fund over the next 18 months, before the legislation is implemented.

**John Mason:** From what I understand, Glasgow City Council dumps a lot of its rubbish in South Lanarkshire, but it argues in its written submission that much of the benefit should come back to Glasgow rather than staying in South Lanarkshire. I presume, the people suffer from dumping of the waste. Has there been thinking on that, or is it still to be developed?

**Stuart Greig:** We want to ensure that the people who are affected by landfill sites are the first port of call for compensation for that damage. They will be either the people right beside a landfill site or people who are affected by transportation of the waste to the site. They are the number 1 priority. The priority after that is to consider the other environmental implications of landfill so that money can, perhaps, flow into things outside the closest and most-affected communities.

Glasgow City Council may have justification for what it says if some of its citizens are affected by transportation—the movement down the street—to the landfill site in South Lanarkshire.

**John Mason:** How specific should the fund be? One suggestion is that it should be for environmental projects or for preventing future waste. The Patersons Quarries Ltd landfill site is in my constituency, so we have had some of the fund. One of the funded projects built a tennis court, which is good: I am for tennis courts, but the link to waste is a bit limited. Another project was a church kitchen: I am also a fan of church kitchens but, again, the link to waste is limited. Do we need to make the fund more restricted to waste reduction?

**Stuart Greig:** There is potential for that to be done. When the fund was initiated, it covered a much broader range of projects; money was diverted into research on how to recycle more, for example. The challenge is that there are a number of vested interests in the fund around such research—waste management companies operate a number of the charities that distribute the fund and have vested interests in trying to increase recycling rates. That is what the regulator, Entrust, keeps an eye on.

There is an opportunity to try to ensure that the fund is focused on measures that will make the biggest difference whether locally or to the policy landscape. However, it must be done in a way that does not interfere with the free market and competition between the waste management companies.

**John Mason:** RSPB Scotland said: “The current administration of the tax”—I think that it means for the fund—“is ungainly and costly (it costs 2% of the value of the Landfill Communities Fund to administer).”

I thought that 2 per cent was quite good. Many charities spend a lot more than that on administration. Will you comment on that?

**Stuart Greig:** The critical thing is that the money will reduce, so we must put in place an administration system that is as cost effective as possible so that as much as possible of that money gets to worthy causes. We are considering options; the current distributive bodies have a strong view of what the system might look like. There are a couple of models on the table, and we will consider taking that forward in the subordinate legislation.

The options are, broadly, self-regulation, which would take out a tier of administration, and simplification of the number of bodies that are involved, whereby there could be one overarching body that helps to administer the funds. Whatever we do, we want to ensure that the fund never
touches the Government’s hands, so that it can be used for match-funding purposes and everything else.

There is no simple solution to all the points that have been raised. We definitely have some thinking to do, and we have a few more discussions to have with all the people who are involved in the fund, but I have no doubt that we will have a good idea on the table in six or 12 months.

Dave Thompson: It might not relate directly to the bill, but I have a question on the fund, which will reduce, as you said. It might be useful if the fund could be bolstered or boosted by some kind of incentive for people who create recycling and other positive waste disposal facilities. If we are trying to encourage less landfill, more recycling and so on, it would be logical not just to reward communities for the damage that is caused by landfill sites, if I can put it that way, but to reward those who create positive recycling facilities and so on. That would help to maintain the fund going forward and would broaden it out around the country, as well. Do you have any views on that idea?

Stuart Greig: I like the idea; some such suggestions have been made. The challenge is to ensure that such a reward would not give a particular waste management company a competitive advantage because it handles specific recyclable materials as part of its business. It is a question of finding a way to do what Dave Thompson suggests without disrupting the competitive market.

Alistair Brown: We would have to take into account the wider issues of Government revenues and what can be afforded, and the fact that some Government expenditure goes into encouraging positive environmental practice.

To clarify Stuart Greig’s point that the revenues that are available to the landfill communities fund will decline, I am sure that his comment was based on the forecast in the financial memorandum, which is that we expect receipts to decline by about 60 per cent between 2015 and 2025. The background is a projection of declining revenues from landfill tax, and because the landfill communities fund is geared to landfill tax receipts—it is a credit up to a fixed cap—we expect that the income that is available to the fund will decline from 2015 onwards from about £7 million a year.

The Convener: That concludes questions from members, but I have a few questions to finish with. We have talked a lot about the landfill communities fund and I do not want to dwell on it, given that it represents a fairly small proportion of the bill, but I want to add my comments. SESA states:

“The relatively small fund would be diluted by extending its remit, leaving less available to those communities experiencing the most direct disbenefit.”

I agree. The area that I represent has a number of landfill sites, particularly in the Garnock valley, and some disadvantaged areas find it difficult to apply for resources from the fund. Work must be done to make it easier and less costly for people to apply, so that the areas that are most affected are the areas that benefit. I certainly do not believe that a declining fund should be extended to the rest of Scotland. I do not see what the benefit of that would be. Do you have any comments on those points?

Alistair Brown: I have a point on the landfill communities fund to make, which comes out of Stuart Greig’s earlier observations. The Scottish Government will be working with the industry, community groups and people with environmental interests to develop proposals that will then be reflected in subordinate legislation that will come to Parliament for approval.

I do not speak with any knowledge of the environmental policy scene, but I expect that many of those issues will be thrashed out in the process of discussing the proposals with interested groups. I also expect that we will find that there are different and sincerely held views that will be difficult to reconcile. There will be people who believe for good reason that the fund should be available to support environmental good causes anywhere in Scotland, and there will be others who believe that the fund should be directed towards good causes that are geographically close to landfill sites. We will need to do our best to draw out some kind of synthesis of those views and reflect that both in the statutory instruments that will require parliamentary approval and in the guidance, which will help whoever ends up administering the fund for Scotland to reflect the policy intention that is finally decided on.

There is a lot of discussion still to be had and a lot of opinion still to be brought in from relevant groups. As you and others have pointed out, we are seeing some of that opinion being expressed—quite coherently, I think—in the responses to the committee’s request for written evidence. The discussion has started and will continue. Perhaps Stuart Greig can confirm whether that is a fair representation.

Stuart Greig: Yes, it is.

The Convener: Let me move on to a couple of other areas before we wind up. Will SEPA or revenue Scotland be responsible for enforcement of the tax?
Alistair Brown: That issue is still for discussion. Very broadly—this is an observation rather than an answer to the question—we have put the costs of enforcement or compliance into the revenue Scotland box for the purposes of the financial memorandum. However, we also register the point that the division between revenue Scotland's responsibilities and those of SEPA—or of Registers of Scotland, in the case of land and buildings transaction tax—is not cast in stone. The division between those two sets of responsibilities is not legislated for, although we expect to address the issue in the tax management bill that we will introduce towards the end of this year.

My expectation is that the precise division of responsibilities will be worked out between the two organisations. They are already working together, now that we have revenue Scotland staffed up in its pre-statutory phase. The head of revenue Scotland, Eleanor Emberson, and her staff, including the chief operating officer Nicky Harrison, are discussing—or beginning to discuss—those issues with SEPA. I think that over the next year or so we will see development such that the division of responsibilities will be well understood and provided in good time, before April 2015.

The Convener: Stuart Greig mentioned that there are 78 legal landfill sites in Scotland. Do you have any idea of the number of illegal sites? One might think, “Well, they're illegal, so we can't really know”, but it is not quite like estimating the number of illegal immigrants, which no one can know for sure. Illegal sites are geographical things that to some extent can be identified. What is the scale of illegal activity? How much of that will be brought into the tax regime if the proposed changes are made? Can you give a broad estimate of what the financial benefit will be?

Alistair Brown: I will make just one point and then invite Stuart Greig to respond. Obviously, illegal sites are a big environmental issue; SEPA exists partly to monitor and tackle environmental problems such as illegal dumping. The committee might want to ask SEPA about those issues when it gives evidence on, I think, 19 June. However, we will have some knowledge of the estimated scale of illegal activity. Stuart Greig will comment on that.

10:45

Stuart Greig: I do not want to say too much on illegal dumping. SEPA is best placed to give the committee a picture of how significant the problem is. We know that the problem is widely dispersed, but there are undoubtedly big pockets of illegal activity. As I said, there have been two or three high-profile large-scale cases in the past couple of years. One involved what was, in effect, an illegal landfill site—we are not talking about a few thousand tonnes of something in the corner of a field, but about a really significant operation. There was also a tyre situation recently. There are substantial cases, but such activity does not happen all over Scotland all the time. There are pockets of significant activity, some of which are around conurbations. A lot of work is being done to tackle the problem.

As I said, the extra tool in the bill—the ability to go after the evaded tax—will be a significant additional deterrent. There is no doubt that, if we are to have a zero-waste society, we will need the most robust market conditions that we can create, because making the right investment in alternatives to landfill is a risky business; profit margins are still thin. Anything in the marketplace that disrupts that and lowers the price that can be charged is very damaging, so that is a real priority for us.

The Convener: There being “a few thousand tonnes of something in the corner of a field” seems quite alarming to me, given that there might be a lot of vehicle movements to dump it there. Is there an issue about a lack of enforcement and of resources for it? If large quantities of tyres or drums of chemicals suddenly appeared in a field near my house, I would contact the authorities, and I am sure that plenty other people would be of the same mind. Is that an issue that the bill might help to address?

Stuart Greig: A lot of work is going on to develop better intelligence on such issues, which is exactly the point that you raise. Investigations of such issues are nowadays treated in the same way as any criminal investigation is treated. A strong case has to be built and intelligence has to be used from all sorts of avenues, including industry and the public. With significant instances, all that information has to be pulled together and the police have to be brought in. They are major investigations.

Illegal dumping is a significant issue that we definitely do not want to underestimate. SEPA will be able to give the committee a good picture of the work that is going on at the moment and the activity on which it is focusing. We are all looking forward to having the extra powers that the bill will give us to clamp down on such activities.

The Convener: I thank our witnesses and colleagues for their questions.

I suspend the meeting briefly, until 10:55, so that we can change witnesses and so that members can have a break.
Scottish Parliament
Finance Committee
Wednesday 12 June 2013

[The Convener opened the meeting at 09:30]

Landfill Tax (Scotland) Bill: Stage 1

The Convener (Kenneth Gibson): Good morning and welcome to the 18th meeting in 2013 of the Finance Committee. I remind everyone present to turn off mobile phones, tablets and other electronic devices. We have received apologies from John Mason, the deputy convener, who will arrive late this morning.

The first item of business is to take evidence as part of our scrutiny of the Landfill Tax (Scotland) Bill. I welcome to the meeting Professor Jim Baird, of Glasgow Caledonian University and the Chartered Institution of Wastes Management; Stephen Freeland, of the Scottish Environmental Services Association—known as SESA—and Craig Hatton of North Ayrshire Council.

Normally we would have an opening statement from the panel of witnesses, but because you represent diverse organisations we will go straight to questions. I will ask some initial questions; I might ask them of one individual, but witnesses should please feel free to contribute at any point. Once I have asked some opening questions, I will go round the rest of my colleagues on the committee, who will no doubt have their own questions.

I will welcome Craig Hatton by asking him the first question. I was quite impressed by North Ayrshire Council's submission, which is quite detailed and gave us many grounds on which to ask questions. In the first paragraph of your submission, you talk about

“uncertainty over the rate of Landfill Tax”

and say that that will have

“an impact on financial planning for the Council.”

You go on to say that

“A significant increase in the tax rate may have an impact on decisions being made in relation to alternative waste treatment options currently being explored.”

How many tons of waste—inert and non-inert—are we talking about and on what financial parameters could the bill impact?

Craig Hatton (North Ayrshire Council): The council currently spends around £2 million a year on disposing of waste to landfill, and it recycles more than 50 per cent of its waste, so it is among the highest performers. We are working with the Clyde valley group of authorities to develop our residual-waste treatment options, to meet the objectives of the zero waste plan. Our financial modelling is built on that coming on course in 2020, but we do not know what the rate of landfill tax will be post 2014-15. If that was to increase significantly, it would place two financial pressures on the council with regard to its continued disposal of waste to landfill and whether we could bring forward the Clyde valley procurement exercise for treatment facilities to which we will ultimately take our residual waste. Those are our particular concerns; clearly we want to know by how much that £2 million would increase.

The Convener: On the decision not to introduce significant changes, you say in your submission that you would be

“concerned over possible cross border waste transfer if landfill tax rates and structures are not aligned to the HMRC’s rates in the rest of the UK.”

How much of a difference per tonne would trigger cross-border transfers, particularly to somewhere like North Ayrshire, which is not exactly close to the border?

Craig Hatton: My answer was more about a wider national issue. I almost used the term “waste tourism”. If we have a differential rate, the rate of tax per tonne will be far higher than the transport cost per tonne. Authorities and areas close to the border on both sides may have waste transferred between them. It would be a concern if waste were to be imported to Scotland, given its environmental impact. Conversely, if Scottish authorities and businesses exported waste to England, that would be a concern for England.

The Convener: Indeed. Others have mentioned that in their submissions, so it is a key point on which I am quite happy for Mr Freeland and Professor Baird to come in. Although people have talked about it, I do not have a feel for how much per tonne would make a difference. If I were sitting in Preston or Newcastle thinking about shipping waste north of the border because of differentials, what kind of differential would make the difference? What would make me want to hire a driver and a truck and move stuff all the way to Kilwinning or Irvine?

Craig Hatton: Waste would be moved to places closer than that—it will depend on the differential. We could get more detail from transport industry experts, who might be able to provide clarity on the prices, but the most recent figures suggest that we are looking at about 15p per tonne per mile. You can get between 20 and 24 tonnes of waste on an articulated lorry, so you can do the calculation yourself.
The Convener: That is fine.

Stephen Freeland (Scottish Environmental Services Association): I agree with Craig Hatton. The viability of taking waste greater distances would depend on the extent of the differential. Moreover, any marked difference between England and Scotland could increase fly-tipping in Scotland if businesses in Scotland take umbrage at having to pay higher disposal charges on their waste.

The Convener: Will you comment, Professor Baird?

Professor Jim Baird (Chartered Institution of Wastes Management): Craig Hatton has properly described the metric as pence per kilo or per tonne per mile. Perhaps I can help you a little bit with the numbers. Waste moves, through transfer stations, from the Highlands down to Perth; having worked with some of those local authorities, I would say that the figure is about £10 per tonne. However, distance must be taken into account.

Merryside Recycling & Waste Authority, which looks after Liverpool’s waste, announced last week that the material will go to a Teesside-based contractor. People already accept the idea of waste moving around and finding its market, but if you create a big differential—say, £10 a tonne—waste will be migrated elsewhere.

The Convener: Does that happen a lot on the continent of Europe? Given that there are dozens of countries over there—there are 27 European Union member states and plenty others besides—you would expect differential rates.

Professor Baird: The question is interesting. We are in a single market in which waste, especially hazardous waste, moves to sophisticated well-developed countries such as the Netherlands and Germany, where it can be most effectively treated with the right technology. There is a lot of hazardous-waste movement around Europe, but it is quite legitimate and there is a market for it. The danger with this proposal is that we will be creating a differential on a taxation system that might lead to movement that we do not really want; we would prefer the waste to find its market instead of being pushed by regulatory taxation.

The Convener: Indeed.

In its submission, North Ayrshire Council says:

“Where illegal activities such as illegal dumping, fly tipping or illegal transfer is found, the Scottish Government should ensure full cost recovery policies are implemented.”

I asked witnesses at last week’s meeting whether they had any idea of the extent of illegal dumping. Of course, the fact that it is illegal might make it difficult to quantify, but are you aware of many instances in North Ayrshire over the years?

Craig Hatton: Fly-tipping affects the UK as a whole; it has certainly increased in the past 10 to 15 years and continues to be a problem for all areas. I do not have any figures to hand for the tonnage, but I think that there was, according to our last estimate, about 1,500 tonnes a year of fly-tipped waste in North Ayrshire.

The Convener: North Ayrshire is about 2.5 per cent of Scotland. I do not know whether we can extrapolate such figures, but if that turned out to be the average rate, it would mean 60,000 tonnes of fly-tipped waste a year across Scotland.

Do Professor Baird or Mr Freeland have any knowledge of the level of illegal dumping and fly-tipping?

Professor Baird: There are two problems associated with illegal dumping, the first of which is fly-tipping, which is social, public and small-scale and carried out by individuals. It is a constant problem for local authorities and I do not know what it costs them.

In its first waste crime report, the Environment Agency down south considered fly-tipping as something that local authorities deal with, but it highlighted serious waste crime, in which people treat illegal dumping as a business, as an issue. It identified something like 11,000 illegal sites—not fly-tipping incidents, but operations involving tyres, active waste and so on. Waste crime is victimless, goes largely unreported and is not recorded for years. That said, an incident in West Lothian in the past couple of years has probably drawn civil servants’ attention: had the individuals in that case—it is documented; you will find it if you look for it—also been required to pay landfill tax on that waste, the fines that they received would have been three or four times higher. The tax, therefore, is a way of penalising illegal dumping.

The Convener: Are the proposals in the bill adequate to address that? Are we on the right track?

Stephen Freeland: I welcome the addition of powers in the bill to recover avoided tax from illegal sites. That is absent from the existing regime.

The Convener: The committee has heard of a large dump that was found in Lanarkshire just a few weeks ago and which cost a six-figure sum to clear up.

With regard to the list of activities and materials that will be exempt from landfill tax, the North Ayrshire Council submission says:
“Special wastes could be considered for a differential rate to ensure that cost is not a deterrent to ensuring compliance with disposal or treatment requirements.”

Which special wastes did you have in mind?

Craig Hatton: We had in mind hazardous waste such as asbestos, tyres and a range of other things. It is important that cost is not a deterrent so, given that landfill is probably one of the few options for such waste, we should not move people towards fly-tipping. Instead, we must ensure that special wastes are managed and disposed of responsibly and in accordance with the legislative framework.

Professor Baird: Because of the cost of disposing, say, asbestos waste, which requires special measures if it is going to be put in landfill—for example, parts of the landfill need to be classed as “hazardous permitted”—it is right to look at the problems of finding alternative routes into the countryside while trying to encourage proper and well-managed treatments, and the ability to vary the tax will support that.

Stephen Freeland: As a broader comment, I note that the bill contains very little detail on the proposal to introduce a third tier of tax, but in the consultation it was suggested that incinerator bottom ash and biostabilised material would benefit from a tax rate that was separate from the existing standard and lower rates. However, we need to understand better the economic impacts and consequences of such a move. For example, setting a higher rate for IBA will have financial implications for investment in energy from waste. IBA can be recycled into aggregates and construction products, the markets for which are often cyclical and demand for which is variable, and landfill provides a useful backstop when there is no demand for IBA material. Moreover, the energy-from-waste operator will face additional costs.

Similarly, the consultation suggested that biostabilised material might benefit from a reduced rate of tax, perhaps to mirror the fact that it has less environmental impact. However, you have to consider treatment of bio waste through anaerobic digestion, which requires an alternative and different infrastructure, and the question whether that will undermine the economic viability of such plants.

09:45

Professor Baird: I want to make the point that landfill tax is in effect a tax on methane, so it is a greenhouse gas tax. We should acknowledge that if we start to introduce other taxation levels that are based on the type of material, we will lose the fundamental reason for the tax. Inert material is taxed at only a couple of pounds per tonne, whereas biologically active waste, which generates lots of methane when it is put into landfill, is taxed more. If we start to deviate towards having rates for special waste, hazardous waste, bottom ash and so on, we will drift away from the fundamental principles of the tax. I am not commenting on whether that is bad or good, but we should note that that is what we are doing.

The Convener: As several colleagues want to come in, I will not ask many more questions—I have loads of questions to ask, but I do not want to steal anyone else’s thunder—but I have a final question on the issue of certainty. The submission from the Scottish Environmental Services Association states that, on the question

“whether the Bill is consistent with the four principles underlying the Scottish Government’s approach to taxation—certainty, convenience, efficiency and proportionate to the ability to pay— ... the Bill offers the industry little in the way of certainty”.

When we put that point to Alistair Brown and Stuart Greig of the bill team last week, Stuart Greig said:

“We have asked SESA—it is working on something for us—to identify all the points on which it needs most certainty. Some things can be covered in guidance and some will be in the subordinate legislation, but that will give us a hit list of things on which we need to work closely with SESA to give it as much certainty as we can as soon as we can. That has been our approach, and we will continue to pursue that over the coming months as the bill moves through Parliament.”—[Official Report, Finance Committee, 5 June 2013; c2730.]

I notice that Professor Baird takes the view that,

“provided the Scottish Landfill Tax and its subordinate legislation remains consistent with the UK regime then CIWM (Scotland) believes the Bill is consistent with these principles.”

Before I move on to questions from colleagues, can you comment on those points?

Stephen Freeland: The reason why we made that point is that the bill gives no indication of what the tax will be come 2015. We represent an industry that is looking to make investment decisions for alternative non-landfill infrastructure, the viability of which will depend on what landfill tax will be, so it would have been nice to have had an indication of what that tax will be. Similarly, for the differential rates—the potential third rate of tax—it would be interesting to know what that might be and to what materials it might apply. The main reason why we made that point is that it would be useful to have that on the face of the bill.

I acknowledge the points that Stuart Greig made. Within our organisation, we have convened a group to look at some of them, in particular qualifying materials and suchlike. We will make that information available to Dr Greig and his colleagues very soon.
Professor Baird: The bill seems just to take the powers, whereas the consultation to which we submitted a detailed response talked about qualifying materials and so on. We are probably watching and waiting to be consulted on the next stage. As Stephen Freeland said, the bill does not even set the taxation rates. The Scottish Government has promised that the tax will come in in 2015 at the same rate, but there is no guarantee on that. The bill also says nothing about qualifying material. The only new powers that the bill seems to introduce are the idea of targeting illegal dumping and the Scottish Environment Protection Agency’s regulatory role. I do not know whether you want to ask questions on that.

The Convener: I will leave my colleagues to ask those questions—otherwise, they will have no questions left to ask.

Professor Baird: All the detail will follow in secondary regulationulation, and we will engage in that process.

Stephen Freeland: I think that that is right. If all the promises are kept about there being no intention to rock the boat dramatically, as compared with the existing system, we will be happy with that. We have no issue with the powers being devolved to the Scottish Government, but the bill contains nothing to suggest what the policy intention is.

Craig Hatton: To enable medium-term and long-term financial planning for local authorities—at a time of increasing pressure on the public purse—in making their waste decisions, we would like to see what the rates will be post 2014-15.

The Convener: Thank you. I open up the discussion to my colleagues, who are all champing at the bit.

Jamie Hepburn (Cumbernauld and Kilsyth) (SNP): Most taxes are designed to accrue revenue to the public purse, but this one is slightly different in that its primary purpose is to reduce the amount of waste that is going to landfill. What is your assessment of the bill’s potential to achieve that aim?

Stephen Freeland: Given that most of the bill follows the existing provisions in the Finance Act 1996, it should be able to achieve that aim. The intention is still to impose a high level of tax on the most damaging biological waste that is going to landfill. In principle, it ought to be able to do that.

Craig Hatton: The landfill tax has been extremely successful in changing behaviours in the waste industry. The cost of disposing to landfill is much cheaper than alternative technologies, and the landfill tax has been a good driver for change in the light of that. The role of landfill tax still exists, but it will be overtaken by plans within the zero waste plan and by landfill bans from 2020. We are going beyond the initial role of the taxation, as we formed it in legislation, through other types of legislation.

Jamie Hepburn: Do you think that, as we work towards 2020, the bill as drafted can play a role?

Craig Hatton: Yes, I think that it can. The rate of the tax is the big issue. Professor Baird has raised issues about illegal disposal of waste; the bill is welcome in respect of trying to recover those costs. The bill broadly will support those principles and will support the zero waste plan.

Professor Baird: The idea is that the amount of money that is generated as tax, which is about £100 million just now, will drop to £38 million over the next seven or eight years with our aspiration to reduce what is going to landfill. It is really an environmental tax that will create the right behaviour by driving waste away from landfill, meaning less emission of greenhouse gas. The revenue that would otherwise have gone to revenue Scotland will end up going to those who provide alternative treatment technologies, which is fine and appropriate.

Jamie Hepburn: Professor Baird mentioned the forecast reduction in receipts. North Ayrshire Council’s written submission refers to that and to the shortfall that will be created through the reduced funds and reduction in the block grant. Some of us have raised as a concern the impact that will have on the public purse. There is a difference between this tax and the other devolved taxes such as the land and buildings transaction tax and the Scottish rate of income tax, which are specifically designed to increase taxation revenues and to encourage economic activity. With the landfill tax, that is not the case. I therefore pose this question to Mr Hatton, as the matter is addressed in your written submission: how do we square that circle?

Craig Hatton: The short answer is that I do not know. As you have picked up, the landfill tax is a form of taxation for which the quantities that attract taxation will reduce drastically as we move forward and alternative technologies come in. That will potentially leave a funding gap, and it will be for the Government to identify how that funding gap will be filled. Our concern is about how it will be filled.

Jamie Hepburn: There is talk about there being a one-off block-grant adjustment. Do you think that there is a case for the UK Government to decrease the reduction in the block grant over the lifetime of the tax, given that it is not designed to be about generating revenue?

Craig Hatton: That would all depend on the block-grant recalculation, but clearly there is a high risk that we will be left with a funding gap.
Jean Hepburn: So, do you think that there is a case for the UK Government to look positively at the issue?

Craig Hatton: There is a case for looking at it.

Professor Baird: I know where Jamie Hepburn is coming from. If we were to stay in the UK landfill tax system, the reduction would take place in any case, assuming that we kept like for like. To transfer that from the block grant in 2015 seems to be reasonable. As we march forward, the amount will be reducing, but it would have reduced in any case, would it not?

Jamie Hepburn: I am not as clear on that as you might be. It is meant to be a one-off reduction, and given that the amount of revenue accrued will become less, the reduction could therefore become a gap that might not otherwise have existed.

Professor Baird: The same will be happening in the rest of the UK; the landfill tax take will be reducing. I am not a finance expert, but it strikes me that that is why we made the point that it was fair simply to reduce it in 2015, and then to start moving forward ourselves.

Jamie Hepburn: It is an issue that has been raised by North Ayrshire Council as well, so we are just trying to flesh out the debate. I am not as clear as you might be on whether it will cause problems going forward.

Jean Urquhart (Highlands and Islands) (Ind): In a similar vein, I would like to go back to Mr Freeland’s answer to the convener’s question about certainty, convenience, efficiency and proportionateness to the ability to pay. You are concerned that the industry does not know what the rate will be and that there is uncertainty about what will happen in 2015. If we were not devolving the tax, would there be more certainty?

Stephen Freeland: To a degree, yes—there would be more certainty. As things stand at UK level, the tax in 2014 will be £80 per tonne, and we gather that there is a floor to be placed under that. That is the current system, and the confusion is about what will happen come 2015, a year later, once it switches.

Jean Urquhart: Is that level fixed, and not dependent on a promise from a politician?

Stephen Freeland: I gather that the level is fixed.

Jean Urquhart: Professor Baird mentioned a concern about SEPA in his written submission, which states:

“Our principal concern is that the reporting of the taxable disposals does not result in increased administrative burden on the landfill operator.”

Can you explain how that would work?

Professor Baird: Many of our members are SEPA employees and we have full respect for SEPA, which is an environmental regulator doing its job. I guess that what we are saying is that SEPA is dealing with environmental regulation and policing, and that it is being given an additional responsibility, based I presume on the notion that it is already dealing with landfill data and could therefore easily embrace that responsibility.

However, what is proposed is a different role—a tax-policing and revenue-raising role. We have to ask whether SEPA has the expertise to do that. Maybe it has, maybe it has not; SEPA staff could, however, be trained and it is proposed that that happen.

The other important issue is about evidence. Stephen Freeland pointed out that the papers supporting the bill say that the tax has a high compliance rate, and that it is self-assessed and self-regulated and has worked well with Her Majesty’s Revenue and Customs and with the landfill operators. There are some 70-odd landfills active in Scotland, and a lot of them are small, so it did not strike me that we need to change the existing system, which is not very burdensome.

10:00

There is another point. Over the years, I have written several responses to consultations. It shakes my faith in my understanding that my views will be taken on board when, despite the fact that we have a professional body on waste that says, “Look—the system’s okay,” and a waste industry—the people who deal with the waste and landfill operators—that largely says, “Look—the system’s okay,” somehow SEPA keeps being put forward as the proposed mechanism. When the view is clearly to ask, “Why change the system?”, it makes me wonder why I should bother submitting consultation responses. That is a personal view. There is no evidence that changing the system will improve things or that there needs to be a change. Do you get my point?

Jean Urquhart: Yes, I do.

We have talked a bit about the recycling and reuse of waste. North Ayrshire Council has done well in increasing the amount of material that it recycles. We have also talked about the reduction in tax revenue, which means that there is a funding gap for the Government and councils. Are you confident that we will continue to see increases in recycling rates and that the targets are realistic?

Craig Hatton: About 18 months ago, North Ayrshire Council agreed a waste strategy that sets our aspirations for the future. We already recycle
in excess of 50 per cent of material. We think that we can get that towards 60 per cent, but given the levels of deprivation that we have in North Ayrshire—there is a direct link between recycling performance and deprivation—that will be a big challenge. We will probably plateau at around that level.

The next big step for the council and for all waste operators is the move from disposing to landfill to energy from waste. That will make a big change in the volumes of waste that go to landfill. Pre-treatment is set down in the zero waste plan, and the residual waste from that process will result in some further single-figure percentage point improvements in recycling. I would say that councils and the industry as a whole are doing well in embracing the significant challenges that we have faced on waste, but it will be a diminishing return as we move forward.

Stephen Freeland: I echo those points. As far as the broader picture is concerned, we have made tremendous strides in recycling over the past few years. I gather that the recycling rate is around the 40 per cent mark at municipal sites at the moment.

The yearly increase in recycling has been decreasing year on year as it becomes harder to extract more material for recycling. Achieving the 70 per cent target will require a momentous effort. We are confident that the new regulatory framework that comes into place on 1 January next year will provide a bit of a boost, particularly on food waste. The fact that more food waste will be diverted from landfill into recycling should help to boost the recycling rates.

In the next five to 10 years, local authorities will be under a lot of pressure to capture more and more recycling. As that will involve the hardest-to-reach element of recycling, authorities will face a difficult choice, because the cost of increasing recycling by 1 or 2 per cent at most will be significant. That is something that we need to keep an eye on.

Professor Baird: I agree. When we talk about recycling targets, we mean local authority recycling targets, and we know the constraints that local authorities are working under. It is very difficult. The recycling rates are plateauing. I have anecdotal evidence from councils that performance is falling, simply because of the financial pressures on them. Achieving the target will be tough.

The European Union’s Eurostat data shows that the Belgians and the Germans were recycling 40 or 50 per cent of their waste in the late 1990s. Their rates are creeping up to 65 per cent. However, they also have well-developed infrastructure for energy recovery from incineration, which is where we need to go. We will have to achieve a balance by using what we cannot recycle for energy recovery.

Michael McMahon (Uddingston and Bellshill) (Lab): My question is about the landfill communities fund. I represent a constituency that covers both North and South Lanarkshire. Whether it is justified or not, there is a perception locally that the central area of Lanarkshire is overpopulated with landfill sites—you can say whether you think that that is the case. More important, though, is the distribution of the landfill communities fund. The fund is derived from the taxation of those facilities and is supposed to be for those most affected by landfill, but is it distributed equitably? Is the distribution proportionate to the number of landfill sites in an area?

Stephen Freeland: I am not close to the landfill communities fund, but I gather that the existing system is deemed to work well in distributing the funds to the right projects. Concerns were expressed in the consultation, and there were suggestions of extending project eligibility beyond the 10-mile radius around a landfill site or siphoning off a proportion of landfill tax receipts for national strategic projects. From an environmental justice perspective, our view is that the fund should be for areas in close proximity to the landfill site and that the 10-mile radius should remain in place, because extending it would leave less money available for the people who are most directly impacted by landfill.

Professor Baird: The bill does not say anything about putting in place a different system for the fund, so it is difficult to comment. We commented originally that we would welcome a slight increase to the radius. In North Lanarkshire, there are sites at Greengairs and Auchenlea, as well as the Levenseat site at Forth. The area has a history of coal mining and subsequent land filling, and communities in the area have benefited from the landfill communities fund.

I would say that the system works. We did not give a view on it in relation to the bill, although we have given a view previously. The fund is about addressing the inequity of living next to a landfill site, which some communities have had to bear the brunt of. I sit on a few panels that are associated with distributing the landfill communities fund and there has been an element of people saying that we should deal with the 10-mile radius and local delivery, and help those communities. We have also taken a bit of that money and put it into projects that are non-specific to areas but which address wider biodiversity funding. There is a very good network of people who deliver the landfill communities fund, and they have been quite creative about the way in which...
they engage. The councillors and local people in Mr McMahon’s constituency area are engaging in decision making around which projects come forward, so the system seems to be working at the moment.

Michael McMahon: The local communities in my area are aware of the funding and know that they can draw it down, because the landfill sites are all around them.

Professor Baird: An important point is that the fund lever in other money. It is not just about fund money; a project could get £30,000, but that could help it get heritage or lottery funding.

Michael McMahon: I have seen such projects and know that a lot of communities have benefited in that way. However, the danger is that the bill might be seen as an opportunity to look again at the fund’s distribution mechanism, which could mean that the communities affected by landfill sites would start to lose out on funding. Do you share my concern about that?

Professor Baird: If it is going to drop by two thirds, it is—

Michael McMahon: No. I mean the money might go out of the geographical area to areas that are not as adversely affected or impacted by landfill.

Professor Baird: We need to wait and see what the Government proposes.

Gavin Brown (Lothian) (Con): Mr Hatton, in the North Ayrshire Council submission, you state that “advance warning of ... tax increases” would be needed. Will you flesh that out a bit? What sort of length of time did you have in mind?

Craig Hatton: Given the challenges to public sector finances, we look to plan further and further ahead. The council set a two-year budget last time and has a 10-year financial plan so that it can plan in advance for the significant changes that it needs to make to face those challenges. Therefore, the greater the notice, the better.

The current rates of landfill tax up to 2014-15 were set two years ago. One of the big pluses of that was that it allowed us to do longer-term planning and to build business cases for alternative treatment arrangements. Such procurement exercises take about five years, so we need quite a good lead-in time to manage the public finances and to enable procurement exercises and new methods of collection to be developed. If the lead-in is too short, we merely act and make the wrong decision. A longer period allows us to evaluate decisions more carefully.

Gavin Brown: Can you be more specific? If the tax goes live in April 2015, what would you say to central Government about when the rates ought to be set?

Craig Hatton: I would like the rates to be set at least three years in advance so that we know what the level of taxation will be for the next two or three years. That would give us clarity to allow financial planning to take place.

Gavin Brown: When it is set, you would like a three-year projection.

Craig Hatton: Yes.

Gavin Brown: When should it be set? If it goes live on April 2015, when would you call on the Government to announce publicly what the rates will be?

Craig Hatton: As soon as practicably possible.

Gavin Brown: Can you be more specific than that? I do not want to press you; it is just that the committee has to make a recommendation to the Government.

Craig Hatton: Okay. The council will start setting its budget in September for the small gap that it needs to make up in 2014-15 and then 2015-16, so it needs the figures as soon as possible. That is all that I can say.

Gavin Brown: I will not press further on that. I am grateful for the response.

I have one more question that arises specifically from your submission, but I am interested in whether other witnesses have views on it. You suggest that “Materials … such as for the protection of the drainage layer should be exempt from landfill tax.”

Should that policy proposal be enacted in the bill, or should we consider it over time? Do other witnesses have any views on that? Are there any other changes to the list of materials that ought to be made immediately or in the medium term?

Craig Hatton: The landfill operators could, perhaps, get together and submit a range of examples.

Clearly, there is a distinction. Materials that are used for engineering works should not attract the higher level of taxation. Together with a range of landfill operators, the council has put a number of cases to HMRC about the level of taxation that has been applied to engineering materials that are used to protect liners and drainage and make up roads. It is time consuming and expensive to go into all the legislation and legal work with HMRC. If we could consider that from an industry perspective, that would be most useful.
**Gavin Brown**: Is it the council’s position that the Government should do that before April 2015, or is it something that should happen after that?

**Craig Hatton**: Again, it should happen at the earliest opportunity. We are paying higher rates of tax on materials that are used in the construction and operation of the landfill sites, whereas we should be disposing of waste that is being collected.

**Gavin Brown**: Okay. That is helpful. Do other panellists have views on the list of materials?

10:15

**Stephen Freeland**: The area has been discussed quite a lot in the trade press, particularly in the past year and a half. HMRC has been issuing rolling guidance, particularly in the summer of last year, to try to explain this complicated issue. I gather that the view is that, if waste is used for a permanent engineering feature or structure on a landfill site, it is not necessary to pay the full disposal tax. Given that there has been that rolling guidance, it would be useful for the Scottish Government to adopt a strong position on the matter up front.

**Professor Baird**: The point is that a lot of the secondary legislation, guidance and regulations need to be in place for 2015. It would not be a good idea to discuss what qualifies and what does not after 2015, because the mechanism needs to be in place by then. Over the years, there have been various iterations, and some might argue that there have been loopholes. HMRC has tightened things up and brought clarification. There has been an incremental definition of what counts and what does not. A good starting point would be to look afresh at what HMRC has come up with and move forward with that.

**Gavin Brown**: My final question is directed at Professor Baird and Mr Freeland. Although both your submissions welcome the extra powers that SEPA will have to tax illegal or criminal activity, you both put forward the view that SEPA will need additional resources in order to exercise the powers effectively. Do either of you have views at this preliminary stage on what resources SEPA will need in order to do that?

**Stephen Freeland**: As has been said, SEPA’s primary role is to protect the environment. By bolting on tax-collecting powers, we might divert it from its primary focus. I gather from some data from last year that it has had a 17 per cent reduction in staff over the past few years, and I think that more efficiency savings are in the offing. We are a little concerned that the tax-collecting powers will be an additional distraction for SEPA.

Also, to strip it right back, I note that there is a potential conflict of interest. As our environmental watchdog, SEPA clearly and rightly has a role in reducing the amount of waste that goes to landfill, but a tax-collecting authority has a role in trying to increase the amount of tax revenue from disposals.

**Professor Baird**: I cannot say what resources will be required. I think that the papers suggest £300,000 as an on-going cost, and some things are mapped out.

In bringing in illegal disposal provisions, the bill proposes that, as well as fining those who are caught, we will get tax income from that activity. However, illegal activities should not be occurring in the first instance, so there is clearly an issue. Perhaps SEPA needs more resources in order to manage, watch, inspect, engage and deal with reported incidents. A tax-raising opportunity around illegal disposal has been thrown in, but SEPA needs the resources to deliver on preventing 20,000 tonnes from being put into a site that should not receive it and dealing with unauthorised disposals. If SEPA is going to do the work, you should make sure that it is equipped with sufficient resources.

**Gavin Brown**: That is helpful. Thank you.

**Malcolm Chisholm (Edinburgh Northern and Leith) (Lab)**: I was going to start by asking about that very issue, but I think that it has mainly been covered. I was curious about the £300,000. Is it supposed to include the work in relation to illegal deposits, or is there an oversight?

My more general question is about how regulation can be enforced, considering that such deposits are usually made without the knowledge of the authorities. Presumably, the activity is illegal at present. What system is in place to monitor and prevent illegal deposits? What system is envisaged in future?

**Professor Baird**: My point is that we do not know the extent to which illegal deposits are occurring. We know only when prosecutions come forward or SEPA issues notices. It is a difficult one to quantify. By giving SEPA the ability to collect the tax on authorised and unauthorised deposits, should we not ensure that it has adequate resources to tackle the illegal activities?

**Malcolm Chisholm**: The issue has had a reasonable hearing so I will not say any more about it.

I was interested in a statement that you made earlier. If I picked you up correctly, you said that a lot of the money from the tax would be used to encourage more environmentally friendly methods of disposal. I was not sure about that. In terms of the money, I suppose that the related point is how...
much of the tax currently goes to the landfill communities fund and how much is proposed will go to the fund.

Professor Baird: About 6 or 7 per cent is allocated to the landfill communities fund. I think that the take at the moment is around £6 million or £7 million of a total take of about £100 million.

Malcolm Chisholm: Is the proposal for Scotland that that should remain the same?

Professor Baird: No. The proposal is actually to increase it to 10 per cent.

Malcolm Chisholm: Okay. What about some of the money being spent on more environmentally friendly methods of disposal?

Professor Baird: You must have misunderstood me. I think that the money is spent on addressing environmental justice issues around people living close to—

Malcolm Chisholm: So you were referring to the landfill communities fund.

Professor Baird: It seems reasonable that the fund should address such issues—that is what it was set up to do in the first place.

Malcolm Chisholm: In that sense, most of the money is spent just like other taxation revenue. That takes us back to Jamie Hepburn’s question, because there is a problem in Scotland. You said that the same thing happens at a UK level but the UK has a range of taxes that it can use to offset any reduction in money from landfill tax. The particular worry in Scotland is that we have a much more limited range of revenue-raising powers and therefore any reduction will have an effect on the budget. That is the point that North Ayrshire Council highlighted. I imagine that the Scottish Government will argue that the block grant should be reduced only by the smaller amount that it is predicted will be raised from the landfill tax in about a decade’s time.

Professor Baird: Yes. You have picked up on the point that the Treasury has a range of taxation powers to draw on. Our problem will be that we will effectively have only two such powers, and revenue from one of them is diminishing. I am not an expert on this but I presume that the block grant that we receive after 2015 will benefit from the other tax-raising powers that the UK put in place to offset the reduction in landfill tax revenue down south.

Malcolm Chisholm: It might do. We will see.

Finally, the rates are a bit of a difficult area for me. You say that you would support the introduction of a third rate in relation to waste that had been stabilised so as to be fairly biodegradable but which had not yet been thermally treated. That is all a bit technical, but I wonder whether you think that the tax on such deposits should reflect the fact that the waste posed a greater risk to the environment and therefore be significantly higher, or is it unrealistic to expect all waste put to landfill to be thermally treated in the first place?

Professor Baird: Within the CIWM, you will get lots of different views on that. My main point is that the ability to apply different levels of taxation probably gives us some flexibility at this point. We might not choose to take or use those powers. There are different views; I am trying to represent the wider community.

The idea—I will not make it too complex—is to treat waste to the point at which it is no longer biologically active and then put it to landfill, which seems reasonable. However, people might want to take that material and recover energy from it. We need to consider energy security, so we must not use the taxation powers to allow biodegraded waste to slip into landfill and undermine our ability to generate energy.

Playing around with the levels is a delicate process. We must ensure that, when we see what the levels are, we are consulted, engaged and the consequences are explained to us.

The Convener: That concludes questions from colleagues around the table, although I have one or two that I want to ask.

Mr Freeland, paragraph 17 of your submission says:

“We believe that more resources should be invested in tackling illegal waste management activity to provide a high level of protection for communities and responsible waste management companies across the country.”

What additional resources are you talking about?

Stephen Freeland: We are talking about targeted campaigns by SEPA to ensure that it does not just carry out its very useful and productive day-to-day inspections of the regulated industry.

In fairness to SEPA, over the past few years, it has increasingly recognised the damaging consequences of illegal waste operations. We want a more joined-up approach between SEPA, the police and local authorities to target such operations.

I do not know whether SEPA needs extra resources from the Scottish Government. At the front end—a task force—

The Convener: You are suggesting that there should be more joined-up thinking, and not that additional financial resources should be put into the process.

Mr Hatton, paragraph 12 of your submission talks about SEPA’s role and refers to
“a potential skills gap which will require to be reviewed further.”

What are your concerns in relation to that skills gap?

Craig Hatton: SEPA does a lot of good work as an environmental regulator, which we see as the focus of its business. If it is to be given tax-collecting powers, it will need people who have related skills. I doubt that such skills exist in SEPA. Therefore, SEPA needs the right resource so that it can collect the tax, if that is the direction that the bill intends to take.

As Mr Freeland said, we still have a big issue with illegal waste and we need SEPA to focus on that activity.

The Convener: I will ask Professor Baird about the block grant adjustment. The Office for Budget Responsibility is predicting an income of £107 million from landfill tax, but the figure could be as low as £38 million, which would leave a gap of £69 million. Craig Hatton raised the issue of funding that gap, and Malcolm Chisholm made the point that, because we do not have the same powers as the UK, we cannot make adjustments to allow for that gap. Do you have any further information on the likely decline in money from the tax? For example, we have talked about recycling plateauing and the performance of some local authorities perhaps falling back. Will there not be an inexorable decline? Will revenue plateau? Is there a figure that we will end up at?

Professor Baird: The broad point is that there will be small, incremental improvements in recycling over the years. We need to meet landfill directive targets. In order to comply with them—they are outside Scottish legal jurisdiction; the UK reports on them—we must divert waste from landfill.

The solution is to develop technology around getting energy from waste. Many committee members will be familiar with regional developments where technologies come forward but then there is a change of administration and things are delayed. In the meantime, everyone is trying to do their best at recycling. I think that the revenue will drop—it has to drop—but it will drop because of waste being diverted from landfill to energy recovery.

10:30

The Convener: I have just one point before we finish. If we are ultimately to reach a recycling rate of 70 per cent—although that might take many years yet—surely for every increase in the percentage of waste recycled that you achieve, the cost increases. It is a lot easier to recycle 25 per cent than it is to recycle 50 per cent or 70 per cent. What resource is required to get to that higher level of recycling? For example, what additional resource would North Ayrshire Council, which I am familiar with, have to invest to get from 50 per cent to 70 per cent?

Craig Hatton: It would have to invest a significant amount of money—it is the law of diminishing returns. We have set out our plans in our waste strategy and the funding detail is in there on getting to beyond 60 per cent. I cannot give you that figure off the top of my head, but significant investment will be required.

It will be increasingly difficult to get to those last few percentage points. As I said, perhaps the biggest challenge for North Ayrshire is the level of deprivation, given the direct correlation between deprivation and lower recycling rates. That correlation has been picked up in a number of UK studies.

The Convener: What is the position across Scotland? Do Professor Baird and Mr Freeland have any idea what level of investment would be required to reach those higher recycling levels?

Stephen Freeland: We did some calculations that suggest that up to £1.5 billion of investment in new infrastructure is required to meet the recycling targets. There is also a case for investment in education at the local authority level.

We are talking about a very complex issue, but at the end of the day, it is still a manufacturing and production process. Waste goes in, is treated and comes out. Like any manufacturing business, what can be achieved depends on what goes in at the front end. A more concerted campaign is needed to engage communities and businesses on the importance of the quality of material that comes in and of segregating it properly. That would make the recycling process easier.

The Convener: What timeframe are we talking about for that £1.5 billion of investment?

Stephen Freeland: Between now and 2020.

Professor Baird: If you go back 13 years or so, Audit Scotland would report on the cost of disposal for local authorities and the cost of collection. I recall that, generally, those costs were roughly around £50 per tonne to collect and £50 per tonne to dispose. We do not have a significant tax sitting in there—it is £72 at the moment.

You are right that we are introducing additional and complex collection services. Local authorities are making better use of resources by moving to seven-day collections—they are utilising the infrastructure well. There are higher standards for engineering for landfill, so the costs are all increasing and councils are working very hard to try to deliver services within budgetary constraints.
The next step is to do with food waste—we will all be getting food waste collection services under the new waste regulations. That is a cost to our communities and we do not often own up to the fact that those additional services—the higher-level fruit that we are trying to pluck—are costing us more per tonne than it costs to deal with some of the easier material. Perhaps we are doing something amiss and are being a bit disingenuous around that issue.

**The Convener:** That is interesting. I thank the witnesses for their answers and I thank colleagues for their questions. I suspend the meeting for a few minutes.

10:35

*Meeting suspended.*

10:42

*On resuming—*

**The Convener:** We will now take evidence on the Landfill Tax (Scotland) Bill at stage 1 from our second panel of witnesses. I welcome to the meeting Lloyd Austin of RSPB Scotland, Willie Beattie from the Scottish landfill communities fund forum, Lucy Graham of the Scottish Wildlife Trust and Paul Johnston of the Community Resources Network Scotland. We will go straight to questions. As usual, I will ask the first few questions and then open up the discussion to colleagues around the table.

My first question is for Mr Johnston. In paragraph 4 of your written submission, you say, in relation to the Scottish landfill communities fund, that

"the old 10-mile rule would mean that very few communities could actually benefit from such a fund, and it would seem appropriate to open the fund to organisations outside the 10-mile radius of landfills."

You go on to suggest that, rather than communities, it should be

"organisations involved in waste reduction, re-use, and recycling" that benefit. That looks a wee bit like vested interest. On the previous panel, Professor Baird of Glasgow Caledonian University said that it is important to retain the 10-mile limit to address “the inequity of living next to a landfill site”. What is your comment on that?

**Paul Johnston (Community Resources Network Scotland):** I think that it would be best to characterise what we are advocating as a kind of two-tiered approach. The issue of a two-tiered approach was raised at a previous committee meeting by John Mason. Our two-tiered approach is one in which we would want, first, something to deal with environmental impact mitigation around a landfill site, although, as we know, there may be fewer of them. Secondly, if the benefit from the landfill tax were to be widened beyond the current radius and environmental impact mitigation measures, we suggest that it should focus on those organisations—they would not necessarily be our members, but a large number of them would be—that address the issues of waste.

Our organisations live and breathe zero waste. We are trying to create a circular economy. That is what CRNS is about—it is a resources network of all the organisations that deal with that. There is an interest in all of our organisations being able to deliver, and that is our fundamental interest. That is why we think that, if the fund goes away from the principle of landfill mitigation and goes national, there should be a strong focus on the creation of a resource society.

10:45

**The Convener:** I will let Lloyd Austin in next, but I would like to hear what Mr Beattie and Ms Graham have to say about the 10-mile radius issue.

**Lloyd Austin (RSPB Scotland):** On the so-called 10-mile rule, the legislation uses the phrase "in the vicinity of" and the figure of 10 miles is used as guidance. We have found that to be quite useful.

The communities fund is a means of using a tax on an environmental bad to address an environmental injustice. Some sort of linkage to the location of the landfill site is important for that reason. Having said that, I think that there is a need for the degree of flexibility that exists at the moment, particularly in places such as the Highlands and Islands, whose geography means that a hard-and-fast rule that specifies a distance of 10 miles can be a bit limiting. However, the idea of there being a linkage to a place where there is environmental injustice is an important principle.

In that sense, it is important to recognise the fact that the objectives of the fund must be about seeking to achieve Government environmental objectives. One of those objectives is zero waste. Many policy mechanisms are used to try to achieve zero waste to landfill, and landfill tax is one of them. However, there is a range of other Government environmental objectives, including biodiversity, community enhancement and so on. We must recognise that, for some of those environmental objectives, the landfill communities fund is one of the few funds that are available, and we must ensure that we do not spread that jam too thinly.

**Willie Beattie (Scottish Landfill Communities Fund Forum):** I support what Lloyd Austin has
said. Quite fortuitously, I can tell you that, last week, we registered a project in Skye that is 25 miles from the landfill site. The flexibility that exists in the system allowed for that. The rationale was that all the waste from the north of the island was trundling through a village and past a play area, which was therefore suffering a disamenity. The regulators accepted that argument. The figure of 10 miles is a guideline, not a regulation.

It is important to support all those initiatives, but the most important aspect of the landfill communities fund is empowering communities to achieve their aspirations locally.

Lucy Graham (Scottish Wildlife Trust): I second what has just been said. Although the 10-mile radius is a guideline, in our experience a lot of the distributors use that guideline as a firm figure. The Scottish Wildlife Trust supports the idea that the funding should be focused on the communities that are being adversely affected and that that judgment should be based on proximity, but with a bit of flexibility. Currently, certain distributors exercise some flexibility but others do not. We should roll out that flexibility further.

As wildlife does not conform to a 10-mile radius and our biodiversity projects increasingly work at an ecosystem scale and are interested in connectivity within an area, we want to keep the aspect of proximity while maintaining flexibility with regard to the 10-mile radius.

The Convener: Mr Austin, in your submission you say that the Scottish landfill communities fund is “a good working example of a hypothecated or ‘ring-fenced’ tax – it has compensated for an environmentally damaging activity by funding projects which improve the environment for the benefit of biodiversity and the communities who live near landfill sites.”

You go on to say that “the LCF has therefore been a lifeline”.

The Scottish Wildlife Trust has given us great detail about its projects. Can you tell us about some of the projects on which RSPB has spent money?

Lloyd Austin: Yes, I can give you quite a lot. We have projects such as our wildlife ranger and interpretation work at Kelvingrove in Glasgow; our work with the countryside project in Aberdeen; the development of our Lochwinnoch nature reserve in Renfrewshire; and work on our Airds Moss nature reserve in East Ayrshire. There are a number of projects across the country related to the delivery of biodiversity, the interpretation of biodiversity, education about conservation and opportunities for people to get out into the countryside and enjoy wildlife. Those are our core activities, and those are the things for which funding has been used.

The previous panel mentioned an important point: the funding from LCF comes, in a sense, from the landfill operators. It is seen as private money, which enables us to lever in additional money from the Heritage Lottery Fund, Scottish Natural Heritage and other sources. It can often be a very helpful pump-priming pot of money for getting projects off the ground.

The Convener: Do other panellists wish to comment on projects for which they have received funding through LCF?

Lucy Graham: Yes.

The Convener: You have a tome here.

Lucy Graham: Yes—we have given some examples already.

I want to make the point that, from the perspective of the Scottish Wildlife Trust, the landfill communities fund has been very important, both for small and large-scale projects. We have used it for small-scale biodiversity projects in local wildlife reserves, for example, and for major national species projects that have UK-wide impact, such as the Scottish beaver trial and our saving Scotland's red squirrel project. LCF has been the lifeline for those projects, particularly for the beaver trial.

The Convener: You have been awarded about £3.6 million, with £1.2 million for specific biodiversity projects.

Lucy Graham: Yes, though I would say that £1.2 million is probably an underestimate. Those were projects that were specifically registered as biodiversity projects, but there is a cross-cutting element that means that a project that is registered as relating to access and interpretation, for example, will almost always have some biodiversity benefits as well.

Willie Beattie: We operate within 12 different council areas in Scotland—that is, my own company does, not the forum itself. We have undertaken 750 projects, though I will not bore you with them all.

The Convener: Just mention 400 or 500.

Willie Beattie: Our best project is the one at Greengairs, just north of Airdrie, beside what used to be called the biggest landfill site in Europe. We have done a suite of projects that we like to call “sustainable Greengairs”. The shining light of that project is the community centre and sports hall, which cabinet secretary Alex Neil opened not that long ago. That was a big project that took about seven years to come together—play areas, pathways and all sorts of things were installed.

The most recent bit was the final phase of the community park, which is best described as a linear walkway between the landfill site and the...
villages. The final phase was over very marshy ground, which is ideal for biodiversity. We funded a boardwalk instead of a traditional pathway, so as not to disrupt the ground. We have spent about £2 million of landfill communities fund money in the villages of Greengairs and Wattston. Those are our best examples.

Paul Johnston: A number of our members have accessed landfill tax money, but they sometimes find it difficult to put together projects that meet all the criteria because some active waste management projects do not meet all the requirements in the regulations. The principle behind such projects has been to divert waste and, to date, our members have diverted something like 45,000 tonnes. Landfill tax is part of the mix that maintains 740 full-time equivalent employees and sustains 2,800 volunteers in the sector, so it is important for us. That is why we think that the focus should be on landfill tax.

The Convener: On the issue of regulation, paragraph 9 of the Scottish Wildlife Trust’s submission states:

“We would envisage that any future regulatory role could be streamlined by dropping the information collection and storage function currently being carried out by ENTRUST.”

Can Lucy Graham expand a wee bit more on that? I also ask other colleagues on the panel to give us their views on regulation.

Lucy Graham: From our perspective, the landfill community fund is a great fund to work with and to report on, but there are opportunities to improve and streamline the process.

Essentially, as an applicant organisation, we put together a project and take it to a distributor, which assesses it against the various fund criteria and decides whether to give it approval. Having received approval, we then need to go to the regulatory body, ENTRUST, which rechecks the project against the fund criteria, stores the various records and processes the data. From our perspective, that doubling up in the record making just slows down the process. In terms of cost efficiencies, that extra layer of administration also reduces the amount of money that goes into project delivery on the ground.

Willie Beattie: The issue is very much about the resources and time involved. The amount of information that we are asked to provide on a regular basis is astonishing. I came back from holiday to find that I was being asked to provide by Tuesday night a complete breakdown of all projects over the past three years as well as the leverage in those projects.

I phoned up and said, “When we register the project, we tell you the total project value and how much LCF money is going into it, so you have that information on your system—interrogate your system.” The answer was, “I didn’t know that”. When I asked, “Why do you need this information?”, the answer was, “I don’t know.” That is the kind of thing that we are talking about, because these layers of admin keep coming at us.

Our view has always been—perhaps naively—that it is not wise to take on a regulator, so we just provide the information. However, the requirements are extremely onerous and time consuming for what is a simple and uncomplicated scheme. We all know what projects are compliant, and none of us would seek funding for a project that was obviously non-compliant, because that would be daft.

The Convener: Basically, the amount of regulation could put off applicants, especially in areas where there is a low level of community capacity.

Willie Beattie: Yes, it puts people off. Twice recently, people have withdrawn their applications because the questions coming back were just too complicated for them and they gave up. That is sad, but that is the way that it goes.

Lloyd Austin: I agree very much with the two previous speakers. The distribution bodies are able to perform a reasonably high level of self-regulation. Obviously, Government requires a degree of monitoring and feedback to enable it to report to Parliament and the public to demonstrate what schemes do, but the regulation could take a lighter touch. Between them, revenue Scotland and SEPA should be able to develop an appropriate mechanism.

The new regulatory approach that SEPA is adopting for its wider responsibilities, which is partly being introduced in the Regulatory Reform (Scotland) Bill currently before Parliament, would be the best approach to adopt in this situation as well. The regulator should target those at the criminal end and take a far lighter touch in regulating good-practice operators.

11:00

The Convener: Mr Beattie, you say in paragraph 12 of your submission:

“We believe it appropriate that SEPA should administer the tax and the new Communities Fund.”

Will you expand on that?

Willie Beattie: We have added an appendix with a proposed model. The logic behind that statement is that, as we understand it, revenue Scotland will appoint SEPA to collect the tax and monitor landfill operators.

At the minute, when we receive contributions from a landfill operator, we report that to the regulator, ENTRUST, the landfill operator reports it
to HMRC, and HMRC and ENTRUST occasionally try to reconcile those reports. Why should SEPA not do both? It is the same transaction. With its knowledge of the waste management industry in Scotland, SEPA is well placed to understand the process of landfill tax and landfill tax credits.

**Paul Johnston:** If there is to be a centralised fund, we need to be careful that its collection and administration do not end up being overcentralised or overdevolved. If the distribution of a landfill tax is to be rolled out nationally to any national or strategic projects, there must be some fair way of doing that. One of the best ways would be to ensure that there is a central fund, and it is clear that administration by SEPA would be advantageous to strategic function.

**Lloyd Austin:** I agree with what Willie Beattie said. The key point about any central fund would be its objectives. The current objectives of the fund in relation to communities and biodiversity are good. Therefore, we would want the central administrator to be a body that understands, and is already in the business of delivering, those objectives, which might not always be SEPA. To some extent, with the current system, SEPA would operate well as a single regulator but, if the system were changed to a strategic fund, we would want an administrator that understands the objectives of that fund.

**Michael McMahon:** Following on from the questions that I asked the first panel of witnesses, I will be a bit parochial, if you do not mind.

My constituency is in central Lanarkshire. Mr Beattie mentioned the Greengairs landfill site, which is less than 10 miles from my constituency. On the boundary to the west of my constituency is Auchinlea, and on the other side is Patersons in Glasgow. I also have Mossband farm in my constituency. Within a 10-mile radius, therefore, there are four landfill sites.

One of the reasons for that is that the area is synonymous with logistics and distribution. We have the M74, the M73, the M8 and the A80 all within the 10-mile radius as well. That lends itself to waste coming to the area.

The witnesses talk about requiring the flexibility to disburse the money more widely. They might call it flexibility but, in my area, we might call it unfair. Having been impacted so adversely by the amount of landfill, even the idea that the money might be disbursed beyond where the landfill has an impact does not appear particularly fair to the communities within that vicinity.

The witnesses just talked about SEPA centralising the fund and drawing the money in for national projects. That will not wear well in the communities where the landfill sites impact on the local environment, will it?

**Willie Beattie:** As I mentioned earlier, we operate in 12 areas throughout Scotland, which is because we have 12 contributors—landfill operators—in those areas. We spend money only in the areas where the money is contributed. That is why central Scotland has had 196 projects with a value of £7.3 million, which is about a third of what our organisation has done since the beginning.

We would not support at all the notion of SEPA centralising the fund; in fact, our position is quite the reverse, in that we think that the fund should remain the way that it is and should be distributed locally, because it empowers communities. If the fund was centralised, communities in places such as Greengairs or Auchinlea or wherever—we have funded projects in all the areas in your constituency that you mentioned—would not find it easy to access the fund when they were set against the big boys bidding into a big centralised fund. Therefore, I agree with what you have just said.

**Michael McMahon:** Even if the fund is not centralised but a centralised organisation such as SEPA is involved in distributing it, is it possible that communities that are more rural and that have environmental issues that are different from those in the urban areas that I represent could be the beneficiaries? We would get the dead whales in my area, but other areas would get the money from our landfill sites having to take them.

**Willie Beattie:** I can separately let you have the details of what my company has done over the past 14 years. The project that I referred to earlier on the Isle of Skye is funded with money from Highland Council’s landfill tax credits. It is entirely appropriate to spend that money in that area, and that does not take anything away from your constituency, because the waste was not generated there. I certainly would not support SEPA being involved as a centralised distributor of funds. I accept that I have a vested interest, but the funds should continue to be distributed by people like us in a local dimension, to provide the fairness that you are talking about.

**Lloyd Austin:** I will add to that, first to clarify my earlier comments on the 10-mile guidance. When I suggested flexibility, I put that in the context of the fact that we very much support the current hypothecation. We are talking about a tax on an environmental bad that goes to do some environmental good to address the disamenity of that bad. We would like the connection to the area to be maintained.

In an area such as Michael McMahon’s constituency, proximity is a key factor in maintaining that connection. However, we suggest more flexibility in areas such as the Highlands and Islands. As Willie Beattie just explained, in that
area the proximities and distances have a different impact. For example, on Skye, the disamenity is sometimes more than 10 miles from the landfill site, but it is still linked to a disamenity that is suffered by a community, which therefore gets resources to address it. It is important that a connection remains between the thing that we tax and the project that is delivered with the resource; the point is just that sometimes, particularly in an area such as the Highlands, something a bit more flexible than the 10-mile rule might be needed.

On a central fund, my answer to the previous question was that if there is such fund—we do not necessarily agree that there should be—it needs a central administrator that understands the objective of the scheme. However, I am not convinced that there is a need for that. The important thing is to set up the objectives of the fund and other Government funding mechanisms to try to secure Government environmental objectives, which are its climate and biodiversity targets and so on. Those mechanisms should be the ways in which the objectives can be funded. The experience of the landfill communities fund is that it is a good contributor to achieving Government biodiversity targets, and there is no reason to change that.

Lucy Graham: I second what has just been said. To clarify what I said earlier about the 10-mile flexibility, the Scottish Wildlife Trust is recommending not a centralised fund as such but an element of flexibility about how the funds are distributed and continued focus on the communities that are at disbenefit from the landfill operations.

In the current system, the distribution hangs on those communities. For example, substantial funding went into our Scottish beaver project, but it did not actually come from the landfill operator active in that area. It was a slightly unusual context, but Biffa Award was the key funder of the Scottish beaver trial in Knapdale in Argyll. The operator that made that community disbenefit was the local authority, but it did not have sufficient funds for the projects that we were looking for. We therefore went to a different landfill operator, and we got landfill money for the project through the scheme because the community in the project area was at disbenefit.

Paul Johnston: CRNS would take a slightly different view. We are not against mitigation for Greengairs or any of the areas with large landfill sites. However, our view is that, when we are filling up landfill sites at the rate that we are, the best thing to do is to turn off the tap and stop filling them up—and diversion is one of the things that we can do.

Many of the CRNS's ideas are not as glamorous as other environmental projects, because we are out there doing some of the physical things. We suggest a tiered approach of maintaining the mitigation but having a centralised fund, which a national project could draw on. If that project focused on reducing the amount going into landfill, we think that it would benefit the communities around landfill sites as much as any of the mitigation programmes.

A project could, for example, focus on finding a system that prevents furniture, beds and items that are difficult to recycle from going into landfill sites. Such a project would be a focused and good thing for a centralised fund to support. That is what we are asking for: if we go down the route of having a centralised fund, we could focus it on work like that.

Michael McMahon: I have a final question. You have talked about the current system, which seems to operate well—I know that my community has benefited from the landfill communities fund. However, if we follow the path that Mr Johnston outlined, is guidance going to be good enough in those circumstances? If we are going to have a regulated body involved in the process, which is not the case at the moment, do we not need regulation to ensure that we do not see sucked out of the local communities affected the moneys that are brought to the local community by the landfill sites being in their proximity? Do we not need a bit of extra protection?

Willie Beattie: I am not quite clear—sorry.

Michael McMahon: What you have got at the moment is guidance, but guidance can be toughened up into regulation.

Willie Beattie: No, we do not. ENTRUST regulates the landfill communities fund.

Michael McMahon: Yes, but for the flexibility within the system, does the guidance around that need—

Willie Beattie: That is just on the issue of the 10-mile radius, though. ENTRUST is not particularly flexible about anything else and operates a very strict regulatory framework, so I do not think that that is a problem.

To make a historical point about the current system, in 2003 the landfill communities fund was reduced by two thirds in the UK. That was because the very substantial amount of money at that time—about £100 million a year—went towards some of the UK Government's initiatives on sustainability and recycling. The WRAP programme in particular was partly born out of that funding, and it continues to be so funded. The landfill communities fund is therefore now about a third of the size that it used to be. We think that it is entirely appropriate that the status quo prevails in terms of the objectives of the current system,
which ensure that local communities get what they want and that biodiversity is involved as well. We think that the scheme is working well; it is worth about £70-odd million a year in the UK, so it is quite a small scheme in that sense. If it was centralised, the danger would be that it would be spread too thin and would take in higher-level Government aspirations.

11:15

**Lloyd Austin:** I agree with Willie Beattie on that point, which underlines the point that I was trying to make earlier—the fund is a relatively small resource that leads to good, successful work on community and biodiversity projects. To those projects, it is a very important and significant source of money that they would find very difficult to replace from elsewhere, so before you think about what else you might want to do with it, it would be better to establish what resources are already available for those other types of activities and what proportion of Government resources is going into those other Government objectives, and to work out to what extent the balance of funding is right. We do not want to pour all our money into one stream of work or to divert money from this stream into another one that is already pretty well funded, which would make community and biodiversity projects even harder to fund than they are at the moment.

**Willie Beattie:** I mentioned that we have done 750 projects. Not a single one of those is a project that we have devised. We have not thought, "Oh, that'll be a good project to do." All the projects have been done because communities have come forward to say, "We have an idea and we want to do this." That is a strength of the scheme. Local communities get what they want, not what their local authorities tell them that they should have. We would not want to lose that aspect of the scheme; community empowerment is critical to the scheme.

**Paul Johnston:** All the projects that CRNS members are involved in are environmental projects in a broad sense, but they give employment and reuse in localities as well. Just to reiterate, CRNS projects are not as glamorous as some other environmental projects, but we do those things as well. We are also about community empowerment; we work in difficult-to-reach sections of the community at the same time, so we take the view that a national fund is needed. Our members find it difficult to access funding in general and the reform of landfill tax will give us an opportunity to focus in on waste reduction via our members.

**Michael McMahon:** I feel that the system is working well; Mr Beattie has given us good examples of that. I do not want to see the system broken by involving SEPA in it.

**John Mason (Glasgow Shettleston) (SNP):** I will carry on with that theme. If I understand this correctly, Mr Johnston, you are arguing for quite a narrow definition of how the money is spent—or at least some of the money—and that it should be specifically about reuse, recycling, reducing waste and so on. I can understand the argument for that, because the link between my neighbours putting out a bit of waste and the beavers at Knapdale is pretty loose—but maybe that is a good thing. Are we saying that we want the status quo, are we saying that the money should be more focused on the local community where the waste goes, or are we saying that it should be more on themes, as Mr Johnston was saying?

**The Convener:** Who was that question directed to?

**John Mason:** I would like to hear from all the witnesses, starting with Mr Johnston. Are you saying that we are okay just now because some of the money goes to themes or do you want more of it to go to the kind of work that you are doing?

