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:

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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“)¹. 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“)².

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

² Landfill Tax (Scotland) Bill Delegated Powers Memorandum available here: http://www.scottish.parliament.uk/S4_Bills/Delegated_Powers_Memo_-_FINAL.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?
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?

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”?

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.
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