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.