**Paul Johnston:** A number of our members will access small quantities of the money for projects by landfills, within 10 miles of landfills and so on around the country. I am saying that a proportion of the money—and that proportion needs to be debated—needs to be focused on a national strategic objective. Our members are not local government. There is money for local government and there is money through zero waste Scotland and for other national objectives. What we are talking about here is a one-off. It is the ability to invest in environmental organisations that are involved in changing people’s attitudes, diverting waste, redesigning things and creating the circular economy. How that can be done is through a national scheme.

**John Mason:** Do you not think that more should go into that, then?

**Paul Johnston:** Yes. A proportion should go into that, which would benefit—

**John Mason:** Are you happy with the present proportion? You do not want a bigger proportion.

**Paul Johnston:** I am not happy with the current proportion, because insufficient resources are getting through to those community groups that are involved in the environmental resources sector. We need to focus more into that sector. The landfill tax gives that opportunity, and I hope that we do not miss it.

**John Mason:** Ms Graham, how can you defend the beavers? I have been to see them, and the dams are great and all the rest of it, but where is the link with waste?
Lucy Graham: That is a biodiversity project in a community that is disadvantaged by landfill.

John Mason: That specific area is not disadvantaged, is it?

Lucy Graham: Yes. There is a landfill site that disadvantages the community; otherwise, we would not have got the funding. As I said, the source of the money was Biffa Award, but Biffa does not operate the site.

John Mason: Okay.

On the issue of the 10 miles, I take the point that, in Skye, 10 miles is quite a short distance. We raised this issue last week and I think that Michael McMahon has argued that 10 miles is about the right distance, whereas I would argue that 10 miles is far too big a distance. In the south-east of Glasgow, where I have Patersons Quarries in Groomoakhill, 10 miles could take you to Byres Road or somewhere ridiculous. There is no way that Byres Road should be getting any of the money from that area. Could we devise a more appropriate system, in which the distances are smaller in urban areas and bigger in rural areas, or is that impossible?

Lloyd Austin: The point that I made earlier was that the legislation uses the phrase “in the vicinity of”; the 10 miles is in ENTRUST’s guidance. The issue is the way in which that guidance is interpreted and the context that is written into the guidance to distinguish between urban and rural areas and so forth. The phrase “in the vicinity of” is appropriate for the legislation but should be expanded on in guidance to explain that there are different communities, different landfills and different waste activities. In relation to Skye, Willie Beattie pointed out that the transport of waste and transfer stations and things like that can disadvantage a community as much as a landfill site can.

John Mason: So could we have a scheme in which it would be 2 miles in an urban area, 25 miles in a rural area and 10 miles in an area such as Michael McMahon’s?

Lloyd Austin: I do not think that a hard and fast figure in any case would be appropriate. The issue is whether the community or local environment has been or is affected by the waste disposal, landfill activity or transfer activity. The project applicants, distribution bodies and regulators are quite capable of judging whether there is a link between the project and some form of disamenity in the local area.

John Mason: One of the submissions that we received was from Glasgow City Council. If we took that to its logical conclusion, because Glasgow tends to dump all its waste in Lanarkshire and places like that, all the tax credits would go to Lanarkshire. Glasgow is arguing that, because it is paying so much money, some of the spending should be in Glasgow. How would you respond to that argument?

Willie Beattie: In fact, all of Glasgow’s landfill tax money is spent in Glasgow—

John Mason: At the moment.

Willie Beattie: —although technically its waste is deposited in South Lanarkshire.

The Convener: Technically deposited? Do you not mean actually deposited? [Laughter.]

Willie Beattie: I was referring to the quality of the waste management practices. That is for a very short time and it is not going to continue.

The organisation that funded the beaver project is Biffa Award, which operates for the national waste management company Biffa. Biffa diverts all its landfill tax money to an organisation called the Royal Society of Wildlife Trusts. However, that company has chosen a rather unusual policy route. I speak not just for my own company, but for the Scottish landfill communities fund forum members, including Landtrust, which operates on the landfill tax money from Patersons Quarries in your area. None of our members takes that national view; they all tend to spend money locally. Most of the landfill tax money from Patersons has been spent close to the landfill site over the years, and that fact is referred to openly.

John Mason: So there is a mixture of approaches.

Willie Beattie: Yes.

John Mason: Should that continue to be the case?

Willie Beattie: An element of trust should come into it. Coincidentally, most of the practitioners in the contributing environmental bodies have been doing this for quite a lot of years and the turnover in personnel has not been dramatic. The fact that there is no evidence of the 10-mile radius being abused shows that they deserve the respect of being allowed to continue with the process, which has been working fine. Nobody has ever complained that a specific operator is giving landfill tax credits and the money is being spent miles away from where the disamenity is occurring on a regular basis.

John Mason: It seems a little untidy to me. The fact that Glasgow City Council has raised the point shows that it is scared that it is going to be pinned down a bit more and that, if the dumping occurs in South Lanarkshire or wherever, in the future the money will be much more tied to South Lanarkshire. You are arguing that the current system is okay and that we should just let it carry on.
Willie Beattie: I think so. Glasgow City Council has taken steps to ensure that a good percentage of the future landfill tax credits from its waste will be spent in Glasgow, although I am pretty sure that the waste will go to Greengairs.

John Mason: Glasgow City Council cannot control that, can it?

Willie Beattie: No, but it can suggest. There is a quirk in the regulations, which should be investigated on this point. There is nothing in the regulations to prevent an organisation such as Glasgow City Council from making a request, and local authority landfill operators have been going along with that for years. They put it in a waste contract that the landfill tax credits should go to a certain body for a specific purpose. That should be tidied up—I agree with you on that point.

John Mason: That is interesting. I had not realised that that is what happens. That is helpful. Thanks.

The last paragraph of the Scottish Wildlife Trust’s written submission states:

“LCF spend in Scotland is significantly higher than the amount actually collected here”.

Does that mean that authorities in England are getting waste dumped on them but are not benefiting from the tax credits, some of which are coming to fund the beavers?

Lucy Graham: Willie Beattie may be able to expand on this. It is difficult to tell from the figures, but our understanding is that national distributors such as Biffa Award, Viridor and WREN—companies that work for the large landfill operators—have allocated their landfill tax credits in such a way that, in the past, more of the money has come to Scotland. I understand that we have been getting more than our share, although we have never seen evidence of that because the money is difficult to track in the accounts.

John Mason: The convener is just pointing out some figures to me. The total tax credits are £74 million for the UK but only £4 million for Scotland. That does not seem to support your assertion. Do you know whether that is the total or just part of the total?

Lucy Graham: I would have to go away and check those figures.

Willie Beattie: I would say that the spend in Scotland has been nearer £7 million. I saw that figure when I read the papers yesterday, but I was not sure where it came from. In fairness, the officials who gathered a lot of information may have gathered only £4 million-worth of information.

11:30

The Convener: I will provide some clarification from the RSPB’s submission. It says that the amount “available for project applications, was £74.25 million (around £4m in Scotland)” through the landfill community fund. Scotland’s population is around 8.4 per cent of the United Kingdom’s population and its landmass is around 27 or 28 per cent of the UK’s land mass. The £4 million represents probably around 5.5 to 6 per cent of the UK total, so the percentage is less than our population percentage and significantly less than our geographical percentage. That assumes that the figures from Lloyd Austin are accurate. Obviously, the committee can seek clarification on those figures. Where did you get those figures from, Lloyd?

Lloyd Austin: I am not sure where they came from, but I will check.

The Convener: It may be that Scotland is doing disproportionately worse rather than better, if the figures are right.

Lloyd Austin: I think that it is right that some of the UK-wide operators that have landfill sites throughout the country do not necessarily need to spend their money proportionately to the amount of waste that they put in each landfill site. Scotland has bid into some big national biodiversity or community projects and has therefore been able to get more money out than it has put in, if that makes sense.

John Mason: That might suggest that the current system is not working in some places. I sympathise with Michael McMahon’s argument that the communities that get the disbenefits should get the compensation, but it is clear that communities in the midlands of England or somewhere else are getting a lot of disbenefits and nothing is being spent on them. That is a comment; I am not asking you to answer it.

The RSPB’s paper says:

“The current administration of the tax is ungainly and costly (it costs 2% of the value of the Landfill Communities Fund to administer).”

I thought that spending 2 per cent on administration was quite reasonable compared with what charities, for example, would spend on it.

Willie Beattie: That is the ENTRUST levy, not the cost of administration.

John Mason: Right. Okay.

Willie Beattie: Every time we receive landfill tax money, we report it to ENTRUST, and it sends an
invoice for 2 per cent of the value, which pays for running ENTRUST.

**John Mason:** So if ENTRUST was taken out of the equation, that would immediately free up that money. Is that what you are saying?

**Willie Beattie:** That money would be available for projects.

**John Mason:** I am with you.

**Lloyd Austin:** The word “administration” was clearly the wrong one to use in that instance. We were referring to the cost of ENTRUST and the regulation by it.

**John Mason:** I understand. That is helpful. Thank you.

**Jean Urquhart:** On the same theme, paragraph 5 of the submission from the community resources network Scotland, which is on red tape, says:

“Too many funds are burdened by bureaucracy”,

which makes it hard to access them. I was interested in Willie Beattie’s statement about the fund being really good. Some 750 really good community projects have been delivered, but how easy is it to access? We have heard from the Scottish Wildlife Trust and the RSPB, both of which are very large organisations. In fact, most of the projects that have been talked about are large, even in Greengairs. Correct me if I am wrong, but it sounded as though that was initiated by the community and was quite a big development. How do small applications work? The Big Lottery Fund, for example, has the awards for all programme, which offers amounts of up to £10,000. There is a two-sided, pretty basic A4 form to fill in, and the programme has been hugely successful in contributing to small community trusts. Could you enlighten me a bit about that?

**Willie Beattie:** There are two types of red tape. There is the red tape that a distributive environmental body has to suffer in dealing with regulation and the like. Our procedures are very clear for the communities that deal with us. They have to submit a one-page A4 concept note that deals with people with disabilities or that reuses furniture. As a result, we often find that they might want to set up a project that involves a bit of community composting or a bit of recycling, that deals with people with disabilities or that reuses furniture. As a result, we often find that they are not the most skilled at applying for various things and they end up facing different barriers.

There is usually a myriad of funding packages that they might go for. The first is not landfill tax moneys, it has to be said. They consider issues such as whether they need to become an ENTRUST member. The council is usually the first port of call, and zero waste Scotland might be asked for advice. It is always difficult. Essentially, we are asking for something that would help them to be self-sustaining. As a general rule, the organisations involved are all social enterprises. If we can make them self-sustaining through a fund—in other words, get their businesses working properly—they will not come looking for grant funding very often. We think that one of the best ways of using a diminishing fund is to invest it in something that can be sustained in the future, such as furniture or composting projects, which make something that can be used in food networks and so on. We are being quite specific.

**Jean Urquhart:** I have a supplementary to that. I can think of several small social enterprises like those that you describe, but it seems to me that they fulfil lots of different desires with regard to how people with mental health problems are dealt with in communities. Some such facilities were withdrawn earlier this year and last year. There are quite big concerns in the south of Scotland and in the Highlands and Islands area that I represent, where the organisations that you describe are very small—they might employ up to 20 or only half a dozen people. Such tiny enterprises are vulnerable when it comes to funding.

I cannot see the fund providing the core funding of the organisations that you are talking about.
Would they apply for funding just for a specific project?

Paul Johnston: There will be some that will apply for funding for specific projects, but they will probably be related to a specific landfill in the area or to something that is relatively close. Most of our members do not find it easy to access funding when it is necessary to be a member of a particular organisation. Many of them are stressed for time to make bids for funding. In general, they are constantly making bids all over the place.

We are trying to say that, by having a strategic fund that seeks to generate income for individual businesses and which acts as a driver in reducing waste, we can create something of lasting benefit to all. We have details of that, but I simply want to outline a scheme that we have which revolves around accreditation and quality systems and suggest that investment in such measures will generate income for small social enterprises because they will work with the private sector to improve its waste reduction, ensure that its waste material is taken and so on. In short, we have a specific national scheme that will generate income and jobs as well as benefit the environment.

Gavin Brown: I wonder whether Mr Beattie can put some flesh on the comment in paragraph 15 of the Scottish landfill communities fund forum submission that “our proposal would achieve the same results more cost effectively.”

How much more cost effective would your proposals be in achieving these results?

Willie Beattie: If we had a greater degree of self-regulation, there would be no need for an organisation such as ENTRUST to regulate and we would immediately save 2 per cent of the landfill tax credits generated in a year.

Gavin Brown: You say that you would save 2 per cent, but I presume that if the role were transferred to SEPA, it would need to employ new people, set up a similar system and so on. Would you still save 2 per cent? Have you done any comparative work in that respect?

Willie Beattie: Obviously this is still a proposal—we have not yet fully costed it. However, if SEPA effectively approves distributive environmental bodies for handling this money or accepts that they can do so, there will be an absolute maximum of only 10 or 12 such distributors in the country. If those organisations were members of the Scottish landfill communities fund forum and signed up to a code of conduct that included the annual submission of fully audited accounts, SEPA would only have to look at 12 sets of accounts and then decide whether it needed to take a closer look at someone. It would not need to, as fully audited accounts should present a pretty good picture of how an organisation is run and its probity, and that is why we are suggesting that the approach would be much more cost effective.

The landfill communities fund has been operating since 1996 and I think that I can safely say that, apart from one criminal case down south in the early years, nothing untoward has happened in the scheme in all the years of its operation. That probably shows that it has been working to high pretty standards of probity and security; indeed, that is where the idea of making a saving came in.

Gavin Brown: Appendix 1 of your submission contains a model comprising six rectangular boxes joined with a series of arrows. If I understand it rightly, the difference between your proposal and the current system is that, under your proposal, ENTRUST would no longer be part of that model; as a result, a model that showed the current system would contain another rectangular box.

I note that one of the boxes in your model is labelled “Ombudsman”. Is there an ombudsman at the moment?

Willie Beattie: No. We simply assumed that, in total fairness to applicants, there would have to be some recourse; after all, there is bound to be the odd occasion when, for whatever reason, someone will not be happy with a rejection of their application. We do not imagine that such a move would be expensive. It could even be a voluntary role filled by a suitably qualified person.

Gavin Brown: Thank you very much.

The Convener: I thank my colleagues around the table and, more important, our witnesses for their evidence, which will help with our deliberations.

Meeting closed at 11:44.
The Convener: The second item of business is to take evidence as part of our stage 1 scrutiny of the Landfill Tax (Scotland) Bill. I welcome Eleanor Emberson and Nicky Harrison from revenue Scotland and John Kenny and Ronnie Robinson from the Scottish Environment Protection Agency. There are no opening statements, so we will go straight to questions.

As usual, it falls on me to open the questions. First, I have questions for our colleagues from SEPA. In your submission, you point out: “Alternatives to Landfill are currently expensive. The Bill, by continuing the existing Landfill Tax rates, makes the alternatives to Landfilling more proportionate, thereby encouraging alternative technology development and the utilisation of existing alternative facilities”.

Would an increase or decrease in the landfill tax encourage or discourage that development and utilisation further?

John Kenny (Scottish Environment Protection Agency): As you know, the setting of the rates sits with the minister in the current proposal. The rate that has been set has been a success—the landfill tax has changed behaviours in the waste management industry and encouraged a move away from landfill to more environmentally sustainable solutions.

If the rate was increased significantly, it could make alternatives more attractive. However, it would have a significant impact on business, and business would need a significant lead-in time to adjust to that. It would also be a differential rate from the rest of the United Kingdom, which is not the policy direction of the bill as it stands.

The Convener: On encouraging the proper disposal of asbestos, your submission says: “it would benefit from being taxed at the lower rate to ensure that more material is disposed of safely in a controlled legal manner rather than being stockpiled at the place of production or disposed of illegally.”

How common is the illegal disposal of asbestos or the hoarding of asbestos?

Ronnie Robinson (Scottish Environment Protection Agency): I am probably best placed to answer that. There have been considerable changes over the years. Asbestos was a prevalent building material from the late 1800s through to 1985, when it was banned in building products. Since 1999, it has ceased even to be reused. The only option for asbestos, as it is a hazardous material, is disposal to a landfill site. To dispose properly of this dangerous substance, it is best
placed on land covered up, so that the fibres are not exposed to air. Reducing the tax liability for asbestos would encourage the proper and safe disposal of the material.

The Convener: Indeed, but how extensive is the problem?

Ronnie Robinson: The issue is diminishing, because asbestos is not present in modern buildings. However, a considerable number of buildings and building products still contain asbestos and asbestos fibres. There is a considerable tonnage still to be disposed of but, in comparison with the waste stream in Scotland as a whole, it is small.

The Convener: Are we talking about hundreds or thousands of tonnes a year being dumped illegally?

Ronnie Robinson: We are probably talking about hundreds to small thousands of tonnes of illegal disposal.

The Convener: What is the proportion of that relative to legal disposal?

Ronnie Robinson: I do not have those figures, so I cannot make a comparison. However, I would say that it is a relatively small proportion, compared with overall disposal.

The Convener: Your submission talks about concerns about waste tourism, but you also talk about waste such as incinerator bottom ash being brought into the standard rate of tax, rather than the lower rate. If that happens in Scotland but not in England, will that encourage waste tourism?

Ronnie Robinson: It definitely has the potential to do that. We would like the rates of landfill tax to remain the same as they are in the rest of Britain, to encourage certainty in disposal. However, we believe that certain waste streams would benefit from a slight change and that it is worth discussing that further and consulting on the issue.

Any of the proposals to change the rates could bring about quite complex changes to the movements of material backwards and forwards. It is therefore only fair to consult industry openly if any changes are to be made.

There are benefits to the change that we are discussing, of course. The landfill tax is an environmental tax, and we want to encourage the safe and proper disposal of material and encourage the reuse of material and the development of alternative technologies for that material. Bottom ash is one of the materials whose reuse we would like to encourage.

The Convener: On waste tourism, we have been told in previous sessions that waste can be very price sensitive and that, if the price rose from £2.50 a tonne to £80 a tonne, the waste would be likely just to be shifted over the border. I do not think that people in England would be very happy about that.

John Kenny: We are saying that the change should be considered, not that it should happen. We are saying that we need certainty now. As we engage with industry, opportunities that are worth considering might arise, but all the points that you have raised would have to be considered in any thoughts about such changes.

The Convener: There has been a discussion about how Her Majesty’s Revenue and Customs cannot collect tax from operators whose sites are not permitted, which encourages large-scale dumping. I am trying to understand the scale that we are talking about—I appreciate that the fact that such activity is illegal means that it is hard to get a firm grasp on it.

Last week, Craig Hatton told us that 268 tonnes were dumped in North Ayrshire last year. That is pretty small compared with the amount that is dumped in other local authority areas, as we know. What level of illegal dumping are we talking about, as a share of landfill disposals?

John Kenny: As you say, it is difficult to give an exact number but, over the past few years, SEPA has become aware of large-scale illegal waste disposal and the involvement of serious organised criminality in that. Significant fines of up to £90,000 and £200,000 have been issued. We are investigating operations of a significant scale. If illegal disposal were brought into the tax regime, the tax liability from such sites could get into seven figures.

It is difficult to quantify the exact number of sites, but I can say that in the past year SEPA has submitted 25 reports to the procurator fiscal on waste-related issues, five of which related to the depositing of waste. Our main concern is significant large-scale dumping, and the ability to address that will be the main benefit of bringing illegal waste sites into the tax regime.

The Convener: What is revenue Scotland’s view?

Eleanor Emberson (Scottish Government): As you would expect, expertise on waste disposal lies entirely with SEPA. That said, I think that two issues arise, the first of which is the practical issue that we have been discussing of the amount of tax that might be recovered and the amount of illegal dumping that is going on. There is also an important issue of principle, which is really a policy matter. I share my policy colleagues’ view that we want to send the signal that tax will still be collected from everyone who ought to have paid it. Regardless of whether we collect a large amount of money, we will follow the important principle of not allowing people simply to duck the tax.
The Convener: Obviously, the issue is important. An element on which we seek clarification is enforcement. Who should be responsible for enforcement of tax collection?

Eleanor Emberson: That varies from tax to tax. The committee has recently had a lot of discussion about the land and buildings transaction tax—

The Convener: I am talking about the landfill tax.

Eleanor Emberson: Indeed. Compliance and enforcement activity ranges from chasing up payments that are late or which have not been made and checking that the disposals on a landfill site match the returns on the tax due through to pursuing people who might have been dumping illegally and the corresponding tax liability. One end of that requires a lot of environmental expertise; SEPA has that special expertise and we will look to agree with it the activity that it will undertake and the activity that revenue Scotland will undertake.

The Convener: What is SEPA’s view?

John Kenny: We hold a similar view. There are a lot of synergies to be found, benefits to be had and efficiencies to be made in our work on identifying and dealing with illegal waste sites. We have put a massive amount of resource into that work, and we are working with partners through the environmental crime task force. I concur with my revenue Scotland colleague that we have expertise in enforcement and that it would make sense for us to have that role, but the exact role is still to be determined in discussions.

The Convener: The committee is trying to determine exactly what that role would be.

I understand that £300,000 will be made available to SEPA to carry out the additional responsibilities. Does the agency feel that that sum is adequate?

John Kenny: For what?

The Convener: For the additional work. I appreciate that you do not know exactly what you will be doing, but how do you feel about the sum that has been set aside?

John Kenny: It is adequate to cover our estimate, which is based on our operational experience of inspecting and dealing with landfill sites. We know where we are in that respect; after all, we have a finance department with 20 staff who deal with £30 million-plus of income and an information systems department that has 45 staff and deals with million-pound IS developments. The £300,000 covers what we have quoted for but if, after discussions with revenue Scotland, SEPA’s role expands to include enforcement, we will have to discuss with the organisation the financial arrangements for taking on that role.

The Convener: As colleagues will have questions about the landfill communities fund, I will not ask SEPA about it. However, I wonder whether revenue Scotland has a view on the issue.

Eleanor Emberson: Not really. It is a policy matter.

The Convener: I did not think that you would—I was simply seeking clarification.

Finally, on one other issue that again might be predominantly a policy matter, what is your view on when the tax rate should be set?

Eleanor Emberson: I am afraid that I do not have a view. I think that you explored that question with policy colleagues.

The Convener: Yes, and we will ask the Cabinet Secretary for Finance, Employment and Sustainable Growth the question afterwards. I just wondered whether, in practical terms, you have any concerns about timescales.

Eleanor Emberson: I would have a concern if a timescale that was inappropriate for making administrative arrangements was set, but we will deal with that.

10:15

The Convener: What would you consider to be an appropriate timescale?

Eleanor Emberson: I am sorry, but I cannot answer that right now.

The Convener: Okay.

Eleanor Emberson: We expect to develop systems that will allow rates and arrangements to be changed not simply for landfill tax but for land and buildings transaction tax, potentially at very short notice, if necessary. I do not expect that we would need a long lead-in time administratively, but that would be my only concern.

The Convener: A number of colleagues want to ask questions, so I will let them in straight away.

Jamie Hepburn (Cumbernauld and Kilsyth) (SNP): I posed the following question at our previous meeting. I suppose that it is primarily directed to SEPA but, if revenue Scotland has a perspective on it, it is welcome to provide that. The primary purpose of the landfill tax, unlike taxes that are primarily designed to accrue revenue for the public purse, is to reduce the amount of waste that goes to landfill. If we take the bill in the round, what is your assessment of whether it works towards that primary aim?

John Kenny: The bill is a positive mechanism for doing that. The tax has already been shown to
be successful and has driven a 30 per cent reduction since 1997 in the amount that goes to landfill. It is understood by business and regarded as a success. There is also the landfill communities fund element, so it is a very powerful tool.

**Jamie Hepburn:** I have a question about the block grant adjustment. SEPA was clear that it did not necessarily have a set perspective at this time. However, in our previous evidence session on the bill, North Ayrshire Council expressed concern about a gap that might emerge between any reduction in the block grant and revenue accrued through the landfill tax. Do revenue Scotland and SEPA have a perspective on that?

**Eleanor Emberson:** I am sorry, but that is another policy matter, which the committee explored quite thoroughly with colleagues. It is something to be negotiated between the Scottish Government and the UK Government Treasury. The committee is aware of the issues, so I am not sure whether we could usefully add anything.

**Jamie Hepburn:** Okay. I do not know whether SEPA has anything to say.

**John Kenny:** We have the same view. The facts are there; the issue is just about how that is negotiated out.

**Jamie Hepburn:** Perhaps this does not apply to revenue Scotland, but does SEPA suggest a particular line to take in the negotiation?

**John Kenny:** Our role is to collect the tax on behalf of revenue Scotland, so I do not think that doing what you suggest would be appropriate.

**John Mason (Glasgow Shettleston) (SNP):** The convener touched on the waste tourism idea. Is it SEPA’s view that a small difference in tax rates between, say, Scotland and England or Scotland and the Netherlands would mean that a lot of waste moved backwards and forwards?

**John Kenny:** I would go with the prices that the committee was given by the industry in the previous evidence session. For example, I think that Jim Baird talked about £10 a tonne. That is the kind of ballpark figure that makes a difference.

**John Mason:** So SEPA is comfortable with the idea that we will start off in line with the UK and perhaps experiment in the longer term.

**John Kenny:** Absolutely. Business needs certainty.

**John Mason:** The point has been raised that there are not a lot of recycling opportunities in some communities, such as some of the islands in the Western Isles. Should they be treated differently for those purposes?

**John Kenny:** Do you mean a different tax rate?

**John Mason:** I think that it was suggested that there might be a different tax rate for certain materials, because things would have to be shifted off the islands to the mainland for recycling, which would mean that transport costs became prohibitive.

**John Kenny:** My colleague Ronnie Robinson might add to this, but there are regulatory mechanisms in place that allow exemptions and certain less strict standards for islands. That is a better way to address the problem than having differential rates, which could lead to the perverse tourism of stuff coming back from the mainland to the islands.

**John Mason:** So you feel that the present system is fair towards the islands.

**John Kenny:** It is better than the alternative of having differential rates.

**Ronnie Robinson:** I emphasise that point. There are exemptions from waste management licensing when inert and less-dangerous material can be utilised for beneficial purposes. There are avenues for that. As the bill stands, if such material is used for beneficial purposes, it will not incur landfill tax. That is a benefit.

There would be concern if there was a difference between the islands and mainland Scotland, because that would create the possibility of material going to the islands if things were cheaper there. The issue would depend on scale and the differences between taxable materials, so we would need to be very careful on any changes between areas in Scotland.

**John Mason:** Until now, SEPA’s role has been to minimise landfill and tax, but now SEPA will have the new role of maximising tax. Will there be a conflict of interest between trying to keep the tax down and keep the tax up?

**John Kenny:** It is not SEPA’s role to maximise the tax. SEPA’s role is to collect the tax on behalf of revenue Scotland. There is a communication issue, because we need to make industry aware of that. I know that industry has had the perception that was described and raised that point.

SEPA’s policy direction supports the Government’s policy direction on the zero waste plan and reducing the amount of material that goes to landfill. There are many more areas of potential commonality than of conflict. Our role is not to maximise revenue.

**John Mason:** I take it that revenue Scotland’s aim will be to maximise revenue. How do you see the relationship with SEPA in that regard?
Eleanor Emberson: Revenue Scotland’s aim will be to collect the tax that is due under the bill; it will not be to maximise revenue.

John Mason: I am interested in that. HMRC has a slightly ambiguous position at times as to whether it is maximising tax or just sticking to the rules. HMRC’s history has been of going beyond the law and trying to increase the tax beyond what the law says. You would not see revenue Scotland doing that kind of thing.

Eleanor Emberson: We will come to that in more detail in the tax management bill, which will come before the committee later this year. I do not understand how we would operate beyond the law. We have to operate in line with legislation passed by Parliament.

John Mason: Inevitably there would be grey areas.

Eleanor Emberson: There would indeed, but our aim would be to collect the tax due.

John Mason: It has been suggested that sometimes quite large quantities of illegal waste are dumped over time, and nobody seems to notice them until they have got very big. Does that suggest that SEPA does not have enough resources, or is it just impossible to notice them because there is so much space in Scotland? Will that happen inevitably?

John Kenny: It is not inevitable. As I said, SEPA has put a significant amount of resource into the activity. We have 18 geographical teams that are spread about the country, we have an enforcement support team of specialist staff to undertake complex investigations with surveillance capacity and we partner the police to undertake surveillance. We have invested a significant amount of resource in an intelligence system that gathers intelligence from our staff, members of the public, partner organisations and industry. We engage with industry, which, as you might imagine, is good at telling us when somebody is undercutting it. We have a lot of information at our disposal to identify such sites and we have resources to tackle them.

It is a significant and difficult job. I am not saying that we are aware of every illegal waste site in Scotland, but we have invested a lot to have systems and tools in place to help us to identify and tackle them.

John Mason: We accept that that is not easy, although it is surprising that sometimes dumping is not picked up on even in urban areas. Can you use satellite technology?

John Kenny: Yes. We have used technology called LIDAR—light detection and ranging—in recent cases, which allows us to compare how a flyover was a year or two ago with what is there now. There are thermal techniques to identify how much material has been deposited on-site. We use all those techniques.

John Mason: Finally, I will touch on the communities fund. Paragraph 19 of your submission talks about the role of ENTRUST. Previous witnesses have suggested to us that we could do away with ENTRUST’s role and carry on quite happily. That would save us a bit of administration. Does SEPA disagree?

Ronnie Robinson: The communities fund is generally seen as an effective way of compensating communities for the detriment of having a landfill site alongside them; it is seen as returning something beneficial to communities. The way in which it is organised and regulated seems to work fine. However, we have received views that the regulation is slightly top heavy and that it could be streamlined, so that moneys can be put back into the fund to be better spent on communities.

We appreciate that there are a lot of views out there and many vested interests, among environmental bodies and the distributing bodies that are in place. SEPA would like to be involved in the discussions to look at the synergies and benefits of SEPA perhaps being involved in regulating the process, although that is only one of several options that are being discussed in relation to how the communities fund will be developed.

John Mason: In paragraph 20, you talk about the 10-mile eligibility radius. I completely agree with your analysis of the problem. You refer to the edge of Glasgow, 10 miles from which could take us right across the city, where there is little impact on people, whereas, in a rural area, 10 miles is a relatively short distance and there could be a much wider impact. Do you have a solution to that, or have you just raised the problem?

Ronnie Robinson: We have raised the problem. The point is that, since 1996, the waste management industry has changed considerably. There used to be considerably more landfill sites; waste was generally put in people’s bins and taken to landfill. In 2013, the situation is very different. New waste technologies are available and there is a zero waste policy to encourage the minimisation of waste and stop material going to landfill. As a result, there are fewer landfill sites and material is being transported larger distances to facilities to be treated, rather than going to a nearby landfill site.

In that respect, changes are required in the consideration of the detriment that is caused by the waste management industry as a whole, because that concerns not just landfill sites. We now have closed landfill sites that were open in 1996, which might still be causing environmental
problems. Detriment is also involved in transporting waste past people’s front doors; it would be fair to look at opportunities to compensate communities for that material being moved.

John Mason: Could we make the radius a variable distance? I wonder whether we can look at council wards, which tend to be bigger in a rural area and smaller in an urban area.

Ronnie Robinson: I think that my colleague John Kenny would like to comment on that.

John Kenny: Rather than having a fixed area, the principle should be that those who are directly affected should get the first call on the benefit of the fund.

Michael McMahon (Uddingston and Bellshill) (Lab): My question is directed primarily to SEPA.

You said in evidence this morning and in your submission that you currently license waste sites. However, there are also considerations in the bill that SEPA should manage the landfill communities fund and take a role in the administration of the landfill tax. You have used the words “synergies” and “commonality”. Other people may call it centralisation and a power grab. Are you not concerned that taking on all those responsibilities brings the issue into the centre and may not be the best way of looking at the wider picture?

John Kenny: I want to clarify that SEPA is being given management not of the communities fund but of the collection of the tax.

Efficiency-wise and commonality-wise, the benefits are there. We regulate those sites; we know where they are. We have relationships with the operators, who already make data returns that outline the types and quantities of waste that they receive. It is not about centralisation; it is about making the best use of the resources that are there, in the most efficient manner, in order to collect the tax.

Michael McMahon: Your submission refers to “A single distributing environmental body”.

That would be ENTRUST.

10:30

John Kenny: Our comment was that SEPA could be in a position to administer the fund, but that is an issue for discussion further down the line. That is one view. Our view was not that SEPA should be doing it; it was that SEPA could be doing it, if that was the best thing for the tax and the fund.

Michael McMahon: There has been some discussion of allowing for funding of wider national environmental objectives that are not specific to any one location. It goes back to John Mason’s point. At present, if someone’s life is blighted by their close proximity to the landfill site, at least there can be some benefit, in that they get compensation via the communities fund. As the landfill tax receipts reduce, as they are intended to do, disbursement of the fund more widely would diminish the amount of money that is available to local communities. As things move forward, the communities that have been disadvantaged by having landfill sites could be further disadvantaged by the dissipation of the landfill returns. Is that not the case?

John Kenny: That is a very good point. My earlier comment was that the first port of call should be those who are affected. Again, this is SEPA’s view—I am not saying that this is what should happen. The fund is currently disbursed to a range of activities at various locations. The first call should be those who are affected. If there is a surplus or an opportunity, we are saying that it might be worth looking at strategic issues to support the aims of the tax. There are also potential issues around legacy sites that the public purse might have to pick up.

Michael McMahon: The phrase “vested interests” was used earlier. Would it be a vested interest to say that the only call on the tax should be from local communities that have been blighted by landfill and that it should not be disbursed to areas that are providers of the material that goes into the landfill?

John Kenny: There are many different views. Ronnie, do you want add anything?

Ronnie Robinson: I emphasise my earlier point about the change in the waste management industry. There are now considerably fewer landfill sites, which means that there are closed landfill sites. Those closed landfill sites can still cause greenhouse gas emissions, smells and so on. Communities are still being affected by those sites, even though they are closed.

Michael McMahon: I make no apologies for my final point, although it is about parochialism. The very reason for there being so many landfill sites around my community is the road network, which lends itself to bringing materials to a central point. As we move away from landfill to other means of waste disposal, my community—for that same logistical reason—is now the focus of some very live proposals for incineration. Again, we will be the focus for the changes in waste management. We continue to be affected by waste management even though the means by which we dispose of waste is changing. Where is the advantage to our local communities as those changes take place? You want to consider disbursing the money elsewhere.
John Kenny: As you say, that is based on location, and on economies in the free market. Waste will go where the infrastructure is. I am not aware of any opportunities in incineration for a similar tax. As I said in my first point, those who are affected by landfill should be the first port of call for the communities fund.

Michael McMahon: So you can see my point, which is that if we are going to be the dumping ground, we should be the people who benefit from any taxation that results from our being the dumping ground.

John Kenny: As I said, those who are affected should have the first call on the moneys in the fund.

Michael McMahon: Or the only call on them.

John Kenny: That is a matter of opinion.

Gavin Brown (Lothian) (Con): In paragraph 10 of SEPA’s written submission, in the section on “taxes evaded through the illegal dumping of waste”, you say:

“SEPA would urge the Government to take this opportunity to address this issue by including illegal deposits of waste within the definition of a taxable deposit as outlined in the Bill.”

Are you saying that there should be something additional in the bill that is not yet covered, or are you just applauding what is in the bill?

John Kenny: The latter. We are applauding what is in the bill.

Gavin Brown: In paragraph 29 of the same submission, you say that, in order to carry out landfill tax administration, you “would need to be given authority to audit landfill tax records. This could be done through amendment of section 108 of the Environment Act or by the provision of additional powers of entry and examination in other enabling legislation.”

Have you had a conversation with the Government about that? Is that issue now resolved or does the committee need to pursue it?

John Kenny: My colleague from revenue Scotland can add to this. There have been discussions about the best way in which to address the issue. Is it to give revenue Scotland powers under the bill and for it to delegate the authority to SEPA? My colleague can talk about whether that is the most appropriate route for SEPA to get those powers.

Gavin Brown: In your view, the matter is in hand.

John Kenny: Yes.

Gavin Brown: Thank you. My third question is a slightly curt one. Last week, we heard evidence from several organisations. In written evidence, both North Ayrshire Council and the Scottish Environmental Services Association made statements to the effect that SEPA has a skills gap regarding tax administration. How would you respond to that?

John Kenny: First, I would point out where we have the skills that would help, although I acknowledge that there is a potential gap. In our costings, we have allowed for the development of guidance and staff training to plug that gap.

Gavin Brown: You accept that there is a gap but suggest that it could be filled.

John Kenny: Yes. It is a different kind of audit. We have a lot of auditing skills and landfill skills—we know about landfill sites—but there is a bit more to do before we can audit tax returns. The base is there and there is funding in place to upskill staff as required.

Gavin Brown: In your view, by April 2015, when the tax goes live, there will not be a skills gap.

John Kenny: That is right.

Gavin Brown: My final question is for revenue Scotland, but SEPA may have a view on it. There will clearly be synergies. Your two organisations already work together and will continue to do so. As the bill stands, are the responsibilities of the two organisations clearly defined or is something else needed to ensure that the distinction is crystal clear?

Eleanor Emberson: A lot of the powers and issues that we have been discussing, in relation to which we need to make a clear distinction between SEPA and ourselves, will arise when we discuss the proposed tax management bill rather than the Landfill Tax (Scotland) Bill. However, even when we have the tax management bill a further document will need to accompany the legislation. There will need to be a formal agreement between revenue Scotland and SEPA. The two organisations are already clear that we will need to develop that once the tax management bill is sufficiently far through its consideration. That should be a public document that the committee will have an opportunity to scrutinise.

Gavin Brown: The shared view at this stage is that nothing additional is needed in the Landfill Tax (Scotland) Bill to define those responsibilities.

Eleanor Emberson: Yes.

Malcolm Chisholm (Edinburgh Northern and Leith) (Lab): I am interested in what I perceive as a tension in SEPA’s evidence between the idea of incentivising other methods of disposal, on one hand, and the idea of incentivising dumping, on the other hand. Asbestos provides a good
example of the danger of the latter. If the tax is set too high, more people will dump asbestos. Equally, however, you have said that alternatives to landfill are expensive so the tax must be set quite high to incentivise the use of those alternatives. What is your response to that? Is your conclusion that the tax is set at about the right level and we must be careful not to set it too high or too low?

**John Kenny:** As you say, we believe that the tax is set at the correct level. Applying it to illegal waste sites will also have a massive impact by improving the situation that you are talking about. As well as improving the environment, it should increase business for legitimate operators.

**Malcolm Chisholm:** What is the scenario with regard to alternatives becoming cheaper? You have said that they are expensive at the moment, but do you see them getting cheaper over the next few years?

**John Kenny:** The alternatives will become cheaper as money is invested in them and people learn more about them. Indeed, the increase in recycling rates has been driven by the fact that the technology has become more affordable. However, the industry needs the certainty of the landfill tax and of knowing what the price is to justify the investment in the first instance.

**Malcolm Chisholm:** The zero waste plan sets out a target of a maximum 5 per cent going to landfill by 2025. Do you expect that target to be achieved or does it depend on, say, rising tax rates, lower expense on alternatives or some other factor? What is the status of that 5 per cent?

**John Kenny:** We need to work towards that target. The landfill tax is part of the overall strategy, but our efforts are also being driven by regulatory measures such as bans on certain things such as recyclable and collectable material and food waste going to landfill.

**Malcolm Chisholm:** My next question is for revenue Scotland. I believe that there are estimates for the tax take in 2025, but are those projections based on the 5 per cent target?

**John Kenny:** The enforcement around illegal dumping is not included in that £300,000 figure. That is probably the problem that was in the back of my mind. Not having page 25 of the financial memorandum in front of me, I was not entirely sure whether the figure covered that. Is that not a striking omission?

**Malcolm Chisholm:** As I have said, we have not formally decided where the line should be drawn in that regard, but discussions have still to take place about the enforcement role and who will be best placed to undertake that.

**Malcolm Chisholm:** How much money do you currently spend on illegal dumping work? I presume that you already carry out activities in that area.

**Malcolm Chisholm:** Does SEPA think that that sum of money is adequate to carry out the necessary work to tackle the problem of illegal dumping?

**John Kenny:** The enforcement around illegal dumping is not included in that £300,000 figure.

**Malcolm Chisholm:** That is probably the problem that was in the back of my mind. Not having page 25 of the financial memorandum in front of me, I was not entirely sure whether the figure covered that. Is that not a striking omission?

**John Kenny:** As I have said, we have not formally decided where the line should be drawn in that regard, but when and if SEPA takes on that role there will be negotiations about the finances to support that. I also point out that the wider funding for revenue Scotland might be used to add to that figure.

**Malcolm Chisholm:** When you say “that role”, do you mean the role of monitoring?

**John Kenny:** I mean enforcement. At this stage, we have agreed what SEPA will be doing, but discussions have still to take place about the enforcement role and who will be best placed to undertake that.
John Kenny: That brings me back to my earlier point about synergies. SEPA is already undertaking that work and putting a significant amount of resource into identifying the sites; if we want to go to the next stage of enforcing the landfill tax and collecting it from the individuals concerned, that will involve significant resource. It is a different activity.

Malcolm Chisholm: Do you think that your identification work will simply continue as at present? One could argue that you should be doing more given the financial gain to be made.

John Kenny: That is correct. You make a very valid point.

Malcolm Chisholm: But that has not been factored into the current figure.

John Kenny: No. It would also form part of the discussions.

Malcolm Chisholm: That will do just now. Thank you very much.

10:45

Jamie Hepburn: As I listened to Michael McMahon’s line of questioning, it occurred to me that waste that does not go to landfill will, I presume, go if not to one of the illegal dumping sites that are encompassed in the bill—if of course it is being dumped illegally—then to a recycling plant, of which there are a number in my constituency. Without going into the specifics—after all, that is not what this evidence session is about—I know that at one of those plants waste can be piled fairly high and open to the naked eye of those who live fairly nearby. Of course, it is not a landfill site, but to my constituents that is a rather moot point. Should such sites be encompassed in the scope of the bill?

John Kenny: I do not think so. SEPA’s view is that the purpose of the landfill tax is to divert material away from landfill to be treated in a more environmentally friendly way that protects the environment and which turns waste and what can be recovered from it into a resource. That is the policy driver behind the tax.

Jamie Hepburn: I presume that, under the licence that is granted to operators, waste should not be stored for a certain period of time. If that happens, it might not turn the plant into a de facto permanent landfill site, but what is the difference to those who live nearby? The waste is still sitting there for a certain length of time. I am aware that you will have powers of enforcement, including the power to fine operators, but is there any merit in encompassing such sites in the scope of the bill? I know that they are not illegal dumping sites, but what if they are not operating as they should be? Again, it is something of a moot point. If illegal dumping sites are encompassed by the bill, should those sites, too, be encompassed?

John Kenny: I should clarify that we are talking about illegal landfill sites.

Jamie Hepburn: I am aware of what it means, but I am talking about a particular issue.

John Kenny: I think that the bill should stick with landfill because getting into the issue that you have highlighted would be a different ball game and we would have to think through the impact on industry and so on. The focus should stay on landfill.

That said, controls and systems are in place to regulate the sites to which you refer. They will have a permit with conditions stipulating, for example, that X number of tonnes can be stored for X number of days, or that there should be no offensive odour outwith the boundary. The way to tackle such issues is by ensuring that the permit is being complied with.

Jamie Hepburn: It will not surprise Mr Kenny to hear that I am in regular contact with SEPA about this site, which I will not mention and with which I will not take up any more time just now.

The number of trucks that bring refuse through communities to such sites is the same as the number that go to landfill sites. Are those areas viewed as having merit with regard to getting support through the landfill communities fund?

John Kenny: It would depend on the tie-in with landfill. That brings me back to my response to Mr McMahon’s question about the disposal of waste on different sites. As it stands, the fund supports only those who are affected by landfill. Of course, what you have suggested could be put into the mix in discussions about what the fund should or should not be spent on.

The Convener: I thank our witnesses. As that brings us to the end of this evidence session, I suspend the meeting to allow for a changeover of witnesses.

10:48

Meeting suspended.

10:52

On resuming—

The Convener: We continue to take evidence on the Landfill Tax (Scotland) Bill at stage 1 from our second panel of witnesses this morning. I welcome John Swinney, Cabinet Secretary for Finance, Employment and Sustainable Growth, and Alistair Brown, Stuart Greig and John St Clair of the Scottish Government bill team, all of whom are familiar to the committee.
We do not expect an opening statement, cabinet secretary, unless you are desperate to give one.

The Cabinet Secretary for Finance, Employment and Sustainable Growth (John Swinney): I could provide one if it would be helpful, but I suspect that the committee would have heard some of it before. I am happy to answer questions.

The Convener: We shall go straight to questions, then.

The first question is about forecasts. It is highly likely that the Scottish Government’s zero waste plan will see both the quality and the type of material in landfill in Scotland change substantially, with far less material going to landfill and what is landfilled mostly being inert materials.

We have looked at Office for Budget Responsibility predictions before. Its prediction for receipts for the financial year 2015-16 was £151 million in March 2012 and £105 million in March this year. What are the Scottish Government’s current estimates for the financial year 2015-16? Given the fact that the bill will allow the collection of tax from illegal dumping, has that played a part in your figures? If so, how much is the tax expected to raise in 2015-16?

John Swinney: The Scottish Government has not made a specific estimate of the expected tax receipts from landfill tax in 2015-16. However, we have noted the significant change in the OBR’s predictions and projections for landfill tax receipts in Scotland. The difference that the convener has cited between the OBR’s March 2012 forecast for 2015-16 and its March 2013 forecast—£151 million compared with £105 million—illustrates the substantial change that can occur in the OBR forecasts. The £105 million forecast strikes me as much more conceivable, whereas I found the £151 million figure utterly inconceivable.

My expectation is that, in the coming period, we will see a long-term reduction in the revenue from landfill tax. We accept that the success and effectiveness of recycling policies, which are part and parcel of the Scottish Government’s wider approach to achieving the emissions reductions that are required under climate change legislation, will result in a reduction in receipts from landfill tax. Clearly, we will need to deal with that as a Government.

The Convener: You have not mentioned the additional revenue that might come from the taxation of illegal dumping. How does that come into your figures?

John Swinney: The taxation of illegal dumping is an extra tool that we are putting into the bill that will enable us to do three things. First, it will provide a further disincentive to illegal practice. People should not be able to avoid the disposal costs that are legitimately charged by legitimate operators, in which landfill tax will be a part of the calculation. Secondly, it will strengthen the business opportunity for landfill operators to dispose of materials properly and effectively in accordance with the wider regulatory infrastructure. Thirdly, it will bring all the activity into the Government’s wider environmental agenda for more sustainable disposal of waste and utilisation of resources within our society.

I would not characterise the taxation of illegal dumping as a revenue raiser, as it is primarily a disincentive. If the result is that more revenue is raised, there will probably be a double impact for us because there will be a fine for the illegal dumping and a charge when the waste goes to a legitimate landfill site for disposal.

I accept that financial benefits may arise from the crackdown on illegal dumping, but the motivation behind the taxation of illegal dumping is not purely and simply to provide a revenue raiser. The provision is there to ensure the enforcement of the existing legal framework. If that gives rise to a further benefit to the public purse, so be it.

The Convener: My reason for asking is the effect on the block grant adjustment. Would that revenue be included in the negotiations and discussions on the final block grant adjustment? Clearly, we need to try to hone down what effect that might have.

John Swinney: It is difficult enough to predict tax rates, but it is even more difficult to predict the proceeds from a fine-type element of the legislative provision. I can see no real or credible basis for that being advanced as part of the block grant adjustment.

The Convener: Let me move on to the delegated power provisions.

The Delegated Powers and Law Reform Committee’s report on the bill states:

“Section 41(3) of the Bill creates a bespoke type of Parliamentary procedure which is referred to as … as … "provisional affirmative procedure” and which means that

“were a provisional affirmative instrument to be made immediately prior to the summer recess the Parliament’s approval of the instrument continuing to have effect would not be required to be obtained until 28 days after the Parliament returns from recess. In such cases therefore new measures imposing taxation could be in place for up to 3 months before the Parliament is required to approve them”.

The question is this: why does the Scottish Government consider it appropriate to modify the basis of taxation without securing the agreement of Parliament through the affirmative procedure?
11:00

John Swinney: Essentially, it comes down to giving the Government the opportunity to take forward tax changes and tax measures when we consider it necessary for them to have immediate effect. I accept that this is new territory for the Parliament, because we have not previously taken decisions of the character that we are now required to take in relation to tax provisions.

Although I recognise the scenario that the Delegated Powers and Law Reform Committee has painted, I contend that it represents an implication of the Parliament moving into a different space because of the necessity to apply provisions that have early effect. We will consider carefully the issues raised by the Delegated Powers and Law Reform Committee as the bill progresses through Parliament. We are obviously interested in the Finance Committee’s views on issues material to it.

The Convener: The Delegated Powers and Law Reform Committee’s report on the bill states:

“Section 35(1) permits the Tax Authority to delegate any of its functions (other than functions of legislating) to SEPA... when a statutory function has been designated that should be publicly and clearly identified so that persons regulated by the regime understand who is authorised to take what steps. No provision for the publication of such delegations is provided for in the bill.”

The Scottish Government has advised that

“there would be an opportunity to revisit this in the Tax Management (Scotland) Bill to be brought forward next year. However the Government has not given any firm commitment to do so.”

Can you give us a commitment to do that?

John Swinney: I certainly give the committee the assurance that I will look very carefully at the issue that has been raised. The Government has every desire to be transparent when it comes to all these matters, so I am happy to consider the issues that are raised, although the composition of the tax management bill, which is due to be introduced in the next parliamentary year, obviously also has potential implications for how these matters are dealt with. We will certainly explore the issue and respond to the questions in the Delegated Powers and Law Reform Committee’s report.

The Convener: Quite a lot of evidence has been taken on the Scottish landfill communities fund, which will be created under sections 18 and 20 of the Landfill Tax (Scotland) Bill. It remains unclear whether the negative or affirmative procedure will be used. Can you provide some clarification? Does the Scottish Government intend to hold a consultation on the draft order in advance of its introduction?

John Swinney: We intend to consult before we use the subordinate legislation powers. The Government would take that approach on all such matters. I assure the committee that there would be a further consultation before the powers were used.

During the consultation on the bill, we undertook extensive consultation and had feedback from a number of parties on the proposals that the Government has set out for the landfill tax communities fund. Broadly, it is fair to say that there was a pretty positive reaction to the Government’s proposals, which indicates that we are moving in the right direction on many of the issues. There will obviously be further consultation when we come to exercise the powers.

The Convener: I want to cover one last issue before I let in colleagues—that of certainty, which came up in evidence last week and the previous week.

Stephen Freeland of the Scottish Environmental Services Association said:

“We represent an industry that is looking to make investment decisions for alternative non-landfill infrastructure, the viability of which will depend on what landfill tax will be, so it would have been nice to have an indication of what that tax will be. Similarly, for the differential rates—the potential third rate of tax—it would be interesting to know what that might be and to what materials it might apply... it would be useful to have that on the face of the bill.”—[Official Report, Finance Committee, 12 June 2013; c 2776.]

Craig Hatton from North Ayrshire Council added:

“Given the challenges to public sector finances, we look to plan further and further ahead. The council set a two-year budget last time and has a 10-year financial plan so that it can plan... for the significant changes that it needs to make to face those challenges.”

He went on to say:

“procurement exercises take about five years, so we need quite a good lead-in time to manage the public finances and to enable procurement exercises and new methods of collection... If the lead-in is too short, we merely act and make the wrong decision.”—[Official Report, Finance Committee, 12 June 2013; c 2783.]

He made the point that he would like the landfill tax rates to be set as early as possible and at least three years in advance. If that had been done, the rates would have been set last year.

What is the Scottish Government’s view of that? When are the rates likely to be set? That has been a key aspect of the evidence that we have received from a number of people.

John Swinney: There are two different issues that the committee must consider. One of them relates to the investment approach, which the first witness that the convener cited was making a point about, and the investment decisions that
individual operators make about participation in the implementation of the Government’s zero waste strategy. Frankly, those investment decisions will not be driven by what the landfill tax rates are this year or next year; they will be driven by the opportunity that exists to make a return by participating in the zero waste strategy.

For example, I readily accept that, if a company were to embark on a proposition to recycle particular elements of waste, it would look to see whether it was likely that in a number of years’ time, as part of the zero waste strategy, there would be a ready flow of materials that would provide it with a core for its business activity. That is a long-term investment decision. Mr Lochhead regularly discusses such issues with the waste industry, and we very much welcome the participation of the private sector in resolving some of the issues, through selling its services to public authorities.

As I said, those are long-term investment decisions that will be influenced not by what the landfill tax rates are this year or next year, but by whether, as a country, we will dispose of materials such companies can utilise and make an economic return from. That should not be confused with the setting of the landfill tax rates in any given year.

The second point is about the setting of the tax rates. As I have said to the committee on other issues, I am keen to set tax rates in a timescale that is of assistance to industry, but it must also give us sufficient clarity on the proceeds that we are likely to realise for the public finances. That has an effect on the implications of the block grant adjustment mechanism into the bargain.

I have not stated at what stage we will set the rates. I am certainly considering whether it would be relevant to do that at around budget time in September 2014, but I have yet to make a final decision. We can consider that further as part of the committee proceedings.

The Convener: On that latter point, local authorities seem to be saying that they need a longer period to allow them to make the investment decisions that they need to make.

We have been told in evidence by organisations such as the Scottish Environmental Services Association that a price differential of as little as £10 a tonne could affect whether waste remains in Scotland or goes to England and vice versa. If rates are not set early on, authorities might not take some of the investment decisions that you have mentioned. They might feel that they do not need to do so because, if the rates are significantly different, waste would depart Scotland. They are looking for certainty in their long-term business planning.

**John Swinney:** I have already stated clearly that the rates in Scotland will be set no lower than those in the rest of the UK in 2015. I am mindful of the information that has been put in the public domain to suggest that a relatively small differential in cost might lead to waste transit.

To return to the answer that I have just given, I contend that the long-term investment decisions have relatively little to do with landfill costs, and everything to do with the long-term implementation of the zero waste strategy. As part of that strategy—which is an integral part of our agenda for tackling carbon emissions—we have to reduce the amount of waste that we put into landfill. That is not a point of debate or contention. It therefore follows, in terms of offering policy certainty, that opportunities in the waste disposal environment will present themselves as perfect candidates for long-term investment for individual companies that are interested in that area of activity.

The Convener: You say that the rates will not go lower than the UK rates, but the issue is how high they may potentially go.

**John Swinney:** I recognise the issues that industry has raised concerning the variations in cost that might lead to differential practice in transit for waste disposal, and I will be mindful of them when I set the rate of tax.

The Convener: Thank you. I will now open up the session to colleagues round the table.

**Jamie Hepburn:** The convener mentioned the block grant adjustment, and I would like to explore that with you, cabinet secretary.

It is clear that the landfill tax is somewhat different from the other devolved taxation powers, and you have said that we hope to decrease the revenue that is accrued through the tax. That is perhaps an issue with regard to how we progress any negotiations on the block grant adjustment.

Some concern has been expressed about the possibility of a gap emerging in future years between the adjustment and the revenues that are accrued. North Ayrshire Council mentioned that issue in our previous evidence session. Do you think that the concern is legitimate? If so, is it uppermost in your mind as you progress negotiations on the block grant adjustment?

Perhaps you can tell us where those negotiations are just now.

**John Swinney:** The negotiations are on-going. I am not in a position to tell you—not because I am keeping the information private, but because I do not know—the extent to which the UK Government will want to resolve those issues before the spending round is announced next Wednesday. As I understand it, that announcement will provide us with our budget numbers for 2015-16, which is
when stamp duty land tax and UK landfill tax will be abolished in Scotland.

The issues are very relevant for the process of setting the budget that will be announced to the House of Commons next Wednesday. I cannot tell the committee whether there will be agreement on those questions between now and then, or whether they will be left as issues to be resolved.

The convener has written to me to say that the committee will be unable to provide a view on the block grant adjustment in light of the fact that it has not heard from the Chief Secretary to the Treasury. However, the committee must be aware that there may well be an element missing from the budget round announcement by the Chancellor of the Exchequer next Wednesday because we do not yet know what the block grant adjustment mechanism will be. That addresses the issue in general.

11:15

On the specifics of landfill tax, in discussions on block grant adjustment we have to avoid, in essence, a solution for each of the individual small taxes, because they will be different. We know that landfill tax receipts will go down in the medium term. The OBR’s initial estimates suggested significant growth in landfill tax receipts from £115 million in 2011-12 to £157 million in 2016-17. The only people on the planet who thought that must have been the people in the OBR, because nobody else would ever have come to that conclusion. At least we are now in a more sensible place about the pattern of landfill tax: receipts will go down.

The way to address the issue is to have a discussion and an agreement that relates to all the devolved small taxes, taking into consideration the fact that there is likely to be a loss of revenue on landfill tax, and come to a reasonable position on the totality of block grant adjustment that should be taken into account. As I said, that is still the substance of discussion that is going on with the Treasury on these questions.

**Jamie Hepburn:** I do not know whether you can tell us, but do you have any sense that that argument has been taken on board?

**John Swinney:** I do not know. That would require me to foresee the outcome of the discussions with the Treasury. The discussions have not concluded and are on-going. I do not think that they will be resolved by next Wednesday—I will be very surprised if they are—so we will have to talk further about the details.

The OBR has now given us a more credible expectation of revenue, and we can give the UK Government—and we have given it—our expectations of the consequences of the tax. In the financial memorandum, we predict a decline in landfill tax revenues from about £107 million in 2015-16 to about £40.5 million in 2025. We are likely to see that decline take its course within those parameters, and that has to be reflected in the block grant adjustment.

**John Mason:** I will press you on some of the points that the convener raised. I take the point that investment in recycling facilities is driven by policy direction and not just by what the rate happens to be in a particular year. However, the policy direction has driven the rate, because the UK policy has been to increase the rates escalator, or whatever it is. Therefore, people have known that rates would increase, which surely encouraged investment in recycling facilities and suchlike. Will it not continue to be the case that policy drives the rates and the rates drive the investment?

**John Swinney:** We can debate to a significant degree how all those things interact, but I contend that the policy framework is the key point. In essence, it structures what we have to do as a society, and that therefore gives a signal to industry as to what is required to be undertaken. That is complemented by what I have said, in that we will set our tax rate at a rate no lower than it is in the rest of the UK. That puts the matter into a framework that is pretty clear on the direction that we are taking.

The fact that Parliament unanimously passed the Climate Change (Scotland) Act 2009 offers long-term certainty, as the act requires the Government to deliver on carbon reduction targets, and waste policy is an essential ingredient in that process. That gives a reliable framework within which operators can make their plans.

**John Mason:** Presumably, the concern is that, if the rate in Scotland was higher, on the one hand, that would be an incentive to invest more in reuse and recycling but, on the other hand, it would be an incentive to move waste south and therefore a disincentive to invest in reuse and recycling in Scotland. The point is that the rate is a factor in all of that, is it not?

**John Swinney:** We have to be mindful of the role of the rate in that calculation. The point that I am trying to make about the short-term announcement of the rate is that the rate is not the factor that drives investment. The factor that drives investment—and has to drive it—is whether we are on a long-term and committed path to a zero waste objective in Scotland. That is the crucial signal to industry that there is a long-term business opportunity here in Scotland. Yes, of course it will be made possible by the rates that we charge, but if the industry thinks for a second that our position on zero waste is one of, “Here
today, gone tomorrow,” investment will not come to Scotland.

I want to be absolutely crystal clear with the committee that a key element of the Government’s measures to reduce carbon emissions is the success of our zero waste strategy. That is the signal to invest for the business community. Of course I accept that the rates are material in that process, but they are a subset of the overall policy direction that the Government is taking.

John Mason: In its evidence, the Chartered Institute of Taxation claimed that “the resource that is being protected is land”, which struck me as slightly odd. Obviously, we are trying to protect land, but the aim is wider than that, is it not?

John Swinney: I am not altogether sure that I quite understand the point.

John Mason: The CIT said that, because we are trying to protect land, the tax should not be based on the weight of waste, whereas my understanding is that as well as trying to protect the land, we are trying to reduce landfill.

John Swinney: That is it precisely—yes.

John Mason: I just wanted to clarify that point.

John Swinney: The agenda is about a whole host of other things, too. It is about resource utilisation in its widest sense. It is about giving a signal to householders and businesses on how we utilise different materials in our daily personal or working lives and whether there is a necessity for us to reuse something or whether it is just to be disposed of. Those can be terribly casual decisions that we make, but the zero waste strategy is about getting individuals and organisations to think more holistically about how they use resources. The point that the CIT raised does not in any way sum up the objectives of the Government agenda in that respect.

John Mason: I asked the SEPA representatives on the previous panel whether the islands and remote communities are being treated fairly, as there has been some suggestion that we should perhaps have different rates for the islands. However, SEPA’s answer was that perhaps it is just slightly less strict with the islands because they do not have the facilities for reuse and recycling that we have in more urban areas. Does that continue to be your view as well?

John Swinney: Yes, although I am happy to explore the issue in more substance to see whether there is a particular disincentive. Through my regular visits to the Scottish islands, I am aware of the efforts to which the island authorities have gone to promote and encourage recycling and effective waste management in communities.

However, I am certainly happy to consider further the issues that are raised to ensure that the island communities are being treated fairly, given the facts with which they are wrestling.

John Mason: The issue of SEPA’s resources has come up a few times. We know that a certain amount of illegal dumping goes on. Would more resources for SEPA reduce that, or is the equation not as simple as that? If it is missing things at the moment, will it miss things in the future?

John Swinney: SEPA receives grant in aid from the Government and it levies charges relevant to its functions. Without its charges going up significantly, grant in aid has fallen as SEPA has become a more proportionate organisation and has operated more efficiently. I pay tribute to the leadership of SEPA, who have taken forward that agenda effectively in the past six years. SEPA’s performance is strong, and it operates and functions efficiently and effectively.

The issues of enforcement and tackling illegal dumping are difficult and complex. SEPA operates closely with other public authorities in our localities. Through some of those channels, it might be possible to identify examples of illegal dumping that could be tackled in a focused and effective way. That is what we would expect SEPA to do. I do not think that that automatically requires us to consider increasing the resources that are available to SEPA. It has always worked collaboratively at a local level.

On the issue of cracking down on illegal dumping, we have allocated resources as part of the outline planning of revenue Scotland to explore the compliance activity for the new taxes that we are introducing. A team in revenue Scotland, which we estimate will be made up of eight members of staff, will undertake compliance activity in that respect. We need to look at the whole picture of what SEPA is doing on the ground with local authorities, and what revenue Scotland can add to the enterprise to try to tackle the activity.

John Mason: Earlier, I asked representatives of revenue Scotland whether they saw it as part of their role to maximise the tax take. That might have been a little bit unfair, as that might be part of the tax management bill that we will consider in due course. However, grey areas will appear in any legislation as it is applied. I know that HMRC believes that it is its duty to push in the direction of getting more tax when there is a grey area. Do you see revenue Scotland doing that as well?

John Swinney: My perspective is that revenue Scotland’s job is to raise the appropriate level of revenue. I do not say that as a sort of, “On the one hand this, on the other hand that,” kind of answer. Revenue maximisation is a stage beyond what I
expect revenue Scotland to do. I want it to get the tax that is due under the legislation that we pass. The issue of what is appropriate to be collected is part of what I am wrestling with in advance of my statements to Parliament next Tuesday in the stage 3 proceedings on the Land and Buildings Transaction Tax (Scotland) Bill.

On the Landfill Tax (Scotland) Bill, if somebody is illegally dumping but that passes all the tests in the bill, I would expect revenue Scotland to raise the revenue as it is its duty to do so. Do I expect revenue Scotland to go out looking for illegal dumpers? Yes, I do. In my view, that will be getting in the appropriate tax. Similarly, I expect all the good and effective operators throughout the country that run good sites in an effective and well-managed fashion to pay the landfill taxes that are due, which I know for a fact that they do at present. So the issue is really about ensuring that the appropriate level of taxation is raised. I am not setting revenue Scotland off on a revenue-maximisation strategy; I just want it to do the job properly, fully and in accordance with law.

11:30

**John Mason:** That is helpful.

I will touch on one more area. The committee has spent quite a lot of time on getting evidence on the landfill communities fund, and a few issues have been raised. The first is whether ENTRUST or an equivalent is needed or whether that is just a waste of money and we could, in effect, have 2 per cent more going into good causes.

A second issue is whether the money should be spent just in the area around a landfill site or whether it should be spent more widely—for example, for beavers in Argyll, and things like that. The Scottish Wildlife Trust told us quite a lot about how the beavers project in Argyll is funded by the landfill communities fund but not because of the neighbouring site—it is because of other sites further away. The point was raised that money is being moved around a lot. I suspect that Mr McMahon will say more about this, but one question is whether the money should be available for a national pot or should be available only locally. A third issue is whether, if the money is just to be local, the limit of a 10-mile radius around a site is appropriate.

**John Swinney:** There were a number of points in there.

**John Mason:** I did not want the convener to stop me halfway through.

**John Swinney:** For the sake of completeness, I should make it clear to the committee that beavers are not just in the area of the Argyll project, because they are numerous in the rivers in the area in which I live, having somehow got there. I will just leave that for the committee to ponder.

I am open to further discussion on the points that John Mason raised and I would be interested in the committee’s view on them. Instinctively, I think that it would be difficult simply to operate a local distribution scheme based on the view that, because there is a landfill site in an area, the immediate proximity should be the beneficiary. Actually, although the landfill site is there, community proceeds come from the landfill tax because householders and businesses across the country play an active part in the recycling regime. So, although people might not have the landfill site beside them, they play their part in separating waste into different commodities, which is part of the regime that determines how much goes to landfill and how all that is comprised. I am therefore not persuaded at this stage by the view that, because the waste is put into landfill sites locally, the scheme should be handled locally. However, I am open to discussion on that question.

On the administration, there is a lot of work to be done on the most efficient way of delivering the fund. Some of the admin costs for the fund that I have seen are on the high side. I think that we can do that admin in more efficient ways, and we will explore those.

Since 1996-97, Scotland has received 7 per cent of the landfill communities fund but been responsible for 9.2 per cent of receipts. We have paid 9.2 per cent of the landfill tax, but our projects have received only 7 per cent of the proceeds. That says to me that we have an opportunity to ensure that there is more significant benefit in Scotland as a consequence of keeping the pot within Scotland and administering it more efficiently and at a lower cost.

**The Convener:** To follow on from John Mason’s point about islands, I must say that I do not think that the authorities are particularly lenient in islands. If a cow drops dead on Arran, the carcase cannot be buried in the corner of the field—it still has to be shipped all the way to the mainland. There are strong environmental regulations on islands, just as there are everywhere else.

**Gavin Brown:** Cabinet secretary, you talked about the Government’s thinking on when the rates might be confirmed for April 2015. When you confirm them, will you simply announce the rates for one financial year, will there be three-year rates or will you give an indication of what the rates will be over the next couple of years? Do you have a view on that at this stage?

**John Swinney:** I certainly accept that, if there is to be an escalator, for example, having knowledge of that has been helpful. I am mindful of that point
in determining how much detail we will set out when we set the dates of the first instance.

**Gavin Brown:** The convener asked most of the questions that the Delegated Powers and Law Reform Committee raised. However, he did not ask one point about section 13(4), which concerns the amount of tax for qualifying material. Orders that are made under that section will sometimes be made under provisional affirmative procedure, which is what the convener asked about, but also sometimes under negative procedure.

**John Swinney:** Can I just check the reference, Mr Brown?

**Gavin Brown:** It is section 13(4) of the bill or paragraphs 13 onwards of the Delegated Powers and Law Reform Committee’s report. I do not know whether you have that report in front of you.

**John Swinney:** I do not have that report in front of me, but I have the bill.

**Gavin Brown:** You have already been asked about the provisional affirmative procedure, so I will not ask about that, but orders that are made under that section can also be made under negative procedure in cases where the tax is being narrowed—for example, things are coming out of it.

The Delegated Powers and Law Reform Committee says in its report:

"the lead committee may wish to consider whether reduction in liability or the provision of exemptions for certain types of activity might be sufficiently controversial as to merit the affirmative procedure rather than the negative procedure provided for in the Bill."

Does the Government have a formal response to that statement?

**John Swinney:** My view is based on the fact that a reduction of burden is envisaged in such circumstances and I assume that that would be less controversial, which is why it would be considered appropriate to use the negative procedure.

Chewing that over, I suppose that there could be perspectives within the Parliament that would consider a reduction of burden to be controversial or unwelcome. Therefore, there may be a necessity for wider scrutiny, so if the committee has further reflections on that point or is concerned by the approach that we are taking, I am happy to consider that.

