LANDFILL TAX (SCOTLAND) BILL

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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 management¹ 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.

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

3 Building a low carbon economy, Committee on Climate Change, 2008
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

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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\(^6\). 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](http://www.scotland.gov.uk/Publications/2012/10/3524)
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.

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.

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.

Within the Scottish Government, consultation has involved a wide range of Scottish Government interests including: Finance, Zero Waste Policy, Constitutional Change, Scottish Government Legal Directorate, Better Regulation and Industry, and Analytical Services & Economics (Environment).

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

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-blow 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\(^7\)) 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.

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.
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
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\(^9\). The case number is SEA/00734.

LANDFILL TAX (SCOTLAND) BILL

POLICY MEMORANDUM

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