**Michael McMahon:** I return to the point that John Mason touched on, about the idea of allowing for funding of wider environmental objectives that are not specific to any one location. There are certain parts of the country, notably mine, where—

**John Swinney:** Not to make it in any way parochial.

**Michael McMahon:** To be entirely parochial, the road network lends itself to logistics and distribution in the local economy, and we are therefore subjected—if that is the right word—to a number of landfill sites in the vicinity of the M80, the M8 and the M74. It is interesting that there is an idea that, because wider Scotland contributes to landfill, it should somehow benefit from the landfill communities fund. I had always thought that the principle of the landfill communities fund was that, if an area is blighted by having the landfill dumps, it would benefit in some way from local investment out of the taxes and revenues that are raised from the dumps to which it is subjected. I find it strange that anyone would argue that, because they helped to generate the need for landfill, other areas should benefit somehow from the distribution of the fund. Could you expand further on that rationale?

**John Swinney:** I am not sure that my explanation in response to Mr Mason was the clearest that I have ever given in Parliament. I concede that point in response to Mr McMahon's question, and I quite appreciate the seriousness of the issue that he raises about his constituency from the perspective of that locality.

The point that I was trying to make is that landfill tax is a proceed of what is being disposed of in landfill, and if we are disposing of less material in landfill, that is a product of the actions of citizens and businesses right across the country, because our approach to better waste management is being bought into right across the country. My point was that, if there is a community proceed coming out of landfill, there is therefore a possibility of that having a wider benefit to projects throughout the country.

I am not saying that that is the Government’s thinking; I am simply saying that the argument is valid in exploring the best direction to give to the community landfill tax fund effort. That must be countered by the pretty firm point that Mr McMahon has made about the fact that his constituency is affected, as other constituencies will be, and that they should be the ones that receive the proceeds. There is an interesting debate to be had about the right approach to take, which I am sure we can flush out during the passage of the bill and going forward. I certainly would not want for a moment to suggest that the answer that I have given to Mr Mason is the Government’s last word on the subject—far from it.

**Michael McMahon:** That is an interesting response. Maybe during that debate we can strike a deal that, since my area has had all the landfill sites for the past decades, other communities
Jean Urquhart (Highlands and Islands) (Ind): My question is a variation on a theme. We are talking about a community fund that will diminish with the success of the programme, as we head towards zero landfill. If I open a little factory that takes rags and timber and dirty cans and makes grand pianos out of them—which is how creative we have to be, I suspect—I could argue that my community is having the trucks coming in not to contribute to landfill but so that the waste can be used, so why would the area in which such an enterprise is located not be eligible for some of the tax revenue?

Given that the policy framework is setting the scene for society having to be aware of recycling and saving, it seems that there are two issues that need to be dealt with as a result. One is the need to reduce waste so that there is not so much of it; the other is—to repeat what you said yourself, cabinet secretary—that we should treat waste as a resource that we can use. Are we going to see some of the money in the meantime, or a different fund, so that we can be creative in that way? There are colleges throughout Scotland with product or industrial product design courses that could yield various ways of using waste.

11:45

John Swinney: A lot of the activity that is envisaged—to expand Jean Urquhart’s point—essentially is encapsulated in the role of zero waste Scotland. That is the function of that organisation: to work with partners and, in some circumstances, to be supported by Scottish Enterprise or Highlands and Islands Enterprise in developing business propositions that emerge from those types of activities. Therefore the answer is yes. Part and parcel of what we are trying to encourage in the zero waste agenda is a focus in society on the reuse, adaptation and redeployment of resources that are no longer required for their primary function in a particular area. I think that “reduce, reuse, recycle” is the mantra that Mr Lochhead has put forward—I hope that that is the right word order. There will be mechanisms in place to enable support to be taken forward in that fashion.

Jean Urquhart: I want also to mention the islands, where there are issues that need to be addressed. I think that I am right in saying that Shetland does not send any waste off the island. That is an example of resilience and resourcefulness. Shetland is producing district heat schemes and there has been quite a big investment, including some Government money, in recycling glass into other products. That is worth looking at.

John Swinney: It is right that the example of Shetland involves district heating, as part of a waste incineration proposition. As I said in my answer to John Mason, I will explore the issue in relation to the islands to determine whether there is fairness in how that is being taken forward.

Malcolm Chisholm: I want to pick up on a couple of points. You used the figure of 7 per cent at one stage; you seemed to be implying that 7 per cent of the overall UK money for the community fund was coming to Scotland. Is that what you meant, or did you mean that 7 per cent of the overall landfill tax in Scotland went to the community fund—if you can see the distinction?

John Swinney: I was saying that Scotland’s share of landfill tax receipts—the total UK pot—since 1996-97 is 9.2 per cent but we have received only 7 per cent of the landfill communities fund to contribute to projects in Scotland.

Malcolm Chisholm: So you are saying that 93 per cent went to the rest of the UK.

John Swinney: I am, yes.

Malcolm Chisholm: I wanted to clarify that.

You also said words to the effect that you expect SEPA to detect illegal dumping. Do you expect SEPA just to continue the work that it is doing currently in that regard, or do you expect it to step up its efforts because there is now a financial incentive to detect people?

John Swinney: It is not so much that there is a financial incentive. The point is that there will be a tax to be charged on that activity. To go back to my answer to John Mason, the law provides for a tax to be applied on illegal dumping. Therefore I would expect SEPA to pursue that as part of its activities. As part of the arrangements that I have put in place, operating under the umbrella of revenue Scotland, there will be compliance support and assistance for SEPA in doing that.

Malcolm Chisholm: In last week’s session, concerns were expressed about the £300,000 that is being given to SEPA for various activities. However, when I asked SEPA about the issue this morning, I was told that there was no extra money for stepping up its activities with regard to detecting illegal dumping. Will that be a problem?

John Swinney: SEPA is a very good example of an organisation that could have kept on coming to the Government, saying, “We want more money—we need to put up our charges.” However, after being asked by ministers to examine its internal operations and find ways of operating very efficiently, it has been able to reduce the required grant in aid, keep charges at a
very stable level and improve its internal operation. Instead of following the option of simply asking for more money, it has got on with making itself more efficient. It is a very good example in that respect, and I am confident that it will be able to operate in that way.

Malcolm Chisholm: If SEPA had enforcement powers, would the situation change and would extra resources be required? I do not know when a decision will be taken on that, but there seems to be some doubt over it at the moment.

John Swinney: SEPA is already able to fine illegal dumpers and indeed does so, but the bill provides for a tax charge to be applied into the bargain. I am confident that the agency already operates in the space that would enable it to act in this fashion.

Malcolm Chisholm: On the big question of the effect on the budget and the block grant adjustment, which Jamie Hepburn has already raised, I should say that, when I asked your officials about this issue two weeks ago, I got it all wrong. Now that I have fully understood it, am I right in thinking that your opening position would be that the block grant adjustment should be only £40 million because that is envisaged as the amount of money that will be raised in the long run from the tax?

John Swinney: That would be a very reasonable conclusion to reach in the negotiations. I will offer it as my closing position to the UK Government.

Malcolm Chisholm: Is the £40 million based on the assumption that the target in the zero waste plan of only 5 per cent of waste going to landfill by 2025 will be met?

John Swinney: Yes. Obviously, in basing our calculations for 2025 on the 5 per cent figure, we are making a number of assumptions, but that is the basis of it.

Malcolm Chisholm: You have said that you will not impose rates lower than those in the rest of the UK. It would of course be tempting to impose higher rates because one would think that that would be an incentive not to use landfill. However, we have already discussed cross-border considerations; moreover, as SEPA has suggested, if the rate is too high it will encourage the illegal dumping of, say, asbestos—although one could argue that, as a general principle, a too-high rate will encourage illegal dumping anyway. What range of factors would you consider in deciding whether to raise the rate instead of keeping it the same?

John Swinney: I have to be mindful of all these different factors; for example, I have acknowledged that relatively small cost differentials could encourage cross-border activity. I do not think that such practices are in anyone’s interest because not only will they displace tax income that ordinarily should be raised in Scotland but further emissions will be incurred in travelling longer distances. A variety of factors will have to be considered and reconciled, but I am adamant that the setting of rates must be compatible with and should in no way undermine the Government’s long-term journey to reduce waste in Scotland as part of the zero waste strategy.

For completeness, I point out that, if Scotland were independent, it would be contrary to current European regulation and directives to transport any waste across the border. Perhaps the prospect of keeping waste in that context might persuade Mr Chisholm and some of his colleagues of the merits of Scottish independence, but the Government is very clear about its policy direction and the long-term achievement of our environmental targets and therefore has to take a set of measures to support that agenda.

Jamie Hepburn: The cabinet secretary might already have answered this, convener, but I want to ask a brief question for absolute clarity. I know that illegal dumping will be brought within the scope of the landfill tax and Mr Swinney has made it clear that, at present, SEPA can impose fines on individuals or organisations that dump waste illegally. However, I think that the cabinet secretary also said that the bill will provide for fines and tax charges to be applied. Does that mean that organisations will be fined as well as taxed for this activity?

John Swinney: Organisations could be fined, could face a tax charge and could also face charges for proper disposal by a recognised operator.

Jamie Hepburn: So there could be criminal proceedings.

John Swinney: Indeed.

Jamie Hepburn: That is helpful.

The Convener: That concludes the committee’s questions, cabinet secretary, but not mine.

In 2011-12, the landfill tax revenue in Scotland was £98 million and, as you said earlier, in 2025 you will be looking for about £40.5 million. I do not want to take issue with Malcolm Chisholm’s figures again, but does that not mean that you will be looking for a block grant adjustment of about £57.5 million? Moreover, do you have year-on-year figures to show how you reach that £40.5 million? You said that you had indicative figures, but how strong are your figures in that respect?

John Swinney: The 2025 figure has been reached by calculating where we think we will be with regard to waste recycling. I am pretty sure
that we could work out a year-by-year staged assumption, but we would be getting into a certain level of expectation about the block grant adjustment, which we might well have to get into in order to reach an agreement.

As for how all of this fits together, I said earlier to Mr Hepburn that there is a certain variability in our expectations about whether the taxes that are being deployed to us will go up or go down. The block grant adjustment mechanism must take account of that in the round, and that is the point that I will be advancing in our dialogue with the UK Government.

The Convener: My understanding was that the aim of the landfill communities fund is, as Michael McMahon suggested, to support blighted communities. However, in your comments, you seemed to suggest almost changing the fund's definition. Is it still the Scottish Government's intention to ensure that, broadly speaking, the fund will continue to focus on blighted communities? I realise that it will have some flexibility, but should that not be the fund's core purpose?

John Swinney: I acknowledge that that is the fund's core but, as we embark on this approach, we need to explore whether we can construct the fund in a way that best meets the expectations of communities in Scotland and which recognises some of the factors that I have highlighted in my evidence.

The Convener: The fact is that the fund will be declining year on year. You said earlier that, although Scotland had raised 9.2 per cent of the tax in the UK, it received only 7 per cent of the landfill communities tax money. According to RSPB Scotland, the potential value of credits in the fund amounts to £74.25 million a year in the UK, which means that Scotland's share is about £1.6 million or £1.7 million less than it should be. Why is Scotland not getting the 9.2 per cent or thereabouts share that it is actually raising? Is it because projects are not coming forward?

12:00

John Swinney: As this is a bidding process, convener, the short answer can only be that insufficient projects are coming forward from communities in Scotland.

The Convener: Given that revenue and the fund itself are declining year on year, is there any merit in encouraging more communities to make bids, or do you believe that we should be making more bids for projects to try to get our share above 9.2 per cent?

John Swinney: The tax will be devolved in April 2015, so there is not an awful lot of time—just short of two years—to make an impact in that respect. The clear lesson in all of this is that we have to be very effective in how we engage communities and motivate them to be part of this process.

The Convener: Finally, on enforcement, although SEPA has the power to instigate environmental enforcement action on illegal sites, HMRC cannot collect the tax on those operators and, as we have discussed, that encourages illegal dumping. Earlier, SEPA and revenue Scotland made it clear that discussions are ongoing about who will be responsible for enforcement in the case of non-payment and for pursuing these illegal dumpers. What is the Scottish Government's view on the matter?

John Swinney: The framework is being put in place under the auspices of revenue Scotland, which will be using SEPA as the contact point for collecting and administering the tax and ensuring that it is properly collected. That is the most effective explanation that I can give.

The Convener: Thank you for that clarification.

That concludes our questions, and I thank the cabinet secretary and his officials, and members for their questions. At the start of the meeting, the committee agreed to take the next item in private. I now close the public part of the meeting and will allow a couple of minutes for the public and the official report to leave.

12:02

Meeting continued in private until 12:08.
INDEX OF WRITTEN EVIDENCE TO THE FINANCE COMMITTEE

Written submissions

- Chartered Institute of Taxation
- City of Edinburgh Council
- Comhairle nan Eilean Siar
- COSLA
- East Ayrshire Council
- East Dunbartonshire Council
- EB Scotland Limited
- Falkirk Council
- Glasgow City Council
- North Ayrshire Council
- North Lanarkshire Council
- Renfrewshire Council
- RSPB Scotland
- Scottish Environmental Services Association
- Scottish Wildlife Trust
- SEPA
- South Ayrshire Council
- South Lanarkshire Council
- The Chartered Institution of Wastes Management
- The Community Resources Network Scotland
- The Scottish Landfill Communities Fund Forum

Supplementary written submissions

- The Scottish Landfill Communities Fund Forum
- Scottish Wildlife Trust
1. The Chartered Institute of Taxation responded to the Scottish Government’s consultation entitled ‘A Landfill Tax for Scotland’ (http://www.tax.org.uk/tax-policy/public-submissions/2013/landfill_tax_Scot_public) and now welcome this opportunity to provide comment on the above Bill, which was laid before the Parliament on 17 April 2013.

2. Our evidence is set out in the attached annex. We would be happy to provide any further input to the Bill if requested. Please advise our technical assistant Helen Musi at technical@ciot.or.uk if you do have any further requests in this regard.

3. The Chartered Institute of Taxation (CIOT) is the leading professional body in the United Kingdom concerned solely with taxation. The CIOT is an educational charity, promoting education and study of the administration and practice of taxation. One of our key aims is to work for a better, more efficient, tax system for all affected by it – taxpayers, their advisers and the authorities. The CIOT’s work covers all aspects of taxation, including direct and indirect taxes and duties. Through our Low Incomes Tax Reform Group (LITRG), the CIOT has a particular focus on improving the tax system, including tax credits and benefits, for the unrepresented taxpayer.

4. The CIOT draws on our members’ experience in private practice, commerce and industry, government and academia to improve tax administration and propose and explain how tax policy objectives can most effectively be achieved. We also link to, and draw on, similar leading professional tax bodies in other countries. The CIOT’s comments and recommendations on tax issues are made in line with our charitable objectives: we are politically neutral in our work.

5. The CIOT’s 16,500 members have the practising title of ‘Chartered Tax Adviser’ and the designatory letters ‘CTA’, to represent the leading tax qualification.
Introduction
6. The Chartered Institute of Taxation (CIOT) welcomes the opportunity to provide input to the proceedings on The Landfill Tax (Scotland) Bill.

7. In our comments on the Scottish Government’s consultation entitled ‘A Landfill Tax for Scotland’ (http://www.tax.org.uk/tax-policy/public-submissions/2013/landfill_tax_Scot_public), we took as our starting point that if landfill tax is to fulfil its role as a fiscal measure designed to encourage good behaviours and penalise poor behaviours, it needs to be levied on what is placed into the ground as waste and not merely material that enters a landfill site. We remain of that view. We examine the specific issues raised in the call for evidence, and provide comments on the basis that that is still the correct approach to the tax.

8. If it is proposed to create a Scottish equivalent of the Landfill Communities Fund, then consideration should be given to ensuring that it is used to fund activities that further development of waste reduction objectives.

Executive summary
9. We recognise the practical approach to introducing the tax along the same lines and using the same rates as those in the rest of the UK.

10. However, we consider that the existing legislation does not properly reflect the environmental intentions of the tax, especially in re-use and recycling of material, and encourage the early revision of proposed law to address these points.

11. The taxation of used or recycled materials merely because they are on a landfill site may be detrimental to the stated zero-waste policy.

12. The use of further rates of tax would be a more appropriate link to the environmental impact of certain waste categories but any definition of existing or future lower rates must provide sufficient clarity to avoid taxpayer uncertainty.

Consistency with principles of certainty, convenience, efficiency and proportionality (First bullet)
13. We believe that the tax meets the principles of certainty, convenience and efficiency but for the reasons set out elsewhere in this response we are not convinced that it wholly meets the principle of proportionality.
Decision not to introduce significant changes to the form or structure of the existing UK Landfill Tax

14. The Bill draws very heavily on the provisions of FA 1996, which introduced landfill tax in the UK. Adopting a system that aligns closely with that of the rest of the UK is a pragmatic approach that recognises that the waste and recycling industry operates across borders within the UK and would not welcome having to deal with two totally different systems.

15. Nevertheless, as our comments in response to the UK consultation entitled ‘Modernising Landfill Tax’ (http://www.tax.org.uk/tax-policy/public-submissions/2009/modernising-landfill-tax-ciot-comments) showed, we believe that there was a need to improve the tax to better achieve its environmental objectives.

16. Thus, while we accept the pragmatic reasons for adopting legislation that is substantially similar to that of the legislation in the rest of the UK, we do not think that the legislation or the manner in which it is implemented should be identical. In particular, there are features of the UK legislation that do not meet what we believe are the objectives of the tax such as Scotland’s Zero Waste Plan. (http://www.scotland.gov.uk/Topics/Environment/waste-and-pollution/Waste-1/wastestrategy).

17. We therefore welcome the fact that the Bill includes the provision that would allow more rates of tax. Under the current UK rates structure, there is a considerable difference between the rate that is applied to inert matter and other waste, despite the fact that some of the other waste taxed at the standard rate may create minimal environmental impact. While we do not comment on rates as such, it is appropriate to point out that this structure does not seem to fit with the objectives of the tax.

18. We also pointed out that the resource that is being protected is land and as suggested in the UK consultation it is the amount of land used for waste that needs to be protected. Accordingly it appears illogical to set taxes on the basis of weight although we accept that there may be practical problems to overcome in arriving at a fairer measure.

19. We note that the Bill would allow the Scottish Government to include materials in the definition of waste that are put to a use on site and that are not therefore in fact waste eg temporary cover for materials used in landfill. The origin of the UK provision is two UK cases dealing with landfill tax (Parkwood Landfill v Commissioners of Customs & Excise (2002] EWCA Civ 1707) and Waste Recycling Group Ltd v HMRC ([2007] EWHC 3014 (Ch)). HMRC then acted to have the effect of these decisions reversed, bringing many uses of materials back within the scope of the tax, including some arising from a necessary requirement of environmental law/permitting.

20. We do not believe that the Scottish Government should use the powers included in the Bill to apply similar rules to those applied under the current landfill tax legislation. We note in particular this passage from the Court of
Appeal’s judgment in *Parkwood* that makes it clear that the provisions that HMRC subsequently asked the UK Government to enact were contrary to the principles of the tax –

‘The Commissioners accept that their argument leads to the result that companies such as Parkwood will be liable for tax if they use recycled material for site engineering or building purposes, whereas they would not be liable for tax if they used fresh materials. That cannot have been the intention of Parliament when they introduced the landfill tax. The purpose of the legislation was to tax waste material deposited at landfill sites and not to tax deposits at landfill sites of useful material produced from waste material.’

21. Taxing non-damaging material would appear to be contrary to the zero-waste policy.

**List of qualifying materials**

22. The explanatory notes to the Bill indicate that it is intended to adopt the same lists of materials qualifying for the lower rate or for exemption as the current UK Bill. It does however go on to say –

This means that in future Ministers could introduce a third tax band for stabilised materials at a tax rate that was between the two current rates.

23. As brought out in our submission, the current definition of qualifying materials has brought confusion and uncertainty of treatment in certain situations. Clarifications promised in July 2012 have still to be published, notably mixed load qualification criteria.

24. We accept the reasons why it might be convenient to start with the current UK provisions. However, we consider that the Scottish Government should not wait for the coming into force of the Bill to consult with those in the Industry on how best to use the flexibility in the Bill to use the rate structure as a disincentive for not rendering the most damaging waste stable.

**Illegal dumping of waste**

25. We did not comment on this issue in our original response but since the legislation has been included in the Bill we now comment as follows.

26. It would appear to us that the proceeds received by a person who carries out an illegal dumping activity for reward could be confiscated under The Proceeds of Crime Act 2002.

27. However, we accept that any proceeds that could be recovered may be less than the actual taxes that would have been due and that therefore simple recovery of the proceeds of a crime may not be sufficient to protect the tax base. Further, that legislation would not cover illegal dumping not carried out for reward.
28. We therefore accept the principle behind this provision.

Exemptions
29. We accept the reasons for starting with the same exemptions as in the current legislation and the need for a mechanism to remove exemptions when appropriate.

30. This is subject to the principles that exemptions should not be removed if they are necessary to the environmental objectives of the tax and that additional exemptions may be needed for the same principles (see comments at section 4).

Scottish Landfill Communities Fund
31. The details of how this fund will work are to be set out in subordinate legislation. We believe that there should be a full consultation on the management and use of the fund.

The role of Revenue Scotland and SEPA
32. We have noted concerns that have been expressed of a possible conflict of interest in having SEPA collect the tax. However, our view is that close working with SEPA on the tax is essential to ensure that the tax aligns with its environmental objectives.

The block grant
33. We did not comment on this in our response to the consultation and do not do so here.

Financial implications
34. We do not have the expertise to comment on the financial implications of the Bill.

The Chartered Institute of Taxation
35. The Chartered Institute of Taxation (CIOT) is the leading professional body in the United Kingdom concerned solely with taxation. The CIOT is an educational charity, promoting education and study of the administration and practice of taxation. One of our key aims is to work for a better, more efficient, tax system for all affected by it – taxpayers, their advisers and the authorities. The CIOT’s work covers all aspects of taxation, including direct and indirect taxes and duties. Through our Low Incomes Tax Reform Group (LITRG), the CIOT has a particular focus on improving the tax system, including tax credits and benefits, for the unrepresented taxpayer.

36. The CIOT draws on our members’ experience in private practice, commerce and industry, government and academia to improve tax administration and propose and explain how tax policy objectives can most effectively be achieved. We also link to, and draw on, similar leading professional tax bodies in other countries. The CIOT’s comments and recommendations on tax issues are
made in line with our charitable objectives: we are politically neutral in our work.

37. The CIOT’s 16,500 members have the practising title of ‘Chartered Tax Adviser’ and the designatory letters ‘CTA’, to represent the leading tax qualification.
FINANCE COMMITTEE CALL FOR EVIDENCE ON THE LANDFILL TAX (SCOTLAND) BILL

SUBMISSION FROM THE CITY OF EDINBURGH COUNCIL

1. The City of Edinburgh Council welcomes the development of the Scottish Landfill Tax and is grateful for the opportunity to comment on the proposed legislation.

2. Because this Council is not a landfill operator, and will not be involved in the administration of the tax, we have restricted our comments to those most relevant to our objectives.

   Our comments are as follows:

3. It is proposed that, at least initially, Landfill Tax in Scotland will be set at a level to closely mirror that in England. We believe this is the right approach both to avoid encouraging landfill flows in either direction between England and Scotland, and to ensure that as far as possible the reduction Scottish Block Grant is offset by the Landfill Tax income.

4. It is noted that it is proposed to increase the amount of the Landfill Tax used to support communities affected by landfill, and to support environmental objectives.

5. Again this approach seems appropriate and sensible. It might further be appropriate to ensure that as well as these initiatives, the Scottish Government could look to utilise income from Landfill Tax to support the development or introduction of alternatives to landfill, or to develop more local markets for recycled materials, and to support reductions in littering and fly tipping. All of these could be delivered in partnership with Zero Waste Scotland.

6. We would also hope that as an organisation we may ourselves continue to benefit from these sources of funding.

7. However it should be noted that as landfill is phased out, by definition, the income from Landfill Tax will diminish, and therefore should not be relied on as a funding source in the longer term.

8. An earlier stage of the consultation highlighted the area of exemptions with regard to Landfill Tax. It could be argued that it would be appropriate to exempt the use of landfill for residues from Energy from Waste processes where these cannot be used for a more useful purpose.
FINANCE COMMITTEE CALL FOR EVIDENCE ON THE LANDFILL TAX
(SCOTLAND) BILL

SUBMISSION FROM COMHAIRLE NAN EILEAN SIAR

Whether the Bill is consistent with the four principles underlying the Scottish
Government’s approach to taxation – certainty, convenience, efficiency and
proportionate to the ability to pay;
1. The Bill is consistent with these four principles.

The decision not to introduce significant changes to the form or structure of
the existing UK Landfill Tax;
2. By not introducing significant changes to the form or structure of the existing
UK Landfill Tax legislation uncertainty and misinterpretation is avoided.

The use of the same list of qualifying materials as specified in the Landfill Tax
(Qualifying Material) Order 2011;
3. Options to expand the list of Qualifying Materials should be considered. For
example, to regard the potential for excavated peat from landfill cell construction
works, as being similar to sub-soils if no useful diversionary application is available
and the material can subsequently be usefully used on the site from where it has
been extracted.

The intention to set tax rates in subordinate legislation and in “such a way that
rates will follow closely UK rates”;
4. This is supported to prevent competition across UK borders.

The power in the Bill to establish more than two tax rates and to vary the list of
material qualifying for different tax rates in subordinate legislation;
5. Although the increase in the rate of Landfill Tax has made many recycling
processes economically sustainable on the mainland of Scotland, the
disproportionate costs of haulage of materials from island communities, such as the
Western Isles, place unfair limitations on the economic sustainability of alternatives
to landfill disposal. It is therefore considered that the rate of Landfill Tax applied to
Island wastes disposed of to landfill should be at a lower rate for specific types of
materials where no viable recycling or recovery routes are available.

6. In addition, with a differential rate of Landfill Tax varying between £80/tonne
and £2.50/tonne, there is potential to consider an additional rate for materials which
are close to inert specification but have no route for reuse or recycling.

The provisions which will allow the tax authority to pursue taxes evaded
through the illegal dumping of waste;
7. This change is supported as it reinforces the ability to make the polluter pay
when their actions evade taxation and result in environmental damage.
The list of activities and materials which are exempt from landfill tax;
8. Currently, gully emptying wastes delivered to a landfill site for treatment are charged at the full rate of LFT even if the water content is separated from solids, and discharged after treatment. Only the solid waste residues are disposed of to landfill. With the current guidance, Landfill Tax liability is applied to the total combined waste entering the site, even although the separated liquid is never landfilled.

The Scottish Landfill Communities Fund;
9. The potential increase in available funding for environmental projects is welcomed.

The role of Revenue Scotland in the administration of the tax;
10. No comment

The role of SEPA in the administration of the tax;
11. It is considered to be potentially advantageous to have a single body administering environmental compliance and Landfill Tax. SEPA will be able to call on their detailed understanding of Waste Management to carry out the role of LFT administrator.

The formula for calculating the adjustment to the block grant;
12. No comment

The financial implications of the Bill as estimated in the Financial Memorandum.
13. No comment
Introduction
1. COSLA welcomes the opportunity to respond to the Finance Committee’s invitation for written evidence on the Landfill Tax (Scotland) Bill. COSLA recognises that the regulations governing the detailed implementation of a Scottish Landfill Tax system will be drafted and consulted upon later this year. COSLA also notes that a separate Bill will be brought forward to establish a new tax administration body, Revenue Scotland, to oversee the Scottish Landfill Tax and other devolved taxes.

2. Given that much of the detail on how the new taxes will operate is not available at this stage, COSLA has restricted its response to more general principles and, where appropriate, the specific areas on which the Committee is looking for views.

General comments
3. In presenting our evidence COSLA would like to set out key messages on local taxation more generally as well as more specifically in relation to the Landfill Tax. At the core of COSLA’s submission is our vision for stronger local democracy in Scotland. This places local government at the heart of delivering outcomes for our communities and a key partner with the Scottish Government in the democracy of Scotland.

4. An essential part of our vision is that local government should have maximum freedom and flexibility to control the resources needed to deliver services locally to communities. The tax raising powers which local government already possesses are a key feature of the resource landscape at the local level and are a key element in our vision for greater local control of resources.

5. There are sound reasons as to why the new Landfill Tax should be administered nationally and that the tax levied is used to support the overall Scottish block. Not the least of these being stability and consistency of treatment. Therefore COSLA is not arguing that a different approach should be taken to introducing the new Landfill Tax. The Committee should be aware however of COSLA’s view that the new tax environment which is emerging in Scotland, with the landfill tax and land & buildings transaction taxes, needs to take account of the local dimension. This includes taxation through Council Tax and local authorities own powers to charge for services, both of which should be considered as revenue raising tools at the local level.

6. COSLA has responded to the Scottish Government’s recent consultation on Tax Management in Scotland and has made these very points. In our response COSLA has called for close engagement with Revenue Scotland and for Local Government representation on the Board of the new body. We are seeking
reassurances that the creation of a national tax administration framework and the introduction of new national taxes do not imply a move toward centralisation and erosion of local taxation powers. We have also highlighted Local Government’s substantial expertise in tax management and collection which we are offering to share in shaping the new tax environment.

7. COSLA supports progressive approaches to the new devolved taxes, if carefully managed, but any move towards using taxes to change behaviours, for example, need to be developed in partnership with Local Government.

8. With any new national taxation COSLA would want to know the rates being proposed well in advance and to understand the potential impact on local government and local communities. Ideally this would be several years in advance; however COSLA acknowledges that the new Landfill Tax will need to be in place for 2015/16. Government must therefore bring forward subordinate legislation as quickly as possible.

9. As a wider point COSLA would be concerned with any significant changes to the financial landscape for waste treatment and infrastructure procurement, which may cause delays to planned projects and may put at risk elements of capacity needed for the zero waste agenda.

Scottish block grant adjustment
10. The structure of the Scotland Act 2012 block grant deal and the continuing success in Scotland of the pursuit of the zero waste agenda points to a clear funding gap for the Scottish Government post 2015, which the Government will need to address. The level of tax charged between 2015 and 2020 is crucial for local authorities business cases and costs in delivering the infrastructure necessary to achieve the prevention, re-use and recycling outcomes set out for a zero waste Scotland.

11. COSLA is seeking assurance from the Scottish Government on the mechanisms that will be put in place to ensure the adjustment to the Scottish Block Grant is managed fairly and that any shortfall in expected yield will not be passed onto Local Government.

Approach to the Scottish Landfill Tax
12. Councils have, since the announcement of the zero waste agenda, been implementing business plans which have factored in the current UK Landfill Tax system. Achievement of zero waste plan outcomes requires consistency, clarity and certainty if councils are to continue to take decisions now that represent and deliver best value for public services for the next decade and beyond.

13. It is essential that certainty exists and where it does not that the financial risk to local authorities is appropriately mitigated by Scottish Government. It is essential that any future increases in landfill tax are provided to local authorities well in advance of any change being due and COSLA would suggest that five years in advance would be most appropriate.
14. COSLA recognises from recent waste policy discussions that there may be a potential change in waste policy from a zero waste agenda to a circular economy, which is potentially another distinct change in waste related activity required across Scotland. The Scottish Government needs to be clear on the implications of this for existing fiscal instruments. The landfill tax was devised a decade ago to implement the UK policy agenda around diverting material from landfill which is different from the adoption of a zero waste agenda by Scotland and its focus on the increasing recycling and significantly different from a circular economy outcome.

15. COSLA acknowledges that the landfill tax has been a successful key driver in helping divert waste from landfill. COSLA would like to see a balance between both the desire to introduce a more flexible tax system and the need to provide certainty of burden for local authority’s future investments in waste management.

**Producer responsibility**

16. As well as environmental taxes on the disposal of waste, COSLA would welcome further responsibilities on producers to minimise/prevent waste being presented for disposal in the first instance.

17. As landfill costs and associated restrictions rise, an increase in fly-tipping is a potential risk. There is a need to further investigate the link between further changes to the taxes on landfill disposals and impacts on fly-tipping and local amenity to local authorities. COSLA would welcome clarity on the potential impact any taxation changes will have on the level of fly-tipping generally in further discussions on a Scottish Landfill Tax.

18. COSLA would like to see a Landfill Communities Fund that balances the amenity impact of communities living close to landfill sites and encourages behavioural change across society. We would suggest that the ten mile radius limit is restrictive, and that the scope of projects should be aligned to landfill avoidance, reducing the effects of landfill on the environment and landfill associated issues (for example, fly tipping) across the whole local authority area.
Whether the Bill is consistent with the four principles underlying the Scottish Government’s approach to taxation, i.e. – certainty, convenience, efficiency, and proportionate to the ability to pay.

1. Yes, the Bill is proposing a continuation of landfill tax policy that was previously adhered to by the UK government and which has proved successful in diverting waste from landfill towards more sustainable forms of waste management, providing local government and the private business a degree of reassurance and consistency.

The decision not to introduce significant changes to the form or structure of the existing UK landfill tax.

2. We would support this decision for similar reasons to those outlined in our response to Q1 above. In addition, if different landfill tax rates were applied in Scotland to other areas of the UK this would encourage cross border transport and disposal of wastes which would work against the proximity principle of waste management and other sustainable waste management policies as highlighted within the Zero Waste Plan.

The use of the same list of qualifying materials as specified in the Landfill Tax (Qualifying Material) Order 2011.

3. We are in agreement with this approach.

The intention to set tax rates in subordinate legislation, and in such a way that “rates will follow closely UK rates”

4. We are in agreement with this approach, as per response to Q1..

The power in the Bill to establish more than two tax rates and to vary the list of material qualifying for different tax rates in subordinate legislation.

5. We generally support this approach as it would provide flexibility for future changes in waste management policy and direction, encouraging the diversion of specific wastes from landfill.

The provisions which will allow the tax authority to pursue taxes evaded through the illegal dumping of waste.

We agree that making the illegal disposal of material taxable will act as a significant deterrent to illegal activity, and will support reputable organisations that uphold Duty of Care guidelines and abide by the Pollution Prevention and Control Regulations.

The list of activities and materials which are exempt from landfill tax?

6. The list of materials qualifying for the lower tax rate appears comprehensive and we do not see the need for any refinements. However, inert materials could perhaps be better used in the production of aggregates, building blocks, filtration equipment or landscaping, than going for landfill disposal and perhaps an assessment of the alternative uses for these inert materials is required.

The Scottish landfill Communities Fund

7. East Ayrshire Council supports maintaining and enhancing the Landfill Communities Fund by extending the credit limit for contributions to the Fund.
8. We would also suggest that the 10 mile radius limit is too restrictive and this should be extended to the full area of any local authority where a landfill is located.

**The Role of Revenue Scotland in administering the tax**
9. East Ayrshire Council recognise the requirement for Revenue Scotland and acknowledge that it will have a structure and constitution designed so that it is operationally independent of Scottish Ministers.

**The role of SEPA in the administration of the tax**
10. The proposal to appoint SEPA as the “Collection Agent” for the landfill tax should help to improve clarity between the waste authority and landfill operators.

11. With SEPA acting as the “landfill tax collector” they will be able address issues of clarity through landfill site licences and PPC’s in discussion with the landfill operators.

**The formula for calculating the adjustment to the block grant**
12. The Council acknowledges that the formula for calculating the adjustment in respect of UK Landfill Tax is under discussion between Ministers of the Scottish and UK Governments and is due to be agreed in the first half of 2013.

**The financial implications of the Bill as estimated in the financial memorandum**
13. The Council acknowledges the associated costs as described in the explanatory notes and welcomes the administrative measures that will be introduced to minimise/negate any further additional costs passed to the Local Authority via their landfill operator.
FINANCE COMMITTEE CALL FOR EVIDENCE ON THE LANDFILL TAX (SCOTLAND) BILL

SUBMISSION FROM EAST DUNBARTONSHIRE COUNCIL

1. The Bill is consistent with the Scottish Government’s four principles approach to taxation (certainty, convenience, efficiency and proportionate to the ability to pay) and it is consistent with the Government’s approach to taxation. Effective use of this approach to taxation contributes to the sustainable growth of Scotland’s economy and promotes a sustainable approach to environmental concerns.

2. Although no significant changes are proposed to the existing Bill it will encourage proper disposal of recycling materials.

3. No issues to using the specified qualifying materials as detailed in The Landfill Tax (Qualifying Material) Order 2011

4. This would have a dramatic effect on Local Authority Budgets, if the tax rate rose and was not recovered by local authorities it would leave Councils with a budget deficit.

5. The proposal of different tax rates for different materials should be introduced. Local Authorities and businesses who do not recycle adequately should be penalised.

6. Yes totally agree that the Tax Authority should have the power to pursue taxes evaded by illegal dumping There is a direct correlation between landfill tax rises, commercial charges and the increase in fly tipping. A proposal for greater funding to be made available from the tax could fund enforcement, use of cameras and additional officers to pursue offenders. In addition power to enforce higher fines and make offenders clear illegal dumping.

7. No Issues

8. Although Sepa will administer the fund, Local Authorities need to ensure that they continue to receive a fair share of the funding through the new scheme for local community projects. In a situation where national funding resources are being stretched where competition for funding is becoming increasingly fierce and where many larger funders have shifted their focus onto more strategic economy based priorities this fund continues to be a valuable source of assistance to projects that improve our local communities.

9. Revenues Scotland administration of the tax will ensure revenue, legislative and compliance bodies are working together to ensure the interests of the environment and the economy.

10. The role of SEPA administrating the tax will improve efficiencies in monitoring landfill operators, and calling to task people illegally dumping as well as esuring
businesses are complying with the regulations and in doing so keeping valuable resources from landfill.

11. No Issues
12. No Issues
FINANCE COMMITTEE CALL FOR EVIDENCE ON THE LANDFILL TAX (SCOTLAND) BILL

SUBMISSION FROM EB SCOTLAND LIMITED T/A SCORE ENVIROMENT

whether the Bill is consistent with the four principles underlying the Scottish Government’s approach to taxation – certainty, convenience, efficiency and proportionate to the ability to pay;
1. The Bill is consistent with certainty, convenience and efficiency as it clearly lays out matters relating to the rate, collection and regulation of the tax. With respect to the ability to pay we do not see this as relevant to this particular tax

the decision not to introduce significant changes to the form or structure of the existing UK Landfill Tax;
2. We generally support this view, as the current arrangements are working well with particular reference to changing behaviour and attitudes

the use of the same list of qualifying materials as specified in the Landfill Tax (Qualifying Material) Order 2011;
3. We do not feel qualified to comment as this requires expert input from those technically qualified to address landfill issues

the intention to set tax rates in subordinate legislation and in “such a way that rates will follow closely UK rates”;
4. We think this is a prudent approach as cross border transfer of waste could be the unwelcome consequence

the power in the Bill to establish more than two tax rates and to vary the list of material qualifying for different tax rates in subordinate legislation;
5. This will provide flexibility for future decisions

the provisions which will allow the tax authority to pursue taxes evaded through the illegal dumping of waste;
6. These provisions are extremely important in developing robust legislation, but clarity is required regarding enforcement. In this respect, we would recommend an holistic approach to address the various types of illegal dumping. This could involve a range of strategies including police prosecution and community engagement

the list of activities and materials which are exempt from landfill tax;
7. We do not feel qualified to comment

the Scottish Landfill Communities Fund;
8. The LCF has been demonstrably successful throughout the last 17 years, exhibiting a high degree of probity with cost effective administration. It is popular through its relative ease of access and principally because it empowers communities. It is also true to say that the LCF has significantly levered major funds in many cases, which is due to its status as ‘private’ money and it has also fostered a
high degree of community engagement resulting in people defining and delivering what they want in their neighbourhoods

**the role of Revenue Scotland in the administration of the tax;**

9. It is our understanding that it is the Government’s intention through Revenue Scotland to utilise SEPA in the regulation and collection of the tax. It is desirable to have a Scottish body administering a Scottish tax

**the role of SEPA in the administration of the tax;**

10. The vast experience contained within the Distributive Environmental Bodies (who distribute over 90% of LCF money in Scotland) suggests that regulatory issues could be better managed through efficient reporting systems and accessible support in the very few cases where there may be issues affecting applicants. We would recommend aligning the reporting of the tax and the credit system. Landfill Operators will report tax collection and credits claimed to a Government body (Revenue Scotland/SEPA) and it would make sense in our opinion if recipients of contributions reported to the same body to allow simple reconciliation. In addition, the appointment of a suitably qualified, part time resource to receive, examine, resolve and report any project related issues would serve the need of applicants. Currently, the arrangements cost 2% of the value of the LCF and 20% of its admin costs, not including costs related to the relationship between HMRC and Entrust and our proposal would achieve the same results more cost effectively. (Please see Appendix 1)

**the formula for calculating the adjustment to the block grant;**

11. The proposals read seem logical in the circumstances

**the financial implications of the Bill as estimated in the Financial Memorandum**

12. The proposed costs relating to Revenue Scotland and SEPA are clearly presented and represent better value for money than current UK arrangements
Appendix 1:

The Scottish Landfill Communities Fund Forum (SLCFF)
Proposed Distribution Model for a Scottish Communities Fund

The following proposal is made with the intention of providing a safe, secure, simple and accessible method for distributing Landfill Tax Credits in Scotland.

**Landfill Operator:**
It is proposed that Landfill Operators (LO) will contribute to a Communities Fund through Distributive Environmental Bodies (DEBs) who are registered/approved by SEPA and confirmed members of the Scottish Landfill Communities Fund Forum (SLCFF) and at the percentage of landfill tax determined by the Scottish Government (SG).

**Revenue Scotland:**
LOs will pay landfill tax to Revenue Scotland (RS) who will appoint SEPA to regulate LOs.

**SEPA:**
It is proposed that SEPA would regulate DEBs as well as LOs. In this way, it is envisaged that there would be approximately 10 DEBs, which would make regulation fairly straightforward.

**SLCFF:**
It is proposed that DEBs must be members of the SLCFF and through that agree to a Code of Conduct and formal audit requirements. It is further proposed that SEPA as Regulator would formally agree membership. In addition, it is envisaged that both the SG and SEPA would be appropriately represented on the board of the SLCFF, providing both strategic and policy input.
Projects:
It is proposed that applicants to the fund apply directly to an appropriate DEB. In this way local communities can concentrate on devising and delivering locally desired initiatives whilst DEBs guarantee the financial probity, legal status and reporting necessary for a safe, secure, simple and accessible scheme.

Ombudsman:
The existing Landfill Communities Fund has an exemplary record of delivering high quality projects with the highest standards of probity, which is a testament to the knowledge, experience and standards of DEBs who have been responsible for over 90% of funding awarded over the last 16/17 years. Whilst this experience deserves respect, it is inevitable that from time to time applicants may have issues and to resolve those, it is proposed that a suitably qualified, part time Ombudsman is appointed to allow any issues to be aired. It is further proposed that this role would report any issues to SEPA who could then raise them as appropriate in their role as Regulator.

In conclusion we commend this Distribution Model for a Communities Fund to the Scottish Government as a simple cost effective mechanism which will maximise the benefits of the fund and ensure demonstrable probity.
Whether the Bill is consistent with the four principles underlying the Scottish Government’s approach to taxation – certainty, convenience, efficiency and proportionate to the ability to pay
1. No additional comment at this time beyond the original Government consultation response (submitted prior to 15 January 2013)

The decision not to introduce significant changes to the form or structure of the existing UK Landfill Tax
2. No additional comment at this time beyond the original Government consultation response (submitted prior to 15 January 2013)

The use of the same list of qualifying materials as specified in the Landfill Tax (Qualifying Material) Order 2011
3. No additional comment at this time beyond the original Government consultation response (submitted prior to 15 January 2013)

The intention to set tax rates in subordinate legislation and in “such a way that rates will follow closely UK rates”;
4. We agree with this decision as to do otherwise would generate instability in the market and encourage cross border transportation of waste

The power in the Bill to establish more than two tax rates and to vary the list of material qualifying for different tax rates in subordinate legislation
5. No additional comment at this time beyond the original Government consultation response (submitted prior to 15 January 2013)

The provisions which will allow the tax authority to pursue taxes evaded through the illegal dumping of waste
6. No additional comment at this time beyond the original Government consultation response (submitted prior to 15 January 2013)

The list of activities and materials which are exempt from landfill tax
7. No additional comment at this time beyond the original Government consultation response (submitted prior to 15 January 2013)

The Scottish Landfill Communities Fund
8. We agree with the continuation of the Landfill Communities Fund and welcome the increase in the cap to 6.16%

The role of Revenue Scotland in the administration of the tax
9. We agree with the role of Revenue Scotland as detailed in the bill
The role of SEPA in the administration of the tax
10. We agree with the delegation of the administration and collection of the tax to SEPA as it makes sense to combine this with the organisation’s existing enforcement role.

The formula for calculating the adjustment to the block grant
11. It is difficult to comment on this as in paragraph 6 of the Financial Memorandum it states that the formula for calculating the reduction is still the subject of discussion between Ministers of the Scottish and UK Governments and will be agreed in the first half of 2013. Notwithstanding the formula still has to be agreed some important factors need to be taken into account including the fact that overall revenue from the tax is due to decrease, thus the Scottish Government is taking over responsibility for a tax in decline. Indeed paragraph 33 estimates that receipts will drop from a high of £107m in 2015/16 to £40.5m in 2025. The formula for future years should therefore reflect this.

The financial implications of the Bill as estimated in the Financial Memorandum
12. The figures in Table 1 show that, as a percentage, the Scottish share of UK Landfill Tax has been declining on a year by year basis since 2007/08 and is 8.9% for 2010/11. The forecast receipts in Table 2 however are based on the assumption that Scottish Receipts form 9.1% of total UK receipts which seems to buck this trend. How robust is this 9.1% figure as if it is an estimate it will overstate the forecast receipts in table 2.
whether the Bill is consistent with the four principles underlying the Scottish Government’s approach to taxation – certainty, convenience, efficiency and proportionate to the ability to pay;

1. For businesses there is clarity in landfill tax, as it relates to the amount of waste that they dispose. They therefore have an incentive to manage their wastes, to reduce the amount they dispose of and recycle where collection systems are available and that it is cost effective.

2. For householders there is less clarity. The burden of Landfill Tax is met by the Local Authority. Although Councils have developed recycling infrastructure and actively promoted recycling, the increasing costs of landfill tax are a burden on the public purse.

- Certainty
- Convenience
- Efficiency
- Proportionate to the ability to pay

the decision not to introduce significant changes to the form or structure of the existing UK Landfill Tax;

3. The Landfill Tax came into effect from 1996 and is understood by the waste industry. Changes to it could introduce levels of uncertainty. In particular for the large private companies who operate in the UK, there may be additional bureaucracy if they have to operate under two different tax regimes.

the use of the same list of qualifying materials as specified in the Landfill Tax (Qualifying Material) Order 2011;

4. Consideration should be given to restoring the exemption from tax of aggregates brought into landfill sites to be used for engineering purposes. This material is brought in as a product from the aggregate industry and is used to create haul roads within landfill sites to allow vehicles to safely operate moving and depositing waste within the landfill and as daily cover to ensure compliance with the sites Pollution Prevention Control Permit.

the intention to set tax rates in subordinate legislation and in ‘such a way that rates will follow closely UK rates’;

5. To ensure consistency in approach it is sensible to set rates that will closely follow UK rates. This will ensure that decisions on waste management are made in accordance with waste management principles and are not driven to low cost solutions.

the power in the Bill to establish more than two rates and to vary the list of material qualifying for different tax rates in subordinate legislation;

6. Materials used for engineering purposes within the site should be exempt.
7. Those materials that are easier to recycle and have pre-existing markets (or significant demand could be created) could be more heavily taxed thus creating pressure to recycle or reuse these materials. There should be no cause for these materials to go to landfill unless for engineering purposes. The carbon footprint and environmental impact of disposal materials should be assessed and reflected in the rates.

8. Illegal dumping is a complex issue. The cause is not always clear and the location and frequency of dumped materials is inconsistent, thus making it difficult to deal with offenders.

9. Additional resourcing to “police” areas of concern could be of assistance, in conjunction with more local disposal facilities and publicity of available facilities. The use of the tax for resourcing of enforcement staff both within Local Authorities and SEPA to investigate and tackle the issue of illegal dumping is critical in tackling this issue; this would also support the overall aims of this bill to ensure the proper handling of waste streams.

10. It would be likely to be of assistance to offer a limited exemption for problematic material such as asbestos, to encourage their proper disposal and reduce the risk of illegal dumping.

11. Consideration should be given to restoring the exemption from tax of aggregates brought into landfill sites to be used for engineering purposes. This material is brought in as a product from the aggregate industry and is used to create haul roads within landfill sites to allow vehicles to safely operate moving and depositing waste within the landfill and as daily cover to ensure compliance with the sites Pollution Prevention Control Permit.

12. Materials used for engineering purposes within the site should be exempt.

13. Those materials that are easier to recycle and have pre-existing markets (or significant demand could be created) could be more heavily taxed thus creating pressure to recycle or reuse these materials. There should be no cause for these materials to go to landfill unless for engineering purposes. The carbon footprint and environmental impact of disposal materials should be assessed and reflected in the rates.

14. As an operator of landfills Glasgow City Council has taken advantage of the opportunity to distribute Landfill Tax Credits to Environmental Bodies since 1996. The distribution process has been co-ordinated through an Officer Landfill Tax Subgroup, putting forward recommendations to Committee for consideration and approval.

15. Through this process Glasgow City Council has distributed £11,002,545 to 35 different Environmental Bodies for 155 separate projects.
16. The present distribution model has benefited Glasgow; as a landfill operator Glasgow has been able to support of local projects. In moving forward it would be helpful where local authorities use private landfill operators that any landfill communities fund is used to support activities in the authorities area from where the waste arises.

17. The current distribution model sets a 10 mile radius applies to Object E projects Historic Buildings. In considering the 10 mile radius it is important to look at the source of the waste, particularly if it is from Local authority Collections. As the number of landfill sites reduce, the distance to sites will increase reducing the potential eligibility for funds to go to local authority areas where the wastes arise. As a response an arrangement for local authorities who deliver wastes to private landfill to be eligible to benefit from the distribution of Landfill Communities Funds in their boundaries should be considered.

18. Also, in looking at the impact of landfill operations, consideration should be given to the direct compensation for households who live near landfill sites. This could follow the model when new roads are built.

19. To ensure compliance with the distribution process an independent regulator should be considered. The continued role of ENTRUST, this would ensure continuity of the regulator role. Alternatively, this role could be undertaken by SEPA.

20. To date the Landfill Communities Fund has supported local projects. As part of this review there is an opportunity to consider whether more strategic environmental objectives could and should be supported from this fund. In doing so there needs to be reassurance that this would reduce the fund that has been available to date to support local environmental projects. Rather than using a proportion of the existing fund, consideration should be given of taking a further proportion from landfill tax raised to help fund more strategic environmental objectives. This would maintain the support of local projects from the existing fund and create support for more strategic funds. The strategic funds could be managed by the regulator (ENTRUST or SEPA), following guidance prepared by the Scottish Government.

21. There are also a number of organisations that currently provide support and assistance in terms of carbon mitigation, energy minimisation and a wide range of associated sustainability issues. These organisations could play a role in supporting local projects, signposting the fund and in turn supporting more strategic environmental objectives.

the role of Revenue Scotland in the administration of the tax;

22. Given that landfill tax will be devolved from 2015, it makes sense for Revenue Scotland to be the administrator of the tax. It may, however, be appropriate for some roles and responsibilities to be further devolved to SEPA. This is a matter for the Scottish Parliament rather than local government, but clearly there will be significant challenges for a completely new organisation operating in a technically challenging environment. The timescales for the change are also relatively tight.

the role of SEPA in the administration of the tax;

23. SEPA already have extensive powers to audit landfill sites.
The formula for calculating the adjustment to the block grant;

24. The block grant from Westminster will be reduced to reflect the shift in landfill tax (and SDLT). The Scottish Parliament will no doubt be keen to ensure that the reduction is proportionate to the anticipated revenues from these two devolved taxes from 2015. Local authorities would obviously not favour any reduction in the local government settlement due to any shortfall in the overall Scottish Budget following the change, so the Scottish Parliament should perhaps identify mechanisms to identify and manage any significant variances. Finally, it is to be assumed that any calculation of the adjustment to the block grant would take into account trends, projections and collection data (including bad debts and legacy debt).

The financial implications of the Bill as estimated in the Financial Memorandum.

25. The devolution of these taxes, including landfill tax, brings not only additional powers to the Scottish Parliament, but also additional risks. That is, any fluctuations in landfill tax revenue would directly impact the Scottish Budget. Again, local authorities would not wish to see their settlement impacted by collection of taxes that are outwith their control. A final, related, issue is the Scottish Government’s zero waste strategy: if Scotland moves to a situation of zero waste in line with the targets set, then presumably this represents a significant pressure for the Scottish Budget as landfill tax revenues drop off.
whether the Bill is consistent with the four principles underlying the Scottish Government’s approach to taxation – certainty, convenience, efficiency and proportionate to the ability to pay;

1. There remains uncertainty over the rate of Landfill Tax which will be charged which has an impact on financial planning for the Council. Although it states that rates will closely align to UK rates we still don't know for sure what this rate will be beyond £80 in 14/15. A significant increase in the tax rate may have an impact on decisions being made in relation to alternative waste treatment options currently being explored.

2. Advance warning of any proposed increases would be welcome.

3. Also as progress is made towards the zero waste agenda then Landfill tax income will fall and the block grant from UK Government will have been reduced, creating a possible funding gap. How does Scottish Government intend to fund this gap? Assurance is required that this burden will not be passed on to Local Authorities.

the decision not to introduce significant changes to the form or structure of the existing UK Landfill Tax;

4. We support the decision not to introduce significant changes to the form or structure of the existing UK Landfill Tax as if significant differences existed we would be concerned over possible cross border waste transfer if landfill tax rates and structures are not aligned to the HMRC’s rates in the rest of the UK.

the use of the same list of qualifying materials as specified in the Landfill Tax (Qualifying Material) Order 2011;

5. The existing list would seem to currently be fit for purpose although regular reviews would be practicable. Materials used for specific engineering purposes, such as for the protection of the drainage layer should be exempt from landfill tax.

the intention to set tax rates in subordinate legislation and in “such a way that rates will follow closely UK rates”;

6. There is still no confirmation of what the rates will be beyond 2014/15 which doesn't help in giving certainty for financial planning.

the power in the Bill to establish more than two tax rates and to vary the list of material qualifying for different tax rates in subordinate legislation;

7. Additional tax rates and changes to the list of qualifying materials may have a financial impact but this is difficult to assess without knowing what materials and what the new rates are. Advance warning would be welcome to allow any impact to be assessed.
the provisions which will allow the tax authority to pursue taxes evaded through the illegal dumping of waste;
8. Where illegal activities such as illegal dumping, fly tipping or illegal transfer is found, the Scottish Government should ensure full cost recovery policies are implemented. Recovery should include all taxes due as well as any environmental protection penalties where applicable.

the list of activities and materials which are exempt from landfill tax;
9. Special wastes could be considered for a differential rate to ensure that cost is not a deterrent to ensuring compliance with disposal or treatment requirements. There should be a lower rate of landfill tax for materials used in the operation of the landfill for example internal roads or temporary cover material. Materials used for specific engineering purposes, such as for the protection of the drainage layer should not be taxable.

the Scottish Landfill Communities Fund;
10. The increase of the Tax credit limit by 10% would have a minimal financial impact for the Council (Approximately £1600).

the role of Revenue Scotland in the administration of the tax;
11. The current system of self-assessment reporting should be maintained and reported separately to Revenue Scotland. Landfill operators already have robust systems in place to assess and report on landfill tax payments due.

the role of SEPA in the administration of the tax;
12. SEPA are an experienced environmental regulator, rather than a tax assessor. There is a potential skills gap which will require to be reviewed further.

the formula for calculating the adjustment to the block grant;
13. The formula used for calculating the adjustment to the block grant could have a huge impact on the shortfall that would face Scottish Government as Landfill Tax revenues decrease. Assurance is required that there should not be any financial burden on Local Government as a result of the tax now forming part of the Scottish Block funding.

the financial implications of the Bill as estimated in the Financial Memorandum.
14. An estimated 62% reduction in Landfill Receipts for Scottish Government by 2025. How will the shortfall between the reduced funds and the reduction in block grant be met? As per previous points the burden should not be passed on to Local Government.

15. Cost to NAC depends on the rates set for the tax which have yet to be determined. Certainty around the rates of tax would be welcomed to allow the council to incorporate this into its financial planning.
whether the Bill is consistent with the four principles underlying the Scottish Government’s approach to taxation – certainty, convenience, efficiency and proportionate to the ability to pay;

1. North Lanarkshire Council Waste Management Section broadly agree that the Bill is consistent with the general principles underlying the Scottish Governments approach to taxation.

the decision not to introduce significant changes to the form or structure of the existing UK Landfill Tax;

2. North Lanarkshire Councils Waste Management Section welcome the decision to keep the nature of the Scottish Landfill Tax consistent to the pre-existing structure, thus ensuring a level playing field across the United Kingdom.

the use of the same list of qualifying materials as specified in the Landfill Tax (Qualifying Material) Order 2011;

3. Comments as above.

the intention to set tax rates in subordinate legislation and in “such a way that rates will follow closely UK rates”;

4. Comments as above.

the power in the Bill to establish more than two tax rates and to vary the list of material qualifying for different tax rates in subordinate legislation;

5. In principal North Lanarkshire Council Waste Management Section welcome this approach as it will assist the process of achieving the aims on the Zero Waste Regulations, however care would be required to ensure that there is no inconsistency with the principal of ensuring that the tax in Scotland was consistent with that in other areas of Mainland United Kingdom.

the provisions which will allow the tax authority to pursue taxes evaded through the illegal dumping of waste;

6. Again North Lanarkshire Council welcome this approach, however would seek further guidance that this pursuit of offenders would not become a burden or strain on the resources of the Local Authority in pursuing this issue.
INTRODUCTION

1. The Landfill Tax (Scotland) Bill is one of three related bills being brought forward as a consequence of measures enacted in the Scotland Act 2012. Under the terms of the 2012 Act, the Scottish Parliament will have responsibility for taxes on land transactions and disposals to landfill. The Landfill Tax (Scotland) Bill deals with disposals to landfill in Scotland and makes provision for a tax on those disposals to be called the Scottish Landfill Tax. The intention is that the provisions introducing Scottish Landfill Tax will come into force in April 2015.

2. The Landfill Tax (Scotland) Bill was introduced in the Scottish Parliament on 17 April 2013. The regulations governing the detailed implementation of a Scottish Landfill Tax system will be drafted and consulted upon later this year. A separate Bill will be brought forward to establish a new tax administration body, Revenue Scotland, to oversee the Scottish Landfill Tax and other devolved taxes.

3. It is expected that the Finance Committee will be designated as the lead committee for scrutinising the Landfill Tax (Scotland) Bill. The first stage for the committee is to report on the Bill’s general principles.

EVIDENCE REQUIRED

4. The committee is seeking written views (evidence) on the general principles of the Bill and in particular response to twelve specific areas listed below.

5. Renfrewshire Council welcomes the opportunity to respond to these issues and comments are drafted below.

Whether the Bill is consistent with the four principles underlying the Scottish Government’s approach to taxation – certainty, convenience, efficiency and proportionate to the ability to pay;

6. Agreed.

The decision not to introduce significant changes to the form or structure of the existing UK Landfill Tax;

7. This would be welcomed and would prevent issues with National Landfill Companies operating in Scotland and this would limit any cross border trading issues.

The use of the same list of qualifying materials as specified in the Landfill Tax (Qualifying Material) Order 2011;

8. This is agreed. There however remains some uncertainty and ambiguity over materials used for engineering purposes. The proposal to introduce new differential
rates for stabilised materials or for combustion residue from incineration should be supported, as this would further encourage and support the development of landfill diversion and treatment infrastructure.

**The intention to set tax rates in subordinate legislation and in “such a way that rates will follow closely UK rates”;**

9. This would be welcomed as it would prevent cross border trading and would prevent market distortion. It is however essential that subordinate legislation is enacted promptly with new proposed rates communicated well in advance and projected for at least 5 years to allow for Local authorities to project financial outlay and affordability and to measure the impact of proposed future waste treatment infrastructure.

**The power in the Bill to establish more than two tax rates and to vary the list of material qualifying for different tax rates in subordinate legislation;**

10. This requires further clarification as it could have a significant impact on treatment options for residual waste. Scottish Local Authorities are currently procuring long term treatment plants and cognisance should be taken of long term financial planning and affordability. e.g. a lower tax rate could influence methods of treatment such as mechanical biological treatment to reduce biodegradability. The proposal to introduce new differential rates for combustion residue from incineration should be supported as this would further encourage and support the development of landfill diversion and treatment infrastructure.

**The provisions which will allow the tax authority to pursue taxes evaded through the illegal dumping of waste;**

11. This would be welcomed along with a more concerted effort in relation to prosecuting offenders to ensure that the punishment is more expensive than the savings made from continuing to commit environmental crime.

**The list of activities and materials which are exempt from landfill tax;**

12. Further clarity is required over specific materials particularly in relation to exemptions due to engineering purposes. This is to avoid future challenges to “engineering” materials used at landfill sites.

**The Scottish Landfill Communities Fund;**

13. The Landfill Communities fund should ensure there is a balance demonstrated between communities directly affected by proximity to landfill sites and encouraging behavioural change in the general population of Scotland. It should also allow the effects of fly tipping to be tackled in problem areas.

**The role of Revenue Scotland in the administration of the tax;**

14. Close engagement will be required with Revenue Scotland and Local Government should be represented on the Board of Revenue Scotland. This will allow for Local Authority engagement and give support to the new organisation.

**The role of SEPA in the administration of the tax;**

15. Accepted, provided that sufficient funding and expertise are transferred to the organisation, in order to support the new burden.
**The formula for calculating the adjustment to the block grant;**

16. The structure of the Scotland Act 2012 block grant deal should further consider the continuing success in Scotland of the Zero Waste agenda which points to a clear funding gap for the Scottish Government post 2015 which needs to be addressed and also as a minimum a clear commitment given by the Scottish Government that any potential shortfall in anticipated yield will not be passed on to local government.

**The financial implications of the Bill as estimated in the Financial Memorandum.**

17. Local Government would wish to see grants increasing to accommodate increasing burden on local authorities brought about by landfill tax charges. As landfill tax will be diminishing due to the ban on biodegradable material going to landfill Local Authority would be seeking assurances that this tax will not be replaced by further taxation on new technologies commissioned to treat waste.
1. RSPB Scotland is part of the RSPB, the largest wildlife conservation organisation in Europe with over one million members, around 90,000 of which are in Scotland. We campaign on issues affecting wildlife and the natural environment both at home and abroad, carry out scientific research, education, land management and policy advocacy, and promote the conservation of birds and biodiversity.

2. RSPB Scotland welcomes this opportunity to give evidence to the Finance Committee. We responded to the consultation, A Landfill Tax for Scotland in January this year. A copy of that response can be viewed at http://www.rspb.org.uk/ourwork/library/briefings.aspx or on request from allan.whyte@rspb.org.uk.

Whether the Bill is consistent with the four principles underlying the Scottish Government’s approach to taxation – certainty, convenience, efficiency and proportionate to the ability to pay

3. We feel that on the whole the Bill is consistent with the aforementioned four principles. The tax is a working example of the hypothecation in action, whereby money from an environmental ‘bad’ is able to be used to assist the delivery of environmental ‘good’ in the form of projects that directly benefit biodiversity and communities in the vicinity of landfill sites. The taxation of waste-to-landfill also encourages less waste which in itself benefits the natural environment.

The decision not to introduce significant changes to the form or structure of the existing UK Landfill Tax

4. We agree that no significant changes are required and that the tax is an effective mechanism by which to change behaviour, reduce the undesirable practice of waste-to-landfill, whilst encouraging the reduction, re-use and recycling of materials.

The use of the same list of qualifying materials as specified in the Landfill Tax (Qualifying Material) Order 2011

5. No comment from RSPB Scotland

The intention to set tax rates in subordinate legislation and in “such a way that rates will follow closely UK rates”

6. We agree with this approach. Altering rates may encourage the cross-border transfer of waste. Depending on how the rates were set, this would either lead to a loss of revenue from Scotland or an increase in the amount of landfill waste within Scotland. In addition large scale transfer of waste over large distances would increase the carbon footprint of waste handlers through increased emissions. All of these scenarios are undesirable.
The power in the Bill to establish more than two tax rates and to vary the list of material qualifying for different tax rates in subordinate legislation

7. No comment from RSPB Scotland

The provisions which will allow the tax authority to pursue taxes evaded through the illegal dumping of waste

8. We agree with these provisions which will lead to the development of appropriate legislation. We support a robust approach to the implementation and enforcement of environmental regulations, without which evasion/avoidance would likely be more prevalent, which in turn would prevent the tax achieving its objectives.

The list of activities and materials which are exempt from landfill tax

9. No comment from RSPB Scotland

The Scottish Landfill Communities Fund

10. Taxing waste going to landfill encourages us to produce less waste while delivering positive environmental benefits. It is a good working example of a hypothecated or ‘ring-fenced’ tax – it has compensated for an environmentally damaging activity by funding projects which improve the environment for the benefit of biodiversity and the communities who live near landfill sites. In particular, allowing landfill operators to contribute towards environmental projects through the Landfill Community Fund (LCF) has enabled valuable biodiversity work to take place across Scotland and delivered many positive environmental outcomes.

11. It is worth noting that this has the added benefit of helping drive forward the Government's environmental objectives at no extra cost to the public purse, since Landfill Tax is classed as private money. This also puts successful applicants to the LCF in a unique position to make government money go further. For example, an organisation in receipt of funding from Scottish Natural Heritage could deliver more on a particular environmental project through having access to the private funding stream of the LCF. In addition, a successful application to the LCF can often be used as a tool to attract matched funding from other sources.

12. In 2010/11 the potential value of credits available through the Landfill Community Fund, and therefore available for project applications, was £74.25 million (around £4m in Scotland). For nature conservation organisations the LCF has therefore been a lifeline at a time when funding for the natural environment is being squeezed ever more tightly, and is one of the few remaining funding streams for biodiversity work. Biodiversity objectives should be a priority of any similar hypothecated scheme in Scotland and need not infringe upon any community benefit, as healthy biodiversity in itself would deliver positive environmental outcomes for nearby communities.

The role of Revenue Scotland in the administration of the tax

13. We recognise that Revenue Scotland would be the obvious overarching administrative authority. Through previous discussions/meetings we understand that Revenue Scotland intend to appoint SEPA to administer Landfill Tax in Scotland. We would support this given the expertise and information that SEPA currently hold with regard to landfill in Scotland.
The role of SEPA in the administration of the tax
14. The current administration of the tax is ungainly and costly (it costs 2% of the value of the Landfill Communities Fund to administer). By aligning the reporting of the landfill tax and the credit system, the administration would be made more efficient. This could be achieved by ensuring that Landfill Operators report tax collections and credits claimed to Revenue Scotland/SEPA. If recipients of any contributions also reported to the same body, reconciliation would be a simple exercise.

15. As Distributive Environmental Bodies (DEBs) distribute the vast majority of LCF funding in Scotland and hold considerable experience in adhering to the current regulatory stipulations, it is argued that regulation in its current form is excessive. Regulation in a future Scottish system would be much more efficient if based on a more self-regulatory system (given the ease and transparency of reconciliation). One, suitably experienced and qualified person could be employed (possibly on a part-time basis only) to analyse, resolve and report any issues that do arise. This would save thousands of pounds that could be used for the benefit of the environmental/community projects rather than burdensome administration of the scheme.

The formula for calculating the adjustment to the block grant
16. No comment from RSPB Scotland

The financial implications of the Bill as estimated in the Financial Memorandum
17. No comment from RSPB Scotland
FINANCE COMMITTEE CALL FOR EVIDENCE ON THE LANDFILL TAX (SCOTLAND) BILL

SUBMISSION FROM SCOTTISH ENVIRONMENTAL SERVICES ASSOCIATION

Introduction
1. The Scottish Environmental Services Association (SESA) is the trade association representing Scotland’s waste and secondary resource industry. Driven by EU environmental law, we are a leading partner in Scotland’s transformation from a disposal to a zero waste society: we have helped Scotland’s household recycling rate increase to over 40%.

2. Two out of every three voters in Scotland believes the waste management services our Members provide in partnership with local authorities is the most valued local service.

Opening remarks
3. The landfill tax arguably represents one of the greatest levers available to influence the management of waste in Scotland and across the UK, as the landfill tax escalator has made viable more sustainable waste solutions that would otherwise remain undeveloped.

4. The standard rate of landfill tax has been rising by £8 a year until at least £80/tonne by 2014, where a floor will be placed at this rate. SESA suggests that the floor under the landfill tax rate should remain to act as a long term driver to encourage investment in alternative waste infrastructure.

5. SESA recommends that:
   • the landfill tax escalator should not be extended beyond 2014, as further tax increases would penalise waste producers and increase costs for local authorities during a time of financial strain. The current landfill tax escalator already acts as a strong disincentive to landfill;
   • the Scottish landfill tax system should be consistent with the rest of the UK;
   • clearer guidance is made available to the industry on the range of materials that qualify for the lower rate of landfill tax.

whether the Bill is consistent with the four principles underlying the Scottish Government’s approach to taxation – certainty, convenience, efficiency and proportionate to the ability to pay;

6. The Scottish Government appears to have drafted the Bill as an enabling framework, with specific detail on how the new tax regime might apply in practice to follow later in secondary legislation. As the Bill offers the industry little in the way of certainty then we would have to argue that it is not consistent with the principles described above.

7. We would much prefer to see greater clarity and detail in primary legislation to inform the democratic process. The Bill instead seeks wide executive powers where the likely character of their execution remains opaque.
the decision not to introduce significant changes to the form or structure of the existing UK Landfill Tax;

8. SESA strongly supports this approach. The cost of waste management in Scotland should be broadly the same as the rest of the UK: environmental criminals might otherwise exploit regulatory arbitrage between Scotland and England, leading to both “waste tourism” and higher levels of flytipping.

the use of the same list of qualifying materials as specified in the Landfill Tax (Qualifying Material) Order 2011;

9. As above, as most of SESA’s Members operate on a UK-wide basis we support a consistent approach across the UK to implementation and regulation of landfill tax. However, we suggest that there is scope for the Scottish and UK Governments to work closely together to provide the industry with much clearer practical guidance on the materials and corresponding properties (e.g. physicochemical) which qualify for the lower rate of tax.

the intention to set tax rates in subordinate legislation and in “such a way that rates will follow closely UK rates”;

10. SESA supports the Scottish Government’s intention to set landfill tax rates which mirror that of the UK. However, the reference above to rates which “follow closely” UK rates remains rather ambiguous and fails to provide the industry with certainty or clarity of the new taxation landscape. This potentially undermines investment decisions in alternative (i.e. non-landfill) waste treatment capacity.

11. If certainty is indeed an underlying principle of the Scottish Government’s approach to taxation it appears somewhat of a curious omission that there is nothing on the face of the Bill to indicate what tax rate will apply from 2015, or even clarification that landfill rates will in fact mirror that of the UK. Instead, a rather tentative attempt to provide assurances to the industry is relegated to the Bill’s explanatory notes.

12. The landfill tax arguably represents one of the greatest levers available to influence the management of waste in Scotland, as the landfill tax escalator has made viable more sustainable waste solutions that would otherwise remain undeveloped.

13. The absence of any reference in the Bill to the landfill tax rate is all the more curious given Mr Swinney’s recent comments that the landfill tax was a cornerstone of Scotland’s Zero Waste Plan.

the power in the Bill to establish more than two tax rates and to vary the list of material qualifying for different tax rates in subordinate legislation;

14. The price differential between landfill and non-landfill waste management options is a key driver for delivering alternative (non-landfill) waste infrastructure. Therefore, in seeking to introduce different rates for certain materials we urge the Scottish Government to carefully consider the economic implications of price variation for different materials. As above, criminals and others might seek to exploit significant regulatory and price variations in the cost of landfill disposal across the UK.
15. SESA fully understands the Scottish Government’s ambitious zero waste agenda, but cautions against introducing too much complexity into the Scottish landfill tax system, as it would become harder to administer.

*the provisions which will allow the tax authority to pursue taxes evaded through the illegal dumping of waste;*

16. Illegal waste management activity is a national problem requiring strong leadership and resources sufficient to create a climate where the fear of being caught is high. With the introduction of new, higher environmental standards and the increase in the landfill tax this has never been so important.

17. We believe that more resources should be invested in tackling illegal waste management activity to provide a high level of protection for communities and responsible waste management companies across the country. We support proposals in the consultation to allow recovery of avoided tax from illegal dump sites.

*the list of activities and materials which are exempt from landfill tax;*

18. The tax exempt materials and activities contained within clauses 7-10 (part 2) directly replicate relevant provisions of the Finance Act 1996, and remain fit for purpose.

*the Scottish Landfill Communities Fund;*

19. We strongly support the continuation of the Landfill Communities Fund (LCF) which reaches many communities which otherwise are unable to obtain funds to improve local amenities and biodiversity. The LCF has become a critical source of funds for a wide range of organisations and delivers those funds in a highly cost effective manner and with great integrity. The Fund’s widely acknowledged success can be further built up with the proposed extension of the credit limit.

20. While there is no direct reference in the Bill, we understand that broad powers conferred under clause 20 would be used by the Scottish Government to change the delivery, regulation and eligibility of projects under the LCF.

21. SESA notes that the current delivery model has been tried and tested over many years and there is general agreement amongst landfill operators and fund recipients that the current model works very well.

22. We therefore do not support proposals to extend eligibility for funds beyond the existing 10 mile radius or to use a proportion of the LCF to support the Scottish Government’s strategic environmental objectives. The relatively small fund would be diluted by extending its remit, leaving less available to those communities experiencing the most direct disbenefit.

*the role of Revenue Scotland in the administration of the tax;*

23. No comment.
the role of SEPA in the administration of the tax;
24. Though details are lacking in the Bill, we understand that the existing self-assessed approach (for tax liability) could be replaced by a central system, in which SEPA would be responsible for calculating an operator’s tax liability.

25. SESA is not convinced that proposals for a centrally assessed system would offer any advantages over the current system and, in particular, is concerned that SEPA would lack the necessary resources and technical expertise to carry out proposed new landfill tax assessment duties. Additional resources would need to be in place to handle any disputes or appeals associated with SEPA’s assessment of tax liability.

26. We note that the self-assessed approach is used by companies to calculate a whole range of existing tax liabilities and the Scottish Government has not put forward a robust case to suggest why landfill tax liability should be handled any differently. Furthermore, there is no evidence presented in the accompanying impact assessment to suggest that the current self-assessed system is ineffective or subject to abuse. In fact, page 27 of the explanatory notes confirms that compliance rates are high under the existing tax system.

the formula for calculating the adjustment to the block grant;
27. No comment.

the financial implications of the Bill as estimated in the Financial Memorandum.
28. We are not convinced by the case that the new system would reduce administrative burdens on landfill operators (page 27, paragraph 59) if, as proposed, the Scottish Government intends to introduce differential rates of tax on a range of specified mat
1. The LCF provides benefits to communities all across Scotland by protecting and enhancing ecosystems and by extension the ecosystem services that flow from them. Importantly this is one of the very few funding streams that supports wholly biodiversity-related projects. This could prove vital for Scotland if it is to meet the Convention on Biological Diversity binding “Aichi Targets” which underpin the Scottish Government’s Scottish Biodiversity Strategy.

2. To date, the Scottish Wildlife Trust has been awarded circa £3.6 million of LCF grant aid, with £1.2 million going to specific biodiversity projects. LCF funding has provided essential support to many of the Trust’s major biodiversity initiatives, such as the Scottish Beaver Trial. The other £2.4 million awarded to the Trust has funded the provision, maintenance and improvement of general public amenity which allows local people greater access to wildlife.

3. Without the LCF it is unlikely that many projects which have delivered significant benefits for communities and biodiversity would have gone ahead. These projects have secured employment in a range of sectors and mobilised significant levels of community volunteering.

4. Any move to increase funding for the environment, such as extending the credit limit of the LCF, should be encouraged as money is being increasingly restricted elsewhere in the natural environment sector. This will be especially vital if proposed cuts to elements of Pillar 2 of the Common Agricultural Policy, which provides money for habitat creation and restoration (e.g. peatland restoration), go ahead.

How the management and regulation of LCF scheme might work in Scotland

Project delivery

5. Currently the LCF is delivered by experienced Distributive Environmental Bodies (DEBs) (e.g. WREN and Biffa), which operate at differing regional levels (e.g. the Angus environment trust covers all of Angus) and know their operational area and project client base (groups like the Scottish Wildlife Trust and the RSPB Scotland) well. They provide good value for money with management fees usually less than 10% of money they receive from landfill operators. In some cases, funds are also distributed directly by landfill operators to groups like the Scottish Wildlife Trust.

6. We would suggest that the scheme continues to be managed by DEBs who already hold significant expertise in the running and management regulations of the LCF. They could enforce the regulations agreed in Scotland through stipulations in contracts that non-compliance of the rules would result in a refusal to pay grant awards to applicants.
Regulation

7. One of the biggest issues regarding the present operation of the scheme is the perceived over regulation. While regulation is crucial to ensure delivery of high quality projects and financial regularity, it is important that it does not obstruct the delivery of projects. We have concerns in relation to the current regulation model carried out by ENTRUST, which we believe is expensive, duplicates information-gathering and in the Trust’s opinion over-regulates the scheme.

8. ENTRUST currently scrutinise project applications and register projects. Their only regulatory role is to ensure that Landfill Tax Contributions are spent in compliance with the regulations. The first role is arguably superfluous - the guidance is clear and currently projects are registered with ENTRUST almost without exception. The present regulatory model acknowledges the lack of risk by permitting certified Environmental Bodies (EBs) (like ourselves) to self-register projects.

9. We would envisage that any future regulatory role could be streamlined by dropping the information collection and storage function currently being carried out by ENTRUST. Registration holders (such as the Scottish Wildlife Trust) would be obliged to hold all relevant information regarding their projects (as set out in a regulatory framework) and be required to present any such information upon demand should there be any concerns over compliance - or potentially through proportional audits.

10. We would suggest that financial probity could be ensured by EBs reporting receipt of contributions from DEBs direct to Revenue Scotland who reconcile these with contributions reported by Landfill Tax payers. The DEBs themselves would be able to demonstrate adherence to correct financial procedures by the fact that they are registered companies, subject to auditing and publication of accounts by the Scottish Government.

11. The Trust believes that a more efficient regulatory process such as that suggested above would ensure that more funding would be made available for project delivery as opposed to the process of delivery. This is important given that the focus of the scheme should remain one that empowers communities and delivers biodiversity improvements for the benefit of all.

Examples of Scottish Wildlife Trust Projects Supported by the Landfill Communities Fund:

Cumbernauld Glen – Access Improvement Project (also known as the mountain bike trial)

12. The Scottish Wildlife Trust had identified damage done by mountain bikers to the woodland understory at its Cumbernauld Glen reserve as well as a developing user conflict in the Glen between mountain bikers and pedestrians. The Trust sought to remedy this by applying for funding from the LCF, to provide a tailored, all-skill facility for mountain bikers to encourage them away from the wooded area that they had previously been damaged and away from footpaths popular with pedestrians. At
the same time access to the Abronhill entrance to the site was improved to make it suitable for walkers, cyclists and families with young children.

13. The Trust’s Community Woodland Officer actively encouraged local mountain bikers to participate in both the planning and design phases of the project and their input had a direct bearing upon the on the creation of the trails.

14. The bike trail is now used daily by various user groups including schools, local workers at lunch time, the police for training and by local families and children for recreation.

15. This LCF project has achieved multiple positive outcomes including: an increase in the use of the reserve for recreation and exercise, a reduction of conflict, increased safety for all user groups, allowing people a greater connection with nature and their local environment and an increase in the biological value of the area by removing non native conifers (from the mount biking site) and replanting with native species.

Scottish Beaver Trial
16. The SBT is a partnership project between the Scottish Wildlife Trust, the Royal Zoological Society of Scotland and the Forestry Commission Scotland to undertake a time limited, five-year trial reintroduction of Eurasian beavers (Castor fiber) to Knapdale, Mid-Argyll. The licence for the trial was granted by the Scottish Government in May 2008, with the first beavers being released in May 2009. The Trial will run until 2014. Over 50% of the funding for this project (over £1 million) has come from the LCF (Biffa award). It is highly unlikely that this project would have gone ahead without it.

17. This LCF funded project has allowed scientific study of beaver re-introduction and some interesting data about their habits have been recorded. The GPS receivers fitted to the beavers has been particularly useful for recording movements. The environment created by the beaver has also provided and increased the range of habitats for wildlife including dragonfly, frogs, toads and birds such as the great crested grebe.

18. The project has also provided direct employment for 3.5 full time equivalent project officers as well as indirect employment for a range of support staff. Tourism in the local area has greatly benefited from the LCF funded trail and this has resulted in the Heart of Argyll Tourism Alliance recently running the ‘Beaver Tourism Experience’ at the Cairnbaan Hotel near Knapdale. The event was run to help local business make the most of the opportunities presented by wildlife tourism. The project also helps to “put Argyle on the map” as a visitor destination with Ray Mears and the BBC “Great British Winter” having recently filmed there.

19. The project also has an extensive education programme; over 13,000 people of all ages and abilities having participated in over 300 beaver trial educational events ranging from site visits to classroom learning.
Red Moss of Balerno boardwalk and interpretation
20. Red Moss of Balerno Wildlife Reserve is a lowland raised bog to the south of Edinburgh on the edge of the Pentland Hills Regional Park. Red Moss is the only lowland raised bog in Edinburgh and has been identified as a Priority Habitat under the European Union’s Habitats Directive.

21. In 1993, to encourage public understanding of lowland raised bogs and their conservation, the Scottish Wildlife Trust constructed a circular boardwalk on the reserve with interpretation panels describing various aspects of lowland raised bog ecology and management. In 2010 and 2012 LCF funding was used to upgrade the circular boardwalk which can now be used by wheelchair users.

22. Red Moss of Balerno is visited on a regular basis by many members of the local community, with the infrastructure enabling public access to a rare lowland raised bog habitat. The boardwalk upgrade made possible by the LCF, allows visitors (wheelchair users and school groups in particular) enhanced and safer access to the reserve.

Falls of Clyde cameras
23. Falls of Clyde reserve is in a spectacular woodland gorge setting. Due to the topography, Scottish Wildlife Trust staff identified that this site presented an obstacle to those unable to negotiate the steep 2 km path to the falls and peregrine nest site (especially younger, older and disabled visitors).

24. To solve this problem and to enhance the visitor experience to the reserve, funding was applied for from the LCF to install three cameras covering the falcons nest, the spectacular falls and a badger set. In addition to the images being live streamed to the visitors centre, pictures are also sent to the Scottish Wildlife Trust website to inspire and enthuse people from all over the world. The cameras are also used to help a team of volunteers safeguard the peregrine from wildlife crime.

Cathkin Marsh
25. Cathkin Marsh wildlife reserve is a beautiful area of fen and marshy grassland tucked amongst green fields between Glasgow and East Kilbride. The reserve is home to a wide variety of breeding birds, including snipe and reed bunting. The site is directly adjacent to a large landfill site. Almost all works that are carried out on the reserve and the wildlife ranger are paid for by the LCF.

26. This includes ecological monitoring of the site, maintenance of onsite infrastructure such as the bird hide and raised walkway, the promotion and implementation of a programme of events such as nature walks with local schools, coordinating volunteers at the reserve and the development of links with local interest groups.

27. The reserve is extensively used by a wide range of user groups from neighbouring Castlemilk and East Kilbride and is popular with nature lovers, joggers, families and dog walkers.
28. Further issues to consider in developing and introducing LCF in Scotland:

• The Scottish Wildlife Trust would like to see any new scheme including an option to register object D and object DA (amenity and biodiversity) projects together as many projects that deliver multiple benefits include elements of both.

• The guidance relating to the source of contributing third party payments should be reviewed to minimise the possibility of this requirement delaying or preventing implementation of projects.

• Consideration should be given to how the devolution of the tax to Scotland will be implemented without impacting negatively on projects. For example, for what period of time will projects in Scotland that have been awarded grants from LCF funds raised in England be able to utilise this money? It is our concern that DEBs may shy away from awarding long term contracts due to uncertainty over funding.

• Currently LCF spend in Scotland is significantly higher than the amount actually collected here (as some of the major DEBs have awarded grants here using funds raised in England). The Scottish Wildlife Trust would like to know if any estimates been made of the amount that will be available for projects in Scotland post-transition and how this compares to the current level of funding? If these estimates have been made Scottish Wildlife Trust would be keen to know if the level of funding is likely to increase or decrease and by how much.
1. In our role as Scotland’s environment regulator one of SEPA’s roles is the regulation of the waste management industry through permitting and enforcement of regulations. We already receive submissions of data and payment of fees from landfill site operators. We also have experience of developing and running systems which handle financial transfers from multiple sources and record income against different charging schemes as well as experience in operating debt recovery systems.

**Whether the Bill is consistent with the four principles underlying the Scottish Government’s approach to taxation – certainty, convenience, efficiency and proportionate to the ability to pay**

2. We believe that the Bill is consistent with the Scottish Government’s four principles of taxation. By replicating many of the existing features of the current landfill tax system, the Bill will provide certainty, convenience and efficiency to landfill site operators who currently already pay landfill tax.

3. By encouraging material away from landfill sites towards other reuse, recovery and recycling options, the Bill will aid delivery of Scotland’s Zero Waste Plan and provide environmental efficiencies.

4. Alternatives to Landfill are currently expensive. The Bill, by continuing the existing Landfill Tax rates, makes the alternatives to Landfilling more proportionate, thereby encouraging alternative technology development and the utilisation of existing alternative facilities.

**The decision not to introduce significant changes to the form or structure of the existing UK Landfill Tax**

5. The existing Landfill Tax is seen by all stakeholders as an environmental, “green tax”, which works and delivers development of alternatives to landfill, compensates those communities affected by landfills and generates revenue. Keeping a similar structure and form for the tax makes implementation of the Scottish Landfill Tax more straightforward for all stakeholders, reduces the burden and cost on the operators of landfills and the Government.

**The use of the same list of qualifying materials as specified in the Landfill Tax (Qualifying Material) Order 2011**

6. In order to maintain consistent compliance and regulation of the landfill tax and to avoid confusion when the tax is transferred to Scotland, it is logical that changes are kept to a minimum. The existing Landfill Tax (Qualifying Material) Order 2011, which specifies what material qualifies for landfill tax at the lower rate should be broadly adopted. However, to encourage the proper disposal of asbestos it would benefit from being taxed at the lower rate to ensure that more material is disposed of safely in a controlled legal manner rather than being stockpiled at the place of production or disposed of illegally.

**The intention to set tax rates in subordinate legislation and in “such a way that rates will follow closely UK rates”**

7. The intention to set tax rates in subordinate legislation is a practical way of ensuring that rates can be changed due to budgetary requirements or if Ministers decide there are benefits to changes at a later date. It allows for changes in the UK tax rates to be reflected quickly in the Scottish system to minimise waste tourism.
The power in the Bill to establish more than two tax rates and to vary the list of material qualifying for different tax rates in subordinate legislation

8. The existing two tiered charging should be adopted broadly as at present, to ensure a consistent adoption of the landfill tax in Scotland and to prevent undue complexity in the handover of administration of the tax. However there may be an opportunity for subsequent change. For example wastes which could be put to productive use, such as incinerator bottom ash could be brought into the standard rate of tax instead of the lower rate. There is an argument that wastes for which landfill is the only legitimate waste management option (e.g. asbestos) should be charged at the lower rate. There are unlikely to be many such wastes.

The provisions which will allow the tax authority to pursue taxes evaded through the illegal dumping of waste

9. Recent prosecutions and ongoing investigations have highlighted the fact that illegal landfill sites are operating on a large scale. While SEPA have the powers to instigate environmental enforcement action on these sites, currently HMRC cannot collect tax from operators whose sites are not permitted. This actively encourages large scale illegal dumping as the tax avoided and the relatively small fines imposed by the courts make the activity financially attractive. This causes pollution of the environment, creates an unfair commercial platform, removes potential recyclate and results in lost resources, undermining the aim of achieving a sustainable Scotland. It also reduces the amount of tax revenue raised.

10. SEPA would urge the Government to take this opportunity to address this issue by including illegal deposits of waste within the definition of a taxable deposit as outlined in the Bill. This would be a major boost in attempts to combat environmental crime.

11. A further tax avoidance scheme is the use of excessive material in activities which are registered as exempt from the Waste Management (Scotland) Regulations 2011, especially paragraph 9 and 19 exemptions. Better definition of the scope of these activities and the maximum quantity of materials they can accept would help address this issue as well as improving environmental controls and promoting better use of waste materials. Activities which do not comply with the exemption criteria are licensable and could fall into the revised definition of taxable deposits. SEPA would encourage the tightening of existing exemption criteria to maximise the benefits of the illegal waste provisions outlined in the Bill.

The list of activities and materials which are exempt from landfill tax

12. The proposals outlined in the Bill for activities which are exempt from landfill tax appear appropriate and consistent with the existing Landfill Tax exemptions, apart from the absence of an exemption for visiting NATO forces.

The Scottish Landfill Communities Fund

13. SEPA supports the proposals to establish a Landfill Communities Fund in Scotland and to extend the limit for contributions to the fund. We would welcome the opportunity to discuss the structure of this fund further with the Scottish Government.

14. There may be benefits in splitting the fund to allow a proportion of the money to be assigned to strategic national projects whilst retaining the majority of the fund for individual, local projects.
15. A single distributing environmental body could manage the Landfill Communities Fund which would fund applications for specific individual projects. A separate Environmental Restoration Fund could direct funding to deliver national objectives, although this funding may be constrained by State Aid Regulations.

16. This approach retains the link to projects in communities local to landfill sites, providing some compensatory benefit to these communities, whilst also allowing for funding of wider environmental objectives which are not specific to any one location.

17. However it would result in the reduction of the number of distributive environmental bodies and potentially lose close community links to individual Landfill Operators. Lack of close relationship may make funding less likely.

18. Retaining an independent regulator for the Communities Fund is likely to have benefits in terms of State Aid Regulations. Funding obtained through the communities fund could be used as match funding for other bids. This should increase the proportion of projects that are able to be fully implemented.

19. The functions of the regulator would depend on how the fund is set up. However a good starting point would be the functions and responsibilities currently undertaken by ENTRUST.

20. The 10 mile eligibility radius is not wholly effective in ensuring that those most affected by landfill sites benefit from projects. For example a single landfill site on the edge of Glasgow brings almost the entire city within the eligibility radius, despite most parts of the city being wholly unaffected by the site. By contrast some rural sites will have few communities within a 10 mile radius but site traffic may impact on properties at greater distances.

21. Given the changing demographics of the industry, there will be fewer communities within 10 miles of an active landfill but increasing numbers close to closed sites. As such SEPA does not support the retention of the 10 mile eligibility radius.

22. It may be appropriate to require a proportion of the fund to be retained for projects in communities affected by active landfill sites, but it is also important that the fund is open to projects to off-set legacy issues related to closed sites. The fund should also be able to fund wider strategic environmental priorities such as climate change, to which landfill emissions have been a contributing factor.

The role of Revenue Scotland in the administration of the tax

23. SEPA supports the proposed role of Revenue Scotland as the administration authority in Scotland. In order to deliver the proposed duties it will be important to clearly define responsibilities between Revenue Scotland and agencies given the authority to collect tax on their behalf, such as SEPA. This will require the sharing of information between agencies and as such the importance of ensuring compatibility of information systems should be stressed.

The role of SEPA in the administration of the tax

24. SEPA is well placed to administer landfill tax collection for the following reasons:

25. SEPA already receives submissions of data and payment of fees from landfill site operators. The data returns relate to the types & quantities of waste that sites have received. There is a natural synergy between this data collection role and the administration of the landfill tax returns.
26. SEPA currently issues c10,000 invoices per annum for licensed activities, including annual subsistence charges for landfill sites. The organisation has experience of developing and running systems which handle financial transfers from multiple sources and record income against different charging schemes. We also operate debt recovery processes.

27. There is a natural synergy between SEPA’s waste site licensing, data collection role and the administration of the landfill tax. There may also be scope to align enforcement powers between environmental and tax offences at landfill sites by adding failure to comply with tax obligations as a reason why SEPA could suspend a landfill permit. This would avoid confusion or complication of SEPA’s enforcement procedures.

**Landfill tax administration by SEPA would require**

28. Systems to record landfill tax data returns and to facilitate payments would be required along with procedures to ensure the efficient operation of these systems. Audits of landfill operators’ records would be required. A process to deal with queries from operators and to agree site-specific arrangements for operating tax exempt areas would also be needed.

29. As well as the legislation required to give SEPA the duty to collect landfill tax, SEPA officers would need to be given authority to audit landfill tax records. This could be done through amendment of section 108 of the Environment Act or by the provision of additional powers of entry and examination in other enabling legislation.

**The formula for calculating the adjustment to the block grant**

30. The Bill or the associated Financial Memorandum does not deal with the Scottish Block Grant adjustments. We are unaware of any agreement between the Ministers of the Scottish and United Kingdom Governments on the formula for calculating the Block Grant adjustment and are therefore unable to comment further. We trust that any adjustment will allow for the proposed Revenue Scotland, Registrars of Scotland and SEPA set up and running costs.

**The financial implications of the Bill as estimated in the Financial Memorandum**

31. The Financial Memorandum would appear to be a fair assessment of the likely implications of the Landfill Tax.
Whether the Bill is consistent with the four principles underlying the Scottish Government’s approach to taxation, i.e. – certainty, convenience, efficiency, and proportionate to the ability to pay.

1. Generally yes, the Bill is proposing a continuation of landfill tax policy that was previously adhered to by the UK government and which has proved successful in diverting waste from landfill towards more sustainable forms of waste management.

The decision not to introduce significant changes to the form or structure of the existing UK landfill tax.

2. We would support this decision for similar reasons to those outlined in our response to Q1 above. In addition, if different landfill tax rates were applied in Scotland to other areas of the UK this would encourage cross border transport and disposal of wastes which would work against the proximity principle of waste management and other sustainable waste management policies.

The use of the same list of qualifying materials as specified in the Landfill Tax (Qualifying Material) Order 2011.

3. We are in agreement with this approach.

The intention to set tax rates in subordinate legislation, and in such a way that “rates will follow closely UK rates”

4. We only know that the landfill tax will reach a level of £80 per tonne for the year 2014/15, and therefore any further increases in the landfill tax beyond this date has the potential for the Council to have to pay for these tax increases at the expense of providing other services.

The power in the Bill to establish more than two tax rates and to vary the list of material qualifying for different tax rates in subordinate legislation.

5. We generally support this approach as it would provide flexibility for future changes in waste management policy and direction.

The provisions which will allow the tax authority to pursue taxes evaded through the illegal dumping of waste.

6. We are content that the provisions detailed are sufficient to allow orders to be made to recover landfill tax from any illegal dumping of waste activities.

The list of activities and materials which are exempt from landfill tax?

7. The list of materials qualifying for the lower tax rate appears comprehensive and we do not see the need for any refinements. However, inert materials could perhaps be better used in the production of aggregates, building blocks, filtration equipment or landscaping, than going for landfill disposal and perhaps an assessment of the alternative uses for these inert materials is required.
The Scottish landfill Communities Fund
8. Yes, we very much support maintaining a Landfill Communities Fund and extending the credit limit for contributions to the Fund.

9. We would also suggest that the 10 mile radius limit is too restrictive and this should be extended to the full area of any local authority where the landfill site is located as well as the ten mile radius.

The Role of Revenue Scotland in administering the tax
10. No particular comment other than the need for Revenue Scotland to work closely with the Scottish Environment Protection Agency (SEPA).

The role of SEPA in the administration of the tax
11. The proposal to appoint SEPA as the “Collection Agent” for the landfill tax should help to improve clarity between the waste authority and landfill operators.

12. With SEPA acting as the “landfill tax collector” they will be able address issues of clarity through landfill site licences and PPC’s in discussion with the landfill operators.

The formula for calculating the adjustment to the block grant
13. No comment at this time.

The financial implications of the Bill as estimated in the financial memorandum
14. The Council is already committed to reducing waste going to landfill to only 5% by the year 2025 in accordance with the requirements of the Zero Waste Plan, and we therefore would not wish to see increasing expenditure on landfill tax in future years that would impact on the delivery of other council services.
FINANCE COMMITTEE CALL FOR EVIDENCE ON THE LANDFILL TAX (SCOTLAND) BILL

SUBMISSION FROM SOUTH LANARKSHIRE COUNCIL

1. The Bill seeks to continue the main principles of the existing Landfill Tax and as such will offer existing operators certainty and continuity. In the future this legislation provides the powers to introduce new tax rates or change the materials which are subject to tax. It is vital that where this occurs that adequate consultation takes place to ensure that taxes continue to be proportionate to the ability to pay.

2. Landfill Tax has been operating in the UK for over 15 years and has been a driver for local authorities and other organisations to increase recycling and divert waste from landfill to new levels that demonstrate sound waste management practice. Significant changes to the form or structure are therefore not required.

3. The categories outlined in the Landfill Tax (Qualifying Material) Order 2011 adequately cover the materials and therefore this same list is relevant for use going forward.

4. While there are advantages in setting landfill tax rates that will follow closely UK rates i.e. consistency and continuity for National operators, Scottish local authorities will essentially dispose of waste within landfills and therefore operate within a Scottish system. The opportunity therefore exists for the Scottish Government to set different rates in Scotland.

5. While it is recognised that power in the Bill provides the opportunity to establish more than two tax rates and to vary the list of qualifying material, the need to introduce significant changes should only be done through discussion with relevant stakeholders.

6. Ultimately the polluter pays principle should apply and where possible all taxes that apply to waste disposed of responsibly or irresponsibly should be pursued by the tax authority. In current cases where it is not possible to identify those responsible for illegal dumping of waste the local authority will pay the relevant disposal costs including landfill tax. To be in a position to achieve this approach will require adequate resources to focus on the perpetrators and follow this up at a local level with an appropriate joined up approach between Local Authorities, Police, SEPA, etc.

7. The list of activities and materials which are exempt appear to be reasonable and will not affect the overall business of Local Authorities.

8. This Bill provides the Government with an opportunity to consider how the Scottish Landfill Communities Fund operates and is managed and whether the system for Communities accessing funding can be streamlined and improved.
9. It would seem appropriate that Revenue Scotland, in its role as the tax authority for the administration of Scotland’s devolved taxes, will be best placed to have the responsibility for the administration of the tax for landfill.

10. It is not clear what SEPA’s input will be in the administration of the tax. SEPA will have a role to play in the regulation and operation of landfills i.e. what is disposed of, etc. but it is not entirely clear what role it will perform in the administration of tax which essentially should be the responsibility of a financial institution.

11. The Bill itself does not include specific details on how the Scottish Block will be trimmed to remove the UK Landfill Tax element. This will be discussed between the Scottish and UK Ministers however it is crucial that the impact on Scotland can be covered by the additional tax raised in Scotland. It is particularly important to ensure that future estimations of collection of Landfill Tax in Scotland are robust, especially in light of efforts to reduce down landfill, as this will in turn reduce the level of Scottish Tax collectable. The Scottish Government must cover any shortfall in Scottish Funding from the change in tax and ensure that any shortfall in expected yield is not simply passed on to Local Government.

12. As the bandings have yet to be identified for the Scottish Landfill tax it is difficult to establish whether there will be additional costs for councils. The paper states that as the tax already exists, there will be no significant change in net tax costs to local authorities or the wider public sector from this Bill. If this is the case experienced then there should be no issue for councils.
1. CIWM (Scotland) thanks the Finance Committee for the opportunity to provide a written response to their letter of the 24th April 2013. CIWM (Scotland) provided written evidence to the Scottish Government’s consultation on the Scottish Landfill tax in November 2012 and on this occasion respond to the questions as outlined in the correspondence.

2. The Bill, as presented, provides the basis for the implementation of a replacement Scottish landfill tax regime in Scotland, but much of the detail is to follow in subordinate legislation. For example the Bill makes no reference to any standard or lower rate of taxation nor does it provide any details of qualifying material or escalator, and we are left with the Policy Memorandum to advise us that at the time of introduction, the Bill and its subordinate legislation will broadly reflect that of the UK Landfill tax regime as it stands at present.

Whether the Bill is consistent with the four principles underlying the Scottish Government’s approach to taxation – certainty, convenience, efficiency and proportionate to the ability to pay

3. As it stands, and provided the Scottish Landfill Tax and its subordinate legislation remains consistent with the UK regime then CIWM (Scotland) believes the Bill is consistent with these principles.

The decision not to introduce significant changes to the form or structure of the existing UK Landfill Tax

4. This is a reasonable approach ensuring there is no disparity between the rest of the UK and Scotland in relation to the movement of wastes and the associated costs of disposal. It will also allow Scotland to adapt the tax in a considered and incremental manner to support the direction of future Scottish waste policy.

The use of the same list of qualifying materials as specified in the Landfill Tax (Qualifying Material) Order 2011

5. CIWM (Scotland) are broadly supportive of the existing list currently in use and welcome the consistency being offered and the opportunity to be consulted, if and when Scottish Ministers decide to modify the qualifying material list.

The intention to set tax rates in subordinate legislation and in “such a way that rates will follow closely UK rates”

6. The Policy Memorandum states that the Scottish Government will set rates at a level no lower than the Landfill Tax, but rates could be set higher in future with the possibility of establishing a third tax rate. This means the profile of taxation generated compared to the rest of the UK will shift through time. However, setting initial rates similar to the rest of the UK makes sense at this stage.
The power in the Bill to establish more than two tax rates and to vary the list of material qualifying for different tax rates in subordinate legislation

7. The suggestion made is that an additional rate for stabilised material might be needed. This is a reasonable approach since it gives the Scottish Government some flexibility to consider how best to manage waste which has not been thermally treated (for example), but has reached some degree of stabilisation in terms of its biodegradability. However, this opens up a wider debate on defining when waste has been stabilised. For the moment CIWM (Scotland) would support the ability to introduce a third rate, and will respond to any resultant consultation.

The provisions which will allow the tax authority to pursue taxes evaded through the illegal dumping of waste

8. As CIWM (Scotland) understands it, the Bill considers authorised and unauthorised landfill activities as being taxable disposals. HMRC guidance states that “any material which is deposited at a site which is not subject to a waste management licence or permit under environmental law is not liable to tax”. In the Bill waste disposed at permitted landfills and exempt sites and indeed unauthorised sites (presumably illegal disposal activities) would all become taxable disposals. CIWM (Scotland) supports this approach in principle, but presumably disposal at unauthorised sites at the present time is already an illegal activity and SEPA would need to provide additional resources in order to bring such activities into the tax regime and to apply any criminal sanctions. Subordinate legislation will need to define how the weight of such illegally disposed waste would be determined for taxation purposes.

The list of activities and materials which are exempt from landfill tax

9. These are reasonable and consistent with the existing regime.

The Scottish Landfill Communities Fund

10. CIWM (Scotland) supports such a scheme and welcomes the Scottish Government’s intention to allow a 10% increase to the amounts which can be directed through the scheme. No detail is provided on how the scheme will work and CIWM (Scotland) will respond to any future consultation.

The role of Revenue Scotland in the administration of the tax

11. As Scotland assumes devolved taxation powers, it seems reasonable for a body, Revenue Scotland, to be established. CIWM (Scotland) does note that the current landfill tax self-assessment and reporting scheme works well and would expect any assessment and reporting scheme introduced by Revenue Scotland and SEPA to not lead to any additional burdens on the landfill operators.

The role of SEPA in the administration of the tax

12. CIWM (Scotland) did express concern about this in our earlier consultation response, but clearly Scottish Government are of a view that SEPA is well placed to fulfil its environmental and fiscal regulatory responsibilities. Our principal concern is that the reporting of the taxable disposals does not result in increased administrative burden on the landfill operator. CIWM (Scotland) await the details of how Revenue Scotland and SEPA intend to administer the scheme, before commenting further.
The formula for calculating the adjustment to the block grant
13. This is a reasonable approach since the net tax loss/gain to both the Scottish and UK Governments remain zero when the transfer occurs.

The financial implications of the Bill as estimated in the Financial Memorandum
14. The income generated by the tax is in line with our understanding. As the Waste (Scotland) Regulations take effect, we can expect to see less revenue generated, but it is difficult to determine how much this will reduce by.

15. In terms of administrative costs, the Land and Buildings Transactions Tax (LBTT) will raise three times the revenue raised by the Scottish Landfill Tax, and given the number of stakeholders involved, most of the Revenue Scotland costs will be associated with the LBTT. If as suggested Revenue Scotland hand over much of the responsibility for collection to SEPA, then the running costs of £300k to SEPA seems reasonable. However, the Bill proposes illegal disposal as a taxable disposal, and there should be some provision to allow SEPA to pursue such illegal activity. The budgets make no provision for this.
FINANCE COMMITTEE CALL FOR EVIDENCE ON THE LANDFILL TAX (SCOTLAND) BILL

SUBMISSION FROM THE COMMUNITY RESOURCES NETWORK SCOTLAND

1. The Community Resources Network Scotland (CRNS) represents recycling and re-use organisations across Scotland on issues of sustainable community resource management. Most members of CRNS are social enterprises managing waste resources at a local level through recycling, re-use, composting, waste reduction and waste education activities. They prevent tonnes of valuable product and materials from ending up in landfill, create local jobs and other economic opportunities, and typically work to help those on low incomes or who are disadvantaged.

Proportionate to the ability to pay
2. Third sector organisations such as charities and social enterprises use the funds they raise to contribute to the common good. CRNS members, in addition, contribute to the Scotland’s Zero Waste strategy. CRNS asks that the legislation take account of the unique position of CRNS members, and similar organisations, and either waive landfill tax and VAT, or credit them through tax allowances. For while CRNS members are actively engaged in waste reduction, re-use and recycling, inevitably like any business, they have to dispose of some residual operational waste and the cost of doing this represents a significant outlay.

Scottish Landfill Communities Fund
3. An opportunity for strategic investment. CRNS believes that the introduction of a replacement fund provides an opportunity for a strategic approach to increasing the capacity and sustainability of those elements of the third sector committed to environmental objectives – see paragraph 8.

4. Beyond the 10-mile rule. In recent years the number of operational landfills has reduced and therefore the old 10-mile rule would mean that very few communities could actually benefit from such a fund, and it would seem appropriate to open the fund to organisations outside the 10-mile radius of landfills. However, given the strategic objective to drive down the volume of waste going to landfill, the value of the potential fund must diminish over time. To open the fund to a wide range of environmental organisations outside the 10-mile radius will mean a thinner allocation of a diminishing fund. CRNS recommends that the replacement fund is targeted towards those organisations outside the 10-mile radius which are demonstrably active in addressing the waste hierarchy to the benefit of their communities; that is, those organisations involved in waste reduction, re-use, and recycling.

5. Red tape. The new fund should be clear in its objectives, transparent in its operation, and simple to access. Too many funds are burdened by bureaucracy making it difficult for volunteer-led organisations to access them and meet the, often onerous, demands. Perhaps small sums could be distributed using a fast-track approach.
6. **Administration fatigue.** It is noted that Section 20 states that ‘environmental bodies’, are approved by the Tax Authority. CRNS broadly welcomes this approach to ensure the proper allocation of public funds. However any approval process should not go beyond what is currently required from Scottish Charity and Registered Company regulations to avoid an additional administrative burden. Indeed it would be welcomed if the Tax Authority could tap into the information already held by OSCR to avoid duplication of administration processes.

7. **Geographical equity.** Section 20 implies that individual landfill operators could gift environmental bodies sums of money. Whilst this was appropriate under the old regime we believe the establishment of a fund to which all qualifying organisations might apply would be more appropriate. This would remove any potential geographical bias. (See paragraph 4.)

8. **CRNS considers that the introduction of a new communities fund is an opportunity for community resource management organisations to become self-sustaining, and in strategic terms, a way to fund a step change in attitudes to resource management.**

9. It believes that there might be two complementary objectives for the replacement fund:

   - **Local/tactical:** fund organisations whose work embraces the waste hierarchy, in a fair and transparent way (see paragraphs 4-7) to develop and deliver local projects which will be to the benefit of the community.
   - **Strategic:** fund the community resource management sector to develop and implement an accreditation/certification scheme, in alignment with zero waste regulations.

10. The model CRNS has in mind will represent a strategic investment in the third/community sector by placing it in a self-funding position to influence and lead businesses in the sustainable use of resources.

11. Certificates will be awarded to businesses (initially from the SME sector) and third sector organisations which demonstrate commitment to and implementation of waste reduction, re-use and recycling in their business strategies and operations which both support and sustain employment and local communities as well as being economically sound.

12. The scheme will be self-funding with income streams from the validation/accreditation/certification process.
FINANCE COMMITTEE CALL FOR EVIDENCE ON THE LANDFILL TAX (SCOTLAND) BILL

SUBMISSION FROM THE SCOTTISH LANDFILL COMMUNITIES FUND FORUM

Whether the Bill is consistent with the four principles underlying the Scottish Governments approach to taxation – certainty, convenience, efficiency and proportionate to the ability to pay,
1. We believe the four principles to be laudable and appreciate that the Bill endeavours to ensure that the new Scottish Landfill Tax is consistent with them.

The decision not to introduce significant changes to the form or structure of the existing UK Landfill Tax,
2. Is we believe sensible as it simplifies the changeover from the UK to the Scottish tax.

3. In particular it will reduce the complexity and administrative cost for companies with operations in Scotland and elsewhere in the UK as the systems required will be broadly similar for both tax regimes.

The use of the same list of qualifying materials as specified in the Landfill Tax (Qualifying Materials) Order 2011,
4. Is we believe sensible for the same reasons as given in observation 2 and over and above that it will reduce the likelihood of cross border waste traffic aimed at taking advantage of whichever is the more attractive tax regime.

The intention to set tax rates in subordinate legislation and in such a way that rates will follow closely UK rates,
5. Is we believe sensible as it reduces the likelihood of cross border waste traffic aimed at taking advantage of whichever is the more attractive tax regime.

The power in the bill to establish more than two tax rates and to vary the list of materials qualifying for different tax rates in subordinate legislation,
6. Is we believe sensible as it may be deemed necessary at some future point to develop a graduated band of tax rates to reflect the level of environmental risk posed by various waste materials, as opposed to the simple two tier system used in the present UK Landfill Tax.

The provisions which will allow the tax authority to pursue taxes evaded through the illegal dumping of waste,
7. Are we believe sensible, we believe that the rigorous and consistent pursuit of evaded taxes associated with illegal dumping, at both the individual and corporate level, will in association with the application of existing laws against same, contribute to the reduction and hopefully eventual eradication of the practice of illegal dumping.

The list of materials and activities which are exempt from Landfill Tax,
8. We have no views on this
The Scottish Landfill Communities Fund,
9. We are supportive of the principles as set out in the Bill, which appear to broadly reflect the arrangements presently in existence for the UK Landfill Communities Fund which has been extremely successful throughout its 17 years of existence, exhibiting a high degree of probity with cost effective administration by the Distributing Environmental Bodies.

10. The popularity of the present LCF is due to its relative ease of access and principally because it empowers communities and delivers projects which benefit them directly. It is also true to say that the LCF has significantly levered major funds in many cases, which is due to its status as ‘private’ money. (We believe that the new Communities Fund could be established and run as per the principles set out in Appendix 1)

The role of Revenue Scotland in the administration of the tax,
11. We believe it appropriate for a Scottish Tax to be administered by a Scottish Agency.

The role of SEPA in the administration of the tax,
12. We believe it appropriate that SEPA should administer the tax and the new Communities Fund.

13. We believe that the administration of the new Communities Fund could be a relatively simple matter as the vast experience contained within the existing Distributive Environmental Bodies (who distribute over 90% of LCF money in Scotland) suggests that regulatory issues could be managed through efficient reporting systems and accessible support in the very few cases where there may be issues affecting applicants.

14. We would recommend aligning the reporting of the tax and the credit system. Landfill Operators will in future report tax incurred and credits claimed to SEPA and it would make sense in our opinion if EBs in receipt of contributions also reported to SEPA, as this would facilitate simple reconciliation of contributions made with receipts. In addition, the appointment of a suitably qualified, part time resource to receive, examine, resolve and report on any project related issues would we believe serve the need of applicants.

15. Financial reporting, monitoring and regulation arrangements cost 2% of the value of the existing LCF and 20% of its admin costs, not including costs related to the relationship between HMRC and Entrust and our proposal would achieve the same results more cost effectively. (Please see Appendix 1)

The formula for calculating the adjustment of the block grant,
16. We have no views on this
The financial implications of the Bill as estimated in the Financial Memorandum,
17. We note that the proposed costs are clearly presented and appear to represent better value for money than the present UK arrangements.
Appendix 1:

The Scottish Landfill Communities Fund Forum (SLCFF)
Proposed Distribution Model for a Scottish Communities Fund

The following proposal is made with the intention of providing a safe, secure, simple and accessible method for distributing Landfill Tax Credits in Scotland.

**Landfill Operator:**
It is proposed that Landfill Operators (LO) will contribute to a Communities Fund through Distributive Environmental Bodies (DEBs) who are registered/approved by SEPA and confirmed members of the Scottish Landfill Communities Fund Forum (SLCFF) and at the percentage of landfill tax determined by the Scottish Government (SG)

**Revenue Scotland:**
LOs will pay landfill tax to Revenue Scotland (RS) who will appoint SEPA to regulate LOs

It is proposed that SEPA would regulate DEBs as well as LOs. In this way, it is envisaged that there would be approximately 10 DEBs, which would make regulation fairly straightforward

**SLCFF:**
It is proposed that DEBs must be members of the SLCFF and through that agree to a Code of Conduct and formal audit requirements. It is further proposed that SEPA as Regulator would formally agree membership. In addition, it is envisaged that both the SG and SEPA would be appropriately represented on the board of the SLCFF, providing both strategic and policy input

**Projects:**
It is proposed that applicants to the fund apply directly to an appropriate DEB. In this way local communities can concentrate on devising and delivering locally desired initiatives whilst DEBs guarantee the financial probity, legal status and reporting necessary for a safe, secure, simple and accessible scheme.

**Ombudsman:**
The existing Landfill Communities Fund has an exemplary record of delivering high quality projects with the highest standards of probity, which is a testament to the knowledge, experience and standards of DEBs who have been responsible for over 90% of funding awarded over the last 16/17 years. Whilst this experience deserves respect, it is inevitable that from time to time applicants may have issues and to resolve those, it is proposed that a suitably qualified, part time Ombudsman is appointed to allow any issues to be aired. It is further proposed that this role would report any issues to SEPA who could then raise them as appropriate in their role as Regulator.

In conclusion we commend this Distribution Model for a Communities Fund to the Scottish Government as a simple cost effective mechanism which will maximise the benefits of the fund and ensure demonstrable probity.
1. The 10 Mile Radius:

- This is established guidance, not regulation
- It means within 10 miles of any registered landfill site whether active or not
- Most Contributors accept this guidance and practice it, as reported by our members
- Dis-amenity is considered to include Transfer Stations and Transport Issues and this tends to be proportionately applied when relevant

2. Landfill Communities Fund Expenditure in Scotland:

A figure of £4.5M was quoted at the meeting and this is an incorrect estimate. The true figure lies in excess of £6M per annum, however, it is likely that this discrepancy is explained by the £4.5M figure being only representative of those Distributive Environmental bodies based in Scotland and it does not include landfill tax money generated and spent in Scotland by organisations based elsewhere,
FINANCE COMMITTEE CALL FOR EVIDENCE ON THE LANDFILL TAX (SCOTLAND) BILL

SUBMISSION FROM SCOTTISH WILDLIFE TRUST – SUPPLEMENTARY EVIDENCE

What % of the Landfill Communities Fund might Scottish communities reasonably expect to benefit from?

1. Scotland's population is 8.4% of the UKs total population\(^1\).

In the absence of clear figures on total LCF credits (broken-down by geographic source), population size is a reasonable marker for expected landfill production and hence for expected credits available.

On that basis, one might expect Scotland to benefit from 8.4% of the disbursed Landfill Communities Fund awards\(^2\).

In recent years, what % of landfill communities fund allocations have been allocated in Scotland?

2. Although RSPB's submitted figures for 2010/11 suggested that Scotland was only getting 5.3% of the LCF “pot” i.e. Scotland was getting proportionally less than our 'share'. Subsequent to the Finance Committee meeting, SLCFF have clarified that these figures were incomplete as they overlooked the credits disbursed by those distributors (DEBs) which operate on a UK-wide basis (e.g. WREN, Biffa Award, Viridor Credits).

3. We would refer to the Consultation Response submitted by Peter Cox (WREN) (4\(^{th}\) Nov 2013) which drew upon a variety of sources and suggested that in 2010/11 c.12% of the disbursed credits were awarded to Scottish projects. This appears to be a net benefit to Scotland (and implies that credits linked to waste disposal outwith Scotland are being spent on Scottish projects). This supports our perception (which is based upon awards received by the Scottish Wildlife Trust).

Scottish Wildlife Trust’s concern:

4. The conflicting data above illustrates that the underlying evidence and statistics are opaque, and - given our role simply as a recipient charity – the Scottish Wildlife Trust is not best placed to give definitive analysis. However, we would wish to reiterate our understanding that in recent years there has been a net flow of landfill credits into Scotland, and voice our concern that the devolution of the tax collection will end this, effectively decreasing the LCF funding available to Scottish communities, charities and local authorities.

5. It has been indicated that the Scottish Government intends to increase the proportion of an operator’s liabilities that can be offset into the Landfill Communities Fund (by 10%). The Scottish Wildlife Trust welcomes this proposal but seeks comfort that any increased diversion of taxes into the LCF will be sufficient to at least maintain the levels of LCF spend available to those Scottish communities at disbenefit from landfill disposal.

Note. The above statistics are based upon LCF defrayed in a given financial year.

\(^1\) 2011 census results

\(^2\) This estimate does not take into account regional variability in recycling, nor regional variation in the take-up of the LCF scheme (which is a voluntary option for landfill operators)
Submission to the Scotland Bill Committee regarding the Landfill Communities Fund (LCF)

1. Thank you for an opportunity to provide to the committee information regarding the Landfill Communities Fund. I have read through the submissions from other interested parties, all of whom are excellent organisations in their field, but understandably the committee probably has little basis to make any considerations on anything other than the goodwill relating to this unique scheme.

2. I will endeavour to enhance the information you have, whilst trying to keep this brief and to the point. There are aspects where I have assumed the committee have a level of understanding or knowledge but I can elaborate wherever required. I will mention sources that should give confidence in the basis of my submission. I would add that this document does not in any way seek to influence any opinion regarding the future waste strategy for Scotland.

Background

3. The Landfill Tax, introduced in 1996, is administered by HM Revenue & Customs on the basis of a tax charge on waste going into landfill sites. The rate per tonne has been set by HM Treasury and there is a tax escalator in place until 2015, after which a floor has been proposed on the tax rate. The tax is collected by the Landfill Operators in a similar fashion to VAT, and a return is submitted to HM Revenue & Customs. At an agreed frequency (quarterly or annually), the Landfill Operators make payment(s) to Environmental Bodies (EB - organisations that are approved to distribute the foregone tax element). These EBs in turn seek to fund worthy capital based projects. There are specific criteria, the principle being that projects must be within 10 miles of a landfill site and the amenity must enjoy full public access for a minimum of 104 days per annum.

4. There have been a number of changes during the years, but now the Landfill Tax generates over £1 billion per annum, and a percentage of this tax is foregone to provide capital funding for a range of projects under the natural, built and social environments agenda. The value going into the LCF across the UK is approximately £72 million (as stated in HMRC tax Bulletins)

Scotland – estimated landfill tax levels

5. From a variety of trusted sources I have determined that the value of Landfill Communities Fund (tax diverted and treated as private funding) each year over the last 3 tax years, and expressed that figure as a percentage of the UK wide tax. With this information I can subsequently make an educated estimate on the Landfill Tax applicable each year. All figures expressed in £millions

<table>
<thead>
<tr>
<th>Tax Year</th>
<th>LCF (Scotland)</th>
<th>LCF (UK)</th>
<th>Percentage</th>
<th>Estimated Landfill Tax</th>
</tr>
</thead>
<tbody>
<tr>
<td>2008/09</td>
<td>£6.4</td>
<td>£66.4</td>
<td>9.65%</td>
<td>£95</td>
</tr>
<tr>
<td>2009/10</td>
<td>£7.4</td>
<td>£67.4</td>
<td>10.88%</td>
<td>£111</td>
</tr>
<tr>
<td>2010/11</td>
<td>£7.3</td>
<td>£71.0</td>
<td>10.22%</td>
<td>£117</td>
</tr>
</tbody>
</table>

(Source – ENTRUST, WREN, RSWT (for Biffaward), Viridor Credits, SITA Trust & HMRC Tax Bulletins) Note: The Landfill Tax calculations can only be estimates
because there are differing levels of tax based on the type of material going into landfill. The only accurate method is knowing the full breakdown of tonnages – which is unavailable from any agency.

Scotland – gauged impact of the LCF

6. Part of the difficulty in raising the awareness of the LCF is the quality of information that is available especially since the scheme cannot be promoted or advertised in any form. The regulator, ENTRUST, has the responsibility of registering and recording all projects proposed by EBs and also ensuring that there is adequate governance, transparency of process and fairness in the delivery of distributing this unique tax based scheme, they are not empowered to disseminate information and it is left to the devices of the EBs (such as WREN) to take up that where applicable. There is a levy on all recipient EBs for covering the regulatory cost, which is currently set at 2% of diverted landfill tax received.

7. Once again and using the same sources I have determined the following spend of LCF monies in Scotland, and shown that spend as a proportion of the overall LCF spend in each year

<table>
<thead>
<tr>
<th>Tax Year</th>
<th>LCF Spend (Scotland)</th>
<th>LCF Spend (UK)</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>2008/09</td>
<td>£8.0</td>
<td>£65.7</td>
<td>12.10%</td>
</tr>
<tr>
<td>2009/10</td>
<td>£7.4</td>
<td>£71.4</td>
<td>10.39%</td>
</tr>
<tr>
<td>2010/11</td>
<td>£7.4</td>
<td>£62.2</td>
<td>11.94%</td>
</tr>
</tbody>
</table>

8. Bearing in mind that EBs can utilise up to 10% of the monies received for their own operational costs, and that there is a levy payable to the regulator, it is evident that Scotland is a net beneficiary of the LCF.

Detailed impact

9. There are several EBs that are either a subsidiary of the landfill operator or are under contract to the landfill operator to distribute on their behalf, but it must be remembered that this is a voluntary scheme. The methodology, criteria and geographic coverage of these EBs is varied. To that end I can only give specifics on my own organisation, with a view that there is some scope to apply a multiplier effect to the specifics I have shown. WREN represents approx. 10% of the Scottish LCF receipts.

10. In the early years of the scheme, much emphasis was placed on funding waste minimisation, recycling and recycling awareness projects. This was dropped in 2002 when the scheme was revised and 2/3rds of the income was subsequently redistributed to organisations such as Defra and WRAP to assist in the financing of various UK government waste related initiatives. WREN had up to that point provided £577k to 22 such projects in Scotland.

11. To date WREN has provided a further £6.85 million of funding in Scotland, covering 199 projects. The total project cost for these 199 projects is £37.8 million, an aggregate multiplier effect of 5.5 (although the current position is just under 4). With our business plan to deliver funding community facilities, biodiversity habitat and restoration of heritage projects, WREN has distributed as follows:
11. The type of organisation that apply through the Landfill Communities Fund is also varied. The EBs have an open application process that is available to groups that are constituted (i.e. not a company or a charity), through to community councils, conservation organisations (accepted they are also charities!) right up local authorities and charities. Many of the “constituted” applications are from Friends group organisations that support the maintaining and improvement of publicly owned assets. But the LCF is also available to local authorities for the capital projects such as play areas, sports facilities and public park works.

Considerations for the Scotland Bill Committee
12. The comments made by RSPB regarding the taxation levels are logical. Market forces may well determine logistical movement of waste on either side of the border, and the Scottish government will have a view on this. This therefore leads to the conclusion that there should be parity between the Landfill Tax (Scotland) and the Landfill Tax (rest of the UK).
13. Within the section “Scotland - gauged impact of the LCF” I have demonstrated that Scotland is actually a net beneficiary of the LCF. With the implementation of a separate Landfill Tax for Scotland it is probable this will ring-fence LCF monies created, available and spent in Scotland. The charts above indicate the types of organisation that will be adversely impacted by the shrinkage of funding available as a consequence. Whilst the level of impact may not be severe, nevertheless in such unprecedented economic times as now, this will not be welcome news.

14. An option for the Scottish government is to increase the proportion of the Scottish Landfill Tax that is injected into the private sector (this is annually adjusted by HM Treasury at the moment) so that a capped sum is available for organisations as above and may even be widened.

15. A further consideration is that this becomes an un-regulated environment with a requirement for the Scottish government to be satisfied that targets and operating costs of the EBs are contained and maintained. In effect, starting a new scheme with a blank canvas.

16. Given that all of the organisations that distribute the funding have been doing so for up to 15 years, they are an efficient means to deliver targeted funding, and there is a scheme wide maximum operating cost of 10% for operating costs. The actual costs vary according to economy of scale, but in today’s terms is good value.

17. With the legislation announced by Environment Secretary Richard Lochhead aiming at Zero Waste for 2020 it is clear that this programme and landfill cannot co-exist. It is logical therefore to maximise the use of the Landfill Tax during the intervening period, and ensuring that an element of this is focused on delivering community benefit is the resounding message endorsed by the written submissions I have read on the website.

18. Whilst waste is an undesirable commodity to society, the landfill communities fund has supported many iconic projects in Scotland, and I was reminded only yesterday of the re-introduction of beaver to Scotland after an absence of over 400 years … funded by Biffaward. It is accepted that landfill cannot go on indefinitely but whilst a tax regime is in place and delivers community benefit there is a positive side to this, which also assists in meeting funding expectations externally.

Peter Cox
Waste Recycling Environmental Ltd (WREN)
4th November, 2011
June 2013

Dear Jim

SCOTTISH LANDFILL TAX BILL – TIMELINE

Ahead of my appearance before the Finance Committee, scheduled for 19 June, you requested a copy of the milestones and key deliverables for Revenue Scotland in relation to the implementation of the tax.

This mirrors similar information we have previously provided with regard to Land and Buildings Transaction Tax.

We have established a Tax Administration Programme, which is a joint programme of work between Revenue Scotland, Registers of Scotland and the Scottish Environment Protection Agency (recognising our intention to work with SEPA to collect Scottish Landfill Tax, and with Registers of Scotland to collect Land and Buildings Transaction Tax).

As noted in my letter of 14 May regarding the Committee’s interest in Land and Buildings Transaction Tax, we are in an initiation phase for the Tax Administration Programme, and at this point we are working through our milestones and business planning, with a view to having a plan in place when we move to implementation. We expect that implementation phase to start from July, if the Parliament passes the Land and Buildings Transaction Tax Bill in June. As such, our identification of milestones is high-level at present, and represented in the attached diagram.

In terms of tax administration, the key strands of work – against which we are developing those milestones – are as follows:

- Staffing (we completed initial recruitment to Revenue Scotland in May 2013)
- Agreement on the management of data between RS, Registers of Scotland and SEPA, which will underpin decisions on ICT development
- Process mapping
• Initial estimates of our longer-term staffing expectations in the three organisations

I hope this is helpful – please let me know if I can provide anything further at this stage or if, following the Committee’s considerations on 19 June, any other information is required.

ELEANOR EMBERSON
**IT**
- Data framework agreement
- ICT development and testing with RoS and SEPA
- Final testing

**POLICY AND LEGISLATIVE**
- Work with Landfill Tax Bill team on policy development
- Secondary legislation and guidance
- Work with Tax Management Bill team on policy development, secondary legislation and guidance

**STAFFING, ROLES AND RESPONSIBILITIES**
- Initial Revenue Scotland staffing
- Agree roles and responsibilities with RoS and SEPA; agree and implement required staffing

**PROCESS MAPPING**
- Scope and complete process maps with RoS and SEPA

**STAKEHOLDERS AND COMMS**
- Develop initial Comms and engagement
- Ongoing engagement with stakeholders

**TRANSITION ARRANGEMENTS**
- Agreement with HMRC
- Ongoing engagement with HMRC through transition

**GOVERNANCE**
- Likely recruitment of Board / Chief Executive

**GATEWAY REVIEW**
- GR 0
- Schedule of follow-up Gateway Reviews
Delegated Powers and Law Reform Committee

34th Report, 2013 (Session 4)

Landfill Tax (Scotland) Bill

Published by the Scottish Parliament on 11 June 2013
Delegated Powers and Law Reform Committee

Remit and membership

Remit:

1. The remit of the Delegated Powers and Law Reform Committee is to consider and report on—
(a) any—
   (i) subordinate legislation laid before the Parliament or requiring the consent of the Parliament under section 9 of the Public Bodies Act 2011;
   (ii) [deleted]
   (iii) pension or grants motion as described in Rule 8.11A.1; and, in particular, to determine whether the attention of the Parliament should be drawn to any of the matters mentioned in Rule 10.3.1;
(b) proposed powers to make subordinate legislation in particular Bills or other proposed legislation;
(c) general questions relating to powers to make subordinate legislation;
(d) whether any proposed delegated powers in particular Bills or other legislation should be expressed as a power to make subordinate legislation;
(e) any failure to lay an instrument in accordance with section 28(2), 30(2) or 31 of the 2010 Act; and
(f) proposed changes to the procedure to which subordinate legislation laid before the Parliament is subject.
(g) any Scottish Law Commission Bill as defined in Rule 9.17A.1; and
(h) any draft proposal for a Scottish Law Commission Bill as defined in that Rule.

Membership:

Christian Allard
Nigel Don (Convener)
Mike MacKenzie
Hanzala Malik
John Pentland
John Scott
Stewart Stevenson (Deputy Convener)
Committee Clerking Team:

Clerk to the Committee
Euan Donald

Assistant Clerk
Elizabeth White

Support Manager
Daren Pratt
Delegated Powers and Law Reform Committee

34th Report, 2013 (Session 4)

Landfill Tax (Scotland) Bill

The Committee reports to the Parliament as follows—

INTRODUCTION

1. At its meetings on 21 May and 11 June 2013 the Committee considered the delegated powers provisions in the Landfill Tax (Scotland) Bill at stage 1 (“the Bill”). The Committee submits this report to the Finance Committee as lead Committee for the Bill under Rule 9.6.2 of Standing Orders.

2. The Scottish Government provided the Parliament with a memorandum on the delegated powers provisions in the Bill (“the DPM”).

OVERVIEW OF THE BILL

3. The Landfill Tax (Scotland) Bill was introduced in the Scottish Parliament on 17 April 2013.

4. It is a Government Bill, the second of three taxation Bills being brought forward in consequence of measures contained in the Scotland Act 2012 which made the Scottish Parliament responsible for certain taxes. In particular, it now has responsibility for tax on disposals of material to land. At present, the UK landfill tax regime applies, but it is understood that the intention is to disapply that UK tax in Scotland (using powers in the Scotland Act 2012) at the end of March 2015. The tax provided for in this Bill (Scottish landfill tax) would come into force on the following day.

5. In the consideration of the DPM at its meeting on 21 May, the Committee agreed to write to Scottish Government officials to raise questions on the delegated powers. This correspondence is reproduced at the Annex. The need for

---

1 Landfill Tax (Scotland) Bill available here: [http://www.scottish.parliament.uk/S4_Bills/Landfill%20Tax%20Bill/b28s4-introd.pdf](http://www.scottish.parliament.uk/S4_Bills/Landfill%20Tax%20Bill/b28s4-introd.pdf)

many of the questions asked arose from the lack of justification for the policy approach set out in the DPM.

DELEGATED POWERS PROVISIONS

6. The Committee considered each of the delegated powers in the Bill.

7. The Committee determined that it did not need to draw the attention of the Parliament to the following delegated powers:

   Section 13(2) – Amount of tax (standard rate)
   Section 13(5) – Amount of tax (lower rate)
   Section 14(7) – Qualifying material: special provisions
   Section 15(1) – Weight of material disposed of
   Section 18(1) – Credit: general
   Section 22(9) – Registration
   Section 23(1) – Information required to keep register up to date
   Section 25 – Accounting for tax and time for payment
   Section 26(3) – Time of disposal where invoice issued
   Section 29(5) – Recovery of overpaid tax
   Section 30(1) – Information: material at landfill sites
   Section 34(2) – The Tax Authority
   Section 36(1) – Review and appeal
   Section 37(1) – Partnership, bankruptcy, transfer of business etc. (partnerships)
   Section 37(4) – Partnership, bankruptcy, transfer of business etc. (bankruptcy)
   Section 37(5) – Partnership, bankruptcy, transfer of business etc. (transfer of business
   Section 40 – Ancillary provision
   Section 41(1)(b) – Subordinate legislation
   Section 43(2) – Commencement
   Section 14(2) and (3) – Qualifying material: special provisions
   Section 26(4) – Time of disposal where invoice issued

8. The Committee’s comments and, where appropriate, recommendations on the other delegated power in the Bill is detailed below. Sections 5, 6, 11 and 13 raise common issues and are therefore considered together.
Section 5(5) – Disposal by way of landfill
Power conferred on: the Scottish Ministers
Power exercisable by: order
Parliamentary procedure: provisional affirmative, affirmative or negative procedure, depending on the circumstances

Provision

9. Tax is to be charged on taxable disposals in Scotland. A disposal is taxable if it is a disposal of waste by way of landfill. Section 5 defines what constitutes a disposal of material by way of landfill. Section 5(5) enables the Scottish Ministers to vary the meaning of disposal of material by way of landfill. That order may modify any enactment, including the Bill itself.

Section 6(1) – Prescribed landfill site activities to be treated as disposals
Power conferred on: the Scottish Ministers
Power exercisable by: order
Parliamentary procedure: provisional affirmative, affirmative or negative procedure, depending on the circumstances

Provision

10. Section 6 of the Bill enables the Scottish Ministers to prescribe certain activities which take place on a landfill site (using or dealing with material, and storing or otherwise having material on the site). If an activity is prescribed, then it is treated as if it were a taxable disposal.

Section 11(1) – Taxable disposals: power to vary
Power conferred on: the Scottish Ministers
Power exercisable by: order
Parliamentary procedure: provisional affirmative, affirmative or negative procedure, depending on the circumstances

Provision

11. Sections 7 to 10 of the Bill provide that certain disposals are not to be taxable disposals, although they would otherwise meet the criteria set out in section 3. In effect, these sections set out exemptions from liability for certain disposals. Section 11 allows the Scottish Ministers, by order, to provide that disposals which would otherwise be taxable are not taxable, and conversely that disposals which would not otherwise be taxable are to be treated as taxable.

12. Section 11(3) provides that an order under section 11 may modify any enactment, including the Bill itself.
Section 13(4) – Amount of tax (qualifying material)
Power conferred on: the Scottish Ministers
Power exercisable by: order
Parliamentary procedure: provisional affirmative or negative procedure, depending on the circumstances

Provision
13. Landfill tax will be payable at a lower rate where the material disposed of consists entirely of inert “qualifying material”. Section 13(4) gives the Scottish Ministers power to prescribe the materials which are to be qualifying materials. They may be contained in one or more category, and different rates may be set using the power in section 13(5) for different categories of qualifying material.

14. Under section 13(7), the Scottish Ministers are to set criteria which are to be considered in determining what material is to be listed as qualifying material. Ministers must keep the criteria under review, and publish the criteria and any revised criteria. Section 13(8) requires the Ministers to have regard to those criteria (and any other factors which they consider relevant) when exercising the section 13(4) power.

Comment
15. In relation to each of the above powers the Committee sought an explanation as to why the powers permitted the modification of any enactment rather than being restricted to the provisions of the Bill. The Scottish Government response clarifies that it may be necessary to modify the proposed Tax Management (Scotland) Act in consequence of the exercise of these powers. The Committee is content with this explanation.

16. The Committee also sought further clarification for the choice of procedure applicable to the exercise of the powers. Section 41(3) of the Bill creates a bespoke type of Parliamentary procedure which is referred to in the DPM as “provisional affirmative procedure”. Instruments made subject to this procedure are laid before the Parliament and may come into force immediately but will cease to have effect at the end of the period of 28 days beginning with the day on which they are made unless the Parliament has previously approved them by resolution.

17. The intention behind creating this procedure is that the Ministers should be able to make instruments and bring them into force very quickly, while allowing for a greater degree of Parliamentary control than would be the case with the negative procedure. Although the instrument comes into force, it cannot remain in force unless the Parliament agrees to that within 28 days. The adoption of this procedure also allows for the making of instruments while the Parliament is in recess with the 28 day period being interrupted by any recess of more than 4 days.

18. Should the Parliament not approve an instrument within the 28 day period then it will cease to have legal effect once the period expires. However, anything done in reliance on the instrument during that period remains valid and is unaffected.
19. In each case, if the power is used to extend liability to Landfill Tax the provisional affirmative procedure applies. Where liability is not extended and the variation textually amends any enactment then the affirmative procedure is to apply. In any other case, the negative procedure will apply. Ascertaining the Parliamentary procedure applicable in any given case is therefore more complex than usual. The Committee has given careful consideration to whether this complexity can be justified.

20. The adoption of the provisional affirmative appears to the Committee to be proportionate for the extension of a taxing statute as the Committee considers it is appropriate that such an extension be expressly approved by the Parliament.

21. In addition, the Committee understands why the ordinary affirmative procedure might well be inappropriate for operational reasons: the Scottish Ministers point to the potential need to use this power to combat avoidance, for example. Were the power subject in all cases to the affirmative procedure, it would not be possible to make an instrument during recess (without recalling the Parliament). The provisional affirmative procedure avoids these difficulties, while ensuring that the Parliament still has an opportunity to subsequently scrutinise and approve this alteration to the basis of taxation.

22. Nevertheless the Committee considers it worth drawing to the attention of the lead committee that were a provisional affirmative instrument to be made immediately prior to the summer recess the Parliament’s approval of the instrument continuing to have effect would not be required to be obtained until 28 days after the Parliament returns from recess. In such cases therefore new measures imposing taxation could be in place for up to 3 months before the Parliament is required to approve them.

23. In all other cases, the effect of the change would be to maintain or reduce the scope of the tax. The procedure applicable depends on the manner in which the variation is achieved. If primary legislation is amended then the affirmative procedure applies. If that effect can be achieved without textually amending primary legislation, then the negative procedure is to apply.

24. The Committee was persuaded that there is a distinction between exercising the power so as to broaden the scope of the tax (which is subject to the provisional affirmative procedure) and exercising it so as to maintain or narrow its scope (which is subject to the affirmative or the negative procedure). It appears unlikely that it would be necessary to narrow the scope of the tax at very short notice, whereas broadening its scope in response to lacunae or new avoidance tactics might reasonably require to be done at a time when the Parliament is not sitting. Given that the power may be used to modify primary legislation, it is consistent with the Committee’s general approach for it to be subject to the affirmative procedure where it textually modifies primary legislation.

25. This leaves the residual category where there is no textual amendment. The Committee sought further information from the Scottish Ministers as to why it considered it appropriate to be able to modify the basis of taxation (which is central to the Bill) in any manner without obtaining the agreement of the Parliament via the affirmative procedure. The Scottish Government response
simply states that it is justifiable to distinguish the procedure on the basis of whether it extends or reduces liability.

26. The Committee is content with the circumstances in which the provisional affirmative procedure will apply. It is also content that provision which amends primary legislation should be subject to the affirmative procedure. It considers that the lead committee may wish to consider whether reduction in liability or the provision of exemptions for certain types of activity might be sufficiently controversial as to merit the affirmative procedure rather than the negative procedure provided for in the Bill.

Section 17(1) – Liability of controllers of landfill sites
Power conferred on: the Scottish Ministers
Power exercisable by: regulations
Parliamentary procedure: affirmative procedure where modifying the text of primary legislation, and otherwise negative procedure

Provision
27. Section 16(1) of the Bill makes the operator of an authorised landfill site the person liable to pay the tax on each taxable disposal. Section 17(1) enables the Scottish Ministers to make regulations extending that liability to the “controller” of a landfill site. Section 17(2) provides that the controller is the person who is entitled to determine what (if any) disposals may be made on all or part of the landfill site at any given time, although a person will not be a controller simply because he or she is the employee or agent of the site operator.

28. Regulations under section 17(1) may make provision about who is to be a controller, the circumstances in which a controller is liable to pay tax and the amount payable, the entitlement of a controller to credit, and the arrangements for payment of tax.

29. Regulations made under this power may modify any enactment, including the Bill. They are subject to the affirmative procedure if they textually amend primary legislation, and otherwise to the negative procedure.

Comment
30. The Committee questioned the Scottish Government’s choice of procedure. The Committee was concerned that allowing the use of the negative procedure where primary legislation was not modified did not provide sufficiently high scrutiny of provision which could extend the tax liability of controllers. The Scottish Government has considered the Committee’s concern and proposes to address this by amending the Bill so that regulations under this section are always subject to the affirmative procedure.

31. The Committee welcomes the Scottish Government’s commitment to amend the bill so that regulations under section 17 are subject to the affirmative procedure in all cases.
Section 32(1) – Records: registrable persons
Section 33(1) – Records: material at landfill sites
Powers conferred on: the Scottish Ministers
Powers exercisable by: regulations
Parliamentary procedure: negative procedure

Provision
32. Sections 32 and 33 concern the keeping of records by registrable persons and about material at landfill sites. Section 32 confers power on the Scottish Ministers to require registrable persons to preserve records of a prescribed description for up to 6 years. Section 33(1) confers a power to require persons to make records relating to material at landfill site.

Comment
33. The Committee sought clarification as to why the power to require record keeping relating to material at landfill sites does not specify the category of persons to whom the requirements can be applied but allows the requirement to be imposed on “a person”.

34. The Scottish Government’s response explains that the category of persons needs to be wide enough to encompass persons who may be storing material at landfill sites or conducting any other activity to which section 6 of the Bill could apply.

35. While it might be possible to frame this power more narrowly and still meet this policy objective the Committee is broadly content with the power and that the negative procedure would provide an opportunity for the Parliament to annul a requirement for record keeping that was an unnecessary regulatory burden.

Section 35(1) – Delegation of functions to SEPA
Powers conferred on: the Scottish Ministers
Powers exercisable by: regulations
Parliamentary procedure: negative procedure

Provision
36. Section 35(1) permits the Tax Authority to delegate any of its functions (other than functions of legislating) to SEPA. The delegation of the function does not affect the Tax Authority’s responsibility for the exercise of the function or the Authority’s ability to carry out such functions.

37. The Committee considers that it seems sensible for non-legislative functions of the Tax Authority to be capable of being delegated to SEPA. SEPA already collects data from all landfill sites in Scotland as part of the permitting process and is knowledgeable about the type and quantity of material being deposited and likely to incur tax. Nevertheless, the Committee considers that when a statutory function has been delegated that should be publicly and clearly identified so that persons regulated by the regime understand who is authorised to take what steps. No provision for the publication of such delegations is provided for in the bill.
38. On raising this matter with the Scottish Government it has indicated that it is mindful of the need for transparency and accountability in the delegation of functions from Revenue Scotland to SEPA. It advises that there would be an opportunity to revisit this in the Tax Management (Scotland) Bill to be brought forward next year. However the Government has not given any firm commitment to do so.

39. The Committee strongly recommends that the Scottish Government improve the transparency and accountability of the delegation of functions from the Tax Authority to SEPA by requiring publication of any such delegation.
ANNEX

Correspondence with the Scottish Government

Letter from Committee to Scottish Government dated 21 May 2013:

Section 5(5) – Disposal by way of landfill

Power conferred on: the Scottish Ministers
Power exercisable by: order
Parliamentary procedure: provisional affirmative, affirmative or negative procedure, depending on the circumstances

1. Section 5 defines what constitutes a disposal of material by way of landfill. Section 5(5) enables the Scottish Ministers, by order, to vary the meaning of disposal of material by way of landfill. That order may modify any enactment, including the Bill itself.

2. The Committee asks the Scottish Government:

- why it is necessary that this power permit the modification of any enactment, instead of permitting only the modification of this section or the Bill more generally; and
- why the negative procedure is considered to be appropriate when varying (without textual amendment) the meaning of disposal of material by way of landfill other than by providing for something to be such a disposal when it would not otherwise be, given that the effect of so doing affects the basis of the charge to tax and so goes to the central principles of the Bill?

Section 6(1) – Prescribed landfill site activities to be treated as disposals

Power conferred on: the Scottish Ministers
Power exercisable by: order
Parliamentary procedure: provisional affirmative, affirmative or negative procedure, depending on the circumstances

3. Section 6 of the Bill enables the Scottish Ministers to prescribe certain activities which take place on a landfill site as a taxable disposal.

4. The Committee asks the Scottish Government:

- why it is necessary that this power permit the modification of primary legislation; and
- why the negative procedure is considered to be appropriate when varying (without textual amendment) prescribed landfill activities
other than by providing for something to be such an activity when it would not otherwise be, given that the effect of so doing affects the basis of the charge to tax and so goes to the central principles of the Bill?

Section 11(1) – Taxable disposals: power to vary
Power conferred on: the Scottish Ministers
Power exercisable by: order
Parliamentary procedure: provisional affirmative, affirmative or negative procedure, depending on the circumstances

5. Sections 7 to 10 of the Bill provide that certain disposals are not to be taxable disposals, although they would otherwise meet the criteria set out in section 3. In effect, those sections provide exemptions for certain disposals. Section 11 allows the Scottish Ministers, by order, to provide that disposals which would otherwise be taxable are not taxable, and conversely that disposals which would not otherwise be taxable are to be treated as taxable.

6. The Committee asks the Scottish Government:

- why it is necessary that this power permit the modification of any enactment, instead of permitting only the modification of sections 7 to 10 or the Bill more generally; and
- why the negative procedure is considered to be appropriate when extending (without textual amendment) the scope of exemptions from landfill tax given that the effect of so doing affects the basis of the charge to tax and so goes to the central principles of the Bill?

Section 13(4) – Amount of tax (qualifying material)
Power conferred on: the Scottish Ministers
Power exercisable by: order
Parliamentary procedure: provisional affirmative or negative procedure, depending on the circumstances

7. The Scottish landfill tax will be payable at a lower rate where the material disposed of consists entirely of “qualifying material”. Section 13(4) gives the Scottish Ministers power to list the materials which are to be qualifying materials in an order.

8. The Committee asks the Scottish Government:

- Why it is considered that specifying the qualifying materials is a “technical and administrative” matter, given the effect which listing materials as qualifying materials has on a taxpayer’s liability, and whether it would not be more appropriate for the affirmative procedure to apply to the exercise of this power save in the circumstances where the provisional affirmative procedure already applies?
Section 17(1) – Liability of controllers of landfill sites
Power conferred on: the Scottish Ministers
Power exercisable by: regulations
Parliamentary procedure: affirmative procedure where modifying the text of primary legislation, and otherwise negative procedure

9. Section 16(1) of the Bill makes the operator of an authorised landfill site the person liable to pay the tax on each taxable disposal. Section 17(1) enables the Scottish Ministers to make regulations extending that liability to the “controller” of a landfill site.

10. The Committee asks the Scottish Government:

- why it is necessary that this power permit the modification of any enactment, instead of permitting only the modification of the Bill; and
- why it is considered appropriate that the extension of liability to controllers under this power be subject to the negative procedure unless primary legislation is textually amended, given that this involves the extension of tax liability to persons who would not otherwise be liable?

Section 32(1) – Records: registrable persons
Section 33(1) – Records: material at landfill sites
Powers conferred on: the Scottish Ministers
Powers exercisable by: regulations
Parliamentary procedure: negative procedure

11. Sections 32 and 33 concern the keeping of records by registrable persons and about material at landfill sites. Section 32 confers power on the Scottish Ministers to require registrable persons to preserve records of a prescribed description for up to 6 years. Section 33(1) confers a power to require persons to make records relating to material at landfill site.

12. The Committee asks the Scottish Government:

- Why the power to require record keeping relating to material at landfill sites does not specify the category of persons to whom the requirements can be applied but instead allows the requirement to be imposed on “a person”?

Section 35(1) – Delegation of functions to SEPA
Power conferred on: the Tax Authority
Power exercisable by: delegation
Parliamentary procedure: no Parliamentary procedure

13. Section 35(1) permits the Tax Authority to delegate any of its functions (other than functions of legislating) to the Scottish Environment Protection Agency.
14. The Committee asks the Scottish Government to explain:

- How the delegation of functions will be identified and recorded in the interests of transparency and accountability?

15. The Committee also reflected that, given the devolution of taxes is a new area of Scottish legislation, it would have been helpful if the Delegated Powers Memorandum had contained a more detailed explanation of how the Bill had been constructed and the reasons for taking the powers contained within the Bill.

The Scottish Government responded as follows on 31 May:

Section 5(5) – Disposal by way of landfill
Power conferred on: the Scottish Ministers
Power exercisable by: order
Parliamentary procedure: provisional affirmative, affirmative or negative procedure, depending on the circumstances

SLC question

Why it is necessary that this power permit the modification of any enactment, instead of permitting only the modification of this section or the Bill more generally;

Scottish Government response

The Scottish Government proposes to introduce a Tax Management (Scotland) Bill later in 2013. It may be necessary to use this power to modify the Act that would follow on from this Bill, if enacted. That Bill/Act will contain many provisions key to the administration of Scottish Landfill Tax.

SLC question

Why the negative procedure is considered to be appropriate when varying (without textual amendment) the meaning of disposal of material by way of landfill other than by providing for something to be such a disposal when it would not otherwise be, given that the effect of so doing affects the basis of the charge to tax and so goes to the central principles of the Bill?

Scottish Government response

Careful thought was given as to the appropriate procedure for particular types of instrument, and the negative procedure therefore applies only in cases which would exclude activities from the scope of the tax. Forms of affirmative procedure apply only in cases that would extend the scope of the tax. The Scottish Government considers this to be a meaningful and justifiable distinction.
Section 6(1) – Prescribed landfill site activities to be treated as disposals

Power conferred on: the Scottish Ministers

Power exercisable by: order

Parliamentary procedure: provisional affirmative, affirmative or negative procedure, depending on the circumstances

**SLC question**

Why it is necessary that this power permit the modification of primary legislation.

**Scottish Government response**

The Scottish Government considers that it may be necessary to modify sections such as 6, 30, 32 or 33 once the effects and practices of the Scottish system can be observed. As per the Government response in connection with section 5(5) it may be necessary to modify the Act that would follow on from the Tax Management (Scotland) Bill, if enacted.

**SLC question**

Why the negative procedure is considered to be appropriate when varying (without textual amendment) prescribed landfill activities other than by providing for something to be such an activity when it would not otherwise be, given that the effect of so doing affects the basis of the charge to tax and so goes to the central principles of the Bill?

**Scottish Government response**

As per the Scottish Government response in connection with section 5(5), the Government has drawn a meaningful and justifiable distinction between measures that would extend the scope of the tax and those that would narrow the scope of the tax.

Section 11(1) – Taxable disposals: power to vary

Power conferred on: the Scottish Ministers

Power exercisable by: order

Parliamentary procedure: provisional affirmative, affirmative or negative procedure, depending on the circumstances

**SLC question**

40. Why it is necessary that this power permit the modification of any enactment, instead of permitting only the modification of sections 7 to 10 or the Bill more generally?

**Scottish Government response**
As per the Scottish Government responses above, it may be necessary to modify the Act that would follow on from the Tax Management (Scotland) Bill, if enacted.

**SLC question**

Why the negative procedure is considered to be appropriate when extending (without textual amendment) the scope of exemptions from landfill tax given that the effect of so doing affects the basis of the charge to tax and so goes to the central principles of the Bill?

**Scottish Government response**

Ministers may want to exempt certain disposals, for example asbestos where landfill is the only practical solution and the tax (as a ‘green’ tax and behaviour changing tool) is actually detrimental to better environmental outcomes. As per the Scottish Government response in connection with section 5(5), the Government has drawn a meaningful and justifiable distinction between measures that would extend the scope of the tax and those that would narrow the scope of the tax.

Section 13(4) – Amount of tax (qualifying material)
Power conferred on: the Scottish Ministers
Power exercisable by: order
Parliamentary procedure: provisional affirmative or negative procedure, depending on the circumstances

**SLC question**

Why it is considered that specifying the qualifying materials is a “technical and administrative” matter, given the effect which listing materials as qualifying materials has on a taxpayer’s liability, and whether it would not be more appropriate for the affirmative procedure to apply to the exercise of this power save in the circumstances where the provisional affirmative procedure already applies?

**Scottish Government response**

As per the Scottish Government responses above, the Government considers that the drafters have drawn a justifiable distinction between measures that would extend the scope of the tax and those that would narrow the scope of the tax. Adding material to the qualifying material list will enable them to be taxed at a lower rate.

Section 17(1) – Liability of controllers of landfill sites
Power conferred on: the Scottish Ministers
Power exercisable by: regulations
Parliamentary procedure: affirmative procedure where modifying the text of primary legislation, and otherwise negative procedure

**SLC question**
Why it is necessary that this power permit the modification of any enactment, instead of permitting only the modification of the Bill.

Scottish Government response

As per the Scottish Government responses above, it may be necessary to modify the Act that would follow on from the Tax Management (Scotland) Bill, if enacted.

SLC question

Why it is considered appropriate that the extension of liability to controllers under this power be subject to the negative procedure unless primary legislation is textually amended, given that this involves the extension of tax liability to persons who would not otherwise be liable?

Scottish Government response

The Scottish Government notes the Committee’s query and proposes to introduce at Stage 2 an amendment applying the affirmative procedure to regulations under this section.

Section 32(1) – Records: registrable persons
Section 33(1) – Records: material at landfill sites
Powers conferred on: the Scottish Ministers
Powers exercisable by: regulations
Parliamentary procedure: negative procedure

SLC question

Why the power to require record keeping relating to material at landfill sites does not specify the category of persons to whom the requirements can be applied but instead allows the requirement to be imposed on “a person”?

Scottish Government response

Sections 32 and 33 should be viewed as part of a package with section 6. Regulations under section 33 might seek to obtain information from people claiming to be temporarily storing things at landfill sites to work out whether they were truly being stored or had actually been “disposed” of. In order to get that information, the power in sections 32 and 33 needs to extend beyond “registrable persons”.

Section 35(1) – Delegation of functions to SEPA
Power conferred on: the Tax Authority
Power exercisable by: delegation
Parliamentary procedure: no Parliamentary procedure

SLC question
How the delegation of functions will be identified and recorded in the interests of transparency and accountability?

Scottish Government response

The Scottish Government is mindful of the need for transparency and accountability in the delegation of functions from Revenue Scotland to SEPA. Pending the introduction of the Tax Management (Scotland) Bill it is desirable for the common provisions of the first two tax Bills to be kept consistent. These provisions may be refined or even replaced by the provisions formally establishing Revenue Scotland in the Tax Management (Scotland) Bill.
Landfill Tax (Scotland) Bill: The Committee considered the delegated powers provisions in this Bill at Stage 1 and agreed to seek further information from the Scottish Government.
Landfill Tax (Scotland) Bill:
Stage 1

10:17

The Deputy Convener: Agenda item 5 is consideration of the delegated powers in the Landfill Tax (Scotland) Bill at stage 1. The committee is invited to agree the questions that it wishes to raise in written correspondence with the Scottish Government on the delegated powers in the bill. On the basis of the responses received, the committee would expect to consider a draft report at its meeting on 11 June.

On section 5, which defines what constitutes a disposal of material by way of landfill, section 5(5) enables the Scottish ministers by order to vary “the meaning of disposal of material by way of landfill.” Any such order may modify any enactment, including the bill itself. Does the committee agree to ask the Scottish Government why it is necessary for the power to permit the modification of any enactment, instead of permitting only the modification of that section or the bill more generally, and to ask why the negative procedure is considered to be appropriate when varying without textual amendment the meaning of disposal of material by way of landfill other than by providing for something to be such a disposal when it would not otherwise be, given that so doing affects the basis of the charge to tax and so goes to the bill’s central principles?

Members indicated agreement.

The Deputy Convener: Section 6 enables the Scottish ministers to prescribe certain activities that take place on a landfill site as a taxable disposal. Does the committee agree to ask the Scottish Government why it is necessary for the power to permit the modification of primary legislation and why the negative procedure is considered to be appropriate when varying without textual amendment prescribed landfill activities other than by providing for something to be such an activity when it would not otherwise be, given that so doing affects the basis of the charge to tax and so goes to the bill’s central principles?

Members indicated agreement.

The Deputy Convener: Sections 7 to 10 provide that certain disposals are not to be taxable disposals, although they would otherwise meet the criteria that are set out in section 3. In effect, those sections provide exemptions for certain disposals. Section 11 allows the Scottish ministers, by order, to provide that disposals that would otherwise be taxable are not taxable and conversely that disposals that would not otherwise be taxable are to be treated as taxable.
Does the committee agree to ask the Scottish Government why it is necessary for the power to permit the modification of any enactment, instead of permitting only the modification of sections 7 to 10 or the bill more generally, and to ask why the negative procedure is considered to be appropriate when extending without textual amendment the scope of exemptions from landfill tax, given that so doing affects the basis of the charge to tax and so goes to the bill’s central principles?

Members indicated agreement.

The Deputy Convener: The Scottish landfill tax will be payable at a lower rate when the material that is disposed of consists entirely of “qualifying material”. Section 13(4) gives the Scottish ministers the power to list in an order the materials that are to be qualifying materials. Does the committee agree to ask the Scottish Government why it is considered that specifying the qualifying materials is a “technical and administrative” matter, given the effect that listing materials as qualifying materials has on a taxpayer’s liability, and to ask whether it would be more appropriate for the affirmative procedure to apply to the exercise of the power, save in circumstances when the provisional affirmative procedure already applies?

Members indicated agreement.

The Deputy Convener: Section 16(1) makes the operator of an authorised landfill site the person who is liable to pay the tax on each taxable disposal. Section 17(1) enables the Scottish ministers to make regulations extending that liability to the controller of a landfill site. Does the committee agree to ask the Scottish Government why it is necessary for the power to permit the modification of any enactment, instead of permitting only the modification of the bill, and to ask why it is considered appropriate that the extension of liability to controllers under the power should be subject to the negative procedure unless primary legislation is textually amended, given that that involves the extension of tax liability to persons who would not otherwise be liable?

Members indicated agreement.

Hanzala Malik: I certainly think that that would give clarity, convener.

The Deputy Convener: Sections 32 and 33 concern the keeping of records by registrable persons and about material at landfill sites. Section 32 confers power on the Scottish ministers to require registrable persons to preserve records of a prescribed description for up to six years, and section 33(1) confers a power to require persons “to make records relating to material at a landfill site.”

Does the committee agree to ask the Scottish Government why the power to require record keeping relating to material at landfill sites does not specify the category of persons to whom the requirements can be applied but instead allows the requirement to be imposed on “a person”?

Members indicated agreement.

The Deputy Convener: Section 35(1) permits the tax authority to delegate “any of its functions” other than functions of legislating to the Scottish Environment Protection Agency. Does the committee agree to ask the Scottish Government to explain how the delegation of functions will be identified and recorded in the interests of transparency and accountability?

Members indicated agreement.

Bruce Crawford: Before we conclude this item, convener, I think that, without seeking to improve the policy memorandum, we should also ask the Government for an overall view of how it has constructed the bill and why it has chosen this particular direction. After all, by being required to consider the tax-raising powers, the Parliament is in new territory. Tax law operates differently from other legislation and the Scottish Government, which has its own budget bill, might be able to make comparisons with the UK Government and its own financial provisions. It would be useful if the Scottish Government could give us more contextual stuff and, given the way in which tax law is designed, explain what kind of flexibility a Government has to respond either to the passing of a finance bill at Westminster or a budget bill up here.

The Deputy Convener: That seems to make perfect sense. Do members agree?

Members indicated agreement.
PUBLIC AUDIT COMMITTEE

MINUTES

7th Meeting, 2013 (Session 4)

Wednesday 1 May 2013

Present:
Colin Beattie
Bob Doris
Iain Gray (Convener)
Colin Keir
Tavish Scott

Willie Coffey
James Dornan
Mark Griffin
Mary Scanlon (Deputy Convener)

1. Decision on taking business in private: The Committee agreed to take item 3 in private.

3. Landfill Tax (Scotland) Bill (in private): The Committee considered the audit arrangements for the provisions in the bill. The Committee agreed to write to the Scottish Government and Audit Scotland on issues raised in its discussion.
Public Audit Committee

9th Meeting, 2013 (Session 4), Wednesday 12 June 2013

Landfill Tax (Scotland) Bill

Introduction
1. The purpose of this paper is to invite the Committee to further consider its approach to scrutiny of the Landfill Tax (Scotland) Bill (LT) at Stage 1.

Background
2. The Bill was introduced by the Scottish Government on 17 April 2013. The Finance Committee is lead committee for Stage 1 scrutiny and has issued a call for evidence on the Bill.

3. At its meeting on 1 May this Committee agreed to write to the Scottish Government and the Auditor General for Scotland seeking responses to the points below:

Scottish Government:
Audit arrangements and accountability
- Which organisation will include the landfill tax accountable officer? Will there be one accountable officer for administration and one for collection of the tax?
- Will SEPA’s responsibilities with regards landfill tax be subject to audit by Audit Scotland?
- Will SEPA publish annual information on its performance in collecting the tax and the levels of tax collected?
- Where does the Scottish Government envisage responsibility will lie between the two organisations with regards the delegated functions? For example, should there be lower levels of tax collected than anticipated (and the Committee notes the revenue forecasts of the Scottish Government compared with those of the OBR), would Revenue Scotland or SEPA ultimately be accountable?
- How will SEPA manage its responsibilities on landfill tax alongside other proposed changes to the organisation e.g. in the Regulatory Reform Bill?

Risk management
- With regards the introduction of the proposed landfill tax, what does the Scottish Government consider to be the key risks associated with establishing Revenue Scotland and adding responsibilities to SEPA?
- What are the outline plans and approaches of Revenue Scotland and SEPA in preparing for the collection of this tax?
- What are the Scottish Government’s landfill tax forecasts; do these differ from those of the OBR and, if so, why; and what would be the implications for it and its Purpose (as set out in the Policy Memorandum) of there being lower tax collection compared with the forecasts of the OBR?
Audit Scotland:
- With regards the introduction of the proposed landfill tax, what does Audit Scotland consider will constitute appropriate audit arrangements for Revenue Scotland and the new responsibilities of SEPA?

4. The responses of the Scottish Government and the AGS are attached.

Timetable
5. The Committee agreed to seek, then consider, responses to the above questions and then report any comments it has to the Finance Committee ahead of that Committee’s 26 June meeting (when it will hear from SEPA, Revenue Scotland and the Cabinet Secretary for Finance, Employment and Sustainable Growth).

Conclusion
6. The Committee is invited to consider the attached responses and whether it wishes to submit any comments to the Finance Committee ahead of its evidence session with the Cabinet Secretary for Finance, Employment and Sustainable Growth.

Fergus D. Cochrane
Clerk to the Committee

Annex

Landfill Tax (Scotland) Bill

- Convener to Cabinet Secretary for Finance, Employment and Sustainable Growth, 7 May 2013
- Convener to the Auditor General for Scotland, 7 May 2013
- Auditor General for Scotland to Convener, 27 May 2013
- Cabinet Secretary for Finance, Employment and Sustainable Growth to Convener, 7 June 2013
Dear John,

LANDFILL TAX (SCOTLAND) BILL

The Public Audit Committee, at its meeting this morning, agreed to seek information relating to the landfill tax, specifically in relation to the new responsibilities of SEPA and Revenue Scotland proposed under the Landfill Tax (Scotland) Bill. You will recall I wrote to you in similar terms with regards the Land and Buildings Transaction Tax (Scotland) Bill.

The Committee agreed to seek responses to the following questions:

Audit arrangements and accountability

- Which organisation will include the landfill tax accountable officer? Will there be one accountable officer for administration and one for collection of the tax?
- Will SEPA’s responsibilities with regards landfill tax be subject to audit by Audit Scotland?
- Will SEPA publish annual information on its performance in collecting the tax and the levels of tax collected?
- Where does the Scottish Government envisage responsibility will lie between the two organisations with regards the delegated functions? For example, should there be lower levels of tax collected than anticipated (and the Committee notes the revenue forecasts of the Scottish Government compared with those of the OBR), would Revenue Scotland or SEPA ultimately be accountable?
- How will SEPA manage its responsibilities on landfill tax alongside other proposed changes to the organisation e.g. in the Regulatory Reform Bill?
**Risk management**

- With regards the introduction of the proposed landfill tax, what does the Scottish Government consider to be the key risks associated with establishing Revenue Scotland and adding responsibilities to SEPA?
- What are the outline plans and approaches of Revenue Scotland and SEPA in preparing for the collection of this tax?
- What are the Scottish Government’s landfill tax forecasts; do these differ from those of the OBR and, if so, why; and what would be the implications for it and its Purpose (as set out in the Policy Memorandum) of there being lower tax collection compared with the forecasts of the OBR?

The Committee agreed to pass to the Finance Committee any comments arising from your response ahead of that Committee’s Stage 1 oral evidence session with you on 26 June 2013. **Accordingly, could I invite a response to the above questions by 5 June to allow the PAC to consider this at its meeting on 12 June.**

I have written to the Auditor General for Scotland on this issue and a copy of that letter is attached for your information. I am copying this letter to Kenneth Gibson MSP (Convener of the Finance Committee) and to the Auditor General for Scotland. Should your officials have any questions, could I invite them to contact the Committee’s clerking team.

Yours sincerely

---

**Iain Gray MSP**  
Convener
Dear Caroline,

LANDFILL TAX (SCOTLAND) BILL

The Public Audit Committee, at its meeting this morning, agreed to seek information relating to the landfill tax, specifically in relation to the new responsibilities of SEPA and Revenue Scotland proposed under the Landfill Tax (Scotland) Bill. You will recall I wrote to you in similar terms with regards the Land and Buildings Transaction Tax (Scotland) Bill.

The Committee agreed to seek a response from you to the following question:

- With regards the introduction of the proposed landfill tax, what does Audit Scotland consider will constitute appropriate audit arrangements for Revenue Scotland and the new responsibilities of SEPA?

The Committee also agreed to pass to the Finance Committee any comments arising from your response ahead of that committee’s Stage 1 oral evidence session with the Cabinet Secretary for Finance, Employment and Sustainable Growth on 26 June 2013. **Accordingly, could I invite a response to the above question by 5 June** to allow the PAC to consider this at its meeting on 12 June.

I have written to the Cabinet Secretary on this issue and a copy of that letter is attached for your information. I am copying this letter to Kenneth Gibson MSP (Convener of the Finance Committee) and the Cabinet Secretary.

Please contact our clerking team should you have any questions.
Yours sincerely

Iain Gray MSP
Convener
Iain Gray MSP
Convener,
Public Audit Committee
T3.60
Scottish Parliament
Edinburgh EH99 1SP

Dear Convener

Landfill Tax

Thank you for your letter of 7 May requesting my views on the audit arrangements for the collection of the new Landfill Tax.

The Landfill Tax (Scotland) Bill is the second of three connected Bills that are being introduced to the Parliament in order to implement the devolved taxes provisions of the Scotland Act 2012. The Bill to introduce Landfill Tax deals with arrangements specific to that tax with the overall tax management arrangements expected to be the subject of a later Bill.

The Scottish Government’s Consultation on Tax Management issued in December 2012 proposes that Revenue Scotland should be established as a non-ministerial department and states that “We expect that Revenue Scotland would come within the scope of the Auditor General for Scotland for purposes of audit and scrutiny”. If Revenue Scotland receives funding directly from the Scottish Consolidated Fund then the audit will automatically fall to the Auditor General. If it does not receive direct funding from the Consolidated Fund (for example to cover administration costs) then the audit provision will need to be explicit in the Taxes Management Bill. In either event Revenue Scotland will consequently also be within the scope of section 23 of the Public Finance and Accountability (Scotland) Act 2000 allowing the Auditor General to conduct performance audits.

The Policy Memorandum accompanying the Bill proposes that Revenue Scotland will delegate the collection of the Landfill Tax to the Scottish Environment Protection Agency (SEPA) in order to utilise SEPA’s experience in regulating landfill sites. SEPA is already required to send its accounts to the Auditor General for auditing and therefore any amounts relating to the new responsibilities which appear in their accounts will already be covered by existing powers as is the power to examine the economy, efficiency and effectiveness of the way in which it uses its resources.

In addition, any amounts of tax revenues that fall to be paid into the Scottish Consolidated Fund will be subject to audit as part of the audit of the Fund.

Whilst we understand that it has not yet been decided which sets of accounts the taxes collected will appear in, the existing audit arrangements together with those proposed in the consultation on Tax Management will ensure that I am able to report to Parliament on the operation of the Landfill Tax.

Yours sincerely

Caroline Gardner
Auditor General for Scotland
7 June 2013

Dear Iain

Thank you for your letter of 7 May setting out the Public Audit Committee’s queries about the roles and responsibilities of Revenue Scotland and the Scottish Environment Protection Agency in administering Scottish Landfill Tax following its introduction in April 2015 and about the anticipated audit and risk management arrangements.

I take each of the Committee’s questions in turn below:

Audit arrangements and accountability

Q. Which organisation will include the landfill tax accountable officer? Will there be one accountable officer for administration and one for collection of the tax?

A. The accountable officer of Revenue Scotland will be responsible for Scottish Landfill Tax. We expect the Scottish Landfill Tax Bill and the Tax Management Bill to enable Revenue Scotland to delegate the exercise of any of its functions to SEPA. However, we do not propose that this power would enable Revenue Scotland to delegate its accountability for the tax. That accountability will therefore be retained by Revenue Scotland.

Q. Will SEPA’s responsibilities with regards landfill tax be subject to audit by Audit Scotland?

A. Both SEPA and Revenue Scotland will be subject to audit by Audit Scotland (or an auditor working on behalf of the Auditor General for Scotland) regarding their respective responsibilities for Scottish Landfill Tax.
Q. Will SEPA publish annual information on its performance in collecting the tax and the levels of tax collected?

A. Revenue Scotland will provide operational and performance information on the running of Scottish Landfill Tax, including information from SEPA. Revenue Scotland intends to establish an agreement with SEPA that will include arrangements on the provision and publication of management and performance information. Revenue Scotland will have a formal agreement with SEPA on the delegation of responsibilities.

Q. Where does the Scottish Government envisage responsibility will lie between the two organisations with regards the delegated functions? For example, should there be lower levels of tax collected than anticipated (and the Committee notes the revenue forecasts of the Scottish Government compared with those of the OBR), would Revenue Scotland or SEPA ultimately be accountable?

A. Accountability for running Scottish Landfill Tax will lie with Revenue Scotland. Within any limits on delegation imposed by the tax management legislation, which as you know will come before Parliament later this year, it will be for Revenue Scotland to decide which of its functions will be delegated to SEPA. Planning on this is at an early stage and will not be finalised until the legislation is in place, but Revenue Scotland will have early discussions with Audit Scotland as part of the planning process. The ultimate responsibility for the collection of tax will lie with Revenue Scotland and the delegation of any particular areas of work, such as activity on compliance, will be set out clearly. In the interests of transparency, I have asked that the final agreement on delegation from Revenue Scotland to SEPA be a public document.

Q. How will SEPA manage its responsibilities on landfill tax alongside other proposed changes to the organisation e.g. in the Regulatory Reform Bill?

A. SEPA has set up a Project Board to organise and manage the proposed Landfill Tax responsibilities and employed a Principle Policy Officer and Project Manager to specifically aid the regulatory development and implementation of the Project. An implementation team has been established by SEPA to address the organisational implications of the Regulatory Reform Bill. Both of these operations are overseen by the Head of National Operations, John Kenny, to ensure consistency and ease the development of organisational change in relation to these projects.

Risk management

Q. With regards the introduction of the proposed landfill tax, what does the Scottish Government consider to be the key risks associated with establishing Revenue Scotland and adding responsibilities to SEPA?

A. The Government has identified a number of risks associated with the establishment of legal and administrative arrangements for a new tax system. These include the potential for tax avoidance activity, higher than expected administrative and collection costs and the under-collection of tax. We also require to manage risks in terms of the development of appropriate information technology and other systems for collecting the tax, and the resources required. Planning is at an early stage. However, robust programme management arrangements between Revenue Scotland and SEPA are in place, and these will include a range of mitigating actions in relation to the risks associated with development of information technology systems required to administer the tax.
This will include assurance through the SG's ICT Investment Plan Process, put in place following the Auditor General for Scotlan's report on 'ICT contracts: an audit of three public sector programmes'.

Q. What are the outline plans and approaches of Revenue Scotland and SEPA in preparing for the collection of this tax?

A. Revenue Scotland has established a Tax Administration Programme, which is a joint programme of work between Revenue Scotland, SEPA and Registers of Scotland (recognising our intention to work with RoS to collect the other devolved tax, Land and Buildings Transaction Tax, which the Committee has considered previously).

In terms of tax administration, the key strands of work – against which we are developing appropriate milestones – are as follows:

- Staffing (Revenue Scotland's initial staffing complement is fully in place from May 2013)
- Agreement on the management of data between RS, Registers of Scotland and SEPA, which will underpin decisions on ICT development
- Process mapping
- Initial estimates of our longer-term staffing expectations in the three organisations.

Q. What are the Scottish Government's landfill tax forecasts; do these differ from those of the OBR and, if so, why; and what would be the implications for it and its Purpose (as set out in the Policy Memorandum) of there being lower tax collection compared with the forecasts of the OBR?

A. The Scottish Government provided estimates of forecast Landfill Tax receipts in the Financial Memorandum to the Bill. Within limits of forecasting error, the Scottish Government accepts the 2015-16 forecast of £107m provided by the Office of Budget Responsibility.

Thereafter, as indicated in the Financial Memorandum, the Scottish Government expects receipts from Landfill Tax to fall by 62% in the 10 year period from 2016-17 to 2025-26. The OBR estimates broadly steady receipts to 2017-18. OBR's forecasts are based on projections of current trends in Landfill Tax receipts at a UK level. The Scottish Government forecasts are based on expected future trends in disposal to landfill in Scotland.

The Scottish Government is discussing with the UK Government the block grant adjustment relating to the devolved taxes. The net effect of Landfill Tax on the Scottish Budget depends on both actual receipts and the block grant adjustment.

I trust that this response deals with the Committee's queries.

JOHN SWINNEY
PUBLIC AUDIT COMMITTEE

MINUTES

9th Meeting, 2013 (Session 4)

Wednesday 12 June 2013

Present:
Colin Beattie
Bob Doris
Iain Gray (Convener)
Colin Keir
Tavish Scott

Willie Coffey
James Dornan
Mark Griffin
Mary Scanlon (Deputy Convener)

Landfill Tax (Scotland) Bill: The Committee considered correspondence from the Scottish Government and the Auditor General for Scotland and agreed to write to the Scottish Government for further clarification.
Landfill Tax (Scotland) Bill (Correspondence)

11:50

The Convener: Item 4 is correspondence on the Landfill Tax (Scotland) Bill. We wrote previously to both the Scottish Government and Audit Scotland, asking a number of questions about the audit arrangements around the new landfill tax and about Revenue Scotland, which is the new body that will be responsible for the tax. The question is the degree to which the Auditor General is satisfied that the audit arrangements emerging would allow her to audit the new tax properly. The correspondence is in front of members and I invite members’ comments.

Tavish Scott: I want to pick up on a point in Mr Swinney’s answer to your letter, which I think is broadly fair. However, at the top of page 2, the answer to the committee’s question about the publication of annual performance information does not use the word “annual”. Had it done so, or had it referred to any other timescale, I would have been perfectly relaxed about it. I am sure that the answer is implying “annual”, but I think that it is important that we nail down the timescales in which we should expect information to be provided. After all, the Scottish Environment Protection Agency provides an annual report that includes its accounts and which is audited by Audit Scotland, and so on. I think that we require clarification on the timescale from the Cabinet Secretary for Finance, Employment and Sustainable Growth.

The Convener: I am happy to write again to ask for that clarification. I thought that the response was fair and that it addressed all the questions, and the correspondence from the Auditor General seemed quite reassuring.

James Dornan: On the point that Tavish Scott raised, I take it that we will just ask when the agreement to which Mr Swinney referred will be established, which will surely give us the information that Tavish Scott is looking for.

The Convener: I think that Mr Scott wants us to write to ask for reassurance that the agreement will ensure that SEPA will publish information at least annually, which I think is slightly more than what you are suggesting, Mr Dornan. However, I imagine that annual publication will be contained in the agreement.

Does the committee agree to note the correspondence?

Members indicated agreement.
Dear Kenneth,

LANDFILL TAX (SCOTLAND) BILL

The Public Audit Committee, at its meeting earlier today, considered the responses of the Auditor General for Scotland and the Cabinet Secretary for Finance, Employment and Sustainable Growth to questions from the Committee on the accountability, risk management and audit arrangements to be put in place in connection with this tax. The correspondence is available on our webpage: www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/56760.aspx

The Committee previously agreed to pass to your Committee any comments it had on the responses ahead of your Stage 1 oral evidence session with the CSFESG on 19 June 2013. I am attaching a letter for your information which I have today sent to the Cabinet Secretary seeking clarification on one point. I have requested a response ahead of his evidence session with you.

Yours sincerely

Iain Gray MSP
Convener
Dear John,

LANDFILL TAX (SCOTLAND) BILL

You will recall I wrote to you on 7 May 2013 in connection with the accountability, risk management and audit arrangements for the above Bill. The Committee considered your response, and that of the Auditor General for Scotland, at its meeting earlier today and agreed to seek clarification on one point.

The Committee had previously asked;

Will SEPA publish annual information on its performance in collecting the tax and the levels of tax collected?

In your response of 7 June 2013 you stated:

Revenue Scotland will provide operational and performance information on the running of Scottish Landfill Tax, including information from SEPA. Revenue Scotland intends to establish an agreement with SEPA that will include arrangements on the provision and publication of management and performance information. Revenue Scotland will have a formal agreement with SEPA on the delegation of responsibilities.

Can you confirm that this will be annual information?

It would be helpful if your response to this point could be made known before your evidence session with the Finance Committee on 19 June 2013.

John Swinney MSP
Cabinet Secretary for Finance, Employment and Sustainable Growth
The Scottish Government
St Andrew's House
Edinburgh
EH1 3DG

12 June 2013
I am copying this letter to the Auditor General for Scotland and to Kenneth Gibson MSP (Convener of the Finance Committee). Should your officials have any questions, could I invite them to contact the Committee’s clerking team.

Yours sincerely

Iain Gray MSP
Convener
Thank you for your letter of 12 June 2013. In my response to the committee on 7 June 2013 stated:

"Revenue Scotland will provide operational and performance information on the running of Scottish Landfill Tax, including information from SEPA. Revenue Scotland intends to establish an agreement with SEPA that will include arrangements on the provision and publication of management and performance information. Revenue Scotland will have a formal agreement with SEPA on the delegation of responsibilities."

Further to this, in your letter of the 12 June 2013 the Committee asked:

"Can you confirm that this will be annual information?"

I can confirm that I intend that both Revenue Scotland and SEPA will publish operational, management and performance data in relation to Landfill Tax on an annual basis.

I trust that this response deals with the Committee’s query.
Background
1. The Committee reported on the delegated powers in the Landfill Tax (Scotland) Bill on 11 June in its 34th report of 2013.
2. The response from the Scottish Government to this report is reproduced at the annex.

Scottish Government response

Section 35(1) – Delegation of functions to SEPA

3. Section 35(1) permits the Tax Authority to delegate any of its functions (other than functions of legislating) to SEPA. The delegation of the function does not affect the Tax Authority’s responsibility for the exercise of the function or the Authority’s ability to carry out such functions.

4. In its stage 1 report the Committee strongly recommended that, in order to ensure accountability and provide clarity for individuals regulated by the regime, any such delegations should be published.

5. In its response to the report, the Scottish Government accepted the Committee’s recommendation and indicated that it would provide for the publication of non-legislative delegations to SEPA in the forthcoming Revenue Scotland and Tax Powers Bill.

Conclusion

3. Unless amendments that will affect the delegated powers provisions are made to the Bill at Stage 2 the Committee will not consider it again. Members are therefore invited to make any comments they wish on the Bill at this stage.

Recommendation

6. Members are invited to note the Scottish Government’s response on the Bill and to make any comments they wish at this stage.
Correspondence from the Scottish Government, dated 18 September 2013:

Section 35(1) – Delegation of functions to SEPA
Powers conferred on: the Scottish Ministers
Powers exercisable by: regulations
Parliamentary procedure: negative procedure

Committee’s consideration and recommendation

1. Section 35(1) permits the Tax Authority to delegate any of its functions (other than functions of legislating) to SEPA. The delegation of the function does not affect the Tax Authority’s responsibility for the exercise of the function or the Authority’s ability to carry out such functions.

2. The Committee considers that it seems sensible for non-legislative functions of the Tax Authority to be capable of being delegated to SEPA. SEPA already collects data from all landfill sites in Scotland as part of the permitting process and is knowledgeable about the type and quantity of material being deposited and likely to incur tax. Nevertheless, the Committee considers that when a statutory function has been delegated that should be publicly and clearly identified so that persons regulated by the regime understand who is authorised to take what steps. No provision for the publication of such delegations is provided for in the bill.

3. On raising this matter with the Scottish Government it has indicated that it is mindful of the need for transparency and accountability in the delegation of functions from Revenue Scotland to SEPA. It advises that there would be an opportunity to revisit this in the Tax Management (Scotland) Bill to be brought forward next year. However the Government has not given any firm commitment to do so.

4. The Committee strongly recommends that the Scottish Government improve the transparency and accountability of the delegation of functions from the Tax Authority to SEPA by requiring publication of any such delegation.

Scottish Government’s Response

We accept the Committee’s strong recommendation “that the Scottish Government improve the transparency and accountability of the delegation of functions from the Tax Authority to SEPA by requiring publication of any such delegation”. The Scottish Government will reflect on how best to give effect to this in the forthcoming Revenue Scotland and Tax Powers Bill.
Dear Kenneth,

LANDFILL TAX (SCOTLAND) BILL: RESPONSE TO FINANCE COMMITTEE STAGE 1 REPORT

I am grateful to the Committee for its detailed scrutiny of our proposals set out in the Landfill Tax Bill, and its conclusions in the Stage 1 report. The Scottish Government welcomes the Committee’s support for the general principles of the Bill and notes that the Committee will aim to closely monitor the implementation and delivery of Scottish Landfill Tax.

I would like to respond in more detail to the issues raised and the recommendations made in the Report. I have provided this more detailed response by way of the attached Annex.

I hope the Committee finds this information helpful.

JOHN SWINNEY
The Scottish Government welcomes the Finance Committee’s Stage 1 report on the Landfill Tax (Scotland) Bill. The Scottish Government has considered the Committee’s recommendations and responds to each point as follows:

<table>
<thead>
<tr>
<th>No.</th>
<th>Recommendation</th>
<th>Response</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Tax Rates</strong></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
| 1. | The Committee notes the concerns of witnesses regarding the desire for greater certainty in relation to the setting of future tax rates and invites the Government to clarify the reasons why there is a need to wait until around September 2014 to set future rates. **Paragraph 21** | The Scottish Government will consider the evidence provided to the Committee regarding the desire for greater certainty in relation to the setting of future tax rates. The setting of tax rates and bands will form a key component of the Scottish budget process from 2015-16, as the forecast revenue generated from the devolved taxes will be one determinant of the overall financial resources available to the Scottish Government in the fiscal year in question. It is important that decisions on rates and bands are taken as part of the wider budget process so that the impact on revenues can be appropriately considered. The Scottish Government looks forward to imminent discussions with the Committee on the changes which will be required to the Scottish draft Budget scrutiny process to reflect the expanded fiscal powers devolved by the Scotland Act 2012.

The Government notes that certainty to industry is important for planning and investment decisions. It is important to note that no announcement has been made about what UK rates will be charged after 2015, other than that the standard rate will not be lower than £80 per tonne until 2020 at least. The Scottish Government has already stated that the Scottish rates to be introduced from April 2015 will not be lower than the UK rates in force at that point. The Scottish Government appreciates the necessity to prevent ‘waste tourism’ and discussions will continue with the UK government on this matter. |
2. The Committee also asks the Government to provide greater clarity regarding the period to be covered when the rates are announced and whether there will be an escalator. **Paragraph 22**

Ministers have indicated that they will bring forward proposals on the rates of tax to apply in Scotland from April 2015 as part of the draft Budget process in respect of 2015-16. Once approved by Parliament, the rates will 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 including tax rates applying south of the Border.

### Waste Tourism

3. The Committee notes that the Government’s scope to make substantial changes to the rates and structure of landfill tax in Scotland is limited by the implications for waste tourism. The Committee asks whether the Government has commissioned any research or conducted any analysis on the likely impact of any changes to the structure and rates of landfill tax in Scotland on waste moving between Scotland and England. **Paragraph 29**

The Government commissioned work from Zero Waste Scotland and from Eunomia Ltd to provide the evidence base for elements of the Financial Memorandum and the BRIA. A summary of this work can be found in the paper, ‘Scotland Landfill Tax Bill 2012: An Economic Assessment’, which can be found on Zero Waste Scotland’s website: [http://www.zerowastescotland.org.uk/LandfillTaxEconomicAssessment](http://www.zerowastescotland.org.uk/LandfillTaxEconomicAssessment). This study looked at changes to rates and the potential impact on ‘waste tourism’.
<p>| | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>4.</td>
<td>The Committee also invites the Government to provide details of what discussions have taken place with the UK Environment Agency on the implications of any changes to landfill tax on waste moving between Scotland and England. <strong>Paragraph 30</strong></td>
<td>The Scottish Government has had no direct discussion with the UK Environment Agency on this matter.</td>
</tr>
<tr>
<td>Level of scrutiny</td>
<td></td>
<td></td>
</tr>
<tr>
<td>5.</td>
<td>The Committee welcomes the introduction of the &quot;provisional affirmative procedure&quot; for the changing of tax rates for both Landfill Tax and LBTT where there is a need to make these changes with immediate effect. However, it is not clear why the Bill also provides for this procedure to be used when there is not a need for Ministers to act quickly. The Committee, therefore, invites the Government to explain why the affirmative procedure should not apply to an order changing the tax rates for both LBTT and Landfill Tax other than in cases where there is a need to introduce the tax changes with immediate effect. <strong>Paragraphs 34 and 35</strong></td>
<td>The Scottish Government notes the Committee’s observation. The Scottish Government considers the use of provisional affirmative procedure to be appropriate to set the rates and bands of devolved taxes in all cases (after the first such setting) because it provides a balance between Parliamentary scrutiny and the requirement for government to effectively manage its revenues. These issues cannot be considered in isolation from the overall budget scrutiny process, which will change significantly from 2015-16 onwards to enable appropriate scrutiny by Parliament of the exercise of the expanded fiscal powers devolved by the Scotland Act 2012. The Scottish Government looks forward to imminent discussions with the Committee on the changes required to the Scottish draft Budget scrutiny process. These discussions will fully consider scrutiny of the setting of tax rates and bands.</td>
</tr>
<tr>
<td>No.</td>
<td>Recommendation</td>
<td>Response</td>
</tr>
<tr>
<td>-----</td>
<td>----------------</td>
<td>----------</td>
</tr>
<tr>
<td></td>
<td><strong>Taxable disposals</strong></td>
<td></td>
</tr>
<tr>
<td>6.</td>
<td>The Committee recommends that the introduction of any additional rates is subject to the affirmative procedure. <strong>Paragraph 41</strong></td>
<td>The Cabinet Secretary for Finance, Employment and Sustainable Growth has written to the Delegated Powers and Law Reform Committee to advise that the Government proposes to bring forward an amendment at Stage 2 of the Bill to provide that the order-making power in section 13 (5) of the Bill to introduce additional rates will be subject to the provisional affirmative procedure.</td>
</tr>
<tr>
<td></td>
<td><strong>Exemptions</strong></td>
<td></td>
</tr>
<tr>
<td>7.</td>
<td>The Committee recommends that any adjustment or removal of exemptions is subject to the affirmative procedure. <strong>Paragraph 50</strong></td>
<td>The Cabinet Secretary for Finance, Employment and Sustainable Growth has written to the Delegated Powers and Law Reform Committee to advise that the Government proposes to bring forward an amendment at Stage 2 of the Bill to provide that the order-making power in section 11 (1) of the Bill to adjust or remove exemptions will be subject to the provisional affirmative procedure.</td>
</tr>
<tr>
<td>Island communities</td>
<td></td>
<td></td>
</tr>
<tr>
<td>--------------------</td>
<td></td>
<td></td>
</tr>
<tr>
<td>8.</td>
<td>The Committee invites the Government to respond to the suggestion that there should be a lower rate of tax on island wastes for materials for which no viable recycling or recovery routes are available. <strong>Paragraph 55</strong></td>
<td>Island landfill sites do not have to meet as stringent conditions as those in mainland Scotland in order to meet the European Landfill Directive requirements (as a result of a derogation applying to the Directive). Consequently landfill costs are already potentially cheaper than on the mainland. An island landfill site may utilise up to 52 exemptions from the Waste Management (Scotland) Regulations 2011. If an exemption is registered, disposal to such a site would not be a taxable deposit and there would be no landfill tax liability. Other waste processing activities may also be licensed or permitted. If island landfill sites were subject to a lower rate of tax, transport companies could back-haul waste from the mainland to the islands for financial gain. This would result in reduced landfilling capacity in the islands and an increase in the environmental impact on fragile island ecosystems. Island landfill sites currently pay landfill tax at the same rate as the rest of the UK and waste activities in the islands are regulated in the same way. However the derogation noted above from some Landfill Directive requirements applies to island sites. The Government has no plans to change this position.</td>
</tr>
</tbody>
</table>
| 9. | The Committee asks the Government to clarify whether the resources which have been allocated to Revenue Scotland for compliance activity include additional resources for SEPA to identify and deal with illegal sites. **Paragraph 68** | Revenue Scotland’s resources will be used to pursue appropriate care and management of the two devolved taxes. This includes undertaking compliance activity. On Landfill Tax, SEPA’s expertise will be invaluable and Revenue Scotland expects to allocate some of the funding available for compliance activity to SEPA to support its work.

Provisions within the SLfT Bill would, if enacted, allow for the imposition of a tax charge based on liability arising from illegal landfill. Identifying and dealing with illegal landfill sites is currently part of SEPA’s current environmental activities, for which they receive grant funding, and in future will be part of their tax compliance activity. |

| 10. | The Committee invites the Government to clarify whether any extra revenues raised as a result of the power to impose tax on illegal landfill sites might be used to assist SEPA in identifying illegal sites. **Paragraph 69** | Tax revenues raised from the imposition of Landfill Tax, including tax on disposals to illegal landfill sites, will be paid into the Scottish Consolidated Fund from which public sector activities, including those of SEPA, are funded. SEPA will receive funding in respect of tax administration functions it will carry out on behalf of Revenue Scotland. Funding will take account of a range of factors, including compliance activity. |
### Role of Revenue Scotland and SEPA

| 11.   | The Committee recognises that Landfill Tax is not due to be implemented until April 2015 but is nevertheless concerned about the current lack of clarity regarding the respective roles of Revenue Scotland and SEPA and recommends that this be addressed as a matter of urgency.  

   The Committee intends to monitor and scrutinise the implementation and delivery of Landfill Tax and invites Revenue Scotland and SEPA to report to it both orally and in writing on a six-monthly basis.  

   The Committee supports the recommendation of the DPLRC in relation to the publication of the delegation of functions.  

   **Paragraphs 80-82** | The forthcoming Revenue Scotland and Tax Powers Bill will set out a clear statutory framework which provides for the delegation of some or all of Revenue Scotland’s powers and functions to SEPA in relation to the collection and management of Scottish Landfill Tax, and we look forward to the Committee’s views on these provisions in due course. Other aspects are operational decisions and are part of the ongoing planning and development for April 2015 delivery and will be taken forward in a timely fashion.  

   The Cabinet Secretary for Finance, Employment and Sustainable Growth has written to the Delegated Powers and Law Reform Committee accepting Committee’s strong recommendation “that the Scottish Government improve the transparency and accountability of the delegation of functions from the Tax Authority to SEPA by requiring publication of any such delegation”. The Scottish Government will reflect on how best to give effect to this in the forthcoming Revenue Scotland and Tax Powers Bill. |
### Block grant adjustment

<table>
<thead>
<tr>
<th>Year</th>
<th>Index</th>
</tr>
</thead>
<tbody>
<tr>
<td>2015-16</td>
<td>100</td>
</tr>
<tr>
<td>2016-17</td>
<td>90</td>
</tr>
<tr>
<td>2017-18</td>
<td>81</td>
</tr>
<tr>
<td>2018-19</td>
<td>73</td>
</tr>
<tr>
<td>2019-20</td>
<td>64</td>
</tr>
<tr>
<td>2020-21</td>
<td>56</td>
</tr>
<tr>
<td>2021-22</td>
<td>48</td>
</tr>
<tr>
<td>2022-23</td>
<td>40</td>
</tr>
<tr>
<td>2023-24</td>
<td>33</td>
</tr>
<tr>
<td>2024-25</td>
<td>26</td>
</tr>
</tbody>
</table>

The Committee is currently considering the block grant adjustment in relation to all financial powers arising from the Scotland Act and will submit its views to the Government.

The Committee invites the Government to provide a year-on-year breakdown of the estimated decline in landfill tax receipts between 2015 and 2025 and asks whether the possibility of recycling rates plateauing was considered during the forecasting exercise.

**Paragraphs 90-91**

The Scottish Government forecast a fall in Landfill Tax receipts are set out below. The list is indexed with 100 representing tax receipts in 2015. The table shows an 74% drop in receipts between 2015-16 to 2024-25.

This forecast has been produced internally by the Scottish Government and has not been independently verified. It assumes that Scotland reaches its Zero Waste targets and landfill will plateau post 2025. It also assumes that active waste disposal falls from 1.6m tonnes to 326,500 tonnes and that the volume of waste subject to the lower rate falls from 833,000 tonnes to 324,000 tonnes. Tax rates are assumed to remain as they are at present. No allowance has been made for receipts from taxing illegal landfilling at this stage.
<table>
<thead>
<tr>
<th></th>
<th>Landfill Communities Fund</th>
</tr>
</thead>
</table>
| 13. | The Committee welcomes the retention of the existing landfill tax credit system, supports the 10% increase and invites the Government to confirm that this will result in a new cap of 7.48.  
**Paragraph 111** | The Scottish Government notes the Committee’s response. The new cap will be one tenth more than the UK cap at the point of implementation in 2015 and revised so this proportion is maintained for three years thereafter. If the UK credit cap remains at 6.8% then this would mean a cap of 7.48% in Scotland. |
| 14. | The Committee is supportive of the principle that those communities most affected by landfill sites should be the ones to benefit most from the fund.  
**Paragraph 112** | The Scottish Government welcomes the Committee’s response and is working to ensure this principle is reflected in the future design of the fund. |
| 15. | The Committee recommends that the subordinate legislation detailing the Fund’s regulatory and administrative arrangements should be subject to the affirmative procedure.  
**Paragraph 113** | The Scottish Government notes the Committee’s recommendation and will consider further whether to amend the Bill in this regard. |
| 16. | The Committee invites the Government to provide it with regular updates of its progress with regard to the Scottish LCF.  
**Paragraph 114** | The Scottish Government is happy to provide regular updates on progress on establishing the Scottish LCF. |

**Conclusion**

| 17. | The Committee supports the general principles of the Bill and emphasises that it will seek to monitor closely the implementation and delivery of the Scottish Landfill Tax.  
**Paragraph 115** | The Scottish Government welcomes the Committee’s report and has noted all its points in relation to the Landfill Tax (Scotland) Bill. |
EXTRACT FROM THE MINUTES OF PROCEEDINGS

Vol. 3, No. 40 Session 4

Meeting of the Parliament

Tuesday 29 October 2013

Note: (DT) signifies a decision taken at Decision Time.

Landfill Tax (Scotland) Bill: The Cabinet Secretary for Finance, Employment and Sustainable Growth (John Swinney) moved S4M-08040—That the Parliament agrees to the general principles of the Landfill Tax (Scotland) Bill.

After debate, the motion was agreed to (DT).

Landfill Tax (Scotland) Bill: Financial Resolution: The Cabinet Secretary for Finance, Employment and Sustainable Growth (John Swinney) moved S4M-07167—That the Parliament, for the purposes of any Act of the Scottish Parliament resulting from the Landfill Tax (Scotland) Bill, agrees to—

(a) any expenditure of a kind referred to in Rule 9.12.3(b) of the Parliament’s Standing Orders arising in consequence of the Act, and

(b) any charge or payment in relation to which Rule 9.12.4 of the Standing Orders applies arising in consequence of the Act.

The motion was agreed to (DT).
Landfill Tax (Scotland) Bill:
Stage 1

The Presiding Officer (Tricia Marwick): The next item of business is a debate on motion S4M-08040, in the name of John Swinney, on the Landfill Tax (Scotland) Bill. I will give the cabinet secretary a couple of seconds to catch his breath.

I call John Swinney to speak to and move the motion. Mr Swinney, you have 14 minutes.

14:42

The Cabinet Secretary for Finance, Employment and Sustainable Growth (John Swinney): As members know, the Landfill Tax (Scotland) Bill is the second bill to establish devolved taxes under the limited powers in the Scotland Act 2012. It follows the successful conclusion of the Land and Buildings Transaction Tax (Scotland) Act 2013, which Parliament passed in June and which received royal assent at the end of July.

The bill sets out the provisions and rules for a Scottish landfill tax, which will replace the United Kingdom system of landfill tax in Scotland from April 2015. I am delighted that the bill has reached the milestone of the stage 1 debate.

I thank the Finance Committee’s members for their work to prepare their stage 1 report, and I welcome their support for the bill’s general principles. Yesterday, I responded to a number of the recommendations and issues that the committee raised as part of its scrutiny of the bill.

Both devolved taxes—the land and buildings transaction tax and the Scottish landfill tax—will be administered under powers that are set out in a third bill. That is the revenue Scotland and tax powers bill, which is scheduled to be introduced in Parliament before the end of this calendar year.

I explained in a statement to the chamber in June 2012 that we will establish revenue Scotland to assess and collect devolved taxes. Revenue Scotland will work with the Scottish Environment Protection Agency to administer the Scottish landfill tax. Revenue Scotland will serve the needs of the people of Scotland at a lower cost than would be possible if Her Majesty’s Revenue and Customs administered the taxes, and we will deliver a better system that is more in line with Scotland’s needs.

In my statement in June last year, I set out the approach that the Government is taking to taxation. The proposals are firmly founded on principles that Adam Smith set out in 1776 in “An Inquiry into the Nature and Causes of the Wealth of Nations”. Our approach is based on four maxims that he set out—that the burden should be proportionate to the ability to pay and that there should be certainty, convenience and efficiency of collection. Those principles provide the foundation for a system that will meet the needs of 21st century Scotland, along with the Government’s core purpose of delivering sustainable economic growth for Scotland.

The Government intends to use its responsibility for taxation to ensure that no one is asked to pay more than they can legitimately afford. Landfill tax is quite different in nature from other types of tax such as the land and buildings transaction tax, and it acts as an encouragement to find other means of waste disposal. I have made clear to the Finance Committee my intention that the landfill tax rates will be set at an appropriate level that will be no lower than that for the rest of the UK.

Providing certainty about when and how much tax is due is an important guiding principle that underpins our approach. The consultation process for the landfill tax bill has been extremely helpful and productive, and we will continue to engage with taxpayers and professionals as our proposals develop in order to ensure that tax changes are properly discussed and communicated before they are introduced.

I have noted the desire of those within industry for as much certainty as possible with regard to the setting of tax rates. I have indicated to the Finance Committee that I am minded to make the proposed tax rates for the landfill tax known in the budget of 2014, a number of months before the introduction of the tax in April 2015.

One of the opportunities that we have with the devolution of these tax responsibilities is to create a simple and administratively efficient tax collection system. Revenue Scotland is working with the Scottish Environment Protection Agency on proposals to develop appropriate systems that are as straightforward and accessible as they can be in order to ensure that the approach to collecting Scottish landfill tax meets the needs of taxpayers and the tax authority.

It is essential that our tax system should be efficient, and it is clear that tax revenues must be devoted to paying for public services rather than being consumed in tax administration. The need for efficiency in the tax system is at the heart of our approach, and we will ensure that administration costs are kept to a minimum.

Turning to the bill itself, I want to place resource efficiency at the heart of our economy. The zero waste agenda in Scotland is thinking about moving resources from the margins to the mainstream, and our priorities for the future are supporting innovation and new ways of doing business as we move towards the creation of a circular economy.
The actions that we are already taking are helping businesses to save money and are creating jobs and delivering economic growth. Landfill tax is a cornerstone of our zero waste plan, as it encourages the prevention, reuse and recycling of materials and helps to keep valuable resources circulating in the Scottish economy.

Why is putting the value of resources at the heart of our economy so important? Very simply, it is because we live in a changing world that is placing new pressures on how we manage resources.

The world economy is changing, with new major economic powers emerging in places such as Brazil, India, Indonesia and Korea. The climate is changing: globally, we are set to release another 0.5 trillion tonnes of carbon emissions in the next few decades, and no part of our world will remain untouched by the impacts of climate change.

The population is changing, and the global population is due to increase to 10.5 billion by 2075. That population is becoming more affluent and increasingly urban—so much so that developing countries will need to build the equivalent of a city the size of Glasgow every five days from now to 2050.

All of that means that our demands for resources are changing. Globally, we are expected by 2030 to need 41 per cent more water, 80 per cent more steel and 33 per cent more energy. For some rare earth metals that are used in wind turbines, demand is expected to grow by up to 2,600 per cent. It is no longer acceptable to throw those valuable resources into the ground where their value is lost for ever. A Scottish landfill tax is essential in helping to drive those materials out of landfill and back into the economy.

Landfill tax can be viewed as the first and most successful of the green taxes, and it continues to change waste management practices. Alongside our zero waste plan and waste regulations, the tax will help us to deliver an economy in which materials are reprocessed and remanufactured, which will help in achieving our aim of sustainable economic growth.

The Scottish Government has carefully considered proposals for a landfill tax. Those proposals broadly reflect the existing UK landfill tax provisions, which are well understood by the waste industry and appear to work reasonably well.

The public consultation on our proposals ran from October last year to January 2013, and we asked consultees about two key changes to landfill tax. The first is a proposed enhancement to the tax credit arrangements under which the landfill communities fund operates.

The fund, which operates at a UK level, supports good causes in the vicinity of landfill sites in response to bids from relevant organisations. The Landfill Tax (Scotland) Bill allows us to create a communities fund, and the detail of the fund will be set out in regulations and guidance. However, I want to cover where my thinking has reached on it. I stress that ministers have not reached a conclusion about the details of the communities fund so I look forward to hearing the views that will be expressed by members today before formulating the Government's proposals.

I recognise that the landfill communities fund has been successful in managing to lever in match funding and help communities that are affected by landfill. I intend to set up a Scottish fund to replace the UK system. The Scottish fund will maintain its private funding status and will therefore be a useful and strong asset for securing match funding. That will mean that the Scottish fund will continue the good work of harnessing money for good-quality projects and helping the communities that are most affected by landfill, while, crucially, leveraging in resources from other sources to add to the resources that have been created by the tax credit arising from the landfill tax.

John Mason (Glasgow Shettleston) (SNP): There has been some criticism that the cost of administering the UK system is quite high. Does the cabinet secretary think that administrative costs can be lower in Scotland?

John Swinney: I thank Mr Mason for his intervention, and I acknowledge and agree with the concerns that have been expressed about the UK communities fund’s cumbersome management arrangement. I have therefore decided to set up a Scottish fund. An explicit requirement of that fund will be to significantly reduce the administrative costs that are involved in the process.

That is important for two reasons, the first of which relates to the legitimate issues that Mr Mason and others have raised. Secondly—and I will come on to speak about this in due course—the level of landfill tax proceeds will decline over time so it is vitally important that we ensure that we have a much more efficient and cost-effective management mechanism for the landfill communities fund, which will diminish in the years to come.

The UK fund gives taxpayers the opportunity to earn tax credits by making contributions to the fund. At present, they are capped at 6.8 per cent of total tax liabilities in a year. As I explained to the Finance Committee, we propose to increase by 10 per cent to 7.48 per cent an operator’s tax liability that will be offset by contributions to a separate Scottish fund. That was widely welcomed by those who responded to the consultation.
We have also undertaken a further consultation with stakeholders about how the fund can be administered. As I said to Mr Mason, as we landfill less, less money will become available to the fund during the next decade. Increases in the credit cap will not offset the inevitable decline in the role that landfill has to play in future waste management practices.

I recognise that the current UK landfill communities fund gives priority to community and biodiversity projects on the principle that those who are most affected by landfill should benefit most from the fund.

I also recognise that landfill contributes a sizeable part of Scotland’s greenhouse gas emissions and has climate change impacts. In 2011, landfill emitted 600,000 tonnes of CO₂ equivalent gases into the atmosphere. Furthermore, landfill encourages the production and transportation of new goods through the extraction and processing of virgin raw materials. That is an unsustainable and damaging production model. I am keen to hear members’ views about the funding objectives of a Scottish landfill communities fund and how we can secure the best outcomes.

Current arrangements are predicated on the principle that a 10-mile radius is applied to existing or redundant landfill sites, and the fund is deployed on projects that are contained within that 10-mile radius. There has been much debate of that issue in the Finance Committee and within the consultation.

On the one hand, I understand that community groups in places that are most affected by landfill want the 10-mile radius rule to apply to a Scottish fund so that they benefit the most from it. I have also heard from environmental groups that have an interest in biodiversity projects that the reach of the fund could be extended and the rule should be lifted for biodiversity projects. I am keen to hear the views that will be expressed during today’s debate about how we might proceed on that point. As the bill goes through Parliament, I will confirm the Government’s thinking on the question.

The second main change that we propose for the fund is the taxation of the illegal disposal of waste. We have several reasons for making that proposal. First, illegal dumping is a problem that has significant environmental impacts. It is an environmental crime and it is rightly pursued and prosecuted as such. The additional penalty of a tax charge on illegal disposals should act as a powerful disincentive and help to prevent dumping.

Secondly, illegal dumping undermines legitimate waste operators, including landfill operators. Our proposals will support and encourage the industry to operate responsibly.

Thirdly, by clamping down on tax evasion in this way there is an opportunity to gather additional revenue without increasing the tax burden. Again, this proposal has been welcomed.

I want to make two further points in the remaining time that is available to me. We propose that key elements of the landfill tax will be set out in secondary legislation—for example, tax rates, detailed arrangements for tax credits and the operation of the landfill communities fund, and the list of wastes that fall into the higher and lower tax bands.

Taking that approach will enable the Scottish Government to consult properly on lists of waste materials and on the operation and administration of the tax. It will also provide flexibility to vary rates and to make other changes without the need for primary legislation. The Delegated Powers and Law Reform Committee has commented on our proposals and is broadly content with them.

The second issue is to do with the overall effect of landfill tax on the Scottish budget. As the committee is aware, the impact on the budget of the devolved taxes depends on tax receipts offset by the amount of the block grant adjustment. As I mentioned earlier, I am minded to set the tax rate for the Scottish landfill tax at a level no lower than that for the rest of the UK to maintain stability and to provide certainty to companies operating in the sector. However, as our zero waste policies continue to take effect, we expect to see tonnages to landfill decline further and so tax receipts will also begin to fall. The Office for Budget Responsibility’s forecasts do not yet reflect that expected decline.

One immediate challenge is to secure agreement to a block grant adjustment method that reflects the expected decline. That remains an unresolved issue with the UK Government, as the Scottish Parliament information centre briefing, which the Finance Committee has, makes clear.

I met the Chief Secretary to the Treasury recently before his appearance at the Finance Committee and he agrees that we need to find a resolution to the issue. Members will not be surprised to hear me say that I will continue to be closely involved in resolving the matter.

Stewart Stevenson (Banffshire and Buchan Coast) (SNP): Does the cabinet secretary recognise that in Catalonia, for example, from 2004 to 2009 there was a reduction of approximately 20 per cent in their equivalent tax, which shows what can be done and what we might expect as we focus on reducing landfill?
John Swinney: The evidence speaks for itself on the effectiveness of the zero waste strategy in reducing the amount and the volume of waste that is going to landfill. It is literally an arithmetic calculation—which, of course, my dear friend Mr Stevenson would be adept at performing on behalf of us all—that that will be the pattern of revenues in the years to come, which will have to be reflected in the block grant adjustment mechanism.

I am confident that we will have the legal and administrative systems in place in good time to collect a fair and robust landfill tax in Scotland from April 2015. I have covered the approach that the Government is taking to the formation of the legislation and the issues that have been raised in the Finance Committee. I look forward to considering the points that are raised by members of Parliament today as a consequence of the debate and to engaging further to resolve the issues that I have indicated still require resolution.

It is with pleasure that I move,

That the Parliament agrees to the general principles of the Landfill Tax (Scotland) Bill.

The Deputy Presiding Officer (John Scott):

Many thanks, cabinet secretary.

I call Kenneth Gibson to speak on behalf of the Finance Committee. Mr Gibson, you have 10 minutes or thereby.

14:58

Kenneth Gibson (Cunninghame North) (SNP): I am pleased to debate the Landfill Tax (Scotland) Bill and to highlight some key areas that the Finance Committee considered during its stage 1 scrutiny of the bill.

The Scotland Act 2012 devolved a range of taxation and borrowing measures—the ability to borrow money for capital projects and to set a Scottish rate of income tax to replace a 10p in the pound reduction in income tax for Scottish taxpayers across all tax bands, as well as powers to set taxes on land and buildings transactions and on disposals of waste to landfill.

Our report identifies issues and themes that emerged from the evidence that we considered. I will highlight some of those, starting with the tax framework.

The Scottish Government has said that landfill tax will not be set at lower rates than the UK equivalents, and Mr Swinney just confirmed that. Scottish rates will mirror UK rates in 2015-16, meaning £80 per tonne for active materials and £2.50 per tonne for inert materials. The rates are not specified in the bill, which allows the Government the flexibility to change the rates in future without the need for primary legislation.

The cabinet secretary mentioned certainty, but a number of witnesses raised concerns about the impact of uncertainty in relation to taxation rates on their financial planning. The submission from the Convention of Scottish Local Authorities said:

“It is essential that certainty exists and where it does not that the financial risk to local authorities is appropriately mitigated by Scottish Government.”

Similarly, the Scottish Environmental Services Association stated:

“We represent an industry that is looking to make investment decisions for alternative non-landfill infrastructure, the viability of which will depend on what landfill tax will be, so it would have been nice to have an indication of what that tax will be.”—[Official Report, Finance Committee, 12 June 2013; c 2776.]

We heard from the cabinet secretary that, although he had yet to make a final decision on the timing of his announcement of landfill tax rates, he was considering doing so around the same time as publication of the draft budget in September 2014. He has reaffirmed that again today. We have invited the Government to clarify why there is a need to wait until then. We would also welcome confirmation of the duration that the rates will apply for and whether there will be an escalator.

One issue linked to rate setting is waste tourism, whereby waste might be transported across the border—in either direction—in order to take advantage of more favourable rates. The RSPB Scotland submission explained:

“Altering rates may encourage the cross-border transfer of waste. Depending on how the rates were set, this would either lead to a loss of revenue from Scotland or an increase in the amount of landfill waste within Scotland.”

The committee recognises the potential for such impacts, should there be significant changes to the rates and structure of landfill tax. Therefore, we have invited the Government to outline what discussions it has had with the UK Environment Agency on the issue and to confirm whether it has commissioned any research or analysis.

As with the land and buildings transaction tax, the Government reserves the power to make future changes to landfill taxation rates via subordinate legislation. The bill provides that the first order to set tax rates will be subject to the affirmative procedure and any future orders will be subject to the “provisional affirmative procedure”, which would allow rate changes to come into force immediately.

The committee welcomes the fact that changes to taxation rates will be subject to a form of affirmative procedure and recognises that there may be times when it is necessary for changes to have immediate effect—for example, in response to dramatic changes in market conditions—but it is
not clear to us why the standard affirmative procedure should not be used to set future rates in normal circumstances. For that reason, we ask the Government for the rationale behind using the provisional affirmative procedure other than when speed is of the essence.

The bill also enables the Government to introduce additional rates of taxation for certain types of waste via secondary legislation. The evidence was generally in favour of that power. The committee recommends that the introduction of any additional rate be made subject to the affirmative procedure.

Similarly, while there will initially be an identical set of exemptions to those under the existing UK tax regime, the Government reserves the right to add certain categories of waste to, or to remove them from, the exemptions list. We heard suggestions that hazardous materials, such as asbestos, should be made exempt in order to encourage safe disposal and to reduce illegal dumping. The bill provides for any additions to the list of exemptions to be subject to the negative procedure, but, given the potential for waste tourism, the committee recommends that any adjustment to the list of exemptions be made subject to the affirmative procedure.

Evidence was heard about the dangers of illegal landfill sites, which Mr Swinney also touched on. Such sites not only damage the environment but are invariably controlled by tax-dodging criminals. Even when such illegal sites are discovered, the court fines are often less than the tax evaded. The fact that the financial risks of getting caught are outweighed by the benefits makes such activity profitable and attractive to the unscrupulous.

If criminals were required to pay landfill tax, the fines would be much higher. Renfrewshire Council noted in its submission that the proposals will

"ensure that the punishment is more expensive than the savings made from continuing to commit environmental crime."

The committee therefore welcomes the taxing of unauthorised disposals to landfill.

Nevertheless, although respondents were supportive of the imposition of a tax on illegal landfill sites, some suggested that regulatory and enforcement bodies such as SEPA need additional resources to help identify such sites. The Scottish Environmental Services Association stated that the problem required

"strong leadership and resources sufficient to create a climate where the fear of being caught is high."

We seek clarification as to whether the resources allocated to revenue Scotland for compliance activity include additional resources for SEPA to identify illegal sites. We also ask whether any additional revenues collected as a result of the new power might be used to identify further illegal landfill sites.

Revenue Scotland—a body that will be formally created by the revenue Scotland and tax powers bill, which we expect to scrutinise next year—will administer the new landfill tax and work with SEPA in a similar way to that in which it will work with Registers of Scotland on the LBTT. Witnesses agreed that such an approach seems sensible. For example, RSPB Scotland stated that it supports the proposal,

"given the expertise and information that SEPA currently hold with regard to landfill in Scotland."

However, we also heard concerns relating to a "potential skills gap" at SEPA. For example, the North Ayrshire Council submission stated that SEPA is

"an experienced environmental regulator rather than a tax assessor."

The Chartered Institution of Wastes Management questioned whether SEPA has the expertise to undertake

"a tax-policing and revenue-raising role."—[Official Report, Finance Committee, 12 June 2013; c 2780.]

SEPA acknowledged that staff require training and guidance to fulfil its new role and confirmed that funding is in place to provide that. SEPA is confident that any skills gap will disappear by April 2015. The Delegated Powers and Law Reform Committee noted that the bill allows the tax authority to delegate functions to SEPA. Although that committee agreed that the provision is "sensible", it "strongly recommends" that publication of any delegation should be required. The Finance Committee supports that and welcomes the cabinet secretary's commitment to "look very carefully" at the issue and to respond to questions in the Delegated Powers and Law Reform Committee's report.

A clear division of responsibilities between revenue Scotland and SEPA is important. We welcome the confirmation that the position will be defined, and the committee will scrutinise that. Nevertheless, although we recognise that the tax will not be implemented until April 2015, the committee seeks further clarification about the respective roles of revenue Scotland and SEPA.

As with the LBTT, the committee will monitor and scrutinise the implementation and delivery of the Scottish landfill tax. We have invited revenue Scotland and SEPA to report on a six-monthly basis. We will receive the first progress report from revenue Scotland and Registers of Scotland on the implementation of the LBTT at tomorrow's Finance Committee meeting.
The cabinet secretary spent some time on the landfill communities fund. At present, landfill operators can give up to 6.8 per cent of their UK tax liabilities to fund community or environmental projects near landfill sites. As the cabinet secretary said, the bill makes provision for the creation of a similar Scottish fund and for a 10 per cent increase in the credit cap.

We are pleased that the Government will introduce a new Scottish cap of 7.48 per cent. Concerns were raised about the regulation of the existing fund, with the Scottish Wildlife Trust suggesting that it is "expensive", that it "duplicates information gathering" and that it is "over-regulated". The Scottish landfill communities fund forum agreed that current regulatory requirements are "extremely onerous and time consuming".—[Official Report, Finance Committee, 12 June 2013: c 2796.]

The committee is therefore pleased that the Government will consider how to administer the fund more efficiently.

At present, to receive funding, a site should be no more than 10 miles from a landfill site. Some witnesses suggested that, as the number of active sites declines, that should be reconsidered, perhaps to consider disruption and pollution that are caused by the transportation of waste through communities en route to sites. Others pointed out that the fund is relatively small and that retention of the 10-mile criterion is important and indeed crucial.

The committee noted the arguments for and against and is conscious that local factors vary from place to place. Although 10 miles might seem a considerable distance in Glasgow, it might not in rural and sparsely populated areas. Considering those views, the committee endorsed the principle that those who are most affected by landfill sites should benefit the most.

For that reason, we welcome the bill team's suggestion that we might need something "a little more sophisticated", and I hope that it will attract the match funding that the cabinet secretary mentioned. We asked the Government to update us on progress on that and we look forward to considering proposals via secondary legislation in advance of the bill's implementation. We recommend that such secondary legislation should be subject to the affirmative procedure.

Members will know that the OBR is responsible for forecasting Scottish tax receipts for the Scottish rate of income tax, the LBTT and the landfill tax. It provided three forecasts for Scottish receipts from landfill tax from 2011-12 to 2017-18, with the second and third much lower than the first. Although the OBR anticipates that landfill tax revenues will remain broadly level from 2015, the Scottish Government expects significant decline, partly due to its environmental policies. It predicts that receipts will fall from £107 million in 2015-16 to about £40.5 million in 2025. As the block grant will be subject to a one-off reduction, the committee believes that it is important that any reduction in tax receipts does not penalise Scotland.

Stewart Stevenson: Will the member take an intervention?

Kenneth Gibson: I am in my last minute but, if I am able to, I am happy to take an intervention.

The Deputy Presiding Officer: You may.

Stewart Stevenson: Is the member aware that, in Sweden, between 2000 and 2009 the tax took dropped to one fifth of the original figure because of success in the programmes to tackle waste and that, if Scotland's ambitions are also realised, we will be in a similar position?

Kenneth Gibson: It appears that the Scottish Government's policies are fairly conservative, as it envisages only a 60 per cent reduction. Clearly, from what the member says, it is important that we have effective negotiations with the UK Government and that forecasting is accurate so that Scotland does not lose out in the way that I indicated.

The committee recently published its report on implementing the Scotland Act 2012's financial powers. Among other things, the report emphasised the importance of forecast methodology and data being published, transparent and open to scrutiny. We ask whether the proposed new independent forecasting body will be established in time to predict landfill tax receipts in advance of the 2015-16 draft budget and, if not, which forecasts would be used to inform the document.

The committee reflected carefully on the evidence and supports the general principles of the bill. I look forward to hearing from other members and the cabinet secretary when he winds up the debate.

15:10

Iain Gray (East Lothian) (Lab): I support the general principles of the Landfill Tax (Scotland) Bill. Those who consider it to be a rather dry and dull piece of revenue legislation, perhaps of more interest to accountants than to agitators, miss the point on several counts because it is, of course, the latest instalment in the greatest devolution of power to the Parliament since it was created in 1999.

As the cabinet secretary briefly mentioned, the bill comes before us as a direct result of the
Scotland Act 2012, which itself is the legacy of the Calman commission. That was an agitation worthy of the name: the Parliament audaciously seized power from the then minority Administration and simply bypassed the executive arm of the Scottish Government to deliver the commission and its wide-ranging recommendations and then successfully negotiate their implementation with the UK Government and the Westminster Parliament.

We should remember that that was not the first shift in power between the Parliaments. Indeed, that process has been a constant feature of devolution, with the most significant example prior to 2012 perhaps being the shifting of responsibility for rail infrastructure along with several hundreds of millions of pounds every year—I think that it was £300 million at the time.

**John Mason:** I agree with Iain Gray: we welcome the new powers. Does he agree that the rate at which powers have come to the Parliament has been disappointingly slow?

**Iain Gray:** Actually, I do not. Indeed, my next point rather contradicts Mr Mason’s point. An examination of the years of devolution would show that powers have shifted almost daily. One example is responsibility for regulation of offshore wind as that industry developed and became more mature. The most recent example is the devolution of council tax benefit and crisis loans—parts of the benefits system—within the past year or so.

Devolution of powers has happened as and when the circumstances have demanded it. That flexibility is what Rhodri Morgan—for it was he—meant when he called devolution a process not an event. However, the Calman changes are qualitatively different, in that they begin substantially to address what the commission identified as the greatest weakness of the Scotland Act 1998: the fact that, by international comparisons, that act devolved a remarkable degree of legislative power to the Parliament but much less fiscal power than in other examples of devolution around the world. The changes in the Scotland Act 2012 are intended to redress that imbalance. That is a shift of principle, not just a shift of administrative convenience.

The commission identified landfill tax as ripe for devolution for two reasons. First, it is a tax based on place—specifically, where the landfill is sited—and, therefore, it is immobile and defined by geography. Secondly, it is a tax the purpose of which is fundamentally related to policy areas that were already within the purview of the Parliament, in the form of pursuing sustainability, reducing environmental damage, achieving greater efficiency in the management of waste and playing our part in addressing climate change—a global challenge, as the cabinet secretary observed in his opening speech. The tax is a crucial lever in the drive to increase recycling and the reuse of our resources and to cut the emissions that damage the planet on which we live.

The bill may read like something less than epic verse, but it nonetheless exemplifies a powerful argument that we should exercise this power and that our devolution settlement is flexible enough to ensure that we do so.

That is of course an argument that the Scottish Government sometimes finds inconvenient for its ambitions and thus it resisted it to the last gasp. However, in the spirit of working on common ground, I will say that I am happy that it has embraced it and that we have reached this landmark today. I commend the Government’s efforts to get the bill in place so that we are ready for April 2015, when the UK landfill tax will be switched off.

The bill leaves many questions begged. It is framework legislation, with little or no detail as to how ministers plan to deploy the new tax. Most obviously, beyond indicating, as he did again today, that the rates will be set at levels no lower than the UK rates at the time of transfer, the cabinet secretary has said only that September 2014 is the earliest that we will know what the opening rate for the tax will be. Both business and local government have sought an earlier indication and, given that this is a new tax—a change—that would seem to me not unreasonable and could help significantly by providing some reassurance. I understand that taxes can change at any time in the future, but perhaps given the circumstances the cabinet secretary might reconsider whether an earlier indication would be possible.

This is one of those curious taxes that if successful will deliver less and less income to Government. The Government’s forecasts reflect that properly. However, we have seen figures today that show that only nine councils have met their recycling targets and that some recycled less last year than the year before, not more. We have to consider how the tax will work. The tax is our key lever to transform that situation, so it would be a little more convincing if ministers were a little less cautious and more imaginative in explaining now how they intend to use their new power to use the tax differently, and to set new and different rates, to do exactly that. After all, that would be no more than the cabinet secretary did in introducing the land and buildings transaction tax, when he took the opportunity to create a more progressive regime than the one that he inherited, which is something that we supported.

One very welcome change to the landfill tax is the power referred to by the cabinet secretary to tax as well as fine illegal landfill sites. Once again, there is a lot of detail still to hear about how that
will be enforced and what additional resources SEPA might have at its disposal to pursue that additional revenue. We look forward to hearing more about that during the passage of the bill.

There are many outstanding questions about the landfill community fund, too. I welcome the fact that the cabinet secretary today indicated an open-mindedness about how we might change and reform that aspect of landfill taxation. Certainly, the increase to 7.34 per cent of tax liability for the fund is welcome. For constituencies such as mine where landfill takes place, those credits can be a very important source of support for local communities. In East Lothian, they fund very diverse activities from the Hi His at Haddington Athletic Football Club to the probably higher-flying puffins of the Scottish Seabird Centre, which is fighting back against tree mallow on the islands of Craigleith and Fidra.

The 10-mile limit is just that—a limit. Kenny Gibson was right to say that, particularly in rural Scotland, 10 miles is not really a very great distance. It seems to me that we could relax the limit without losing altogether the principle that the communities affected are the ones that benefit. For example, we could extend eligibility to the whole of the local authority area where landfill takes place, which would take some account of transportation of the waste to the landfill site.

We are very pleased to see the bill move forward, although we have some concerns about the many questions that its drafting still begs. I accept that primary legislation can suffer from too much as well as too little detail. The Finance Committee made a point about that, too. The committee's resolution was the right one, which was to say that in its view changes in the orders regarding new rates, for example, should be subject to the affirmative procedure, which would ensure proper and appropriate scrutiny when they come forward. The Finance Committee made that point effectively during the passage of the Land and Buildings Transaction Tax (Scotland) Bill. Ministers accepted the point in that case and agreed with the argument, and they should do so in this case, as well.

As with much of our legislation, the dullness is in the detail, but in agreeing to the principles of the bill—I am sure that we shall do so—we should not lose sight of the fact that it is but the latest indication that our devolution settlement is a powerful, flexible and dynamic democratic model that is worth fighting to keep.

15:20

**Gavin Brown (Lothian) (Con):** Working on the bill in the Finance Committee has been pretty interesting and rewarding at times. At this stage, the Scottish Government's overall direction of travel is right. It is broadly attempting to replicate the existing UK-wide landfill tax, but with some tweaks to improve areas in which that tax is not working quite as effectively as it might have done.

I want to focus on some areas that the committee has highlighted in which there are policy decisions to be made by the Government and the Parliament as a whole, and areas in which further information from the Government is required in order to allow Parliament and, indeed, the committee to make decisions about the best way to implement the bill and to look more widely at the secondary legislation that will follow what is a framework bill.

My first remarks relate to tax rates. With any tax, the tax rates gather a lot of comment. Views are put forward by practitioners on all sides, of course, but I wonder whether the Scottish Government can answer one question at this early stage, because the public statements leave open the possibility of confusion.

The Scottish Government bill team's official position in giving evidence was that tax rates would not be set lower than those that are in place for the UK landfill tax. I think that that is pretty close to what the cabinet secretary said. However, the bill's financial memorandum says that “the Scottish tax rates will mirror UK rates in 2015-16”.

Those two things may be exactly the same; equally, they may not be. Saying that the rates will be no lower could mean that they will be the same or higher, whereas the word “mirror” suggests that the rates will be identical. Can the cabinet secretary say at this early stage, either in his closing speech or fairly soon, whether the Government means that the rates will literally mirror the UK rates in 2015-16 or may well be higher? That is not 100 per cent clear to me at this stage.

**John Mason:** I wonder whether the member is making a bit more of that issue than should be the case. My reading of the matter at face value was that the rate would not be any lower, so that is a commitment, and that mirroring means that the rates will perhaps be not exactly the same, but will be very close. That gives me quite a lot of clarity about where we are going.

**Gavin Brown:** That may give Mr Mason comfort. I merely put it on the public record that it would be helpful if we got just a bit more clarity from the Scottish Government, if clarity is indeed available.

It would also be helpful to know something else from the Scottish Government. We have heard that the initial rates or initial information will be given in the autumn of 2014, in advance of the
setting of the 2015-16 budget. Does the cabinet secretary have a view at this stage on the period of time for which rates will be set? In its submission to the committee, COSLA said that it “would suggest that five years in advance would be most appropriate.”

I think that North Ayrshire Council suggested three years. Does the Scottish Government intend to set rates for several years or for single-year periods? Its response to the committee, which came out either yesterday or today, suggested that the matter would be looked at specifically year on year. Will the Government tell us whether the rates will be set for several years or only for one year?

Waste tourism is a critical issue that quite rightly attracted comment throughout the committee’s consideration of the bill. There are, of course, differences between Scotland and the rest of the UK that can lead to waste being taken from one part of the UK to another. We were told that the committee would be surprised at how small the differential in tax rates would have to be for it to be cost effective to move waste. It would be interesting to know—the committee has called for this information—what specific work the Scottish Government has done in that regard and whether it will publish that so that the committee and, indeed, Parliament, can have clarity on how many pounds per tonne the difference needs to be before it starts to make an impact where the rate is higher in one part of the United Kingdom than in another. That will make an impact on a range of matters—the rates that we set as a whole; the number of rates and whether those are ultimately changed; the materials included under each rate; and the exemptions applied to rates.

Stewart Stevenson: Is the member aware of article 11 of Council directive 1999/31/EC?

Kenneth Gibson: Who isnae?

Stewart Stevenson: I am sure that Gavin Brown will have read it intensely. Article 11 specifically addresses the issue of differences between regimes, not just in Europe but worldwide. In effect, article 11 suggests that it would be perfectly proper to legislate to prevent such movements from a regime with tighter environmental controls to one with less tight environmental controls. Would the member support the Scottish Parliament having the appropriate powers to do that?

Gavin Brown: The member is on fire today—he has told us about Catalonia and Sweden and now we are hearing about some old directives, too. In all seriousness, it would be helpful to have a 2013 analysis of what the Scottish Government believes the position to be, so that, as we finalise the legislation and the secondary legislation underneath it, we get a clear picture on how waste tourism might be affected by differential rates.

Like other members, I welcome the move to allow unauthorised disposals to be taxed. That, of course, makes the operation less attractive, and it could have an impact on unauthorised sites. I think everybody—all stakeholders across the spectrum—would be against such sites. There is a serious question for the Government to answer—the answer has not quite come out in its response to the Finance Committee. Is the policy objective simply to give SEPA the power to go after and collect tax from unauthorised sites, rather than merely fine them, which is the current position? Is SEPA expected to visit the same number of sites that it currently visits, with additional revenue being gained as a result? Is the policy objective to intensify the regime and increase the number of sites that SEPA can visit and the amount of work that it can do at those sites, so that we collect additional tax not just from existing sites but potentially from many more? If it is the latter, it would be interesting to hear about the resources that are required to do that.

I will leave it there for now. Suffice it to say that we support the bill at stage 1.

15:28

Jamie Hepburn (Cumbernauld and Kilsyth) (SNP): In welcoming the debate, I congratulate the cabinet secretary on managing to finagle a mention of Adam Smith into his speech. As someone who studied Adam Smith's works as a student at the University of the Glasgow, I never imagined that I would hear his name mentioned in a debate on waste management in the Scottish Parliament. That is surely the ultimate triumph of the cabinet secretary's opening remarks.

When we debated the Land and Buildings Transaction Tax (Scotland) Bill, we spoke about the historic nature of the debate because it was the first time that we had discussed a new Scottish tax in this Parliament—we said that it was a new chapter in the story of devolution. We cannot quite describe the Landfill Tax (Scotland) Bill in the same historic terms—it has managed to be the runner-up in the posterity stakes—but, for the reasons that have been set out thus far, it is still important as part of the general sweep of the devolution of new taxation powers.

I will focus on a few points that arose during stage 1 consideration of the bill by the Finance Committee, of which I am a member. First, it makes a lot of sense to devolve the tax. We can align our approach with our climate change ambitions—the Scottish Parliament's ambitious climate change legislation has been well remarked on, and encouraging more recycling is surely part
of the effort in that regard. The core aim of the landfill tax is to transfer waste from landfill, so that it is recycled instead. It therefore makes sense for the Scottish Parliament to have control over landfill taxation.

I welcome the cabinet secretary’s announcement during stage 1, which he reiterated today, that he will ensure that the act that we pass does not encourage waste tourism, by setting the rate of landfill tax at an appropriate level. If the tax is to be a mechanism to secure environmental improvement, transporting waste across jurisdictions would be counterproductive and would make no sense.

I also welcome the provision for a disincentive in relation to illegal dumping, which is and will remain a criminal offence whose perpetrators are subject to a fine. Under the current arrangements, there is no mechanism for levying tax in such circumstances and a fine might be less than the tax that should have been paid. The bill will ensure that anyone who dumps waste illegally will have to pay the tax as well as any fine that results from criminal proceedings. It seems strange that the UK Government has not taken that sensible step and it is good that the Scottish Government is doing so.

The landfill communities fund will continue to be important, which is also welcome. I think that all members are aware that many local organisations, including organisations in my area, have benefited from the fund, which is probably the most visible element of landfill tax in many localities. There is debate about how near to landfill activity an organisation must be before it can apply for funding, and Michael McMahon, who is a member of the Finance Committee, has been assiduous in pursuing the issue at stage 1, given the landfill activity that takes place in his constituency. A degree of flexibility is sensible, but it is right that areas that are affected by landfill should be the primary beneficiaries of the fund.

The cabinet secretary told the Finance Committee that although Scotland’s share of the total UK landfill tax take since 1996-97 has been 9.2 per cent we have received only 7 per cent of the UK Government’s landfill communities fund for projects in Scotland. There is therefore clearly an opportunity for organisations in Scotland to benefit from the devolution of the tax.

John Mason’s point about the need for more cost-effective administration of the fund was sensible, and the cabinet secretary’s response was the right one. That relates to the issue of an audit of fund holders, which was raised in evidence to the committee by the people who administer the fund. If the administration of the fund is more effective, there will surely be the potential for more funds to be released to organisations. I look forward to hearing the Scottish Government’s suggestions in that regard.

I do not have much time left, but I briefly mention the block grant adjustment for landfill tax, which will be crucial. The Chief Secretary to the Treasury told the committee that he wants the adjustment to be based on forecasts. I gently say that the OBR has been unable to provide a coherent and sensible forecast in relation to landfill taxation. I hope that the UK Government will agree to a fair mechanism and I look forward to seeing what emerges.

I look forward to considering the bill at stage 2.

15:34

Malcolm Chisholm (Edinburgh Northern and Leith) (Lab): The landfill tax has been a fairly successful environmental tax at a UK level, with a 30 per cent reduction in the amount of waste sent to landfill since 1997. That reduction has to a significant extent been driven by the tax escalator, which I hope will also become a feature of the Scottish landfill tax.

Unfortunately, however, we do not know anything about the escalator; indeed, we do not know very much at all about landfill tax rates, except that they will be no lower than those under the UK system. As the committee convener Kenny Gibson has reminded the chamber, that uncertainty was criticised at committee by a range of bodies, including COSLA and the Scottish Environmental Services Association, which argued that it made investment difficult. The cabinet secretary told the committee that rates do not drive investment, but I put it gently to him that rates are not entirely irrelevant in that respect. I hope that he will take on board the committee’s recommendations with regard to his clarifying why he will not make an announcement before December and that he will say something before then on whether he will adopt an escalator and on the period for which he will announce tax rates.

That is not the only uncertainty on this issue; there is also uncertainty about the amount of landfill tax revenue that is currently raised in Scotland. We certainly cannot blame the cabinet secretary for that. There are no directly available data on the Scottish share of landfill tax and the figure of 9.2 per cent of UK revenues that has been bandied about in the committee and elsewhere is derived solely from SEPA-collected data on the quantity of waste sent to landfill in Scotland. The OBR uses that 9.2 per cent estimate for its own estimates on landfill tax revenues; in other words, it estimates UK landfill tax revenues and then takes 9.2 per cent of that for Scotland. However, as we have heard, there is a degree of concern particularly about the OBR’s
initial projections for the next two or three years, which were not only wildly out but unbelievable. Although the OBR has now adjusted those figures, this is clearly an important issue for the block grant adjustment and I hope that the OBR will look seriously at the Scottish Government’s projection of a reduction in revenues to £40 million by 2025, which seems credible—even conservative, as Kenny Gibson has suggested. We had better ensure that we do not take that remark out of context as a description of Scottish Government policy. In any case, I would support the Scottish Government in urging the smallest possible block grant reduction; after all, the whole point of the tax is to drive down revenues, which might seem paradoxical from a Treasury point of view but is entirely sensible from an environmental point of view.

Speaking from an environmental point of view, I think that our instinct would be to drive hard on this tax in order to reduce waste as quickly as possible. However, there are two constraints in that respect: first, we have to be mindful not to encourage illegal dumping; and, secondly, we must remember the issue of waste tourism. Those constraints have to be taken into account in considering whether to have different rates, bands or exceptions from the UK. For example, if we set a different rate that is too high, we might collect less revenue because people would start to take their waste to England. On having different bands, SEPA has recommended that incinerator bottom ash be at the top level. Although that seems like a good suggestion, it might result in people taking all their ash to England. Finally, on having different exceptions, although there is a lot of merit in setting no rate for asbestos—after all, we do not want to encourage illegal dumping—the problem is that, if we have no such rate, we might also get all of England’s asbestos. Such matters have to be weighed up very carefully and I certainly support the committee’s recommendation that, given their difficulty and complexity, any legislation to decide additional rates or the removal of exceptions be taken under the affirmative procedure.

One thing we know is that there will be a tax as well as a fine on illegal dumping. Like the committee, I strongly welcome such a move but I wonder whether the cabinet secretary will clarify what additional revenues will be available to SEPA if it has the enforcement function in that respect. In response to a question that I think I asked in committee, SEPA said that the £300,000 that it had would not cover any enforcement activity. Indeed, in general we need some clarification of the respective roles of SEPA and revenue Scotland on this matter. I am glad that they are working together, but they need to work out exactly where the demarcation lines are.

One means of mitigating the impact of landfill at a local level is the Scottish landfill communities fund, which the cabinet secretary described in some detail in his speech. I am pleased that the current system of providing landfill operators with tax credits in exchange for a percentage of tax liability will be followed and that the 6.8 per cent of liabilities under the current system will be boosted by 10 per cent by the Scottish Government. That is certainly welcome. However, evidence to the committee from the Scottish landfill communities fund forum and others suggested that many areas that could benefit from such support are put off by an overcomplicated application process. Therefore, if the fund is to be properly benefited from under the new regime, we should look to simplify the system. For example, SEPA said that the regulation is top heavy and could be streamlined. I welcome the fact that the cabinet secretary has listened to SEPA and has made an announcement about that today.

On the eligibility radius, there is some tension between looking for more creative ways to reduce environmental impacts throughout Scotland and compensating communities that are closer and, therefore, more directly adversely impacted by the consequences of landfill. I would err on the side of caution and suggest that, for the sake of environmental justice, any finite funding should be distributed among those communities. That is consistent with the committee’s recommendation supporting the principle of those most affected benefiting the most.

15:41

John Mason (Glasgow Shettleston) (SNP): Yesterday, one of my staff told somebody that I was the only MSP who was interested in the landfill tax, but that was a bit unfair. The Finance Committee has been quite enthusiastic about it, as have Malcolm Chisholm—although he sometimes hides the fact—Gavin Brown and John Swinney. We should not underestimate the significance of the Parliament’s gaining tax-raising powers, albeit that the vast majority of taxes are still controlled by Westminster. Whatever happens in 2014, 2015 and 2016, the Parliament is not satisfied with the powers that it has, will not be satisfied with the powers that it has been promised and will press for the people in Scotland to make more decisions for Scotland.

Although, in the scheme of things, this is a relatively small tax, it is an important one because it brings together environmental policy, revenue raising and support for local communities. As with any tax in Scotland, we need to be aware of what our neighbours, especially England, are doing. As Malcolm Chisholm pointed out, a higher landfill tax is good for the environment, but there is little point
in it if it only shifts waste across the border and we suffer a loss of revenue. The evidence at committee was that even small differences in rates could lead to waste tourism, which we need to guard against both on a cross-border basis and between the mainland and the islands within Scotland. The answer to the challenges that the islands face is to have different exemptions for them and perhaps slightly less strict standards in some cases, rather than to have different rates for different parts of the country. Therefore, the statement that the Scottish rate will mirror the UK rate and that the rate will be no lower than the UK rate in 2015 is pretty fair.

Stewart Stevenson: Is the member aware that article 2 of the EC landfill directive of 1999 specifically makes provision for communities that have

“no more than 500 inhabitants per municipality”
or that are more than 50km from an appropriate place where waste may be deposited? I wonder whether we are doing as much as we may be permitted under the directive.

John Mason: The member would have to ask people who are better placed than I am whether we are doing as much as we could. I still think that the direction that the bill takes, and the present situation whereby there are slightly different standards for islands and remote communities, is fair.

There have been calls for greater certainty about rates and so on, a lot of which is crying wolf. Neither in the UK nor in Scotland can there be complete certainty about the future. One of the key aims of both Governments is to reduce waste by reducing, reusing and recycling, but that is notoriously hard to predict. The tenements in my constituency recently received grey recycling bins for food but it takes some time for people to get used to recycling.

Gavin Brown: Will the member give way?

John Mason: Let me just finish the point. In some cases, I have seen the little waste receptacles being used as mini-buckets to store mops in, which is not what they were intended for. There is always a degree of resistance to such changes.

Gavin Brown: The member used the phrase “crying wolf”. I wonder whether he was on the committee when it signed up to statements such as

“The Committee notes the concerns of witnesses ... and invites the Government to clarify the reasons”

for delay, and

“The Committee ... asks the Government to provide greater clarity”
on rates. Did he think that people were crying wolf when he signed up to the committee’s report?

John Mason: I have been thinking about the report every day since we wrote it, as I am sure Mr Brown has.

The point is that of course we would all be happy to have more clarity, if that were possible, but there needs to be a bit of realism. On the landfill tax, as in other areas, we do not have facts about the future. We can make projections and estimates and we can have a vision, but we do not know all the facts about the future. We must be realistic about that.

On unauthorised disposals, it is welcome that, in future, tax and fines will have to be paid. SEPA has a key role to play in that regard. We see small and large-scale dumping throughout the country, which we all agree needs to be clamped down on. SEPA’s resources must be kept under review, as that is an area of major concern for all our constituents. I welcome the Government’s response, which says:

“Funding will take account of a range of factors, including compliance activity.”

The block grant adjustment is one of the trickiest areas when it comes to the introduction of the landfill tax. Logically, the revenue that is received should fall, but the OBR has predicted that cash income will stay level. The Scottish Government response that receipts could fall by 74 per cent between 2015-16 and 2024-25 is pretty dramatic, and I certainly hope that that can be achieved, but the block grant adjustment must take account of that.

All three block grant adjustments are the subject of negotiation between the Scottish and UK Governments. Although it would be my preference to have a distinct, transparent solution for each of the three taxes, I accept that the landfill tax is smaller, relatively, and that the Scottish Government may want to trade off a poorer settlement on one tax for a better settlement on another.

I think that the 10-mile radius is probably too narrow in a rural area, but it is almost certainly too wide in an urban area. The bill team’s statement that

“something a little more sophisticated” — [Official Report, Finance Committee, 5 June 2013; c 2743.] was needed, which is referred to in paragraph 105 of the committee’s report, is very welcome.

The Landfill Tax (Scotland) Bill is the second of the proposed tax bills under the Scotland Act 2012. I very much welcome more control coming to Scotland. We must accept that we have limited room for manoeuvre on landfill tax, but we need to tackle the huge problem of waste that we face,
and I believe that the bill gives us the opportunity to do so.

15:47

Hanzala Malik (Glasgow) (Lab): I welcome the opportunity to speak about the landfill tax and its implications for Scotland’s long-term future.

Taxation and waste are not issues that capture the public’s imagination, but Tesco’s recent publication of the amount of food that it wastes— as part of which it was revealed that more than two thirds of bagged salads are thrown away—has shocked many people. I use the example of Tesco, as a substantial part of such waste occurs in the processing of food. For waste to be reduced, processes will need to change. We must take steps to reduce that element of waste.

For many companies, the reduction of waste is a matter of medium-term planning. In addition, the financial investment that is required for waste companies to develop an alternative strategy will involve positive long-term decision making. That is why the uncertainty over exactly what the landfill tax rate will be beyond 2015 is an issue that we need to grapple with. When the cabinet secretary was questioned by the Finance Committee, he said that such decisions were independent of the landfill tax rate and were to do with whether the Scottish people throw away things that those companies can make profit from.

My understanding is that both things are important for companies to make long-term financial projections and plan investments such as alternatives to landfill. It is much easier for the Scottish Government to increase certainty by setting the landfill tax rates three years in advance; whether we need a crystal ball to estimate what Scots will chuck away is another issue.

On another note, the consultation responses show widespread support for the landfill communities fund—the LCF—which is funded by landfill tax. The fund allows managers of landfill sites to give money for environmental, community and built heritage projects within a 10-mile radius of landfill sites or operational depots. I believe that the 10-mile radius rule should be more flexible to enable a wider group of community organisations to access the funds and make good use of them. One or two colleagues have suggested that the radius should be extended particularly in rural areas, but I think that we would benefit from it being done right across Scotland.

The bill will allow us to develop a clear management structure, and there should be regular updates on the fund’s administration to avoid the current duplication. The tax tariff on landfill should be flexible, which would allow realistic taxation that would encourage industry to participate and invest, and allow alternative use of landfill sites so that we can have a better future for not only our industry but our citizens.

Last but not least, it is important that we recognise that the amount of waste in Scotland places an unnecessary burden on the nation’s resources. It is therefore important that we continue to ensure that we play a serious role so that industry does not carry all the burden. The Government has a responsibility to share its views and aspirations with industry and to work hand in glove with it to ensure that we take full and proper advantage of reducing our waste; the current landfill sites; the taxation levels that will be in place; and the prediction that the landfill taxes will reduce in the future. That is a good sign, but it will affect the funding of community groups, so we will need to see how they can continue to be supported in the future.

15:53

Rob Gibson (Caithness, Sutherland and Ross) (SNP): From my point of view as convener of the Rural Affairs, Climate Change and Environment Committee, the bill will help Scotland to meet its world-leading climate change targets by aligning tax with environmental policy. I cannot put it any better than the Scottish Wildlife Trust did in its briefing when it said:

“while waste disposal by landfill is still carried out in Scotland, the Trust is in favour of having a tax fund which goes some way to compensate for the environmental "harm" which arises from landfill and which is used to fund biodiversity projects that help to restore ecosystems to health and amenity projects which improve access to wildlife for communities.”

That is a tall order for a small amount of money but, remarkably, major projects have taken place that have allowed those principles to be carried out.

The bill will help to ensure that we establish a tax system that supports the use of taxes and charges in environmental policy. Indeed, RSPB Scotland suggested that it

"is a good working example of a hypothecated or 'ring-fenced' tax - it has compensated for an environmentally damaging activity by funding projects which improve the environment for the benefit of biodiversity and the communities who live near landfill sites."

That said, it is important that we look at how the tax will relate to the zero waste plan, which allows us to think about promoting high levels of recycling and about diverting materials and resources from landfill into more sustainable uses or treatment.

Jenny Marra (North East Scotland) (Lab): I agree with Rob Gibson that the landfill tax is an important part of helping Scotland to achieve its ambitions in the report on proposals and policies,
but does he agree that it is a small part of that project and that a lot more focus, direction and commitment are needed from the Scottish Government in a range of policies, including those on transport and housing, to get anywhere near the targets to which the Government has committed itself?

Rob Gibson: I disagree, because we are talking about specific projects—of which I will give examples—that allow private money to be applied in a fashion that produces a public good. The money that we are talking about does not come directly from the public purse.

I suggest that we think about how we align the tax with the zero waste plan, whose aim is to help people to reduce waste. In my constituency, communities are often 70 or 80 miles from a landfill site—the site might be in Perthshire and not in the Highland area. People must be encouraged to reduce and recycle but, if they must use landfill, huge journeys are required to dispose of material at a landfill site.

We must recognise the need to ask where material comes from when we decide where money from the landfill communities fund should be spent. I have examples from my constituency. Some years ago, I was at the opening of the Scottish Wildlife Trust’s path improvement project at Ben Mor Coigach, which is near Achiltibuie. That small community produces very little material for landfill—I hope that any materials that are taken down from old houses are used for the foundations of new houses and never end up in landfill.

There are many such examples around the country that we could point out. Another SWT project was to improve the peat bog habitat at Commonhead moss. Many such sites are far from areas with landfill, so we must ask whether the eligibility radius of 10 miles should be reviewed for areas such as mine.

The RSPB has made the major point that it feels that there must be flexibility. I am glad that the cabinet secretary indicated that he would take that into account before the bill’s final stages.

From my committee’s point of view, we need to think about taking measures that are as practical and simple as possible to allow the transfer of moneys. We should take into account the geographical breadth of ecosystems to which projects apply. If that is done, we will need to think in the Highlands about a much larger area than we have talked about.

I would like us to apply the system. I am glad that we will reduce costs and therefore increase investment. I am aware that the income will reduce over the years, but we will have other powers to encourage people to make the best use of materials that arise for landfill. I am happy to support the bill.

15:59

Michael McMahon (Uddingston and Bellshill) (Lab): As is evident from the 59 per cent decrease in the amount of waste that was sent to landfill between 2000 and 2010, the UK landfill tax has been effective in helping the environment and moving us towards a zero waste Scotland. I am confident that the Scottish landfill tax will do the same. I therefore welcome and support the overall Scottish landfill tax scheme.

However, concerns were raised during scrutiny of the bill about the fact that many aspects of the tax are to be dealt with through subordinate legislation. That has created a lack of clarity and of certainty—as some members have outlined—with regard to issues such as the rates of tax and the power to change the materials that are taxed. The bill is a framework that leaves the specifics to subordinate legislation, and the Scottish Parliament must ensure that future action on the Scottish landfill tax is open to debate and further scrutiny.

A specific area in which details will be set out in subordinate legislation is the landfill communities fund. I support continuation of that fund, which was created to benefit places that are blighted by close proximity to landfill sites. The fund works by providing benefits to such communities from the taxes that are raised from those sites.

In Scotland, the idea that communities should have access to environmental justice is spreading, which is welcome. That has led the Government to take a dual approach to environmental justice, by stating first that “deprived communities, which may be ... vulnerable to the pressures of poor environmental conditions, should not bear a disproportionate burden of negative environmental impacts”—which is absolutely right—and secondly by stating correctly that “communities should have access to the information and to the means to participate in decisions which affect the quality of their local environment.”

I represent an area in which there are four landfill sites in close proximity to each other, and my community has been disproportionately burdened by the negative effects of those sites. However, in the past, the landfill communities fund has helped my community by funding local projects to mitigate the effects of living near the sites.

In that way, the landfill communities fund has helped to move Scotland towards fulfilling the principles of environmental justice. However, it has now been suggested that the scope of the fund
should be reviewed, which leaves me with some concerns. Organisations such as SEPA and COSLA have suggested that money from the fund could be used for funding wider environmental objectives that are not specific to any one location, instead of being used exclusively for communities that lie within a 10-mile radius of landfill sites.

I take on board the points that have been made by members such as Rob Gibson—for example, that for rural communities a 10-mile radius may be too restrictive because communities beyond that limit may be affected by a landfill site. However, we are talking about specific projects that may be Scotland-wide and have nothing to do with landfill at its location, so we must be concerned if that is to be the case. A change in the current scope of the landfill communities fund would be fundamentally unfair, and would violate the principles of environmental justice that those who are interested in the subject have sought to uphold.

It is widely known that communities that lie near landfill sites face much greater environmental injustice than those that do not. Those living near landfills have to deal not only with the emissions that pollute the air, water and soil, but with the burden of costs to address the local nuisances including odour, dust, litter, noise, vermin and visual intrusion that result from living in close proximity to a landfill.

Landfills not only affect the quality of life in a community, but present an actual cost as exemplified in house prices; in Scotland, homes that are in close proximity to landfill sites are valued at 40 per cent less than similar homes that are not. To change the current scope of the fund would leave communities with less money to mitigate the effects of landfills.

It is estimated that the landfill tax will generate £107 million in the first year of implementation, but it is also estimated that the fund will fall to £40.5 million in 2025. To open the fund to broader environmental objectives—coupled with the projection that landfill returns will dissipate—could in the long run leave the communities that are most affected by landfill with less funding.

Although the amount of waste that is dumped in landfills is projected to decrease as a result of the landfill tax, communities in the vicinity of landfills will continue to need funding. Landfill sites will, even if they are closed, continue to affect communities negatively for years to come, and those communities will need access to the funds long after the sites have closed. Communities that are dumping grounds for the rest of Scotland should receive all the benefits that result from taxation of landfills, and should be the only ones that have a say in how those funds are used. At the end of the day, that money is being raised at the expense of communities that are near landfills, so it should be dedicated to those communities.

As was said earlier, it has been suggested that the bill, like other bills that have been introduced as a result of the Scotland Act 2012, would be dry and detailed. I have, however, found the context of the debates around those bills to be interesting, and I look forward to hearing how the cabinet secretary will, as we move forward to stage 2, address the points that have been raised this afternoon and in the committee’s report.

16:05

Mark McDonald (Aberdeen Donside) (SNP): Members have covered how we got to where we are with the landfill tax being devolved to the Scottish Parliament, which emphasises the fact that we in Scotland and in the Scottish Parliament are able to administer taxation and deal with the responsibilities that come with that.

I want to focus on some of the issues that have been highlighted during the debate, the first of which is the block grant adjustment. As I was not party to the committee evidence sessions, I have listened closely to what has been said in the debate about the notion that the block grant adjustment would be based on OBR projections, and I have some concerns because the OBR projections and forecasts on things like economic growth and oil revenues generally tend not to be recognised as being realistic.

In March 2012, the OBR estimated that in 2014-15, landfill tax income would be £145 million, in 2015-16 it would be £151 million, and in 2016-17 it would be £157 million. By December of the same year, the OBR had reduced the figures to £105 million, £107 million and £107 million respectively. By March 2013, just 12 months after the first figures were published, the OBR reduced them again to £104 million, £105 million and £105 million. Those are quite significant adjustments to be made in 12 months. If it turned out that the projections did not match up to reality and it transpired that the OBR had underestimated or overestimated the figures at any stage, that would have implications for the block grant adjustment and potential future clawback. It is therefore important to ensure that the sums add up, so I would welcome the cabinet secretary’s views on how he sees the role of the OBR projections and whether there is a better way of looking at those in future years.

The bill is important not just because of its revenue implications but because it is a tax that is clearly linked to environmental sustainability. It is, essentially, designed as a deterrent to landfill and an encouragement to consider alternative means of waste disposal that will reduce the landfill tax.
burden on public bodies and organisations. We should not be afraid to administer the landfill tax in that way, which is why I was interested in Gavin Brown’s point about the rate at which the tax is to be levied. I caution against entering into any kind of taxation competition over the rate at which landfill tax is levied.

I also do not buy the argument about waste tourism. Rob Gibson summed up the point appropriately when he said that, even within Scotland, many authorities have significant distances to travel to dispose of waste to landfill, so the notion that local authorities or organisations will send trucks across the border to dispose of waste to landfill for a marginal saving on the tax, which would soon be gobbled up by the associated transportation costs, does not really bear scrutiny.

Gavin Brown: Will Mark McDonald give way on that point?

Mark McDonald: Mr Brown has that twinkle in his eye, so he clearly has a clever point to make. I will allow him to make it.

Gavin Brown: I have a direct quotation from the bill team:

“The committee would be surprised at how small the differential in tax rates would be for it to be cost effective to move waste.”—[Official Report, Finance Committee, 5 June 2013; c 2728.]

That is what the bill team, along with the cabinet secretary, told the committee.

Mark McDonald: I do not think that that argument would stand up to scrutiny based on what Mr Gibson has said. If you were simply going from one part of the border to another part of the border, I do not think that that would be an economic way in which to dispose of waste. We will agree to disagree on that.

On the landfill communities fund, prior to being elected to Parliament in 2011, I served as the chair of an organisation called Aberdeen Greenspace Trust Ltd, which administered landfill community funding through grant aid and delivery of environmental projects.

I welcome the fact that, in his evidence to the Finance Committee on 19 June, the cabinet secretary stated that at present, Scotland gets less in terms of landfill tax receipts than would be expected—landfill tax receipts from Scotland make up 9.2 per cent of the total UK pot, but only 7 per cent of landfill communities fund spending has been contributed to projects in Scotland. The administering of a landfill communities fund in Scotland gives us the opportunity to address that imbalance.

It is interesting as well to consider, when we come to the establishment of a landfill communities fund in Scotland, the need to ensure that although it will be done through subordinate legislation, organisations such as Aberdeen Greenspace in my constituency could feed in their thoughts on how the fund might operate and how it might operate differently from the way in which the current UK fund is administered through Entrust. I would welcome an opportunity to have that dialogue outside the debate.

On the 10-mile radius, I take on board Michael McMahon’s point. My experience, through working with Aberdeen Greenspace, was slightly different, in that there were often opportunities to expand the work that was being done through the landfill communities fund to which the 10-mile radius proved to be a barrier. We have to accept and recognise that environmental sustainability does not always have to be geographically constrained. The broadening out of the ability to use the money for other projects would perhaps have a knock-on effect on landfill and so might indirectly benefit communities that find themselves adjacent to landfill. Some such communities are just on the border of my constituency as well, so I think that the 10-mile radius needs to be examined because there are opportunities that would be restricted if we were to retain it.

16:12

Claudia Beamish (South Scotland) (Lab): I am pleased to have the opportunity to speak in the debate on the Landfill Tax (Scotland) Bill. Not being a member of the Finance Committee, I want to take a step back to say something about zero waste and climate change to help set the context of the bill, building on the cabinet secretary’s broader remarks, and how the bill fits in with other policies.

My starting point is, of course, where we want to get to—zero waste. In the interim, landfill sites must be excellently managed for the sake of the communities near them, and it is right that affected communities receive some benefit for the disruption and inconvenience that is caused. The Rural Affairs, Climate Change and Environment Committee spent a lot of time taking evidence on new zero waste regulations, which are now in force.

A wide range of Scottish society, from public bodies, local authorities, communities, households and individuals are now expected to contribute, with clear timescales and guidelines. A range of measures will come in incrementally over the next few years. For instance, there will be a ban on any metal, glass, paper, card or food that is collected separately for recycling going to incineration or landfill from January of the coming year. There is also a range of support through Zero Waste Scotland and others to match the policies,
including the resource efficient Scotland newspaper campaign to highlight changes for businesses.

Food waste is, in my view—as well as in the view of my colleague Hanzala Malik and others—a particular challenge, not just for businesses but for supermarkets, public bodies and, indeed, for us, too, in our families.

How we change is also a learning process for politicians and policymakers. The RACCE Committee heard from Professor Walter Stahel earlier this month about the circular economy, in which the responsibility of the manufacturers is no longer cradle to grave, but cradle to cradle. Zero Waste Scotland is—and I quote—actively encouraging and supporting investment in “innovative resource management technologies”.

All that must be seen in the context of the climate change targets, to which an altered waste culture can make a significant difference. The Institute for European Environmental Policy report, which was recently commissioned by Scottish non-governmental environment organisations, is reported as having concluded that “on climate the Scottish government had relied heavily on policies which did not put pressure on voters to change their lifestyles. That weakness made it more likely that it would fail to hit the 2020 target.”

The robustness of the new climate change behaviours framework will be of fundamental importance in changing our culture.

However, although we have come a long way in changing cultural attitudes since 2002-03, when we had a deplorable recycling rate of under 6 per cent—the rate in Scotland is now 42 per cent—there is still a need to decrease landfill, and the landfill tax is an appropriate lever. I understand that the cabinet secretary has reassured the Finance Committee that the bill will be in keeping with the Scottish Government’s zero waste strategy and carbon emissions targets.

On the administration arrangements for the landfill communities fund, I hope that providing a local perspective from South Scotland region might make a useful contribution to how the tax is to be distributed under the new devolved arrangements. As a rural primary teacher and eco-schools co-ordinator, I was over several years involved in the Levenseat Trust acorn awards for local schools. The projects included a local food production research project for primary school children and a three-dimensional mural made out of recycled materials. The impact was practical and positive. The trust has asked me to highlight on its behalf a few points, which I also support.

Levenseat Trust’s administrators suggest that the new fund should still be distributed very much at local level and that local people should have more say in its guidelines than they have had in the past. They also ask for the criteria to be reviewed, as “restrictions make it difficult to apply for funding” for school projects, for instance. They highlight that, due to the restrictions, it is, frankly, sometimes difficult to distribute funds. They ask that any residue of distributable funds, such as the trust has had, should not go back to the Scottish Government at changeover time, but should instead be distributed by appropriate local distributors. Finally, the trust requests that the administration of the funding should not become more challenging; the cabinet secretary has given an assurance that things will be simplified.

I also stress how valuable the landfill communities fund is in supporting biodiversity projects. During the debate I have—unusually—somewhat changed my view on the 10-mile radius. The Scottish Wildlife Trust has highlighted wide-ranging projects, including a peat bog habitat improvement project and a project for saving Scotland’s red squirrels—to cite just two of many—and Rob Gibson made an important point about the needs of wider remote rural areas. However, Malcolm Chisholm is right that the issue is about environmental justice, and Michael McMahon’s clear description of communities that are affected by landfill must be respected.

Some members may have followed BBC Radio 4’s excellent programme earlier this month “Costing the Earth”, which focused on an interesting development in Belgium, where old landfill sites are being “mined”—for want of a better word—for valuable materials that have been dumped in earlier decades. I raise that point to ask whether, given that there are 5,000 million tonnes of landfill buried in Europe spread across 0.5 million sites, the cabinet secretary has considered looking at that idea from a Scottish Government point of view.

The Scottish Government’s low-carbon behaviours framework highlights 10 key behaviour areas and the Government states:

“The most sustainable option is to prevent waste being produced in the first place”.

In my view, that is the most important behaviour. In the meantime, I welcome the principles of the bill.

16:18

Jean Urquhart (Highlands and Islands) (Ind): I am delighted to have the opportunity to speak on the Landfill Tax (Scotland) Bill and I welcome its stage 1 completion. I thank fellow members of the Finance Committee for their commitment, interest and dedication in scrutinising the general
principles of this important bill. I also thank the Government for its feedback on the committee’s report, which has made the Government’s position clear on a number of the committee’s concerns.

As a result of the bill, the Scottish ministers will become the tax authority for the purposes of the Scottish landfill tax. That is a great step forward. I have confidence in the ability of the Scottish ministers and their staff to take responsibility for the Scottish landfill tax as well as for other important taxes such as the Scottish rate of income tax. The bill enables ministers to make an order to designate another tax authority, and I welcome the move by the Cabinet Secretary for Finance, Employment and Sustainable Growth to set up a new body, revenue Scotland, as Scotland’s tax authority for devolved taxation. Revenue Scotland already exists as an administrative function within the Government, and the Government has been consulting on provisions to establish it on a statutory footing.

The Government has indicated that it intends that the administration and collection of the Scottish landfill tax should be undertaken by the Scottish Environment Protection Agency on behalf of revenue Scotland. Landfill tax administration and collection would become a new function for SEPA, which already visits and inspects landfill sites as part of its environmental regulation duties. That would offer significant advantages for the Government. The existing knowledge and considerable expertise in SEPA will create opportunities for significant efficiencies and other operational benefits in relation to the administration and collection of the Scottish landfill tax. I therefore support the Scottish Government’s intention to have SEPA in charge of the administration and collection of the tax.

Although I give full support to the general principles of the bill, I draw the Parliament’s attention to two areas of concern. First, I believe that one further waste exemption could be considered. Part II A of the Environmental Protection Act 1990 states:

“If no person has, after reasonable inquiry, been found who is by virtue of subsection (2) above an appropriate person to bear responsibility for the things which are to be done by way of remediation, the owner or occupier for the time being of the contaminated land in question is an appropriate person.”

That means—I think—that individual property owners might end up footing the bill for contaminated land remediation through no fault of their own. There are live examples of individual householders who have been charged vast sums for the remediation of contaminated land.

In the Cabinet Secretary for Finance, Employment and Sustainable Growth’s statement to Parliament on 7 June 2012, he described four principles that underlie the Government’s approach to taxation and he reiterated them today. They are certainty, convenience, efficiency and that the tax is proportionate to the ability to pay. It is that final principle that I believe is relevant here. My suggestion is that consideration should be given to including in the bill a measure to allow for the costs of contaminated land remediation to be waived if an individual property owner is found to be on contaminated land, has in no way caused the contamination but yet has been unfortunately designated the status of appropriate person because of the lack of someone being found who actually caused the contamination. By putting such a measure in place, the Scottish Government would ensure that its principle of taxation being proportionate to the ability to pay is adhered to.

The second concern relates to the committee’s suggestion that there should be a lower rate of tax on island waste, for materials for which there are never likely to be viable recycling or recovery routes. Although the Government has made its position clear on that, I still believe that a review of the issue could be carried out. In Shetland, Enviroglass provides a local solution for Shetland’s waste glass by recycling all the glass that is collected by the local authority through its bottle banks. That has been essential in minimising the financial and environmental costs that shipping glass to mainland UK for recycling would incur. However, not all island communities are fortunate enough to benefit from such a scheme and a review could help to find alternatives for the islands that lack the means to cheaply recycle waste materials.

A final aspect of the bill that I will speak about relates to the Scottish Government’s zero waste agenda, which is an ambitious programme of change that aims to create an environment in which we make the most of resources and minimise Scotland’s demand on primary resources. That is to be achieved by maximising the reuse, recycling and recovery of resources rather than treating them as waste. The Scottish landfill tax will play an important role in maintaining the economic stimulus that is required to harness those waste management opportunities and in directing the Scottish economy towards a prosperous future with secure access to resources. By doing so, Scotland could follow the great example of its Nordic neighbour Sweden and make productive use of waste that would otherwise build up at landfill sites.

We must ensure that environmental organisations continue to be supported by the landfill communities fund. The Scottish Wildlife Trust, for example, has received £3.6 million to date, which has helped it to develop and manage essential environmental and community projects.
The Landfill Tax (Scotland) Bill is a good and valuable piece of legislation. It does what it is supposed to do: it provides legislative provisions for a Scottish landfill tax to replace the UK landfill tax regime. It provides the Scottish Government with real power to take important decisions on a crucial area of taxation and makes use of the experience and expertise of the Scottish Environment Protection Agency. It is conducive to the Scottish Government's zero waste agenda as we look to greener energy alternatives. Therefore, I support the general principles of the bill.

Stewart Stevenson (Banffshire and Buchan Coast) (SNP): I will certainly not be the only member in the chamber who is grateful to the landfill tax for paying for some community facilities. In particular, within the boundaries of my previous constituency, the proceeds of the tax built a new hall at Longhaven. The boundaries have changed and a certain Mr Salmond now has that hall within his constituency; I no longer do.

It is also interesting to hear that we are talking about something like 600,000 tonnes of CO₂ being emitted. That is a substantial figure indeed.

There has been quite a lot of discussion about whether we might have waste tourism. I thought about that before coming to the chamber and looked at a paper that was produced in 2012 for the European Environment Agency by the European topic centre on sustainable consumption and production. It is a big paper—96 pages—and, in essence, considers how the landfill tax in all its multifarious forms works in the countries of the European economic area. There is a wide variation, but the one thing in the paper that is interesting is that there is little suggestion that small differences could promote big tourism, notwithstanding the fact that, as Gavin Brown reminded us, the committee was told that they might. Therefore, we must avoid coming to an early conclusion on that.

In the UK, landfill has gone down to less than half of what it was over the 12 years from 1998 and we expect it to go down further.

Hanzala Malik: Will Stewart Stevenson give way?

Stewart Stevenson: Briefly, please.

Hanzala Malik: My interventions are usually brief. Stewart Stevenson has talked a lot about the past, which is helpful, but I will take him to the future, in which landfill will be used less and less. I draw his attention to the landfill communities fund. Where will such funding for community groups come from as the proceeds of the landfill tax reduce?

Stewart Stevenson: That is a perfectly fair and good question. Arguing from the constitutional position that I do, I find it unfortunate that we are being given a tax that is declining—which we want to decline—without having the full range of taxation powers to do something about that within the overall tax system. I hope that even those who do not travel as far as I do constitutionally might support the idea that the Parliament should be responsible for all the taxes that are applied in Scotland, whatever the future constitutional arrangements might be. Therein lies some of the answer.

I will touch on a few disconnected things. I will go again to the European Council directive 1999/31/EC and, in particular, consider what we charge for landfill. Article 10 of that directive is about the requirement to ensure that landfill site operators charge enough to ensure that they are able to look after the site for 30 years after they have taken waste material. We have recent experience of difficulties in remediation in coal fields, where there have been business failures. I wonder whether, looking to the longer term, it might not be appropriate for Governments to take in that money from operators so that it is certainly around. There appears to be less and less opportunity to get insurance cover. I do not think that we should be looking at that now; it is for the future.

The bottom line is that this is, above all, about recycling. Recycling is not new. During the second world war there was a huge amount of recycling and the world into which I was born immediately after the war was recycling focused: paper, aluminium, jam jars and lots of other things were recycled. The focus on recycling that there was in the 40s, 50s and perhaps early 60s vanished and I am delighted that we are getting back to it. I hope that we do more of it. In that world, we also used our resources more effectively and our eating habits were much better.

Jenny Marra: Will the member give way?

Stewart Stevenson: I am sorry, but I do not have time now.

One of the interesting things is that under rationing in the war infant mortality declined and life expectancy increased, even after taking account of war casualties.

I will talk briefly about a couple of wee things. I commend the use of provisional negative instruments so that ministers can act rapidly—immediately, in fact—but, nonetheless, the Parliament can review what is going on, which is good.

I have a genuine question about taxable disposals. We are going to tax disposals of taxable disposals that are made illegally, but if it is not a
taxable disposal, can we tax it? There are things disposed of that are not taxable disposals.

I have a tiny point about pet cemeteries, for which Jim Murphy legislated in 2005. The bill currently says that the disposal material has to be entirely of the remains of dead domestic pets. I hope that we might slacken that slightly to allow a container in which the dead domestic pet can be disposed of.

A week ago today Christiana Figueres, who is the executive secretary of the United Nations framework convention on climate change, was moved to tears when she came out to speak to the BBC after a Chatham House event that she attended. She said, in respect of climate change, that we are condemning future generations before they are even born. Landfill is part of an extremely important agenda. If I agree with anybody in the recent past, it is Christiana Figueres.

The Deputy Presiding Officer (Elaine Smith): We now turn to the winding-up speeches. I remind members that if they have participated in the debate they should be back in the chamber for the closing speeches.

16:33

Gavin Brown: I will begin my concluding remarks with an issue that has reared its head many times over the course of the debate: waste tourism. When Mark McDonald says that he does not buy waste tourism, he might be right. When Stewart Stevenson says that we should press the pause button because of the results of a 2012 paper, he might be right. When the Scottish Government bill team says that a tiny difference in landfill tax regimes makes a huge difference to the level of waste tourism, they might be right. However, the important point is that they cannot all be right. That is why the committee did not necessarily take a firm view on waste tourism but said that it noted the Government’s scope to make fewer changes because of the implications of waste tourism and asked whether “the Government had commissioned any research or conducted any analysis on the likely impact of any changes to the structure and rates of landfill tax in Scotland on waste moving between Scotland and England.”

The important questions remain. What analysis has been conducted and what is the correct conclusion, given the competing claims made over the course of the debate?

Stewart Stevenson: I agree with Mr Brown, curiously enough. There is huge uncertainty and research in and of itself will probably not help us resolve it absolutely. We will have to play the ball where it lands.

Gavin Brown: Conducting research and looking at the matter in a bit of depth, specifically between Scotland and England, would at least give us a degree of comfort and a better guesstimate than we have. That is important, because our analysis of waste tourism impacts on how we might approach various aspects of the bill and the secondary legislation.

For example, there is the number of tax rates. Some people said in evidence that there ought to be three rates. They said that there ought to be a third rate specifically for stabilised materials. If waste tourism does not really exist, that is fine and that suggestion might be perfectly sensible, but if it does exist, that could have a detrimental impact. It has an impact on the materials that are applied under each rate. Some suggested that material that is close to inert but does not have a route for reuse or recycling ought to have a separate rate. Again, if waste tourism does not exist, that is a perfectly sensible suggestion that we might be able to put into practice fairly swiftly. That is why the matter is so important.

It is critical for the Scottish Government to interact as much as it can from now on with the UK Environment Agency. The committee asked about that, and the response was that there had not been any direct discussion with the UK Environment Agency thus far. I request that the Government take up that matter fairly swiftly so that we can at least get a reasonable guess at what is likely to happen, which will then flow into other decisions.

I am conscious that I did not respond to the cabinet secretary’s initial challenge. He wanted to hear from all parties about the existing 10-mile radius rule for the landfill communities fund. I listened carefully throughout the committee’s deliberations and I have listened carefully again today. I am hugely persuaded by Michael McMahon’s passionate contribution about his constituency and the impact that the fund has had on his constituents. It is difficult to get around what he said, although John Mason made the fair point that 10 miles might be a little bit rigid in a rural area and a little bit too wide for an urban area. Perhaps there is an opportunity to change that slightly. However, the committee agreed on the principle that those who are most affected by landfill should be those who gain. I would be particularly nervous about widening the radius too much, particularly as we know that the size of the fund in question is almost guaranteed to drop year on year to the extent that, if the Scottish Government’s projections are right, by 2025 it will probably be worth around 26 per cent of what it is currently worth. I would find it difficult to favour widening the scope while the fund drops quite dramatically.
I will return to unauthorised disposals. I think that I said at the start that we welcome that part of the bill. What is proposed represents a huge improvement on the current system and the Government ought to be congratulated on that, but I again request that the cabinet secretary returns to the question about the political objective behind it. If it is to get SEPA to do more and go to more unauthorised landfill sites, the Government probably needs to back that up with resources. The Chartered Institution of Wastes Management said to the committee that SEPA would require “additional resources in order to bring such activities into the tax regime and to apply any criminal sanctions.”

There is a benefit in simply having the law there, because the likelihood is that we will get additional revenue and it will send out a bit of a message to the unauthorised landfill sites fraternity, but perhaps there is more to be gained by making it a policy objective that we will put greater effort into things and that SEPA will tackle proactively even more landfill sites than it currently does so that the criminal element is stopped and more revenue is brought into the Scottish consolidated fund, which allows us to fund our public services.

I am content to leave it there, Presiding Officer.

16:39

Jenny Marra (North East Scotland) (Lab): The landfill tax is a result of the Scotland Act 2012 and the financial responsibility conferred to the Parliament in one of the biggest transfers of power since the creation of the Parliament, as Iain Gray outlined earlier. It is also important from an environmental perspective, as my colleague Claudia Beamish outlined in her speech.

I read with interest the recent Institute of European Environmental Policy report commissioned by WWF Scotland, RSPB Scotland and the Scottish Wildlife Trust, which found that the Scottish Government has failed to match its ambitions on key environmental policies with the political will and resources to make them work in practice. Stuart Housden, the chief executive of RSPB Scotland, in commenting on the report, noted “major difficulties or complete failures in delivery caused by poor decisions, mixed messages or the lack of or misdirection of resources.”

The landfill tax will be a key lever not only in meeting the Government’s zero waste strategy, as many members have mentioned, but in meeting the Government’s wider environmental ambitions.

It is clear from members’ speeches that, although the legislation is largely supported across the chamber, there is a need for much greater clarity on the practical details of the tax, including how it will operate in the medium to long term, and what policies the Government has to underpin the tax that link it to its environmental targets.

The bill is little more than a framework providing for the landfill tax, how it will be collected and, broadly, what waste might be taxable. As the Finance Committee and many of its witnesses have stated, the lack of detail that we have on how the policy will work in practice is impairing a fuller analysis of the bill and its impact. Clarity is needed most notably on what future tax rates will look like. Although the financial memorandum assumes that tax rates will not be lower than current rates at the point of transfer, we must wait until 2014 to know that for sure. Why is that? The Finance Committee report says that that has caused concern among businesses, local authorities and even SEPA, which will be in charge of collecting the tax.

Iain Gray called for an early indication of what level taxes will be set at, how the Government will use the tax rate to reduce landfill, and how to have a more progressive regime to meet the environmental objectives that I have mentioned. Malcolm Chisholm, who sits on the Finance Committee, highlighted COSLA’s criticism of the fact that there was no early indication of the level of taxation to be set. Will the cabinet secretary adopt an escalator? Does he also accept the link—this is a critical issue that many members raised—between an early indication of the tax rate and potential investments to allow businesses to plan? I hope that he will respond to those questions in his closing remarks.

John Mason: Does not the member accept that the indications that have been given are strong enough for people to make investment decisions, and that people do not need to know the exact detail down to the penny?

Jenny Marra: No, I do not accept that. John Mason has deviated from the consensus across the chamber that an early indication is preferable. Committee members have highlighted that the evidence given to the committee by experts indicates a consensus that an early indication of the tax rate would be desirable.

Like Gavin Brown, I was very much persuaded and impressed by Michael McMahon, whose speech was the best of the afternoon. He raised the important issue of environmental justice for the communities close to landfill sites. There is an argument for more relaxation—but not too much—in local authority boundaries and a more flexible arrangement that is rooted in the communities, as Michael McMahon described. He made a powerful case on the impact on people living near landfill sites from the odour, the dust, the litter, the noise and the visual intrusion, as well as the impact on house prices, which can be reduced by up to 40 per cent. He also made the point that communities will need access to funds long after landfill sites
have closed. That relates to Stewart Stevenson’s point about how we will fund such work, which might be a debate for the future.

Jean Urquhart: I hear the member’s support for the communities that are nearest to landfill sites. Does she agree that we will recycle more if we send less waste to landfill and that recycling plants can generate the same noise, dust and disruption as is generated by landfill sites?

Jenny Marra: I absolutely accept that point. Michael McMahon’s point about environmental justice is just as pertinent to communities such as Jean Urquhart describes as it is to communities that are near landfill sites.

Stewart Stevenson was absolutely right to welcome a return to 1950s recycling, but I draw his attention to figures that are reported in this morning’s The Scotsman, according to which only nine out of our 32 local authorities are meeting their recycling targets. In my city, Dundee, which under a Labour administration was highlighted as a pioneer for recycling in Scotland, recycling has fallen drastically under an SNP administration. A general problem for local authorities is how to increase recycling from tenement properties. That is a cross-party problem that we need to address. I ask the cabinet secretary to address the stagnation or flat-lining of recycling in some local authorities.

This has been a good debate, in which members have raised important points. Labour will support the general principles of the bill at decision time.

The Deputy Presiding Officer: Thank you. I call on the cabinet secretary to wind up the debate. Cabinet secretary, you have until 4.49.

16:46

John Swinney: I have until 4.49? This will be a short speech then. I am sure that that will be warmly welcomed—

The Deputy Presiding Officer: Apologies. I should have said 4.59.

John Swinney: Thank you. Suddenly I am required to cover more ground.

This has been an interesting debate and I welcome members’ general endorsement of the Government’s approach to the bill and many of its key provisions. I want to address some of the issues that members have raised.

First, on the definition of tax rates and uncertainty in that regard, the Government has made it clear that, for all the new tax powers that we are acquiring, we must consider our approach in the context of our budget for any given financial year. Why do we say that? For the simple reason that there will be a block grant adjustment and resources will be taken out of our settlement, which will have to be replaced by revenue that is generated by the tax. Therefore, this must be considered in the context of the overall budget process that the Government undertakes.

That is not a complicated argument; it is perfectly simple. The Government must take tax decisions that affect our ability to undertake public spending, and if we do not take them in an organised and coherent fashion that relates to the Parliament’s spending provisions, I am not sure how we can undertake the process.

Members talked about uncertainty in relation to tax rates, but no one knows what the level of landfill tax will be in the United Kingdom in 2015. That will be set by the chancellor, not six months before the start of the financial year, when I will set rates, but about three weeks before the start of the financial year. The idea that uncertainty is gripping and unsettling everyone who is involved in the waste industry has been slightly overstated in the debate. I must ensure that I bring forward a public expenditure package that is supported by the ability to raise the money. That is done through a budget process, and that is how we should define the approach and specify the rates that will apply.

Iain Gray: The cabinet secretary makes a fair point in saying that there is no certainty about future tax rates, which will be set within the process of setting the budget. That is how things are, and that is right. However, the point here is that this is a new tax. There is a shift or a change from this being controlled by the Treasury to it being controlled by the Scottish Government. If the indication that the cabinet secretary has given is that, in 2015, he will set a rate that is pretty much the same as the UK rate that he inherits, why does he not just say that? That would put an end to that degree of uncertainty, at least.

John Swinney: Mr Gray takes us off course again. This is not a new tax. We have the landfill tax now. The only difference, and the one correct thing about what he just said, is that we will decide on it here in Scotland rather than the UK Treasury deciding on it. I do not think that all the other arguments are strong arguments given what I have said about the approach that we will take to setting the level of taxation.

The second point that I want to raise is on waste tourism, which was talked about quite a lot in the debate. Mr Brown asked what research the Government has undertaken on the matter. In 2012, we commissioned Zero Waste Scotland to produce the report “Scotland Landfill Tax Bill 2012: An Economic Assessment”, which can be found on Zero Waste Scotland’s website. That study showed that an increase in the top rate of tax of between zero and £15 would create little
movement but increases of more than £15 would see significant amounts of waste flowing to England. I hope that that gives members some sense of the variables that are involved in tax levels that might drive waste tourism.

**Gavin Brown:** I have read the Government’s response to the committee’s report and looked though the report to which the cabinet secretary referred. The difficulty with that report is that the three primary things that were modelled were to maintain the exact status quo, to have the status quo with the non-self-assessment model and to have no landfill tax whatsoever. Those three things seem not to distinguish terribly much between rates. I wonder whether something else could be published on that.

**John Swinney:** I will explore it again, but I have just said to the Parliament that the research that the Government commissioned said that the variability would essentially exist above £15. I am not sure what more information the Parliament would require on that. It is a pretty direct answer to the points that have been raised.

Thirdly, members asked about the OBR estimates on landfill tax. Mr Chisholm—fairly, I think—reflected my observation on the estimates, which I have found inexplicable. The OBR has revised down its estimates for 2016-17 by 33 per cent. Frankly, that estimate is a fat lot of use. I confirm to the Parliament my intention to establish a facility within Scotland to enable us to assess the predictions on the various taxes for which we will be responsible. I am looking carefully at what the Finance Committee considers on the question, and I will take decisions in that respect in advance of setting the tax rates in 2014.

A substantial amount of the debate concentrated on the landfill communities fund. There are three elements to that discussion. First, on the administration, the organisation and the supervisory burden, I have been clear to the Parliament that I think that the existing arrangements are too cumbersome. Whatever we put in place, which will be a Scottish model, will be a great deal more efficient and administratively straightforward.

Secondly, there was a call for there to be wider scrutiny of some of the arrangements that are put in place. I will certainly reflect on that in considering how we take forward the administrative arrangements.

However, the heart of the debate relates to whether the 10-mile radius should be applied or whether there should be a broader reach for proposals. I thought that Jenny Marra’s speech was a bit muddled on the question. She said that she whole-heartedly agreed with Michael McMahon and then argued for flexibility, which made it a little bit difficult to work out exactly where she was going on the point.

**Michael McMahon:** Perhaps I can clarify the matter. There are two distinct aspects to the issue, one of which is the distance. It is clear that, in some instances, the 10-mile radius can be too restrictive. The other aspect is the identified individual projects, which would be Scotland-wide and would take money from the local communities to areas of Scotland that are not impacted by landfill in any way. Jenny Marra and I agree that, although the 10-mile radius could be flexible, we must be very careful if we start to take money from local communities to spread it across the rest of Scotland.

**John Swinney:** I have a question for Mr McMahon. Why does he think that projects that take place in other parts of Scotland do not take place in communities? I do not understand what subtle distinction is being made. I would be happy to give way to Mr McMahon again if he could address how projects that happen in other parts of the country do not happen in communities.

**Michael McMahon:** The distinction is not subtle at all. The projects happen predominantly in the local communities and the 10-mile radius protects the impact on those local communities. If we take money out of those communities to put into Scotland-wide projects, that will reduce the amount of money that is available to the communities that are most affected.

**John Swinney:** With the greatest respect to Mr McMahon, who cares passionately about the issue, that did not sound like a clear distinction to me. I understand—[Interruption.]

**The Deputy Presiding Officer:** Order, please.

**John Swinney:** I understand the issues that are involved and I am keen to come to some agreement about how we can proceed. I will, therefore, open up discussions with Mr McMahon and we can perhaps explore those issues more directly to see how we can address them most effectively. The Government has consulted stakeholders extensively and we have received a range of views on the issues, on which we will reflect carefully.

The final area that I will address is illegal dumping. There has been a broad welcome in Parliament for the approach that the Government is taking and the extra provision that we are putting in place. I want to ensure that SEPA takes an effective approach to tackling the issue. Gavin Brown asked whether we will allocate more resources to SEPA to enable it to undertake that work, but SEPA has a commendable record of having improved and extended its performance without asking the Government for more resources. I applaud SEPA for the way in which it
has organised its priorities and its approach to delivering a very efficient and effective assessment mechanism at the local level. I do not think that we should automatically decide that more resources are required to enable organisations to fulfil these functions. Any resources that are generated by the landfill tax will go to the Scottish consolidated fund, from which we allocate resources to different public service priorities.

In closing, I reflect on the constitutional significance of the bill that we are wrestling with today. The bill gives the Parliament wider financial responsibilities, and that is welcome. Iain Gray argued that the Parliament is acquiring more powers as the years go by. I felt that Mr Gray was almost on the verge of expressing support for the Government’s position and that he had come to the view that it was necessary for the Parliament to acquire the full range of financial powers. I did not find particularly compelling his argument that because, since 1999, we have acquired more powers over transport, the Scottish rate of income tax, the landfill tax and the land and buildings transaction tax we should stop acquiring powers. This Government is about acquiring powers to enable us to tackle the issues that matter to the people of our country. If Mr Gray is coming round to our view, we very much welcome him to the strong body of opinion that realises that we need the full range of powers to deal with the issues.

The point that Stewart Stevenson made is absolutely correct: everybody now agrees that the receipts from the landfill tax will decline over time. I have furnished Parliament with my view of the extent of that decline. The challenge for Parliament is to effectively exercise and utilise all our powers to ensure that, while that happens, we are able to sustain investment in public expenditure. For me, that is the simple explanation why we need the full range of financial powers rather than just the limited financial powers that we are acquiring under the bill, which I look forward to supporting at decision time.

Landfill Tax (Scotland) Bill: Financial Resolution

16:59

The Deputy Presiding Officer (Elaine Smith): The next item of business is consideration of motion S4M-07167, in the name of John Swinney, on the financial resolution for the Landfill Tax (Scotland) Bill.

I call on the cabinet secretary to move the motion.

Motion moved,

That the Parliament, for the purposes of any Act of the Scottish Parliament resulting from the Landfill Tax (Scotland) Bill, agrees to—

(a) any expenditure of a kind referred to in Rule 9.12.3(b) of the Parliament’s Standing Orders arising in consequence of the Act, and

(b) any charge or payment in relation to which Rule 9.12.4 of the Standing Orders applies arising in consequence of the Act.—[John Swinney.]

The Deputy Presiding Officer: The question on that motion will be put at decision time.
Landfill Tax (Scotland) Bill

Marshalled List of Amendments for Stage 2

The Bill will be considered in the following order—

Sections 1 to 44       Long Title

Amendments marked * are new (including manuscript amendments) or have been altered.

Section 11

Bruce Crawford
Supported by: Dr Richard Simpson

8 In section 11, page 6, line 10, at end insert—

<(  ) Certificates issued under subsection (2) may, in particular, confer exemption on disposals consisting of material the need for disposal of which arises from activity to remediate contaminated land by persons whom the Tax Authority considers were not responsible for the land becoming contaminated.>

Section 20

Michael McMahon

9 In section 20, page 11, line 20, after <environment> insert <in the vicinity of a landfill site or a former landfill site>

Section 41

John Swinney

1 In section 41, page 22, line 5, after <Orders> insert <and regulations>

John Swinney

2 In section 41, page 22, line 5, at end insert—

<(  ) section 11(1),>

John Swinney

3 In section 41, page 22, line 6, at end insert—

<(  ) section 17(1),>

John Swinney

4 In section 41, page 22, leave out lines 19 and 20
John Swinney
5 In section 41, page 22, line 22, leave out from <providing> to end of line 26

John Swinney
6 In section 41, page 22, leave out line 40

John Swinney
7 In section 41, page 23, leave out line 1
Landfill Tax (Scotland) Bill

Groupings of Amendments for Stage 2

This document provides procedural information which will assist in preparing for and following proceedings on the above Bill. The information provided is as follows:

- the list of groupings (that is, the order in which amendments will be debated). Any procedural points relevant to each group are noted;
- the text of amendments to be debated on the day of Stage 2 consideration, set out in the order in which they will be debated. \textbf{THIS LIST DOES NOT REPLACE THE MARSHALLED LIST, WHICH SETS OUT THE AMENDMENTS IN THE ORDER IN WHICH THEY WILL BE DISPOSED OF.}

Groupings of amendments

\textbf{Taxable disposals: exemption for remediating contaminated land}  
8

\textbf{Credit: expenditure in the vicinity of a landfill site}  
9

\textbf{Subordinate legislation}  
1, 2, 3, 4, 5, 6, 7
Amendments in debating order

**Taxable disposals: exemption for remediating contaminated land**

Bruce Crawford  
Supported by: Dr Richard Simpson

8 In section 11, page 6, line 10, at end insert—

<( ) Certificates issued under subsection (2) may, in particular, confer exemption on disposals consisting of material the need for disposal of which arises from activity to remediate contaminated land by persons whom the Tax Authority considers were not responsible for the land becoming contaminated.>

**Credit: expenditure in the vicinity of a landfill site**

Michael McMahon

9 In section 20, page 11, line 20, after <environment> insert <in the vicinity of a landfill site or a former landfill site>

**Subordinate legislation**

John Swinney

1 In section 41, page 22, line 5, after <Orders> insert <and regulations>

John Swinney

2 In section 41, page 22, line 5, at end insert—

<( ) section 11(1),>

John Swinney

3 In section 41, page 22, line 6, at end insert—

<( ) section 17(1),>

John Swinney

4 In section 41, page 22, leave out lines 19 and 20

John Swinney

5 In section 41, page 22, line 22, leave out from <providing> to end of line 26

John Swinney

6 In section 41, page 22, leave out line 40

John Swinney

7 In section 41, page 23, leave out line 1
FINANCE COMMITTEE

EXTRACT FROM THE MINUTES

29th Meeting, 2013 (Session 4)

Wednesday 20 November 2013

Present:
Gavin Brown     Malcolm Chisholm
Kenneth Gibson (Convener)   Jamie Hepburn
John Mason (Deputy Convener)   Michael McMahon
Jean Urquhart

Also present: Bruce Crawford and John Swinney, Cabinet Secretary for Finance, Employment and Sustainable Growth.

Landfill Tax (Scotland) Bill: The Committee considered the Bill at Stage 2.

The following amendments were agreed to (without division): 1, 2, 3, 4, 5, 6 and 7.

The following amendments were moved and, no member having objected, withdrawn: 8 and 9.

The following provisions were agreed to without amendment: sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 42, 43 and 44 and the Long Title.

Section 41 was agreed to as amended.

The Committee completed Stage 2 consideration of the Bill.
Scottish Parliament
Finance Committee
Wednesday 20 November 2013

[The Convener opened the meeting at 09:31]

Landfill Tax (Scotland) Bill: Stage 2

The Convener (Kenneth Gibson): Good morning and welcome to the 29th meeting of the Scottish Parliament’s Finance Committee in 2013. I remind everyone present to turn off any electronic devices such as mobile phones.

Our first item of business is stage 2 of the Landfill Tax (Scotland) Bill. We are joined by the Cabinet Secretary for Finance, Employment and Sustainable Growth and his officials. Members should note that the officials cannot speak on the record at stage 2 and that all questions should be directed to the cabinet secretary.

I also welcome to the committee Bruce Crawford MSP and members of the public.

Members have copies of the marshalled list of amendments, and the groupings. We will take each amendment on the marshalled list in turn.

Sections 1 to 10 agreed to.

Section 11—Taxable disposals: power to vary

The Convener: Amendment 8, in the name of Bruce Crawford, is in a group on its own.

Bruce Crawford (Stirling) (SNP): I will explain some of the background to amendment 8.

About 18 months ago, I was contacted by constituents from Blanefield about contaminated land in part of the village that had been built on the site of a former calico print works that closed in 1898. It was found that the houses, which were built in the late 1950s and early 1960s, were situated on land that had been contaminated with lead and arsenic. After testing and retesting, it was found that 13 properties remained in need of remediation due to the levels of contamination.

The residents of Blanefield and Stirling Council have come together to work to find the best possible solution to the matter and the many challenges and obstacles that they face. The cost of remediation to Stirling Council—it is the appropriate authority because there is no other body left that could pay for it—and my constituents is extremely high, which is partly due to the cost of the landfill tax. Initial estimates suggest that the cost of decontaminating the land is likely to be well over £500,000, of which a large proportion—about £250,000—would be the cost of landfill tax.

The circumstances are unusual—if not unique. The residents all bought their houses without any knowledge that the land is contaminated, and the developer is long out of business. However, the residents now face huge costs that they cannot possibly meet. My constituents have worked closely with Stirling Council officials over the past 18 months. The council has agreed to provide £125,000 towards the cost of remediation, and it plans to use its in-house contractors to have the land decontaminated through a best-value process. Unfortunately, the landfill tax element of the projected costs will not all be met by the council, which will leave a significant burden on the 13 householders.

I have written to the Westminster Government about the matter and have been told that it is not feasible to grant landfill tax exemptions for such specific circumstances under the current legislative framework. It is entirely possible that the matter will not be fully resolved until the Scottish Parliament takes on responsibility for the landfill tax, which is why I thought it necessary to lodge amendment 8, which would amend section 11 of the bill, and is designed to allow for exemptions to be given by certificate when costs fall on “persons whom the Tax Authority considers were not responsible for the land becoming contaminated.”

John Mason (Glasgow Shettleston) (SNP): Would that exemption be very wide? The words “were not responsible for the land becoming contaminated” could cover the situation that Bruce Crawford described, for which I have sympathy, as well as a very wide range of people who could claim that they did not know about that.

Bruce Crawford: You must have known exactly the point that I was about to come to, Mr Mason. I am about to address that matter.

Amendment 8 would not solve all the problems that my constituents face, but it would provide them with the comfort of knowing that it would result in a significant reduction in the overall costs that they face individually. That said, I acknowledge the shortcomings of the amendment, which could open the door to a developer purchasing land, finding it to be contaminated and not going through the proper due diligence process, and then seeking to find an exemption through a certificate. Mr Mason’s point is therefore correct. Such a result is not my intention, so I ask the committee to view the amendment as a probing amendment. I also ask the Government to consider lodging an amendment at stage 3 that would assist and aid my constituents in dealing with the unique circumstances at Blanefield, but
which would also avoid opening the door to any unintended consequences.

I move amendment 8.

Jamie Hepburn (Cumbernauld and Kilsyth) (SNP): I have a huge amount of sympathy for the people who are affected. I do not know whether they contacted all members of the committee, but I remember that they certainly contacted me, way back.

I very much welcome the fact that amendment 8 is to be viewed as a probing amendment, because it may be worded a little too widely. I know that Bruce Crawford accepts that, so my remarks are directed more at the Government for its further consideration. The amendment is not worded as it would need to be in order to address the intention that the appropriate circumstances should be those in which persons have been unaware of contamination. It is important that any new amendment that is lodged be worded in such a way. The amendment talks about responsibility rather than awareness of the land’s contamination. That will need to be factored in, as well.

I welcome the fact that Bruce Crawford lodged amendment 8. The issue is important, and we need to take it on board and consider it.

Malcolm Chisholm (Edinburgh Northern and Leith) (Lab): Perhaps the cabinet secretary will address my particular point in his response.

I wonder whether the action that Bruce Crawford wishes for could, in fact, be carried out under section 11. I presume that that may be the case, and I also presume that there is no equivalent provision in United Kingdom legislation. I am entirely sympathetic to amendment 8, but I wonder whether it would make a substantive difference in practice, because both the section and the amendment use the word “may”. I presume that the Scottish ministers would have the power under section 11 to carry out the exemption and to waive the tax, as Bruce Crawford seeks, and that the amendment therefore merely illustrates one of the circumstances that could lead to the section 11 power being triggered.

The Cabinet Secretary for Finance, Employment and Sustainable Growth (John Swinney): First, I thank Mr Crawford for lodging amendment 8 and for the opportunity to consider what is clearly a very important issue for his constituents. Amendment 8 sets out a particular circumstance in which ministers could apply an exemption under the powers in section 11 of the bill. I quite understand the significance of the issue that Mr Crawford has raised, and that remediation of contaminated land can have serious financial consequences for individual householders.

The key point that I want to make to the committee is that the proposal in amendment 8—this was also Mr Hepburn’s point—would go significantly wider than individual householders who we would all accept might inadvertently find themselves in such situations. I have great sympathy for the householders of Blanefield who have found themselves in a situation that is not of their making.

However, my understanding of how the issue has been handled and the approach that Stirling Council has taken is that the issue might have to be addressed before the bill would come into effect. I understand that Stirling Council might be moving to invitation to tender, so some of the work might have to be done sooner than the legislation’s coming into effect in April 2015. The bill therefore might not provide a practical solution to the specific circumstances that Mr Crawford has raised on behalf of his constituents.

The general point is that householders might inadvertently find themselves in such circumstances in other cases. Obviously, the committee must consider whether making specific provision for that on the face of the bill would be appropriate.

My office has advised Mr Crawford that under the existing terms of the United Kingdom landfill communities fund some remediation financial support might be available, through a grant application by the Blanefield residents. Although the UK legislation does not provide specifically for such circumstances, I think that there is an opportunity to discuss with those who operate the UK landfill communities fund whether it is possible to identify a practical way to get financial support that would enable the householders to contribute to remediation without it coming from their own resources. I hope that that opportunity can be pursued.

On the specifics of amendment 8, my first concern is that it is a technical amendment. The amendment would not extend the powers in the bill, because the proposed exemption could already be provided by regulations under the current wording of section 11, so Mr Chisholm is absolutely correct in that respect.

My second concern reflects Mr Hepburn’s point and is on the scope of amendment 8. Extension of the exemption as is proposed would be a way out of tax for anyone who owned contaminated land. A person might have bought contaminated land with the intention of undertaking remedial work to realise the full value of the land; amendment 8 would relieve them of having to pay landfill tax in such circumstances. I am anxious not to provide for such a result.
I propose that supporting land remediation projects ought to be one of the objectives of the landfill communities fund when the Scottish landfill tax is introduced in April 2015. In essence, that would provide practical arrangements for dealing with remediation and would offer the opportunity of support for members of the public who find themselves in situations such as Mr Crawford’s constituents have found themselves in. Further thought will be required in order to set out the details of that in regulations, in due course.

I hope that my remarks have provided assurance to the committee on the Government’s thinking on the issue. I am happy to provide what assistance I can to Mr Crawford in the short term to try to ensure that the landfill communities fund can engage constructively with him on the issue.

The Convener: Thank you. Bruce Crawford will wind up and say whether he wishes to press or withdraw amendment 8.

09:45

Bruce Crawford: A number of interesting points have been made. I do not want to go back over the ground that Mr Mason and Mr Hepburn have covered, except to say that their comments were germane and correct.

Malcolm Chisholm wondered whether, under the bill, regulations could apply in this case. I will seek to discover from the cabinet secretary whether regulations could be fashioned to deal with the particular and unique circumstances in Blanefield and to provide some assurance for the future. After all, I am not entirely certain that Stirling Council will prosecute the process to the degree that will enable everything to be completed by 2015. The council is going about the matter in a very canny and sensible way, and recognises that if it were to proceed at the moment there is no way that the householders could possibly find the resources.

With regard to resources, I was very grateful to be contacted last week by the cabinet secretary’s office about the landfill communities fund; indeed, I met the fund’s people yesterday. Unfortunately, the structure of the landfill communities fund in Scotland is such that opportunities are limited for the Stirling area to receive much in the way of resources; the fund is very much defined by the activity of a landfill operator in a particular area and any resources that might be available as a result of a landfill site will be identified for the community in the area. It is also not clear whether the fund’s criteria are wide enough to allow the Blanefield situation through the door.

That said, I very much welcome the cabinet secretary’s commitment to working with me and seeing whether there is a way through this issue. I recognise the wide-ranging nature of my amendment and seek to withdraw it; however, given the circumstances, I might have to consider lodging another more tightly drawn amendment at stage 3, if that is required.

Amendment 8, by agreement, withdrawn.

Section 11 agreed to.

Sections 12 to 19 agreed to.

Section 20—Credit: bodies concerned with the environment

The Convener: Amendment 9, in the name of Michael McMahon, is in a group on its own.

Michael McMahon (Uddingston and Bellshill) (Lab): When we received evidence on the consultation on the bill, some suggested that we should look to the landfill communities fund to provide resources for environmental projects outwith the areas affected by landfill sites. I do not know whether people intended to create such an impression, but the proposal immediately rang alarm bells with me. Another argument that was made—and which I completely understand and have no difficulty with—was that the 10-mile radius criterion in the fund can, in some cases, be too restrictive. For example, a settled community in a rural area might be experiencing exactly the same impacts from air pollution, noise and smell from the lorries going through it as a community that is adjacent to a landfill site, but the site itself might be more than 10 miles away. I am therefore not looking to restrict the use of the landfill communities fund and leave out communities outwith the 10-mile radius that are clearly being impacted on.

Amendment 9 seeks to challenge the thought processes that seemed to come through in evidence that money could be taken from the landfill communities fund for projects that would benefit areas that are not directly impacted by a landfill site. That view concerned me; indeed, after speaking to people about the implications of such a change in the use of the landfill communities fund, I saw that such a move could be only detrimental to the communities that are directly impacted by these sites. By its very nature, the fund is diminishing; however, although the amount that is available from the fund will fall over time, a landfill site’s impact on a community will be felt for longer than it has been used as a practical facility. Given that the amount of money in the fund will fall while the impact remains, I would be concerned by any move to reduce the fund further to provide money for projects that have no connection with a landfill site. That is why I lodged amendment 9.

John Mason: The word “vicinity” jumped out at me. Could you define that?
Michael McMahon: As I said, it is not about the impact on the vicinity; it is about there being no impact. During the stage 1 debate, concerns were expressed that there are communities outwith the 10-mile radius, or the vicinity, that will be impacted on as lorries travel through them; that is especially true in rural areas. I totally understand why people do not want there to be a restriction on the criterion, but I want there to be a restriction on the use of the funds where no direct connection can be made between the area that is benefitting from the spend and its being “in the vicinity of a landfill site”.

The wording was suggested to me by the legal advisers who advise on the drafting of amendments.

Two options were put before me; one was very complex and amendment 9 was the most simplistic. To be fair, it seemed to be the most logical amendment; I am sure that those who have more knowledge of drafting could tell you why there were two possible amendments, of which one was more complicated than the other. I wanted the amendment that would achieve the most basic thing, using a simple set of criteria that surround the landfill communities fund.

I move amendment 9.

Gavin Brown (Lothian) (Con): I agree entirely with the principle that Mr McMahon has laid out today and during the various committee stages and the stage 1 debate. In many respects, it is a principle to which the committee signed up in its report.

My concern about amendment 9 was fleshed out in part by John Mason in his intervention; it concerns the word “vicinity”. The strict dictionary definition that includes the word “surrounding” is pretty narrow. It would be quite restrictive and, going by what Mr McMahon has said, it would tighten things up far more than he intends. If we agree to the amendment and the word “vicinity” goes into the bill, it will be much more difficult for the committee and Parliament to define the distinction between rural and urban under the 10-mile rule. The principle is right, but if we agree to amendment 9, particularly considering its use of the word “vicinity”, it could become unduly restrictive and we might have problems when we try to flesh out exactly what we intend to achieve.

John Mason: I want to expand slightly my point on the word “vicinity”, which Mr McMahon and Mr Brown have mentioned. The assumption has sometimes been made that 10 miles might be too little and that we might need to look at a wider area, whereas in the city 10 miles might be too broad. I have a landfill site in my constituency and all parts of Glasgow would probably be within 10 miles of it. On Mr McMahon’s argument, which I agree with, places on the far side of Glasgow are in no way disadvantaged by that landfill site, so I like the idea that the benefits should go primarily to those who are most severely affected.

I am not entirely convinced by amendment 9, but I hope that the regulations will reflect some of the debate that we had at the committee about how we get a balance. The distance should not just be a fixed distance.

Jean Urquhart (Highlands and Islands) (Ind): I too have sympathy with amendment 9, especially given what we have done with our rubbish in the past. Times are changing and many landfill sites are closing down or being finished and treated, and the whole idea is that we will not take stuff to landfill in the future. It occurs to me that, instead of trundling to landfill, the lorries will trundle to the recycling depot and other areas, so we need a different way of thinking. If the money that is being raised is for environmental projects that are related to the recycling industry, it would be a great shame, particularly in the area that I represent, to have a 10-mile radius. It would be nonsense.

We should look much more widely at the issue and I think that in a year or two we will see it quite differently. I do not support amendment 9.

John Swinney: Michael McMahon’s amendment 9 would insert a condition that money from the tax credit scheme or landfill communities fund should be spent within “the vicinity of a landfill site”.

The argument on that was advanced at stage 1.

In addressing amendment 9, I would like to highlight the issues that are under debate on this question. The presence of a landfill site has, in essence, two main effects. The first is the disamenity that a landfill site causes the community in its vicinity and the second is the detrimental effect that the site has on the wider environment. The first of those—the disamenity on the surrounding community—is crystal clear, but the detrimental effect that the site has on the wider environment is more difficult to define. Michael McMahon has highlighted that lorries will travel through communities to reach a landfill site, which may create a disamenity, and that disamenity may be created by the emissions that emerge from a landfill site, which may have a wide impact on the environment over a large geography.

It is on those questions that we are searching for a conclusion. The debate on those questions has informed a lot of the evidence that has come to the committee, which has clearly caused some concern to Mr McMahon, and I have some sympathy with the position that he has expressed to the committee on this point.
As I indicated in my response to the Finance Committee’s stage 1 report, I agree with the principle that the communities that are most affected by a landfill should benefit from the money available through the fund. The fund that will be established as an integral part of the tax, under sections 18 and 20, will, I am sure, be of significant benefit to the communities in the vicinity of a landfill site, but it should not be available to communities further afield that suffer no disamenity from having a landfill site nearby.

The question that arises out of that is on the extent to which the fund should apply to reflect the impact that landfill sites have on the wider environment. We have already considered the potential for the fund to support land remediation projects, such as the one on Blanefield that Bruce Crawford has brought to the committee’s attention, and the fund could support other environmental and other types of projects.

In the consultation prior to the bill’s introduction, a majority of respondents supported the view that funding for environmental and biodiversity projects should be available through the Scottish landfill tax communities fund, on the basis that landfill sites contribute to climate change and are responsible for a sizable element of Scotland’s greenhouse gas emissions. We need to consider that issue and come to a conclusion on the terminology that will be put in place around the scheme. As a matter of course, I would prefer to see that in regulation rather than on the face of the bill.

The exchange between John Mason and Michael McMahon highlighted the difficulties. I have every sympathy with Mr McMahon on the question of trying to pin down this point and I have no criticism of the ability to get the issue to a fine point. It comes down to the point about vicinity. For me, “the vicinity of a landfill site” is quite a tight term, which may not serve the purposes on which we are all trying to agree.

During stage 1, I indicated that I would be happy to discuss the approach to the issue with Mr McMahon. I welcome the opportunity to hold that discussion and I would be very happy to do that informally with other committee members before stage 3 if that would help, to provide colleagues with the opportunity to reflect on the issues that are at stake.

There is no disagreement that communities that suffer disamenity from a landfill site should have access to the fund; that is agreed absolutely. The question is, if we are going beyond that impact and disamenity, how far are we going and on what basis?

10:00

I am mindful that, predominantly, the consultation responses argued for a position that appears to me to be slightly broader than that for which Mr McMahon has argued today. I will be anxious to consider that evidence in dialogue with members in advance of stage 3, so that we can either come to an agreement on the best way forward or, alternatively, leave space for members to be able to exercise their proper and due right to advance issues at the final stage of the bill. I will be happy to facilitate those discussions and to do so timeously before stage 3.

Michael McMahon: I very much welcome the cabinet secretary’s comments. For clarity, I should say that I seek a direct link between the impact of the landfill site and the communities that may benefit from the funding from the landfill communities fund. I get the general point that landfill sites contribute to climate change, but everything appears to contribute to climate change, so where do we stop with that? Some communities suffer a direct impact—or, in the terminology, a disamenity—whereas other communities do not suffer disamenity for which there is a direct linkage to the landfill site.

I very much welcome the opportunity to discuss the issue further with the cabinet secretary. On that basis, I will not press my amendment today.

Amendment 9, by agreement, withdrawn.

Section 20 agreed to.

Sections 21 to 40 agreed to.

Section 41—Subordinate legislation

The Convener: Amendment 1, in the name of the cabinet secretary, is grouped with amendments 2 to 7.

John Swinney: Amendments 1 to 7 deal with setting out which procedure should apply to certain order-making powers. The amendments are in response to recommendations from both the Finance Committee and the Delegated Powers and Law Reform Committee following the stage 1 process.

Amendments 1, 3 and 7 relate to section 17, “Liability of controllers of landfill sites.” They follow on from a recommendation in the Delegated Powers and Law Reform Committee’s stage 1 report, which identified that regulations made under section 17 could increase the scope of the tax. The amendments will mean that regulations made under section 17 that would change the liability of landfill site controllers will be subject to the affirmative procedure.

Amendments 2, 4 and 6 relate to section 11, “Taxable disposals: power to vary.” I note the
Finance Committee’s recommendations that the power should be subject to the affirmative procedure. Creating an exemption may prove suitably controversial to merit further scrutiny. Therefore, the amendments will make all orders under section 11 subject to the affirmative procedure.

Amendment 5 relates to section 13(4), which provides for the setting of additional rates of tax. The amendment will make all orders under section 13(4) subject to the provisional affirmative procedure. I note the Finance Committee’s recommendation that the power should be subject to the affirmative procedure. However, to stop contractors and operators taking advantage of any change and perhaps rushing materials to landfill, amendment 5 seeks to apply the provisional affirmative procedure in order that any change can take immediate effect.

I move amendment 1.

The Convener: I think that there are no further comments from committee members. Cabinet secretary, do you have anything to add?

John Swinney: I have nothing to add.

Amendment 1 agreed to.

Amendments 2 to 7 moved—[John Swinney]—and agreed to.

Section 41, as amended, agreed to.

Sections 42 to 44 agreed to.

Long title agreed to.

The Convener: That ends stage 2 consideration of the bill. Members should note that the bill will now be reprinted as amended and will be available tomorrow morning. The Parliament has not yet determined when stage 3 proceedings will take place, but members may now lodge stage 3 amendments with the legislation team. Members will be informed of the deadline for amendments once it has been determined.

I thank the cabinet secretary for his attendance today. I call a brief recess to allow the cabinet secretary and his officials to leave and to allow a changeover of witnesses. There will be a five-minute break.

10:04

Meeting suspended.
CONTENTS

Section

PART 1

SCOTTISH LANDFILL TAX

1 The tax
2 Overview

PART 2

KEY CONCEPTS

Taxable disposals

3 Charge to tax
4 Disposal of material as waste
5 Disposal by way of landfill
6 Prescribed landfill site activities to be treated as disposals

Exemptions

7 Material removed from water
8 Material resulting from mining and quarrying
9 Disposal of qualifying material at former quarries
10 Pet cemeteries

Power to vary what is a taxable disposal

11 Taxable disposals: power to vary

Landfill sites and operators of landfill sites

12 Landfill sites and operators of landfill sites

Calculation of tax

13 Amount of tax
14 Qualifying material: special provisions
15 Weight of material disposed of

Persons liable to pay tax

16 Liability to pay tax
17 Liability of controllers of landfill sites

Credit

18 Credit: general
19  Credit: bad debts
20  Credit: bodies concerned with the environment

**PART 3**

**ADMINISTRATION**

**Taxable activities**

21  Taxable activities

**Registration**

22  Registration
23  Information required to keep register up to date
24  Publication of the register

**Accounting for tax**

25  Accounting for tax and time for payment

**Time of disposal where invoice issued**

26  Time of disposal where invoice issued

**Adjustment of contracts**

27  Adjustment of contracts

**Evidence about tax status**

28  Evidence about tax status

**Recovery of overpaid tax**

29  Recovery of overpaid tax

**Information**

30  Information: material at landfill sites
31  Information: site restoration

**Record keeping**

32  Records: registrable persons
33  Records: material at landfill sites

**PART 4**

**GENERAL AND INTERPRETATION**

**The Tax Authority**

34  The Tax Authority
35  Delegation of functions to SEPA
36  Review and appeal

**Application of Act to partnerships, groups of companies etc.**

37  Partnership, bankruptcy, transfer of business etc.
38  Groups of companies
Landfill Tax (Scotland) Bill

Interpretation

PART 5

FINAL PROVISIONS

Ancillary provision

Subordinate legislation

Crown application

Commencement and short title

Ancillary provision

Subordinate legislation

Crown application

Commencement

Short title
Landfill Tax (Scotland) Bill

[AS AMENDED AT STAGE 2]

An Act of the Scottish Parliament to make provision about the taxation of disposals to landfill.

PART 1

SCOTTISH LANDFILL TAX

1 The tax

A tax (to be known as Scottish landfill tax) is to be charged in accordance with this Act.

(2) The Tax Authority is to be responsible for the collection and management of the tax.

2 Overview

This Act is arranged as follows—

Part 2 contains provision for the key concepts underlying the tax including—

(a) what is a taxable disposal,
(b) what disposals are exempt from tax,
(c) how to calculate the amount of tax,
(d) who is liable to pay the tax,
(e) when credit is available in relation to the tax,

Part 3 contains provision about the administration of the tax,

Part 4 contains provision about the Tax Authority and definitions of expressions used in the Act,

Part 5 contains provision about subordinate legislation powers and commencement as well as other final provisions.

PART 2

KEY CONCEPTS

Taxable disposals

3 Charge to tax

(1) Tax is to be charged on a taxable disposal made in Scotland.
(2) A disposal is a taxable disposal if—
   (a) it is a disposal of material as waste (see section 4),
   (b) it is made by way of landfill (see section 5), and
   (c) it is made at a landfill site (see section 12).

(3) For the purposes of subsection (2)(c), a disposal is made at a landfill site if the land on or under which it is made constitutes or falls within land which is a landfill site at the time of the disposal.

4 Disposal of material as waste

(1) A disposal of material is a disposal of it as waste if the person making the disposal does so with the intention of discarding the material.

(2) The fact that the person making the disposal or any other person could benefit from or make use of the material is irrelevant.

(3) Where a person makes a disposal on behalf of another person, for the purposes of subsections (1) and (2) the person on whose behalf the disposal is made is to be treated as making the disposal.

(4) The reference in subsection (3) to a disposal on behalf of another person includes references to a disposal—
   (a) at the request of another person,
   (b) in pursuance of a contract with another person.

5 Disposal by way of landfill

(1) A disposal of material is a disposal of it by way of landfill if—
   (a) it is deposited on the surface of land or on a structure set into the surface, or
   (b) it is deposited under the surface of land.

(2) Subsection (1) applies whether or not the material is placed in a container before it is deposited.

(3) Subsection (1)(b) applies whether the material—
   (a) is covered with earth after it is deposited, or
   (b) is deposited in a cavity (such as a cavern or mine).

(4) If material is deposited on the surface of land or on a structure set into the surface with a view to it being covered with earth, the disposal must be treated as made when the material is deposited and not when it is covered.

(5) The Scottish Ministers may, by order, make provision varying the meaning of the disposal of material by way of landfill.

(6) The order may modify any enactment (including this Act).

(7) In this section, “land” includes land covered by water where the land is above the low water mark of ordinary spring tides.

(8) In this section, “earth” includes similar matter (such as sand or rocks).
6 Prescribed landfill site activities to be treated as disposals

(1) The Scottish Ministers may, by order, prescribe a landfill site activity for the purposes of this section.

(2) A “landfill site activity” means any of the following descriptions of activity, or an activity that falls within any of the following descriptions—
   (a) using or otherwise dealing with material at a landfill site,
   (b) storing or otherwise having material at a landfill site.

(3) If a prescribed landfill site activity is carried out at a landfill site, the activity is to be treated—
   (a) as a disposal 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.

(4) An order under this section may prescribe a landfill site activity by reference to conditions.

(5) Those conditions may, in particular, relate to either or both of the following—
   (a) whether the landfill site activity is carried out in a designated area of a landfill site,
   (b) whether there has been compliance with a requirement to give information relating to—
      (i) the landfill site activity, or
      (ii) the material involved in the landfill site activity,
           including information relating to whether the activity is carried out in a designated area of a landfill site.

(6) In subsection (5), “designated area” means an area of a landfill site designated in accordance with—
   (a) an order under this section, or
   (b) regulations under section 30, 32 or 33.

(7) An order under this section may modify any enactment (including this Act).

Exemptions

7 Material removed from water

(1) A disposal is not a taxable disposal for the purposes of this Act if it is shown to the satisfaction of the Tax Authority that the disposal is of material all of which—
   (a) has been removed (by dredging or otherwise) from water falling within subsection (2), and
   (b) formed part of or projected from the bed of the water concerned before its removal.

(2) Water falls within this subsection if it is—
   (a) a river, canal or watercourse (whether natural or artificial), or
   (b) a dock or harbour (whether natural or artificial).
(3) A disposal is not a taxable disposal for the purposes of this Act if it is shown to the satisfaction of the Tax Authority that the disposal is of material all of which—

(a) has been removed (by dredging or otherwise) from water falling within the approaches to a harbour (whether natural or artificial),

(b) has been removed in the interests of navigation, and

(c) formed part of or projected from the bed of the water concerned before its removal.

(4) A disposal is not a taxable disposal for the purposes of this Act if it is shown to the satisfaction of the Tax Authority that the disposal is of material all of which—

(a) consists of naturally occurring mineral material, and

(b) has been removed (by dredging or otherwise) from the sea in the course of commercial operations carried out to obtain substances such as sand or gravel from the seabed.

(5) A disposal is not a taxable disposal for the purposes of this Act if it is shown to the satisfaction of the Tax Authority that the disposal is of material all of which comprises material falling within subsection (1) or (3) and other material which has been added to that material for the purpose of securing that it is not liquid waste.

8 Material resulting from mining and quarrying

(1) A disposal is not a taxable disposal for the purposes of this Act if it is shown to the satisfaction of the Tax Authority that the disposal is of material all of which fulfils each of the conditions set out in subsection (2).

(2) The material—

(a) must result from commercial mining operations (whether the mining is deep or open-cast) or from commercial quarrying operations,

(b) must be naturally occurring material extracted from the earth in the course of the operations, and

(c) must not have been subjected to, or result from, a non-qualifying process carried out at any stage between the extraction and the disposal.

(3) A non-qualifying process is—

(a) a process separate from the mining or quarrying operations, or

(b) a process forming part of those operations and permanently altering the material’s chemical composition.

9 Disposal of qualifying material at former quarries

(1) A disposal is not a taxable disposal for the purposes of this Act if it is—

(a) of material all of which is treated for the purposes of section 13 as qualifying material, and

(b) made at a qualifying landfill site.

(2) A landfill site is a qualifying landfill site for the purposes of this section if at the time of the disposal—

(a) the landfill site is or was a quarry,
(b) subject to subsection (3), it is a requirement of planning permission in respect of the land in which the quarry or former quarry is situated that it be wholly or partially refilled, and

(c) subject to subsection (4), the authorisation permitting disposals on or in the land comprising the site permits only the disposal of material which constitutes qualifying material.

(3) Where a quarry—

(a) was in existence before 1 October 1999, and

(b) quarrying operations ceased before that date,

the requirement referred to in subsection (2)(b) must have been imposed on or before that date.

(4) Where an authorisation permitting disposals on or in the land does not (apart from the application of this subsection) meet the requirements of subsection (2)(c) and an application has been made to vary the authorisation in order to meet them, it is to be deemed to meet them for the period before—

(a) the application is disposed of, or

(b) the second anniversary of the making of the application if it occurs before the application is disposed of.

(5) For the purposes of subsection (4), an application is disposed of if—

(a) it is granted,

(b) it is withdrawn,

(c) it is refused and there is no right of appeal against the refusal,

(d) a time limit for appeal against refusal expires without an appeal having been commenced, or

(e) an appeal against refusal is dismissed or withdrawn and there is no further right of appeal.

10 **Pet cemeteries**

(1) A disposal is not a taxable disposal for the purposes of this Act if—

(a) the disposal is of material consisting entirely of the remains of dead domestic pets, and

(b) the landfill site at which the disposal is made fulfils the condition set out in subsection (2).

(2) The condition is that during the relevant period—

(a) no landfill disposal was made at the site, or

(b) the only landfill disposals made at the site were of material consisting entirely of the remains of dead domestic pets.

(3) For the purposes of subsection (2), the relevant period—

(a) begins with the coming into force of this section or, if later, with the coming into force in relation to the site of the authorisation mentioned in section 12, and

(b) ends immediately before the disposal mentioned in subsection (1).
Power to vary what is a taxable disposal

11 Taxable disposals: power to vary

(1) The Scottish Ministers may, by order, make provision to produce the result that—
   (a) a disposal which would otherwise be a taxable disposal is not a taxable disposal,
   (b) a disposal which would otherwise not be a taxable disposal is a taxable disposal.

(2) The order may, in particular—
   (a) confer exemption by reference to certificates issued by the Tax Authority and to conditions set out in certificates,
   (b) allow the Tax Authority to direct requirements to be met before certificates can be issued.

(3) The order may modify any enactment (including this Act).

Landfill sites and operators of landfill sites

12 Landfill sites and operators of landfill sites

(1) Land is a landfill site at a given time if at that time an authorisation is in force in relation to the land and authorises disposals on or under the land.

(2) The operator of a landfill site at a given time is the person who is at the time concerned the holder of the authorisation.

(3) Land is to be treated as a landfill site at a given time if at that time—
   (a) disposals of material are made on or under the land,
   (b) an authorisation is required in relation to those disposals, and
   (c) no authorisation is in force.

(4) In determining for the purposes of subsection (3) whether an authorisation is required in relation to disposals of material, no account is to be taken of any prohibition or restriction under the Regulatory Reform (Scotland) Act 2013 that would prevent an authorisation being granted in relation to the disposal of the material by way of landfill.

Calculation of tax

13 Amount of tax

(1) The amount of tax charged on a taxable disposal is to be found by multiplying the standard rate by the weight in tonnes of the material disposed of.

(2) The standard rate is the sum specified for the purposes of this section in an order made by the Scottish Ministers.

(3) Where the material disposed of consists entirely of qualifying material, the amount of tax charged is to be found by multiplying the lower rate by the weight in tonnes of the material disposed of.

(4) Qualifying material is material listed (in one or more category) in an order made by the Scottish Ministers.

(5) The lower rate is the sum specified for the purposes of this section in an order made by the Scottish Ministers.
(6) An order under subsection (5) may set different lower rates for different categories of qualifying material.

(7) The Scottish Ministers must—
   (a) set criteria to be considered in determining from time to time what material is to be listed as qualifying material,
   (b) keep those criteria under review,
   (c) revise them whenever they consider they should be revised, and
   (d) publish the criteria (and any revised criteria).

(8) In determining from time to time what material is to be listed as qualifying material, the Scottish Ministers must have regard to—
   (a) the criteria (or revised criteria) published under subsection (7)(d), and
   (b) any other factors they consider relevant.

**14 Qualifying material: special provisions**

(1) This section applies for the purposes of section 13.

(2) The Tax Authority may direct that where material is disposed of it must be—
   (a) treated as qualifying material if it would in fact be such material but for a small quantity of non-qualifying material,
   (b) treated as qualifying material of one category if it would in fact be such material but for a small quantity of qualifying material of another category.

(3) The Tax Authority may at the request of a person direct that where there is a disposal in respect of which the person is liable to pay tax the material disposed of is to be—
   (a) treated as qualifying material if it would in fact be such material but for a small quantity of non-qualifying material,
   (b) treated as qualifying material of one category if it would in fact be such material but for a small quantity of qualifying material of another category.

(4) Whether a quantity of non-qualifying material or (as the case may be) qualifying material of another category is small is to be determined in accordance with the terms of the direction.

(5) A direction under subsection (3) may apply to all disposals in respect of which a person is liable to pay tax or to such of them as are identified in the direction.

(6) If a direction under subsection (3) applies to a disposal, any direction under subsection (2) is not to apply to it.

(7) The Scottish Ministers may, by order, provide that material must not be treated as qualifying material (or as qualifying material of a particular category) for the purposes of this section unless conditions specified in the order are fulfilled.

(8) A condition specified under subsection (7) may relate to any matter the Scottish Ministers think fit (such as the production of a document which includes a statement of the nature of the material).
15 **Weight of material disposed of**

(1) The weight of material disposed of on a taxable disposal is to be determined in accordance with regulations made by the Scottish Ministers.

(2) The regulations may—

(a) specify rules for determining the weight,

(b) authorise rules for determining the weight to be specified by the Tax Authority in a manner set out in the regulations,

(c) authorise rules for determining the weight to be agreed by the person liable to pay the tax and an authorised person.

(3) The regulations may, in particular, specify, or authorise the specification or agreement of, rules about—

(a) the method by which the weight is to be determined,

(b) the time by reference to which the weight is to be determined,

(c) the discounting of constituents (such as water).

(4) The regulations may include provision that a specification authorised under subsection (2)(b) 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 the Tax Authority is satisfied that such conditions as may be set out in the specification are met in relation to the disposals,

and the conditions may be framed by reference to such factors as the Tax Authority thinks fit (such as the consent of an authorised person to the specification having effect in relation to disposals).

(5) The regulations may include provision that—

(a) where rules are agreed as mentioned in subsection (2)(c), and

(b) the Tax Authority believes 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,

the Tax Authority may direct that the agreed rules are no longer to have effect.

(6) The regulations may be so framed that where in relation to a particular disposal—

(a) no specification of the Tax Authority has effect, and

(b) no agreed rules have effect,

the weight is to be determined in accordance with rules specified in the regulations.

---

**Persons liable to pay tax**

16 **Liability to pay tax**

(1) The person liable to pay the tax charged on a taxable disposal made at an authorised landfill site is the landfill site operator.
(2) The reference in subsection (1) to the landfill site operator is to the person who is at the
time of the disposal the operator of the landfill site which constitutes or contains the
land on or under which the disposal is made.

(3) The person liable to pay the tax charged on a taxable disposal made at an unauthorised
landfill site is any person who—

(a) made the disposal, or
(b) knowingly permitted the disposal to be made.

(4) Where two or more persons are liable under subsection (3), those persons are jointly and
severally liable to pay the tax.

(5) In this section—

(a) an “authorised landfill site” is land referred to in section 12(1),
(b) an “unauthorised landfill site” is land referred to in section 12(3).

17 Liability of controllers of landfill sites

(1) The Scottish Ministers may, by regulations, make provision about the liability of
controllers of landfill sites to pay the tax.

(2) A person is the controller of the whole, or a part, of a landfill site at a given time if the
person determines, or is entitled to determine, what disposals of material (if any) may be
made—

(a) at every part of the site at that time, or
(b) at that part of the site at that time,
(as the case may be).

(3) But a person who determines or is entitled to determine what disposals may be made at a
landfill site or any part of a landfill site only because the person is an employee or agent
of another is not the controller of that site or (as the case may be) that part of that site.

(4) The regulations may, in particular, make provision (or further provision) about—

(a) who is a controller of a landfill site for the purposes of this Act,
(b) the circumstances in which a controller is liable to pay tax,
(c) the amount of tax which a controller is liable to pay,
(d) the entitlement of a controller to credit in respect of tax, and
(e) the arrangements for payment of tax by a controller.

(5) The regulations may modify any enactment (including this Act).

Credit

18 Credit: general

(1) The Scottish Ministers may, by regulations, provide that where—

(a) a person has paid or is liable to pay tax, and
(b) conditions specified in the regulations are fulfilled,
the person is to be entitled to credit of such an amount as is found in accordance with
rules specified in the regulations.
(2) The regulations may make provision as to the manner in which a person is to benefit from credit, and may, in particular, make provision—

(a) that a person is to be entitled to credit by reference to accounting periods,

(b) that a person is to be entitled to deduct an amount equal to the person’s total credit for an accounting period from the total amount of tax due from the person for the period,

(c) that if no tax is due from a person for an accounting period but the person is entitled to credit for the period, the amount of the credit is to be paid to the person by the Tax Authority,

(d) that if the amount of credit to which a person is entitled for an accounting period exceeds the amount of tax due from the person for the period, an amount equal to the excess is to be paid to the person by the Tax Authority,

(e) for the whole or part of any credit to be held over to be credited for a subsequent accounting period,

(f) as to the manner in which a person who has ceased to be registrable is to benefit from credit.

(3) Regulations under subsection (2)(c) or (d) may provide that where at the end of an accounting period an amount is due to a person who has failed to submit returns for an earlier period as required by this Act, the Tax Authority may withhold payment of the amount until the person has complied with that requirement.

(4) Regulations under subsection (2)(e) may provide for credit to be held over either on the person’s application or in accordance with directions given by the Tax Authority from time to time; and the regulations may allow directions to be given generally or with regard to particular cases.

(5) The regulations may provide that—

(a) no benefit is to be conferred in respect of credit except on a claim made in such manner and at such time as may be determined by or under regulations,

(b) payment in respect of credit is to be made subject to such conditions (if any) as the Tax Authority thinks fit to impose, including conditions as to repayment in specified circumstances,

(c) deduction in respect of credit is to be made subject to such conditions (if any) as the Tax Authority thinks fit to impose, including conditions as to the payment to the Tax Authority, in specified circumstances, of an amount representing the whole or part of the amount deducted.

(6) The regulations may require a claim by a person to be made in a return required by provision made under section 25.

(7) Nothing in section 19 or 20 is to be taken to derogate from the power to make regulations under this section (whether with regard to bad debts, the environment or any other matter).

19 Credit: bad debts

(1) Regulations may be made under section 18 with a view to securing that a person is entitled to credit if—
Part 2—Key concepts

(a) the person carries out a taxable activity as a result of which the person becomes entitled to a debt which turns out to be bad (in whole or in part), and

(b) such other conditions as may be specified in the regulations are fulfilled.

(2) The regulations may include provision under section 18(5)(b) or (c) requiring repayment or payment if it turns out that it was not justified to regard a debt as bad (or to regard it as bad to the extent that it was so regarded).

(3) The regulations may include provision for determining whether, and to what extent, a debt is to be taken to be bad.

20 Credit: bodies concerned with the environment

(1) Regulations may be made under section 18 with a view to securing that a person is entitled to credit if—

(a) the person pays a sum to a body whose objects are or include such matters connected with the protection of the environment as are specified in regulations, and

(b) such other conditions as are specified in the regulations are fulfilled.

(2) The regulations may, in particular, specify conditions—

(a) requiring bodies to which sums are paid (“environmental bodies”) to be approved by the Tax Authority,

(b) requiring such sums to be paid with the intention that they be expended on such matters connected with the protection of the environment as may be specified in the regulations.

(3) The regulations may include provision under section 18(5)(b) or (c) requiring repayment or payment if—

(a) a sum is not in fact expended on matters specified under subsection (2)(b), or

(b) a condition specified in the regulations turns out not to have been fulfilled.

(4) The regulations may include—

(a) provision for determining the amount of credit (including provision for limiting it),

(b) provision that matters connected with the protection of the environment include such matters as overheads (including administration) of environmental bodies,

(c) provision for determining the amounts that may be spent on the administration of environmental bodies,

(d) provision as to the matters by reference to which an environmental body can be and remain approved (including matters relating to the functions and activities of any such body),

(e) provision for an environmental body to be and remain approved only if it complies with conditions imposed from time to time by the Tax Authority (including provision for the variation or revocation of such conditions),

(f) provision allowing (whether prospectively or retrospectively) the withdrawal of approval of an environmental body by the Tax Authority.
(g) provision allowing the Tax Authority to delegate the exercise of any of its functions under section 18 or this section to another person,

(h) provision allowing the Tax Authority to disclose to any person to whom its functions are delegated by virtue of provision made under paragraph (g) information which relates to the tax affairs of persons carrying out taxable activities and which is relevant to the credit scheme established by the regulations.

PART 3
ADMINISTRATION

Taxable activities

(1) A person (P) carries out a taxable activity if—

(a) P makes a taxable disposal in respect of which P is liable to pay tax, or
(b) P permits another person to make a taxable disposal in respect of which P is liable to pay tax.

(2) Where—

(a) a taxable disposal is made, and
(b) it is made without the knowledge of the person who is liable to pay tax in respect of it,

the person is, for the purposes of this section, to be taken to permit the disposal.

Registration

(1) The Tax Authority must keep a register containing such information as the Tax Authority thinks is required for the purposes of the collection and management of the tax.

(2) A person who—

(a) carries out taxable activities, and
(b) is not registered,

is liable to be registered.

(3) Where—

(a) a person at any time forms the intention of carrying out taxable activities, and
(b) the person is not registered,

the person must notify the Tax Authority of that intention.

(4) A person who at any time ceases to have the intention of carrying out taxable activities must notify the Tax Authority of that fact.
(5) Where a person is liable to be registered by virtue of subsection (2), the Tax Authority must register the person with effect from the time when the person begins to carry out taxable activities (whether or not the person notifies the Tax Authority under subsection (3)).

(6) Where the Tax Authority is satisfied that a person has ceased to carry out taxable activities it may cancel the person’s registration with effect from the earliest practicable time after the person ceased to carry out taxable activities (whether or not the person notifies the Tax Authority under subsection (4)).

(7) Where—
(a) a person notifies the Tax Authority under subsection (4),
(b) it is satisfied that the person will not carry out taxable activities,
(c) it is satisfied that no tax which the person is liable to pay is unpaid,
(d) it is satisfied that no credit to which the person is entitled under regulations made under section 18 is outstanding, and
(e) subsection (8) does not apply,
the Tax Authority must cancel the person’s registration with effect from the earliest practicable time after the person ceases to carry out taxable activities.

(8) Where—
(a) a person notifies the Tax Authority under subsection (4), and
(b) it is satisfied that the person has not carried out, and will not carry out, taxable activities,
the Tax Authority must cancel the person’s registration with effect from the time when the person ceased to have the intention to carry out taxable activities.

(9) For the purposes of this section, the Scottish Ministers may, by regulations, make provision—
(a) as to the time within which a notification is to be made,
(b) as to the form and manner in which any notification is to be made and as to the information to be contained in or provided with it,
(c) requiring a person who has made a notification to notify the Tax Authority if any information contained in or provided in connection with the notification is or becomes inaccurate,
(d) as to the correction of entries in the register.

(10) References in this Act to a registrable person are to a person who—
(a) is registered under this section, or
(b) is liable to be registered under this section.

23 Information required to keep register up to date

(1) The Scottish Ministers may, by regulations, make provision requiring a registrable person to notify the Tax Authority of particulars of changes in circumstances relating to the registrable person (or any business carried on by the registrable person) which—
(a) appear to the Tax Authority to be required for the purpose of keeping the register kept under section 22 up to date, and
(b) are of a description specified in the regulations.

(2) The regulations may, in particular, make provision—

(a) as to the time within which a notification is to be made,

(b) as to the form and manner in which a notification is to be made,

(c) requiring a person who has made a notification to notify the Tax Authority if any information contained in or provided in connection with the notification is or becomes inaccurate.

24 Publication of the register

(1) The Tax Authority may publish, by such means as it thinks fit, information which—

(a) is derived from the register kept under section 22, and

(b) falls within any of the descriptions set out below.

(2) The descriptions are—

(a) the names of registered persons,

(b) the addresses of any sites or other premises at which they carry on business,

(c) the registration numbers assigned to them in the register,

(d) the fact (where it is the case) that the registered person is a body corporate which by virtue of section 38 is treated as a member of a group,

(e) the names of the other bodies corporate treated under that section as members of the group,

(f) the addresses of any sites or other premises at which those other bodies carry on business.

(3) Information may be published in accordance with this section notwithstanding any obligation not to disclose the information that would otherwise apply.

Accounting for tax

25 Accounting for tax and time for payment

The Scottish Ministers may, by regulations, provide that a registrable person must—

(a) account for tax by reference to such periods (“accounting periods”) as may be determined by or under the regulations,

(b) make, in relation to accounting periods, returns in such form and at such times as may be so determined,

(c) pay tax at such times and in such manner as may be so determined.

Time of disposal where invoice issued

26 Time of disposal where invoice issued

(1) Where—

(a) a taxable disposal is in fact made on a particular day, and
(b) within the period of 14 days beginning with that day the person liable to pay tax in respect of the disposal issues a landfill invoice in respect of that disposal, for the purposes of this Act the disposal is to be treated as made at the time the invoice is issued.

(2) Subsection (1) does not apply if the person has notified the Tax Authority in writing that the person elects not to take advantage of that subsection.

(3) A landfill invoice is a document containing such particulars as the Scottish Ministers may, by regulations, prescribe for the purposes of subsection (1).

(4) The Tax Authority may at the request of a person direct that subsection (1) is to apply—

(a) in relation to disposals in respect of which the person is liable to pay tax, or

(b) in relation to such disposals as may be specified in the direction,

as if for the period of 14 days there were substituted such longer period as may be specified in the direction.

Adjustment of contracts

(1) This section applies where—

(a) material undergoes a landfill disposal,

(b) a payment falls to be made under a disposal contract relating to the material, and

(c) after the making of the contract there is a change in the tax chargeable on the landfill disposal.

(2) In such a case, the amount of any payment mentioned in subsection (1)(b) is to be adjusted, unless the disposal contract otherwise provides, so as to reflect the tax chargeable on the landfill disposal.

(3) For the purposes of this section a disposal contract relating to material is a contract providing for the disposal of the material, and it is immaterial—

(a) when the contract was made,

(b) whether the contract also provides for other matters,

(c) whether the contract provides for a method of disposal and (if it does) what method it provides for.

(4) The reference in subsection (1) to a change in the tax chargeable is a reference to a change—

(a) to or from no tax being chargeable, or

(b) in the amount of tax chargeable.

Evidence about tax status

(1) A certificate of the Tax Authority—

(a) that a person was or was not at any time registered under section 22, or
(b) that any return required by regulations made under section 25 has not been made or had not been made at any time,
is sufficient evidence of that fact until the contrary is proved.

(2) A copy of any document provided to the Tax Authority for the purposes of this Act and certified by it to be such a copy is admissible in any proceedings, whether civil or criminal, to the same extent as the document itself.

(3) Any document purporting to be a certificate under subsection (1) or (2) is to be taken to be such a certificate until the contrary is proved.

Recovery of overpaid tax

(1) Where a person has paid an amount to the Tax Authority by way of tax which was not tax due to it, it is liable to repay the amount to the person.

(2) The Tax Authority is only liable to repay an amount under this section on a claim being made for the purpose.

(3) It is a defence, in relation to a claim under this section, that repayment of an amount would unjustly enrich the claimant.

(4) The Tax Authority is not liable, on a claim made under this section, to repay any amount paid to it more than 4 years before the making of the claim.

(5) A claim under this section must be made in such form and manner and supported by such documentary evidence as the Scottish Ministers may, by regulations, prescribe.

(6) Except as provided by this section, the Tax Authority is not liable to repay an amount paid to it by way of tax by virtue of the fact that it was not tax due to it.

Information

Information: material at landfill sites

(1) The Scottish Ministers may, by regulations, make provision about giving the Tax Authority information relating to material at a landfill site or part of a landfill site.

(2) The regulations may require a person to give information.

(3) The regulations may—

(a) require a person, or authorise an authorised person to require a person, to designate a part of a landfill site (a “non-disposal area”), and

(b) require material, or descriptions of material specified in the regulations, to be deposited in a non-disposal area.

(4) The regulations may make provision about information relating to what is done with material.

(5) Subsections (2) to (4) do not prejudice the generality of subsection (1).

Information: site restoration

(1) Before commencing restoration of all or part of a landfill site, the operator of the site must—
(a) notify the Tax Authority in writing that the restoration is to commence, and
(b) provide such other written information as the Tax Authority may require.

(2) In this section “restoration” means work, other than capping waste, which is required by a relevant instrument to be carried out to restore a landfill site to use on completion of waste disposal operations.

(3) The following are relevant instruments—
(a) a planning permission,
(b) an authorisation.

Record keeping

32 Records: registrable persons

(1) The Scottish Ministers may, by regulations, require registrable persons to make records.

(2) The regulations may be framed by reference to such records as may be stipulated in any notice published by the Tax Authority in pursuance of the regulations and not withdrawn by a further notice.

(3) The regulations may—
(a) require registrable persons to preserve records of a description specified in the regulations (whether or not the records are required to be made in pursuance of regulations) for such period not exceeding 6 years as may be specified in the regulations,
(b) authorise the Tax Authority to direct that any such records need only be preserved for a shorter period than that specified in the regulations,
(c) authorise a direction to be made so as to apply generally or in such cases as the Tax Authority may stipulate.

(4) A duty under regulations under this section to preserve records may be discharged—
(a) by preserving them in any form and by any means, or
(b) by preserving the information contained in them in any form and by any means, subject to any conditions or exceptions specified in writing by the Tax Authority.

33 Records: material at landfill sites

(1) The Scottish Ministers may, by regulations, require a person to make records relating to material at a landfill site or part of a landfill site.

(2) The regulations may make provision about records relating to what is done with material.

(3) Subsections (2) to (4) of section 32 apply in relation to regulations under this section as they apply in relation to regulations under section 32.

(4) But, in the application of section 32(3)(a) in relation to regulations under this section, the reference to registrable persons has effect as a reference to persons.
PART 4
GENERAL AND INTERPRETATION

The Tax Authority

34 The Tax Authority
(1) For the purposes of this Act, the Tax Authority is the Scottish Ministers.
(2) The Scottish Ministers may, by order, amend subsection (1) to provide that another person is the Tax Authority.

35 Delegation of functions to SEPA
(1) The Tax Authority may delegate the exercise of any of its functions under this Act to SEPA.
(2) But subsection (1) does not apply to any function of making an order or regulations.
(3) A delegation under this section may be varied or revoked at any time.
(4) A delegation under this section does not affect the Tax Authority’s responsibility for the exercise of any functions delegated or the Authority’s ability to carry out such functions.
(5) The Tax Authority may reimburse SEPA for any expenditure incurred which is attributable to the exercise by SEPA of functions delegated under this section.

36 Review and appeal
(1) The Scottish Ministers may, by regulations, make provision for—
   (a) the review by the Tax Authority, on the application of a specified person, of any specified kind of decision by the Tax Authority,
   (b) the appeal by a specified person to a tribunal or court against any specified kind of decision by the Tax Authority.
(2) The regulations may modify any enactment (including this Act).
(3) In this section, “specified” means specified in the regulations.

Application of Act to partnerships, groups of companies etc.

37 Partnership, bankruptcy, transfer of business etc.
(1) As regards any case where a business is carried on in partnership or by an unincorporated body, the Scottish Ministers may, by regulations, make provision for determining by what persons anything required by this Act to be done by a person is to be done.
(2) The registration under this Act of an unincorporated body may be in the name of the body concerned; and in determining whether taxable activities are carried out by such a body no account is to be taken of any change in its members.
(3) The registration under this Act of a body corporate carrying on a business in several divisions may, if the body corporate so requests and the Tax Authority thinks fit, be in the names of those divisions.
(4) As regards any case where a person carries on a business of a person who has died or become bankrupt or incapacitated or whose estate has been sequestrated, or of a person which is in liquidation or receivership or administration, the Scottish Ministers may, by regulations—

(a) require the person carrying on the business to inform the Tax Authority of the fact that the person is carrying on the business and of the event that has led to that person carrying it on,

(b) make provision allowing the person carrying on the business to be treated for a limited time as if the person were the other person,

(c) make provision for securing continuity in the application of this Act where the person carrying on the business is so treated.

(5) The Scottish Ministers may, by regulations, make provision for securing continuity in the application of this Act in cases where a business carried on by a person is transferred to another person as a going concern.

(6) Regulations under subsection (5) may, in particular—

(a) require the transferor to inform the Tax Authority of the transfer,

(b) provide for liabilities and duties under this Act of the transferor to become, to such extent as may be provided in the regulations, liabilities and duties of the transferee,

(c) provide for any right of either of them to repayment or credit in respect of tax to be satisfied by making a repayment or allowing a credit to the other.

(7) Regulations under subsection (5) may, in particular, provide that no such provision as is mentioned in subsection (6)(b) or (c) is to have effect in relation to any transferor and transferee unless an application to that effect has been made by them under the regulations.

38 Groups of companies

(1) Where any bodies corporate are treated as members of a group by virtue of this section, for the purposes of this Act—

(a) any liability of a member of the group to pay tax is to be taken to be a liability of the representative member,

(b) the representative member is to be taken to carry out any taxable activities which a member of the group would carry out (apart from this section) by virtue of section 21,

(c) all members of the group are jointly and severally liable for any tax due from the representative member.

(2) Two or more bodies corporate are eligible to be treated as members of a group if the condition mentioned in subsection (3) is fulfilled and—

(a) one of them controls each of the others,

(b) one person (whether a body corporate or an individual) controls them all, or

(c) two or more individuals carrying on a business in partnership control all of them.

(3) The condition is that the prospective representative member has an established place of business in the United Kingdom.
Two or more bodies corporate eligible to be treated as members of a group may apply to the Tax Authority to be so treated.

An application under subsection (4) must set out which of the bodies corporate is to be the representative member.

Where an application referred to in subsection (4) is made—

(a) the bodies corporate are to be treated as a group from the beginning of an accounting period, and

(b) the body corporate set out in the application is to be the representative member, unless the Tax Authority refuses the application.

Where any bodies corporate are treated as members of a group, an application may be made to the Tax Authority to the effect that—

(a) a further body eligible to be treated as a member of the group is to be included among the bodies so treated,

(b) a body corporate is to be excluded from the bodies so treated,

(c) another member of the group is to be substituted as the representative member, or

(d) the bodies corporate are no longer to be treated as members of a group.

Where an application referred to in subsection (7) is made, the change is to have effect from the beginning of an accounting period unless—

(a) the application is to the effect mentioned in subsection (7)(a) or (c), and

(b) the Tax Authority refuses the application.

The Tax Authority may refuse an application under subsection (4) or (7)(a) or (c) only if it appears to it necessary to do so for the protection of the revenue.

Where—

(a) a body corporate is treated as a member of a group as being controlled by any person, and

(b) it appears to the Tax Authority that it has ceased to be so controlled, the Tax Authority must, by notice given to that person, terminate that treatment from such date as may be specified in the notice.

An application under this section with respect to any bodies corporate—

(a) must be made by one of those bodies or by the person controlling them, and

(b) must be made not less than 90 days before the date from which it is to take effect, or at such later time as the Tax Authority may allow.

For the purposes of this section—

(a) a body corporate is to be taken to control another body corporate if—

(i) it is empowered by statute to control that body’s activities, or

(ii) it is that body’s holding company within the meaning of section 1159 of and Schedule 6 to the Companies Act 2006,
(b) an individual is or individuals are to be taken to control a body corporate if the individual or individuals would be that body’s holding company within the meaning of the provisions mentioned in paragraph (a)(ii), were the individual or individuals a company.

39 Interpretation

In this Act—

“accounting period” is to be construed in accordance with section 25, “authorisation” means an authorisation under regulations under section 10 of the Regulatory Reform (Scotland) Act 2013, “authorised person” means any person authorised by the Tax Authority, “material” means material of all kinds, including objects, substances and products of all kinds, “operator” has the meaning given by section 12(2), “planning permission” has the meaning given by section 277 of the Town and Country Planning (Scotland) Act 1997, “registrable person” has the meaning given by section 22(10), “SEPA” means the Scottish Environment Protection Agency, “the tax” means Scottish landfill tax, “the Tax Authority” has the meaning given by section 34, “taxable activity” is to be construed in accordance with section 21, “taxable disposal” has the meaning given by section 3.

PART 5

FINAL PROVISIONS

Ancillary provision

40 Ancillary provision

(1) The Scottish Ministers may, by order, make such incidental, supplementary, consequential, transitional, transitory or saving provision as they consider appropriate for the purposes of, in consequence of, or for giving full effect to, any provision made by or under this Act.

(2) An order under subsection (1) may modify any enactment (including this Act).

Subordinate legislation

41 Subordinate legislation

(1) Any power conferred by this Act on the Scottish Ministers to make an order or regulations includes the power to make—
(a) different provision for different cases or description of case or for different purposes,
(b) such incidental, supplementary, consequential, transitional, transitory or saving provision as the Scottish Ministers consider necessary or expedient.

(2) Orders and regulations under the following provisions are subject to the affirmative procedure—

(za) section 11(1),
(a) the first order under section 13(2) or (5),
(aa) section 17(1),
(b) section 34(2).

(3) An order mentioned in subsection (4)—

(a) must be laid before the Scottish Parliament, and
(b) ceases to have effect at the expiry of the period of 28 days beginning with the date on which it was made unless, before the expiry of that period, the order has been approved by resolution of the Parliament.

(4) The orders are—

(a) an order under section 5(5) providing for anything which would otherwise not be a disposal of material by way of landfill to be such a disposal,
(b) an order under section 6(1) which produces the result that a landfill site activity which would otherwise not be prescribed for the purposes of section 6 is so prescribed,
(d) a second or subsequent order under section 13(2) or (5),
(e) an order under section 13(4),
(f) an order under section 14(7) other than one which provides only that an earlier order under section 14(7) is not to apply to material.

(5) In reckoning for the purposes of subsection (3)(b) any period of 28 days, no account is to be taken of any period during which the Scottish Parliament is—

(a) dissolved, or
(b) in recess for more than 4 days.

(6) Subsection (3)(b) is without prejudice to—

(a) anything previously done by reference to an order mentioned in subsection (4), or
(b) the making of a new order.

(7) Orders and regulations under the following provisions which add to, replace or omit the text of any Act (including this Act) are subject to the affirmative procedure—

(a) section 5(5) (except an order mentioned in subsection (4)(a)),
(b) section 6(1) (except an order mentioned in subsection (4)(b)),
(e) section 36(1), and
(f) section 40(1).

(8) All other orders and regulations under this Act are subject to the negative procedure.
(9) This section does not apply to an order under section 43(2).

Crown application

42 Crown application

Nothing in this Act affects Her Majesty in Her private capacity.

Commencement and short title

43 Commencement

(1) This section and sections 34, 35, 40, 41, 42 and 44 come into force on the day of Royal Assent.

(2) The other provisions of this Act come into force on such day as the Scottish Ministers may, by order, appoint.

(3) An order under subsection (2) may contain transitional, transitory or saving provision.

44 Short title

The short title of this Act is the Landfill Tax (Scotland) Act 2013.
Landfill Tax (Scotland) Bill
[AS AMENDED AT STAGE 2]

An Act of the Scottish Parliament to make provision about the taxation of disposals to landfill.

Introduced by: John Swinney
On: 17 April 2013
Bill type: Government Bill
SUPPLEMENTARY DELEGATED POWERS MEMORANDUM

Purpose

1. This Memorandum has been prepared by the Scottish Government to assist the Delegated Powers and Law Reform Committee (“the Committee”) in its consideration of the Landfill Tax (Scotland) Bill (“the Bill”). This Memorandum describes provisions in the Bill conferring power to make subordinate legislation which were amended at Stage 2. The Memorandum supplements the Delegated Powers Memorandum on the Bill as introduced.

PROVISIONS CONFERRING POWER TO MAKE SUBORDINATE LEGISLATION AMENDED AT STAGE 2

Section 11(1) – Power to vary what is a taxable disposal
Power conferred on: The Scottish Ministers
Power exercisable by: Order
Parliamentary procedure: Affirmative procedure

Provision

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

Reason for taking power

2. 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.

3. 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

4. Following a recommendation by the Finance Committee this procedure has been amended at stage 2 so that all orders made under section 11 are subject to affirmative procedure. Prior to the amendment an order under this section was subject to the provisional affirmative procedure if it produced the result that a disposal, which would otherwise not be a taxable disposal, became a taxable disposal. Where this was not the case, but the order amended primary legislation, affirmative procedure applied. Where neither of those considerations applied, the order was subject to negative procedure.

5. The Finance Committee noted that creating an exemption may prove suitably controversial to merit further scrutiny by Parliament. The Scottish Government accepts this point and has changed the procedure accordingly.

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

Provision

6. 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

7. 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

8. The procedure for this order making power was amended at stage 2 following a recommendation from the Finance Committee. All orders under this section are subject to the provisional affirmative procedure. Prior to the amendment an order under this section was subject to provisional affirmative if it removed something from the list of qualifying material or moved material from one category of qualifying material to another. Where that was not the case, negative procedure applied. The Finance Committee recommended that any change to the qualifying material list(s) be subject to affirmative procedure. The Scottish Government notes the Committee’s recommendation and changed the procedure to provisional affirmative in all cases, so that the order can take effect immediately to stop any rush to landfill material following an order being made, whilst also allowing Parliament a higher degree of scrutiny following any change than negative procedure would allow.
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

Provision

9. 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

10. This enabling provision is 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.

11. 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

12. The procedure for this order making power was amended at Stage 2 following a recommendation from the Delegated Powers and Law Reform Committee. Prior to the amendment affirmative procedure was considered to be appropriate if the power allows for the amendment of primary legislation. For other provision made, negative procedure applied. The Delegated Powers and Law Reform Committee recommended that any change in the liability of controllers be subject to affirmative procedure to enable a higher level of Parliamentary scrutiny. The Scottish Government accepted this point and has changed the procedure accordingly.
Delegated Powers and Law Reform Committee

63rd Report, 2013 (Session 4)

Landfill Tax (Scotland) Bill as amended at stage 2

Published by the Scottish Parliament on 11 December 2013
Delegated Powers and Law Reform Committee

Remit and membership

Remit:

1. The remit of the Delegated Powers and Law Reform Committee is to consider and report on—
   (a) any—
   (i) subordinate legislation laid before the Parliament or requiring the consent of the Parliament under section 9 of the Public Bodies Act 2011;
   (ii) [deleted]
   (iii) pension or grants motion as described in Rule 8.11A.1; and, in particular, to determine whether the attention of the Parliament should be drawn to any of the matters mentioned in Rule 10.3.1;
   (b) proposed powers to make subordinate legislation in particular Bills or other proposed legislation;
   (c) general questions relating to powers to make subordinate legislation;
   (d) whether any proposed delegated powers in particular Bills or other legislation should be expressed as a power to make subordinate legislation;
   (e) any failure to lay an instrument in accordance with section 28(2), 30(2) or 31 of the 2010 Act; and
   (f) proposed changes to the procedure to which subordinate legislation laid before the Parliament is subject.
   (g) any Scottish Law Commission Bill as defined in Rule 9.17A.1; and
   (h) any draft proposal for a Scottish Law Commission Bill as defined in that Rule.

Membership:

Richard Baker
Nigel Don (Convener)
Mike MacKenzie
Margaret McCulloch
Stuart McMillan (Deputy Convener)
John Scott
Stewart Stevenson
Committee Clerking Team:

Clerk to the Committee
Euan Donald

Assistant Clerk
Elizabeth White

Support Manager
Daren Pratt
The Committee reports to the Parliament as follows—

1. At its meeting on 10 December 2013, the Delegated Powers and Law Reform Committee considered the delegated powers provisions in the Landfill Tax (Scotland) Bill as amended at Stage 2 (“the Bill”)\(^1\). The Committee submits this report to the Parliament under Rule 9.7.9 of Standing Orders.

2. The Bill was introduced in the Scottish Parliament by John Swinney MSP on 17 April 2013. It is a Government Bill, the second of three taxation Bills being brought forward in consequence of measures contained in the Scotland Act 2012 which made the Scottish Parliament responsible for certain taxes. In particular, the Parliament now has responsibility for tax on disposals of material to land.

3. A further Bill is required to provide the overall framework for administering the new devolved taxes contained in this Bill and in the Land and Buildings Transaction Tax (Scotland) Act 2013. It is envisaged that the Revenue Scotland and Tax Powers Bill will be introduced shortly.

4. The Scottish Government has provided the Parliament with a supplementary memorandum on the delegated powers provisions in the Bill, in advance of Stage 3 of the Bill (“the SDPM”)\(^2\).

---

\(^1\) Landfill Tax (Scotland) Bill (as amended at stage 2) available here: [http://www.scottish.parliament.uk/S4_Bills/Landfill%20Tax%20Bill/b28as4-stage2-amend.pdf](http://www.scottish.parliament.uk/S4_Bills/Landfill%20Tax%20Bill/b28as4-stage2-amend.pdf)

\(^2\) Landfill Tax (Scotland) Bill Supplementary Delegated Powers Memorandum available here: [http://www.scottish.parliament.uk/S4_Bills/Landfill_Tax_SDPM.pdf](http://www.scottish.parliament.uk/S4_Bills/Landfill_Tax_SDPM.pdf)
DELEGATED POWERS PROVISIONS

5. The Committee considered each of the delegated powers provisions which had been amended or added at stage 2. The Committee’s comments on these delegated powers are considered below.

Section 11(1) – power to vary what is a taxable disposal
Power conferred on: the Scottish Ministers
Power exercisable by: order
Parliamentary procedure: the affirmative procedure

6. This power allows the Scottish Ministers to make some types of material exempt from landfill tax or for disposal by landfill of some sub-types of material to nevertheless be chargeable. Ministers may wish to exempt hazardous material where landfill is the only possible destination to encourage correct disposal methods. It may also be the case that some categories of material which would be covered by a blanket exemption of this kind would be of better value if recycled. At introduction the procedure which applied depended on its content. Some were subject to the provisional affirmative procedure; some which amended primary legislation were subject to the affirmative procedure and the remainder the negative procedure.

7. The Committee referred this power to the Finance Committee to consider whether its use could be controversial and therefore whether a higher level of scrutiny should be applied to its exercise in all cases. The Finance Committee recommended that the power should be subject to the affirmative procedure. It was not convinced that the Scottish Government had made a case meriting urgent action under the provisional affirmative procedure. The Government has amended the power so that it is always subject to the affirmative procedure. The Committee considers that this addresses both committees’ concerns.

8. The Committee finds this power to be acceptable in principle, and is content that it is subject to the affirmative procedure.

Section 13(4) – power to determine that materials qualify for the lower rate(s) of tax
Power conferred on: the Scottish Ministers
Power exercisable by: order
Parliamentary procedure: the provisional affirmative procedure

9. This power allows the Scottish Ministers to specify what materials will qualify for the lower rate of tax when disposed of by landfill. The policy intention is that a higher rate of tax will be payable in respect of material which breaks down in landfill sites and a lower rate will be payable in respect of material which is inert and largely remains the same once landfilled. Material which is subject to the lower rate is called qualifying material. There may be different tax rates for qualifying material.
10. At introduction the procedure which applied depended on what the order was doing. Where the power removed material from the list of qualifying material (so making its disposal subject to the higher rate of tax) or where it transferred material from one type of qualifying material to another (so varying the tax rate to which it is subject) the power was subject to the provisional affirmative procedure. Any other use of the power (for example, specifying new qualifying material so as to attract the lower rate of tax) was subject to the negative procedure.

11. The Committee referred this power to the Finance Committee since the Committee considered that that committee would be better placed to judge whether any use of the power could have significant practical effects or would be controversial. The Finance Committee recommended that any adjustment or removal of exemptions should be subject to the affirmative procedure. The Government has taken on board the recommendation that the higher level of scrutiny should be applied but has adopted the provisional affirmative procedure in all cases. This is to permit an order to take effect immediately to stop any rush to landfill material following an order being made and before it has taken effect. The Committee considers that this amendment addresses both committees’ concerns.

12. The Committee finds this power to be acceptable in principle, and is content that it is subject to the provisional affirmative procedure.

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: the affirmative procedure

13. This power allows the Scottish Ministers to make provision (or further provision) about who a “controller” of a site is and the circumstances in which they have to pay landfill tax. Regulations can also specify the amount of tax payable and a controller’s entitlement to the credit scheme.

14. In its response to the Committee’s Stage 1 report, the Scottish Government accepted the Committee’s recommendation that this power should be subject to the affirmative procedure in all cases. (As originally introduced the power was subject to the negative procedure if it was not used to amend primary legislation.) The Government has amended the Bill accordingly. This addresses the Committee’s concerns.

15. The Committee finds this power to be acceptable in principle, and is content that it is subject to the affirmative procedure.
Marshalled List of Amendments selected for Stage 3

The Bill will be considered in the following order—

Sections 1 to 44           Long Title

Amendments marked * are new (including manuscript amendments) or have been altered.

Section 20

Michael McMahon

1. In section 20, page 11, line 21, at end insert

<(  ) Where regulations specify conditions under subsection (2), the regulations must include provision requiring—

(a) the Tax Authority to approve as environmental bodies only such bodies as appear to it to carry out, or propose to carry out, activities in a locality that appears to the Tax Authority to have been affected by the operations of a landfill site or a former landfill site, and

(b) that the matters concerned with the protection of the environment on which sums are to be expended are those matters that appear to the Tax Authority to contribute to the protection of the environment in a locality that appears to the Tax Authority to have been affected by the operations of a landfill site or a former landfill site.>
EXTRACT FROM THE MINUTES OF PROCEEDINGS

Vol. 3, No. 60 Session 4
Meeting of the Parliament
Tuesday 17 December 2013

Note: (DT) signifies a decision taken at Decision Time.

Business Motion: Minister for Parliamentary Business (Joe FitzPatrick) moved S4M-08621—that the Parliament agrees that, during stage 3 of the Landfill Tax (Scotland) Bill, debate on amendment 1 shall, subject to Rule 9.8.4A, be brought to a conclusion no later than 15 minutes after the stage begins (excluding any periods when other business is under consideration or when a meeting of the Parliament is suspended or otherwise not in progress).

The motion was agreed to.

Landfill Tax (Scotland) Bill - Stage 3: The Bill was considered at Stage 3.

Amendment 1 was disagreed to (by division: For 45, Against 65, Abstentions 0).

The Presiding Officer extended the time-limit under Rule 9.8.4A(c).

Landfill Tax (Scotland) Bill - Stage 3: The Cabinet Secretary for Finance, Employment and Sustainable Growth (John Swinney) moved S4M-08609—that the Parliament agrees that the Landfill Tax (Scotland) Bill be passed.

After debate, the motion was agreed to (DT).
Landfill Tax (Scotland) Bill: Stage 3

14:52

The Presiding Officer (Tricia Marwick): The next item of business is stage 3 proceedings on the Landfill Tax (Scotland) Bill. In dealing with the amendment, members should have the bill as amended at stage 2, which is SP bill 28A, and the marshalled list, which is SP bill 28A-ML. Should there be a division on the amendment, the division bell will sound and proceedings will be suspended for five minutes. The period of voting will be 30 seconds.

Section 20—Credit: bodies concerned with the environment

The Presiding Officer: Amendment 1 is in the name of Michael McMahon.

Michael McMahon (Uddingston and Bellshill) (Lab): I will not take up much of the Parliament's time, because we have moved on in relation to the issue since stage 1.

When I heard evidence at the Finance Committee on the new criteria for the use of the landfill communities fund, alarm bells rang for me because, although the provision is well intentioned, we heard that organisations that seek to promote or further environmental projects in areas where there is no direct link to a landfill site foresaw the potential to use landfill communities fund moneys to further those projects. That is not of itself a major problem, but it takes away from the general principle of the landfill communities fund, which is that it should benefit those who suffer the disamenity of having a landfill site in their vicinity and who are subjected to noise and air pollution because of their proximity to a landfill site. The fund that supports those local communities should not be diminished in any way to support projects that have no connection to a landfill area.

We have to address the problem, as it is a matter of principle. I have had discussions with the Cabinet Secretary for Finance, Employment and Sustainable Growth, which have moved the issue on a fair way from where we were initially, for which I thank him. However, having spoken to representatives of those who use the landfill communities fund, I know that they are concerned that the fund might be diminished if the criteria are not set down clearly in the bill. They know the benefits that go to the local communities that are affected. That is why I have lodged amendment 1. I hope that the cabinet secretary will take on board the genuine arguments that have been made by those who see the inherent danger in changing the criteria to widen the scope of the landfill communities fund. That would be a retrograde step.

It is not sufficient to have any protections in guidance; we have to see them in the bill. We must be absolutely clear what the landfill communities fund is for.

Mark McDonald (Aberdeen Donside) (SNP): An organisation in the constituency that I represent administers the landfill communities fund to a range of projects, some of which do not take place in communities adjacent to landfill. I ask Michael McMahon to clarify what would happen to the projects that that organisation funds, which are welcomed in my constituency, if his amendment was agreed to.

Michael McMahon: There is a set criterion at the moment that communities within a 10-mile radius of a landfill site can benefit from the tax that is collected in their area, which works well. We do not want to move away from that system. There is flexibility in it. We have heard arguments about its application in areas such as Skye, where the landfill site is 25 miles from the nearest settled community, but all the traffic to the site goes through that settled community, so there is a clear link between the landfill site and the community, which is affected by the site being in close proximity to it.

I am talking about the fact that, as we heard in evidence and discussed at the committee, projects that have no direct link with where the landfill fund comes from are looking on it as a source of funding. That is not right and it must be changed. That is why I hope that the cabinet secretary will support my amendment.

I move amendment 1.

The Presiding Officer: Three members wish to contribute. I intend to call all three but I urge them to be very brief.

Kenneth Gibson (Cunninghame North) (SNP): I thank Michael McMahon for giving us an amendment to debate.

As Mr McMahon pointed out, he met the cabinet secretary—

Kenneth Gibson: Sorry?

The Presiding Officer: Full names. It is Michael McMahon.

Kenneth Gibson: Sorry. As Mr McMahon pointed out, he met the cabinet secretary—I see you preening yourself after saying that and putting me down, Presiding Officer. [Laughter.]
Michael—sorry, Mr McMahon—met the cabinet secretary along with me and Jean Urquhart to discuss the issue because there is broad agreement on the committee about it. The issue with which the cabinet secretary and, to be frank, all committee members have been wrestling is how we put what Michael and all of us want to achieve in the bill in a way that allows us to deliver it—[Interuption.] Sorry, Mr McMahon. Of course, there are diminishing resources from the landfill tax because we expect the take to decrease as the Government’s zero waste policy continues to progress and achieve the zero waste targets that we all want to achieve.

We all want to achieve what Mr McMahon wants to achieve; the difficulty is how we put it in the bill. My concern is that the amendment does not do what we want it to do. I am keen that we have what he proposes, but guidance is a much better way of delivering it because we can include in that some of the nuances that he mentioned. There are so many anomalies, such as those that Mr McDonald mentioned, that we must deliver Mr McMahon’s objective in guidance.

As the Finance Committee said in its report, we need the issue to be dealt with in a much less bureaucratic way. The money from the landfill communities fund must also be provided to community groups that do not have particularly high levels of community capacity. At the moment, some of those groups are losing out in favour of bigger organisations that are much slicker and which employ public relations companies and lobbyists. We want to ensure that the money goes to the people who should get it—those who are closest to landfill.

As was pointed out, 10 miles might not be a long distance on Skye but, from where I live in Kilbirnie, it is the distance to Paisley. It could be the distance from one side of the Glasgow to the other, and it is really ludicrous to suggest that one part of Glasgow would benefit from a dump on the other side of the city.

I am broadly sympathetic to, and supportive of, what Michael McMahon wants; I am just not convinced that the amendment is the way forward.

15:00

Gavin Brown (Lothian) (Con): Amendment 1 is an improvement on a similar amendment at stage 2 that was ultimately withdrawn. The lead committee said:

“The Committee is supportive of the principle that those communities most affected by landfill sites should be the ones to benefit most from the fund.”

In response to the committee’s report, the Scottish Government said that it "is working to ensure this principle is reflected in the future design of the fund.”

That principle is more likely to be reflected if it is embedded directly in the primary legislation. After reviewing section 20 of the bill, I do not think that the amendment would be out of place. The amendment does not go into greater depth than other subsections of section 20, so it would be entirely appropriate.

The issue is more important now than it was when the landfill tax was first envisaged for the very reason that Kenneth Gibson gave: resources will be diminishing. Therefore, it is even more important that the most affected communities benefit. That is why I intend to support the amendment.

Iain Gray (East Lothian) (Lab): I support Mr McMahon’s amendment 1. Gavin Brown was right to use the word “principle”. The bill is based on the principle that polluters should pay, and behind the amendment lies the principle that the landfill communities fund should be used to benefit communities that directly suffer the impact of landfill sites. Those communities should benefit directly from the compensation or mitigation that the fund provides.

In earlier debates, we established that the 10-mile limit is too limiting. In my constituency—East Lothian—there is a landfill site at Dunbar. The community there suffers the most direct effects of the site, but it is true that towns and villages throughout the county suffer a concentration of lorry traffic, for example, that brings waste to the site. It therefore makes sense that they, too, should be able to benefit from the fund.

Many extremely worthwhile and important projects in my local communities have received funding in the past as a result of landfill tax credits. I simply want to ensure that that is protected, particularly as resources reduce. The fund should therefore not be opened up to projects that might be worth while and desirable but which are really national rather than local and are far from the direct impact of any landfill site. Such a principle should be in the bill. I support amendment 1.

The Cabinet Secretary for Finance, Employment and Sustainable Growth (John Swinney): As Mr McMahon said, amendment 1 would insert the condition that money from the tax credit scheme or the landfill communities fund should be spent on environmental activities in the locality of a landfill site that is affected by the site’s operations. In addressing the amendment, I will set out three points. We have had a number of constructive discussions inside and outside the Finance Committee that have helped to inform what I will say to Parliament and the position that I hope Parliament will support.
The establishment of eligibility through proximity is better set out in guidance and regulations. I intend to submit the draft regulations and guidance to a consultation process, in which views from all stakeholders can be taken on board and the correct balance can be arrived at.

In feedback from the consultation on the bill, one criticism was about the amount of red tape under the existing arrangements and the administrative burden that is associated with the scheme—Mr Gibson talked about that. That proved to be a deterrent to applications from potential beneficiaries. I fear that Mr McMahon’s amendment would—inadvertently—further entrench that red tape and disincentive to applying.

On paragraph (a) in the amendment, I am keen to avoid a situation in which every project—such as the renovation of a community hall by a group—would have to prove that it is directly affected by and suffers a disamenity from a landfill operation. A project that was close to a landfill site that complied with environmental protection legislation and with permitting rules would be likely to find it burdensome and difficult to prove that it was directly affected by the site’s operation, if we translated Mr McMahon’s amendment into practice in administering the scheme. Away from the transport network, that may limit the spending of the fund to areas in very close proximity to a landfill site.

The presence of a landfill site has two main effects. The first is the disamenity that such a site causes to communities in its vicinity, and the second is the detrimental effect that it has on the wider environment. In my view, the fund should be able to address both those issues.

An overwhelming majority of respondents to the consultation supported the view that funding for environmental and biodiversity projects should continue to be available through a Scottish landfill tax communities fund, on the basis that landfill sites contribute to climate change and are responsible for a sizeable element of Scotland’s greenhouse gas emissions. Indeed, landfill emits 600,000 tonnes of carbon and equivalent greenhouse gases into the atmosphere every year.

I agree with the principle that those communities that are most affected by landfill should benefit from the money that is available in the fund. The fund that will be established under sections 18 and 20 of the bill will, I am sure, significantly benefit the communities in the locality of a landfill site. I agree that the fund should not be available to communities further afield that suffer no disamenity from having a landfill site nearby. However, we must also consider how the fund should reflect the impact that landfill sites have on the wider environment. Those issues need to be considered in the consultation process.

Although I have great sympathy for what Mr McMahon is trying to achieve, I believe that amendment 1 would impose conditions that are too restrictive. A community in the vicinity of a landfill site might not be able to access the fund simply because it was in the vicinity; it would also have to show that it was affected by operations at the site.

I believe that regulations and guidance are the best place in which to set out those mechanisms, which would allow for greater flexibility in their application. I assure Parliament that there will be detailed consultation on the formulation of any regulations and guidance in that regard.

I recommend that Parliament rejects amendment 1.

The Presiding Officer: Members will note that we have passed the agreed time limit for the debate on the group to finish. I exercise my power under rule 9.8.4A of standing orders to allow the debate on the group to continue beyond the time limit in order to avoid the debate being unreasonably curtailed. That means that I can call Michael McMahon to wind up and indicate whether he wishes to press or withdraw amendment 1.
Michael McMahon: Thank you for giving me the opportunity to wind up, Presiding Officer.

I thank the cabinet secretary for genuinely trying to reach an accommodation on my desires on the matter. We have moved to a point where there is not much distance between us, but, as often happens, that has become the sticking point.

I do not believe that there will be any additional red tape or obstacles put in the way of local communities that are directly affected. We are trying to uphold the criteria that currently exist; the 10-mile criterion takes away the problem, because a community in the vicinity of a landfill site is allowed to access the landfill communities fund.

Those who administer the landfill communities fund have done so successfully for a number of years, and the system works well. The problem is that other people now have designs on the funding, and we want to prevent them from accessing it. The obstacles that amendment 1 would put in place are aimed at stopping the dissipation of a fund for local communities so that it cannot be used for projects that have no direct link to local areas that currently benefit from that funding.

Unfortunately—although we have come very close, cabinet secretary—I will press my amendment, and I hope that the Parliament will support it.

The Presiding Officer: The question is, that amendment 1 be agreed to. Are we agreed?

Members: No.

The Presiding Officer: There will be a division. As it is the first—and only—division at stage 3, I suspend the meeting for five minutes.

15:10

Meeting suspended.

15:15

On resuming—

The Deputy Presiding Officer (Elaine Smith): We will now proceed with the division on amendment 1.

For

Baillie, Jackie (Dumbarton) (Lab)
Baker, Richard (North East Scotland) (Lab)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Brown, Gavin (Lothian) (Con)
Carlaw, Jackson (West Scotland) (Con)
Chisholm, Malcolm (Edinburgh Northem and Leith) (Lab)
Davidson, Ruth (Glasgow) (Con)
Dugdale, Kezia (Lothian) (Lab)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)

Against

Findlay, Neil (Lothian) (Lab)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Goldie, Annabel (West Scotland) (Con)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (East Lothian) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Hilton, Cara (Dunfermline) (Lab)
Johnstone, Alex (North East Scotland) (Con)
Lamont, Johann (Glasgow Pollok) (Lab)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Malik, Hanzala (Glasgow) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McArthur, Liam (Orkney Islands) (LD)
McCulloch, Margaret (Central Scotland) (Lab)
McDougall, Margaret (West Scotland) (Lab)
McInnes, Alison (North East Scotland) (LD)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McMahon, Siobhan (Central Scotland) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Murray, Elaine (Dumfriesshire) (Lab)
Pearson, Graeme (South Scotland) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Rennie, Willie (Mid Scotland and Fife) (LD)
Scanlon, Mary (Highlands and Islands) (Con)
Smith, Drew (Glasgow) (Lab)
Smith, Liz (Mid Scotland and Fife) (Con)
Stewart, David (Highlands and Islands) (Lab)
Landfill Tax (Scotland) Bill

The Deputy Presiding Officer (Elaine Smith): The next item of business is a debate on motion S4M-08609, in the name of John Swinney, on the Landfill Tax (Scotland) Bill. I invite members who wish to speak in the debate to press their request-to-speak buttons now, but I indicate at this stage that we are extremely tight for time and it is likely that I will be able to give back-bench members only three minutes. I call John Swinney to speak to and move the motion. Cabinet secretary, you have no more than 10 minutes.

15:16

The Cabinet Secretary for Finance, Employment and Sustainable Growth (John Swinney): I welcome the fact that we have reached the stage 3 debate on the Landfill Tax (Scotland) Bill, which is the second bill establishing devolved taxes in Scotland under the powers in the Scotland Act 2012. The bill sets out the provisions and rules for a Scottish landfill tax that will replace the United Kingdom system of landfill tax from April 2015.

The devolved taxes will be administered using powers that are set out in the third bill establishing devolved taxes in Scotland under the powers in the Scotland Act 2012. The bill sets out the provisions and rules for a Scottish landfill tax that will replace the United Kingdom system of landfill tax from April 2015.

The devolved taxes will be administered using powers that are set out in the third bill establishing devolved taxes, which was introduced last week—the Revenue Scotland and Tax Powers Bill. As I explained to Parliament in June 2012, the arrangements for collection of the landfill tax will be undertaken by revenue Scotland working in conjunction with the Scottish Environment Protection Agency. The new body will be established and its powers will be granted through the Revenue Scotland and Tax Powers Bill.

I turn to the purpose of the Landfill Tax (Scotland) Bill. I want to see resource efficiency at the heart of our economy. The zero-waste agenda in Scotland is moving thinking about how resources are used and reused from the margins to the mainstream. Our priority for the future is supporting innovation and new ways of doing business as we move towards a more circular economy.

Putting the value of resources at the heart of our economy is an important priority for the simple reason that we live in a changing world, which is placing new pressures on how we manage the resources of this planet. The pressures from human population growth are huge and growing. According to the 2012 revision of the official United Nations population estimates and projections, the world population of 7.2 billion in mid-2013 is projected to increase by almost 1 billion people in the next 12 years, reaching 8.1 billion in 2025, with further rises beyond that.
That population is becoming increasingly affluent and urban. That means that our demands for resources are changing. We can no longer afford to throw material away in landfill sites. The actions that we are already taking are helping businesses to save money, create jobs and deliver economic growth.

Scotland’s targets on climate change and waste are among the most stretching anywhere in Europe. We are leading by example. We have shown multimillion pound support for innovation in renewables and low-carbon technologies. On collaboration, Scotland recently became the world’s first national Government to join the Ellen MacArthur Foundation’s group of 100 global leaders committed to accelerating a more circular economy.

We believe that our open, collaborative, international approach to tackling resource issues will deliver real benefits for Scotland. It will bring new domestic industries in reprocessing and manufacturing and new supply chain opportunities for resource managers, and it could create up to 12,000 new low-carbon jobs and up to £1 billion of additional economic activity.

Before devolution, we recycled less than 5 per cent of our household waste. Today, the figure is more than 40 per cent. That increase in recycling has saved more than 4 million tonnes of carbon emissions since 2001.

We are seeing a similar transformation in food waste, as 1 million households in Scotland now have access to a food recycling service whereas five years ago there were no such services. Our waste regulations, which will come into force in two weeks’ time, will also drive a step change in how businesses recycle. That will be a significant source of change and will show how we have used the devolved powers to maximum effect, taking decisive action to guarantee high-quality recycling.

By passing the Landfill Tax (Scotland) Bill this afternoon, the Parliament will be helping Scotland to keep the momentum as we make our economy truly sustainable by making landfilling prohibitively expensive. That will help to mitigate climate change, support economic diversification and create jobs in the process. Those are all substantial and desirable economic aims.

The landfill tax can be seen as the first and the most successful of the green taxes, and it continues to change waste management practices. The Scottish Government has given careful consideration to proposals for the landfill tax, and our proposals broadly reflect the existing United Kingdom landfill tax provisions, which are well understood by the waste industry and which are working well.

Bruce Crawford (Stirling) (SNP): I put on record my thanks to the Government for the way in which it has engaged with me on a matter concerning my constituents in Blanefield. We are grateful. Last week, I received a letter from Richard Lochhead regarding owners who have contaminated property, through no fault of their own, which said that the Government will produce regulations to deal with the issue properly in due course. I put on record my thanks and the thanks of the people of Blanefield for the way in which the Government has dealt with the matter.

John Swinney: I welcome Mr Crawford’s comments. He has advanced the interests of his constituents in the Blanefield area using all means available to him through the legislation. We will continue that discussion as we formulate the regulations that will implement the bill.

The public consultation on our proposals ran from October last year through to January 2013, and we asked consultees about two changes to the landfill tax. The first main change that we propose for the fund is the taxation of illegal disposals of waste. We had several reasons for bringing that forward.

First, illegal dumping is a problem with significant environmental impacts. It is an environmental crime and is rightly pursued and prosecuted as such. The additional penalty of a tax charge on illegal disposal should act as a powerful disincentive and prevent dumping.

Secondly, illegal dumping undermines legitimate waste operators, including landfill operators. Our proposals will support and encourage the great majority of enterprises in the industry that operate responsibly.

Thirdly, by clamping down on tax evasion in this way, there is an opportunity to gather additional revenue without increasing the tax burden. The Scottish Environment Protection Agency’s knowledge of landfill activity and the industry will be crucial in identifying and prosecuting such cases. SEPA will bring together its tax and environmental protection regimes to achieve more efficient and effective compliance. That proposal has been welcomed by stakeholders.

The second key change that the bill brings about is the introduction of a Scottish landfill communities fund that meets the needs of Scotland. I have already made the Parliament aware of my intention to introduce a proposed enhancement to the tax credit arrangements under which the Scottish landfill communities fund will operate. At present, credits are capped at 6.8 per cent of the total tax liabilities of any operator in a year. As I made clear during the stage 1 debate, we propose to increase that cap by 10 per cent, to 7.48 per cent of an operator’s tax liability. That is
intended to encourage operators to make higher contributions to the separate Scottish fund than would otherwise be the case.

As we landfill less, it is inevitable that less money will be available to the fund over the next decade. Increases in the credit cap will not offset that decline in the amount of material going to landfill and, therefore, in tax revenues. I will therefore ensure that the regulations and guidance are drafted so that as large a proportion of fund receipts as possible goes to projects, while the administration costs of the scheme are kept as low as is consistent with satisfactory management. I place on record my concern about the degree and level of the administration costs that are associated with the existing landfill tax scheme. My objective will be to reduce those significantly as part of the regime that we will put in place.

The landfill communities fund has been successful in leveraging match funding and helping communities that are affected by landfill. It is my intention that the Scottish landfill communities fund, which will be introduced in April 2015, will maintain its private funding status. That will allow projects that benefit from the fund also to seek match funding from the Government or the European Union, for example, which can often make a difference to the viability of a project.

I have also given consideration to the regulation of the Scottish landfill communities fund. It is my intention that regulations will provide for SEPA to regulate the fund from April 2015. By making the organisation that will be responsible for collecting the tax responsible for regulating the Scottish landfill communities fund, regulation of the fund and tax administration and collection will be more tightly controlled and more efficient than is the case under the current system.

There are two further points that I wish to make. First, we propose that key elements of the landfill tax, such as tax rates, potential exemptions for hazardous waste, detailed arrangements for tax credits, the operation of the landfill communities fund and the list of the types of waste that will fall into the lower and the higher tax bands, will be set out in secondary legislation. Taking that approach will enable the Scottish Government to consult properly on lists of waste materials and on the operation and administration of the tax. I note that the Delegated Powers and Law Reform Committee has commented on our proposals and is broadly content with them.

The second issue is the overall effect of the landfill tax on the Scottish budget. As Parliament is aware, that will depend on the block grant adjustment mechanism, which is the subject of ongoing discussion between the Scottish Government and the UK Government.

I am confident that we will have the legal and administrative systems in place in good time to collect a fair and efficient landfill tax in Scotland from April 2015. We will also have a tax that is appropriate to the distinctive nature of Scotland, that addresses the real issue of illegal dumping and that applies a distinctive approach to tax credits and to the landfill communities fund into the bargain. I look forward to taking the steps to put those measures into legislation.

I move,

That the Parliament agrees that the Landfill Tax (Scotland) Bill be passed.

The Deputy Presiding Officer: There is no time in hand. I call Iain Gray. You have a maximum of seven minutes, but I would like you to take less than that if possible.

15:26

Iain Gray (East Lothian) (Lab): In the stage 1 debate, I referred to the landfill tax as a new tax. In his closing speech in that debate, the cabinet secretary corrected me—it is, of course, not a new tax, although it is new to us.

We should acknowledge that the landfill tax is not only a tax that already exists but one that, on the face of it, is that thing that is usually anathema to Labour members, and which is often anathema to Scottish National Party members, too—a Tory tax. It was introduced by John Selwyn Gummer back in 1996, although I fear that it is not the thing for which he will be remembered.

Mr Swinney referred to the fact that the landfill tax also bears the distinction of being the first of those taxes or levies that, these days, seem to be something of a bête noire to Mr Gummer’s successors in the Tory party in Westminster—a green tax. It was an early—indeed, the first—response to the realisation that we could not continue using the resources of our planet without thought and polluting it with carbon emissions without a care.

Mr Swinney eloquently explained why that imperative should exercise us no less today than it did 20 years ago. Indeed, all the evidence indicates that we have been too slow to respond and that the consequences have been ever quicker to emerge. The most recent Intergovernmental Panel on Climate Change report was the most urgent and damning yet on how our climate and our planet are changing.

We in Holyrood cannot be complacent about our own part in the problem and the obligation to find a solution. For example, we have set ourselves demanding targets for reducing carbon emissions, but we have repeatedly failed to achieve them, and we have not always proven ourselves willing...
to take the actions that are needed to match our rhetoric.

**The Minister for Environment and Climate Change (Paul Wheelhouse):** Would the member accept that even in the worst-case scenario that is set out in “Low Carbon Scotland: Meeting our Emissions Reduction Targets 2013-2027. The Second Report on Proposals and Policies”, we will do more than the most ambitious Governments in Europe—Germany and Denmark—by achieving more than a 40 per cent reduction in emissions?

**Iain Gray:** I think that the minister has more confidence in RPP2 than I do, but let us see what happens as time unfolds.

That said, on diversion from landfill and increases in recycling, there has been tangible progress, to which the cabinet secretary referred. To that degree, we can claim that the landfill tax has been a success. At the time of its introduction, 54 million tonnes of municipal waste were sent to landfill per annum UK wide. By 2012, the figure had fallen to 19 million tonnes. Therefore, the tax that we inherit is a successful one, which is why it has support from across the chamber and those of all shades of political view. In legislating to pursue landfill tax as a devolved tax, the most important thing must be to create a framework that ensures that the tax continues that success. After all, by the Scottish Government’s own calculation, landfill still emitted in 2011 the equivalent of 600,000 tonnes of CO₂ into our atmosphere.

What the devolution of landfill tax does then is to give us the opportunity to consider how it operates and how we might use and change it so that it even more effectively and further reduces waste. It seems common sense that there is a law of diminishing returns here, with the gains made from a serious effort at recycling and reusing being easy progress to secure in the early years, and as time goes on there being a necessity to try harder and be smarter about how we deploy measures such as the landfill tax to get further gains.

Therefore, it is a pity that about something as basic as the rate itself and how many rates there might be, we still know very little. The cabinet secretary has said at every stage that he is minded to set a rate that is no lower than the one that he will inherit in April 2015, although he will not confirm that for us until September next year. At stage 1, there was considerable debate around waste tourism and whether differential rates would lead to reduced income as landfill was exported to England or, conversely, whether waste would be imported to landfill in Scotland. I do not think that we ever really got to the bottom of that, with the cabinet secretary expressing a view that it becomes an issue only if there is a differential of £15 per tonne, although committee witnesses suggested that £10 per tonne would provoke such an effect.

That issue matters because it implies a rather limited capacity for us to use the new powers to choose our own rates and it seems to me to reflect a rather cautious approach by the cabinet secretary. Perhaps it is for the same reasons that we still do not have an indication of whether the Government favours an escalator in rates. That has been significant in the landfill tax’s success in the past, as there is surely a connection between its effectiveness in reducing waste and the fact that we are heading for a rate 10 times the original one introduced.

For the moment, we remain in the dark on whether the Government has any plans to introduce new rates to differentiate further between types of waste or, indeed, move any categories of waste between existing bands. The landfill tax is a fairly blunt instrument and an opportunity seems to have been missed to explore properly whether and how we could sharpen it. However, as regulations follow the legislation, we will no doubt return to those issues because there is a pressing need for action on waste and carbon, and we must do more than simply frame the bill.

On the positive side, I am pleased that if and when the changes are made, they will now be subject to the affirmative procedure. I am glad that the cabinet secretary listened to representations to that end. I regret that he did not find a way to meet on the face of the bill Michael McMahon’s concerns about the danger that the landfill communities fund might be diverted from the communities that are most affected by landfill. However, overall, the landfill tax is useful. It will now be appropriately devolved and it is potentially a powerful tool for the Parliament in pursuit of our environmental agenda. We shall certainly give the bill our whole-hearted support at decision time this evening.

**The Deputy Presiding Officer:** I now call Gavin Brown, who has five minutes or less.

15:33

**Gavin Brown (Lothian) (Con):** I think that the bill commands broad support across the chamber. It was a pretty good bill at stage 1 and it has been strengthened marginally during the stage 2 process in that the order-making powers in relation to the liability of controllers and the power to vary disposals have been changed to become subject to the affirmative procedure. However, the bill would have been marginally strengthened again today by having the provisions relating to the Scottish landfill communities fund on the face of the bill. From listening to the cabinet secretary, though, in the previous debate and subsequently
in his opening speech in this debate, I think that he and the Government are broadly in the same place as the Finance Committee. I hope that that translates into regulations of the type that he discussed.

Obviously, we welcome the increase to 7.48 per cent in the credit available. The aspiration of having lower administrative costs is commendable and we hope that it becomes the case in practice. I put on record my view that the cabinet secretary did engage on that issue. All that I would say in passing is that I wonder whether there is a way of ensuring that, when the consultation happens, residents of the communities that are most likely to be affected are able to be a direct part of it. Those organisations that regularly contribute to consultations are pretty adept at doing so, and I wonder whether there is any way of levelling the playing field, so to speak, so that communities that are definitely affected but are perhaps not good at voicing their concerns can be heard through that process. Perhaps the cabinet secretary could say something about that in his closing remarks.

Although there is nothing wrong with the bill, it is worth while to reflect on a couple of areas in which the Government will have to do further work when it comes to secondary legislation and the regulations. Waste tourism has already been touched on today and was heavily focused on in the committee process and the stage 1 debate. In my view, the analysis of waste tourism is still a little underdeveloped. Resources ought to be put into that at a Government level so that we can get to the bottom of whether it is likely to exist. We had strong representations to the committee about how sensitive small differences could be, and strong representations in the chamber from those who felt that waste tourism would not be an issue as it would not exist at all.

The issue matters because whether and the extent to which waste tourism exists will have an impact on the rates that the Government might put forward and that we might set as a Parliament and we hope that it becomes the case in practice. I put on record my view that the cabinet secretary did engage on that issue. All that I would say in passing is that I wonder whether there is a way of ensuring that, when the consultation happens, residents of the communities that are most likely to be affected are able to be a direct part of it. Those organisations that regularly contribute to consultations are pretty adept at doing so, and I wonder whether there is any way of levelling the playing field, so to speak, so that communities that are definitely affected but are perhaps not good at voicing their concerns can be heard through that process. Perhaps the cabinet secretary could say something about that in his closing remarks.

The issue matters because whether and the extent to which waste tourism exists will have an impact on the rates that the Government might put forward and that we might set as a Parliament and we hope that it becomes the case in practice. I put on record my view that the cabinet secretary did engage on that issue. All that I would say in passing is that I wonder whether there is a way of ensuring that, when the consultation happens, residents of the communities that are most likely to be affected are able to be a direct part of it. Those organisations that regularly contribute to consultations are pretty adept at doing so, and I wonder whether there is any way of levelling the playing field, so to speak, so that communities that are definitely affected but are perhaps not good at voicing their concerns can be heard through that process. Perhaps the cabinet secretary could say something about that in his closing remarks.

That might have been superseded since the response was produced but, if not, it is important that the Scottish Government takes those discussions forward so that we can get to the bottom of the waste tourism issue.

The next issue on which it is worth while to reflect a bit more is the taxation of unauthorised disposals. The cabinet secretary mentioned that in his speech and, again, I think that it is welcomed by members throughout the chamber. A tax charge on illegal dumping sends out a signal to those who do it and potentially will bring in a stream of revenue for the Scottish Government to use on suitable measures.

The Deputy Presiding Officer: You are in your final minute.

Gavin Brown: However, it is worth while to think more carefully about the ultimate policy objective of that. Is it simply to tax the same level of investigations as we currently have through SEPA or is there a policy plan to have some sort of crackdown or increase the scope and breadth of its work? If it is the former, that is good. If it is the latter, that is probably preferable, but we will have to think carefully about the resources that will be required in order to do that. The Chartered Institution of Wastes Management said:

“SEPA would require additional resources in order to bring such activities into the tax regime and to apply any criminal sanctions.”

The Deputy Presiding Officer: I am afraid that you must close.

Gavin Brown: It is worth while to reflect on that. We will certainly support the bill this evening.

The Deputy Presiding Officer: We turn to the open debate. I am afraid that I can only give speeches of three minutes to four members. I apologise to the fifth member, whom I will not be able to call, and I make a plea for closing speeches to be shortened.

15:38

John Mason (Glasgow Shettleston) (SNP): It is always good to welcome a new tax, although I take the point that the landfill tax is, in fact, a replacement tax and that it is probable that many people will see little immediate change. I accept that it is a relatively small tax and that we hope that it will become smaller over time. Even with it, only about 15 per cent of taxes that are paid in Scotland will come under this Parliament's control. However, it is still an important tax, not least because it brings together environment policy and revenue raising. It is much to be welcomed that the tax and the fines to be paid by those who carry out unauthorised disposals are to be introduced.

Obviously, as with all taxes in Scotland, we need to be aware of what our neighbours and competitors are doing. We might want to have a
higher landfill tax for the good of the environment, for example, but there is little point in having that if it only shifts waste across the border and we suffer a loss of revenue. Therefore, the statement that Scottish rates will mirror UK rates and that the Scottish rate will be no lower than the UK rate in 2015 is pretty fair in the circumstances.

The rate of tax is still to be decided, of course—that has already been mentioned—but a number of red herrings are swimming around in that regard. Going forward, there is no certainty about UK tax rates, so neither businesses nor individuals can have any more faith in a UK Administration than in a Scottish one. In fact, it could be argued that John Swinney is much more boring—I am sorry; I meant to say more stable—than George Osborne, so we can expect more sensible tax decisions in Scotland than we might get in the UK.

We still have to wait and see whether there will be sensible decisions on the block grant adjustment. The odd thing about the landfill tax is that, if it is successful, the tax take will fall, and that must be taken into account when the block grant adjustment is made. All three block grant adjustments for the three taxes that we are taking over are the subject of negotiation between the Scottish and UK Governments.

The Revenue Scotland and Tax Powers Bill, which has been mentioned, was introduced on Friday, and I am certainly looking forward to considering it in detail in the Finance Committee. Tax avoidance is a topical issue, so we have the opportunity to put down some markers on that. Trying to achieve fairness can lead to complex legislation and that, in turn, can mean loopholes for those who can afford expensive tax advice, so we need to emphasise simplicity and tax legislation that is clear to all, including the courts. It is also encouraging that revenue Scotland is expected to cost around 25 per cent less than the cost of the same work being done by Her Majesty's Revenue and Customs.

In conclusion, the Landfill Tax (Scotland) Bill is the second of the proposed tax bills stemming from the Scotland Act 2012. I very much welcome the fact that such control is coming to Scotland. We have to accept that we have limited room for manoeuvre on landfill tax, but we need to tackle the huge problem of waste that we face, and the bill gives the opportunity to do so.

15:42

Michael McMahon (Uddingston and Bellshill) (Lab): Like the land and buildings transaction tax, the Landfill Tax (Scotland) Bill has been very technical, but it has had a remarkably straightforward and consensual passage on to the statute book.

It is important to observe that, although they have never been a major obstacle to the smooth passage of the bill, some concerns remain that many aspects of the tax are to be contained in subordinate legislation. To an extent, that approach has created a lack of clarity and certainty about issues such as rates of tax and the power to change the list of materials to be taxed, as Iain Gray pointed out.

Although the use of subordinate legislation has been somewhat contentious, members will know that I have been particularly exercised about the potential for the landfill communities fund to be raided for purposes that are beyond communities that are directly impacted by having landfill sites located near them. There can be no doubt that the landfill communities fund's purpose is to provide benefits from the taxes that have been raised from landfills where there is a clear and recognisable disamenity to local communities.

During evidence taking in the Finance Committee, I became concerned that organisations with a good appreciation of environmental issues indicated that they have designs on the resources available from the fund and are seeking to siphon off some of the moneys to help projects that are no doubt worthy but are entirely unrelated to the communities around which the landfill tax is generated. The suggestions that those groups put forward to review the scope of the landfill communities fund rang alarm bells with me, so I am glad that, despite the cabinet secretary's rejection of my efforts to have the issue addressed in the bill, he has moved from where he was at stage 1 to accepting the validity of my concerns and agreeing to develop in guidance the points that I have made about ensuring that the connection between disamenity and funding is made.

As I said at stage 1, any change to the current scope of the landfill communities fund would be fundamentally unfair and would violate the principles of environmental justice that we hope to deliver. There is no doubt that communities that are near landfill sites face more environmental problems as a result of landfill than those that are not. People who live near landfills have to deal with odours, dust, litter, noise and often visual intrusion, and changing the latitude of the fund would leave their communities with less money to mitigate the effects of landfill.

Opening the fund to broader environmental objectives coupled with the envisaged reduction in landfill tax receipts will inevitably produce less funding to landfill communities in the long run. It is only fair that the communities that are the dumping ground for waste should receive the maximum possible benefits from the taxation of those landfill sites. At the end of the day, the money is raised at
the expense of communities near landfills, so the money should be dedicated to those communities.

I thank the cabinet secretary for taking the issue on board. It is because of his efforts that I have absolutely no difficulty whatsoever in voting for the Landfill Tax (Scotland) Bill.

15:45

Kenneth Gibson (Cunninghame North) (SNP): As convener of the lead committee, I first thank the clerks, officials and witnesses who helped the Finance Committee in its deliberations as the bill progressed.

As we know, the Landfill Tax (Scotland) Bill will encourage and promote high levels of recycling and simplify the landfill tax system by making it more straightforward and easy to understand. As Scotland continues to build on the success of recycling and climate change policies, the amount of waste going to landfill will decrease, which is to be expected as we work towards achieving our climate change targets.

In evidence to the Finance Committee, the Cabinet Secretary for Finance, Employment and Sustainable Growth, John Swinney, said:

“My expectation is that, in the coming period, we will see a long-term reduction in the revenue from landfill tax. We accept that the success and effectiveness of recycling policies, which are part and parcel of the Scottish Government’s wider approach to achieving the emissions reductions that are required under climate change legislation, will result in a reduction in receipts from landfill tax. Clearly, we will need to deal with that as a Government.”—[Official Report, Finance Committee, 19 June 2013; c 2635.]

The bill also includes provisions for the taxation of illegal dumping, strengthening business opportunities for landfill operators to dispose of materials properly and effectively in accordance with the wider regulatory infrastructure. It will also bring all the activity into the Government’s wider environmental agenda for more sustainable waste disposal, while deterring criminal activity.

Although the Scottish Government has not made a specific estimate of the expected tax receipts from landfill in 2015-16, the Finance Committee recognises the significant difference between the predictions and projections for landfill tax receipts in Scotland, which we discussed in detail at stage 1.

In October, the Cabinet Secretary for Rural Affairs and the Environment launched “Zero Waste—Safeguarding Scotland’s Resources: Blueprint for a More Resource Efficient and Circular Economy”. That plan builds on the success of Scotland’s zero waste plan, identifying actions to shift the focus on to waste prevention and resource efficiency, thereby improving productivity and competitiveness. The strategy sets out how

“In a circular economy, we keep products and materials in use for as long as possible, extract the maximum value from them whilst in use, then recover and regenerate new products and materials at the end of each service life.”

The action plan aims to reduce waste in Scotland by 15 per cent over the next decade to improve competitiveness.

This bill will help Scotland meet its world-leading targets on climate change by establishing a tax system that supports the use of taxes and charges in environmental policy. That approach will compensate for environmental impact and encourage recycling by aligning tax with the aims of the zero waste plan, promoting high levels of recycling and diverting material resources from landfill into more sustainable forms of use.

The bill will also help businesses by ensuring that market distortions caused by illegal operations do not undermine legitimate business ventures, and it will simplify and streamline the administration and collection of landfill taxes by establishing a system that is simple, efficient and easy for landfill operators to understand and comply with. Collection and enforcement will align with the principles of better regulation. A tax credit scheme is incorporated that provides an incentive to operators of landfill sites to contribute financially to projects that meet environmental and social objectives.

15:48

Malcolm Chisholm (Edinburgh Northern and Leith) (Lab): An important argument in favour of increasing levels of fiscal devolution is that it can incentivise economic activity that brings more revenues to this Parliament. However, this particular piece of fiscal devolution works in the opposite direction since, ultimately, we want to collect as little tax as possible by incentivising people to move away from landfill.

That move has profound consequences for the block grant adjustment, which should basically be as small as possible. The bill’s financial memorandum predicts that landfill tonnages in Scotland will

“significantly decrease over the coming decade with a corresponding reduction in receipts.”

That is a necessary consequence of the laudable targets outlined in the zero waste plan, which proposes long-term targets of recycling 70 per cent of all Scotland’s waste and only 5 per cent of remaining waste ending up in landfill by 2025. The Scottish Government estimates that landfill tax receipts will fall from £107 million in 2015-16 to around £40.5 million in 2025—that should be our
guiding figure when it comes to negotiations on the block grant adjustment.

Once we have this devolved tax, we need to drive it forward for economic purposes without worrying about the revenue consequences because the whole aim of the bill is to have less revenue, but we must also recognise the constraints facing us. Those have most commonly been expressed in terms of illegal dumping and waste tourism.

Sometimes the factors pull in opposite directions. For example, setting the rate for asbestos at zero would be good in stopping illegal dumping but would encourage waste tourism from England, and setting rates too high would encourage waste tourism from Scotland to England. The issues are complex, and careful deliberation is needed. It is therefore entirely right that the affirmative procedure should apply to the relevant secondary legislation.

Matters are a lot clearer in relation to the tax on illegal dumping. That is unreservedly good, as is the enhancement to the landfill communities fund, of which the cabinet secretary reminded us. Of course, we are disappointed that the Government rejected Michael McMahon’s amendment, which took the right approach in insisting on a link between a project and a landfill site. I hope that the guidance will embody that principle in some way.

The principles of the bill are sound when it comes to incentivising new technologies that take us away from landfill and challenging illegal dumping. The bill falls short, however, in that there is no certainty about the rates or whether there will be an escalator. Those matters are within the control of the cabinet secretary, and I hope that we will hear about them as soon as possible, if not today.

The Deputy Presiding Officer: I apologise to Jean Urquhart, whom I have been unable to call. Gavin Brown, you can have a maximum of four minutes.

15:51

Gavin Brown: This has been a pretty good, if short, debate, which did not differ enormously from the debate at stage 1. That reflects the fact that very little has changed in the bill since then.

A highlight of the debate was John Mason’s attempt to compliment the cabinet secretary on his personal qualities—I hope that John Mason never finds it in his heart to pay me a compliment, given the strength of his compliment to the cabinet secretary.

The prediction of landfill tax receipts is worthy of greater investment of time from the Scottish Government. In paragraph 12 of its response to the committee’s report, the Scottish Government set out its forecast for receipts between 2015-16 and 2024-25. The table looks pretty good, but the Government noted that the forecast

“has been produced internally by the Scottish Government and has not been independently verified”,

and went on to say:

“Tax rates are assumed to remain as they are at present. No allowance has been made for receipts from taxing illegal landfills at this stage.”

It would be helpful if the Scottish Government published the work that it has done in a bit more detail, to give the outside world some background about the modelling that it used and information about what would happen to the projected receipts if certain things changed, such as the rate of the tax, how tax rates increase, and whether there are two or three rates. That would help us to take matters forward.

I think that I am right in saying that modelling by the Scottish Government and the Office for Budget Responsibility thus far has been on the tax as it currently stands. It would be useful to know what sort of tax the Scottish Government intends the landfill tax to be and what rates it proposes. We would then be able to get predictions on the tax from the OBR and from the Scottish Government that enable us to see what would happen if changes were made.

When the cabinet secretary makes his closing speech, it would be helpful to hear for how long he intends to set the tax when he sets it for first time. What approach does the Scottish Government intend to take? A number of witnesses to the committee made suggestions or requests in that regard. For example, the Convention of Scottish Local Authorities made a formal request in its written submission for the tax to be set for a five-year period. Other organisations suggested shorter periods. It would be useful to know the Government’s intention, so that we can try to give a degree of certainty to the people who will be affected by the tax.

In paragraph 2 of its response to the Finance Committee, the Scottish Government gave the impression—I do not know whether this is correct—that it intends to set the tax on a year-by-year basis, when the draft budget is published each year. It would be helpful to know whether that is the case or whether the Scottish Government intends to provide a degree of stability and certainty by setting the tax for a longer period.

There is much to commend in the bill. There are issues to consider—waste tourism, the taxation of unauthorised disposals, the landfill communities fund and the tax rates that will be set—but I
reiterate that we will support the bill at decision time.

The Deputy Presiding Officer: I call Iain Gray. I apologise that I can give you only five minutes.

15:55

Iain Gray: This has been a short but interesting debate. It has also been a bit of a Donald Rumsfeld debate because a lot of known unknowns have been discussed. We do not know the rate at which the tax will come in. We do not know whether there will be an escalator or new rate bands. We do not know whether there will be any recategorisation of any type of waste. We do not know what the constraints are under which we will have to work to avoid waste tourism.

We also do not know the administrative arrangements for collecting the tax. We know that SEPA will be part of the system and responsible for it, but the cabinet secretary has made it clear that the way in which it does that will be down to revenue Scotland, a body that does not yet formally exist.

As Michael McMahon’s amendment was rejected, we do not know how the landfill communities fund will be distributed. The cabinet secretary has also made it clear that we do not know how the block grant adjustment will work, although in all fairness that is not something he can decide by himself—I understand that.

I was quite taken aback by Mr Mason’s apparent categorisation of the cabinet secretary as boring. I would certainly never—

John Mason: I wonder whether the member will accept my main point, which was that we can put more faith in John Swinney than we can in George Osborne.

Iain Gray: The degree to which we have to put faith in Mr Swinney is exactly the point to which I am coming. I thought that Mr Mason was rising to apologise to the cabinet secretary, but perhaps he will do that privately.

Because of all the things that we do not know, I think that the cabinet secretary has been intriguingly enigmatic about the detail of the bill. I say to Mr Mason that it is true that we will have to take a lot of the cabinet secretary’s reassurances on trust. For example, throughout the bill process, he has insisted that the Scottish Government will be able to levy the tax more efficiently than has previously been the case. That would be extremely welcome, but I am not sure that the cabinet secretary has demonstrated why or how it will be possible, particularly because we do not yet know what the administrative arrangements for raising the tax will be. That is something that we have to take on faith.

We also have to take on faith that the cabinet secretary believes in the principle that communities that are most directly affected by landfill sites will be the ones that benefit directly from the tax credits, as they do at the moment. That is important because, as I have said already, the fund is likely to reduce.

Communities such as mine in East Lothian have benefited significantly in the past from those tax credits. Although I would be the last not to have faith in the cabinet secretary, he said that he wants to ensure that the communities that suffer get the benefit of the fund and then he said that he also wants to take account of the wider impact on the environment. That seems to be a complete contradiction. It is the former that we need to secure, and Mr McMahon’s amendment would have done that. I still regret that the cabinet secretary did not feel able to support it.

In closing, I return to a point that I made at stage 1. A particularly welcome aspect of the Landfill Tax (Scotland) Bill is that it has its origins in the Calman commission and the Scotland Act 2012 that followed. It is therefore a significant demonstration of the fact that devolution is a flexible and dynamic constitutional arrangement.

During stage 1, I pointed out that it was the latest in a long line of changes to devolution, from the devolution of rail infrastructure through to the devolution of the Scottish welfare fund. On that occasion, I could hardly believe it but the cabinet secretary wilfully misrepresented my argument by suggesting that I was arguing that devolution was now complete and could never develop. That was not my point.

My point was that the bill demonstrates that devolution is the kind of dynamic and flexible settlement that the people of Scotland want: it allows us to sustain the benefits of shared risk and opportunity by being part of the bigger United Kingdom while making Scottish decisions—both administrative and fiscal, where that is appropriate—that enable us to be most effective, for example in reducing waste and landfill.

We will support the bill at decision time. We look forward to working with the Scottish Government as it develops the detail of secondary legislation on guidance and as we debate further how we deploy this new power most effectively for the benefit of Scotland.

16:00

John Swinney: It is a mark of the fact that there has been no real division on the substance of the debate that Mr Mason has been harangued by Mr Brown and Mr Gray. We should take considerable comfort from the fact that the Opposition has had so little to disagree with—although Mr Gray made
a valiant attempt at making himself disagreeable—that we have managed to reach a substantive amount of agreement on the bill.

Let me deal with a number of the points that have been raised in the debate. In his argument for fiscal devolution, Mr Chisholm made an important point about the block grant adjustment mechanism. Mr Chisholm’s argument—if I can paraphrase it—was that, when there is fiscal devolution, we should be the beneficiaries of or responsible for any of the consequences of those fiscal decisions. I agree completely with that analysis.

When we come to the arrangements around the block grant adjustment, the principle that Mr Chisholm enunciated is important. When we have fiscal responsibilities under the settlement, we should be able, as the Administration, to retain the proceeds of those decisions as part of that block grant adjustment mechanism. That is certainly my view and it is one that I will take into discussions on the block grant adjustment.

Mr Gray, in one of his fairer remarks in the debate, made it clear that I cannot unilaterally decide the block grant adjustment mechanism—not yet anyway.

Mr Brown thought that there would be benefit in further explanation of our forecast. I have already made it clear to Parliament that the Scottish Government will establish an independent forecasting organisation to assist us in tax planning in Scotland. We need to do that to reflect the particular requirements of Scotland.

As Mr Brown will know, in its first attempt at a forecast of landfill tax for 2014-15, the OBR predicted that it would generate £145 million—a number that I found literally inexplicable. That has subsequently been revised down to £99 million, which is a reduction of 32 per cent. A variability in tax prediction by the OBR of 32 per cent is quite an alarming figure. That is why we will proceed with that aspect of our plans in due course.

Gavin Brown: Does the cabinet secretary accept that one reason for having a three-year lead time was so that we could look at the twice-yearly estimates until a position of stability was reached? Given the announcements two weeks ago from the OBR, the estimate appears to be a lot more stable now.

John Swinney: It is a lot more stable now because the original estimate was complete baloney. If the member goes back to the December 2012 forecast, he will see that literally within nine months the OBR took £40 million off its forecast. Its first forecast was just nonsense. The point that I am making is that accuracy in these estimates is important for wider financial planning.

Mike MacKenzie (Highlands and Islands) (SNP): I wonder whether that would encourage us to take other OBR forecasts, for instance for oil and gas revenues, with a very large pinch of salt.

John Swinney: We have to take care on a lot of those issues. Mr MacKenzie knows that the Scottish Government has a different view from the OBR on oil and gas predictions. Ours is based on industry evidence and investment plans that are being undertaken.

Mr McMahon has perhaps been the most divisive figure in the debate, since he forced us into a division today—I say that in the most respectful way possible. In the stage 1 debate, through stage 2 and into stage 3, he has pursued a clear argument on the proceeds of the landfill communities fund. I compliment him for his tenacity in that argument. I reassure him that the Government’s approach, the work that we have undertaken and the discussions that have taken place away from the parliamentary channel will all be reflected as we proceed to the formulation of the guidance and regulations.

Mr Brown said that we need a level playing field in the way in which people can submit views to the consultation process, and I very much take that point to heart. We need to ensure that we have an open process of discussion that enables us to address the questions and establish the most effective way of proceeding.

The Government will give further clarity as we set out the detailed provisions on the implementation of the landfill tax legislation. I can confirm to Parliament that preparations are well under way for the establishment of revenue Scotland. The further detail that we have filled in on the powers of revenue Scotland in the Revenue Scotland and Tax Powers Bill, which was introduced to Parliament last week, will be an important and helpful clarification in the debate.

My final point is on an issue on which Mr Gray and I are on a similar type of journey. He argues that the bill represents the accumulation of more powers for the Parliament. I am all for more powers for the Parliament and I want to ensure that the Parliament has all the powers that are required to ensure that we make a difference to the quality of life of people in Scotland.

I see that we have been joined by Jackie Baillie, who in her usual fashion is muttering at my side on these questions. I simply say that welfare issues, which Ms Baillie comments on for the Labour Party, are just the issues that I want us to be able to resolve here in the Scottish Parliament. That would allow us to do things very differently from the way in which the House of Commons plans to do them.
I am delighted to close the debate, and I look forward to support for the bill at decision time.