



The Scottish Parliament  
Pàrlamaid na h-Alba

# **Delegated Powers and Law Reform Committee**

**63rd Report, 2013 (Session 4)**

**Landfill Tax (Scotland) Bill as  
amended at stage 2**

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## Delegated Powers and Law Reform Committee

### Remit and membership

#### Remit:

1. The remit of the Delegated Powers and Law Reform Committee is to consider and report on—
  - (a) any—
    - (i) subordinate legislation laid before the Parliament or requiring the consent of the Parliament under section 9 of the Public Bodies Act 2011;
    - (ii) [deleted]
    - (iii) pension or grants motion as described in Rule 8.11A.1; and, in particular, to determine whether the attention of the Parliament should be drawn to any of the matters mentioned in Rule 10.3.1;
  - (b) proposed powers to make subordinate legislation in particular Bills or other proposed legislation;
  - (c) general questions relating to powers to make subordinate legislation;
  - (d) whether any proposed delegated powers in particular Bills or other legislation should be expressed as a power to make subordinate legislation;
  - (e) any failure to lay an instrument in accordance with section 28(2), 30(2) or 31 of the 2010 Act; and
  - (f) proposed changes to the procedure to which subordinate legislation laid before the Parliament is subject.
  - (g) any Scottish Law Commission Bill as defined in Rule 9.17A.1; and
  - (h) any draft proposal for a Scottish Law Commission Bill as defined in that Rule.

#### Membership:

Richard Baker  
Nigel Don (Convener)  
Mike MacKenzie  
Margaret McCulloch  
Stuart McMillan (Deputy Convener)  
John Scott  
Stewart Stevenson

**Committee Clerking Team:**

**Clerk to the Committee**

Euan Donald

**Assistant Clerk**

Elizabeth White

**Support Manager**

Daren Pratt



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**Delegated Powers and Law Reform Committee**

**63rd Report, 2013 (Session 4)**

**Landfill Tax (Scotland) Bill as amended at stage 2**

The Committee reports to the Parliament as follows—

1. At its meeting on 10 December 2013, the Delegated Powers and Law Reform Committee considered the delegated powers provisions in the Landfill Tax (Scotland) Bill as amended at Stage 2 (“the Bill”)<sup>1</sup>. The Committee submits this report to the Parliament under Rule 9.7.9 of Standing Orders.
2. The Bill was introduced in the Scottish Parliament by John Swinney MSP on 17 April 2013. It is a Government Bill, the second of three taxation Bills being brought forward in consequence of measures contained in the Scotland Act 2012 which made the Scottish Parliament responsible for certain taxes. In particular, the Parliament now has responsibility for tax on disposals of material to land.
3. A further Bill is required to provide the overall framework for administering the new devolved taxes contained in this Bill and in the Land and Buildings Transaction Tax (Scotland) Act 2013. It is envisaged that the Revenue Scotland and Tax Powers Bill will be introduced shortly.
4. The Scottish Government has provided the Parliament with a supplementary memorandum on the delegated powers provisions in the Bill, in advance of Stage 3 of the Bill (“the SDPM”)<sup>2</sup>.

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<sup>1</sup> Landfill Tax (Scotland) Bill (as amended at stage 2) available here:  
[http://www.scottish.parliament.uk/S4\\_Bills/Landfill%20Tax%20Bill/b28as4-stage2-amend.pdf](http://www.scottish.parliament.uk/S4_Bills/Landfill%20Tax%20Bill/b28as4-stage2-amend.pdf)

<sup>2</sup> Landfill Tax (Scotland) Bill Supplementary Delegated Powers Memorandum available here:  
[http://www.scottish.parliament.uk/S4\\_Bills/Landfill\\_Tax\\_SDPM.pdf](http://www.scottish.parliament.uk/S4_Bills/Landfill_Tax_SDPM.pdf)

## DELEGATED POWERS PROVISIONS

5. The Committee considered each of the delegated powers provisions which had been amended or added at stage 2. The Committee's comments on these delegated powers are considered below.

### **Section 11(1) – power to vary what is a taxable disposal**

**Power conferred on:** the Scottish Ministers  
**Power exercisable by:** order  
**Parliamentary procedure:** the affirmative procedure

6. This power allows the Scottish Ministers to make some types of material exempt from landfill tax or for disposal by landfill of some sub-types of material to nevertheless be chargeable. Ministers may wish to exempt hazardous material where landfill is the only possible destination to encourage correct disposal methods. It may also be the case that some categories of material which would be covered by a blanket exemption of this kind would be of better value if recycled. At introduction the procedure which applied depended on its content. Some were subject to the provisional affirmative procedure; some which amended primary legislation were subject to the affirmative procedure and the remainder the negative procedure.

7. The Committee referred this power to the Finance Committee to consider whether its use could be controversial and therefore whether a higher level of scrutiny should be applied to its exercise in all cases. The Finance Committee recommended that the power should be subject to the affirmative procedure. It was not convinced that the Scottish Government had made a case meriting urgent action under the provisional affirmative procedure. The Government has amended the power so that it is always subject to the affirmative procedure. The Committee considers that this addresses both committees' concerns.

**8. The Committee finds this power to be acceptable in principle, and is content that it is subject to the affirmative procedure.**

### **Section 13(4) – power to determine that materials qualify for the lower rate(s) of tax**

**Power conferred on:** the Scottish Ministers  
**Power exercisable by:** order  
**Parliamentary procedure:** the provisional affirmative procedure

9. This power allows the Scottish Ministers to specify what materials will qualify for the lower rate of tax when disposed of by landfill. The policy intention is that a higher rate of tax will be payable in respect of material which breaks down in landfill sites and a lower rate will be payable in respect of material which is inert and largely remains the same once landfilled. Material which is subject to the lower rate is called qualifying material. There may be different tax rates for qualifying material.

10. At introduction the procedure which applied depended on what the order was doing. Where the power removed material from the list of qualifying material (so making its disposal subject to the higher rate of tax) or where it transferred material from one type of qualifying material to another (so varying the tax rate to which it is subject) the power was subject to the provisional affirmative procedure. Any other use of the power (for example, specifying new qualifying material so as to attract the lower rate of tax) was subject to the negative procedure.

11. The Committee referred this power to the Finance Committee since the Committee considered that that committee would be better placed to judge whether any use of the power could have significant practical effects or would be controversial. The Finance Committee recommended that any adjustment or removal of exemptions should be subject to the affirmative procedure. The Government has taken on board the recommendation that the higher level of scrutiny should be applied but has adopted the provisional affirmative procedure in all cases. This is to permit an order to take effect immediately to stop any rush to landfill material following an order being made and before it has taken effect. The Committee considers that this amendment addresses both committees' concerns.

**12. The Committee finds this power to be acceptable in principle, and is content that it is subject to the provisional affirmative procedure.**

**Section 17(1) – power to make provision about the liability of controllers of landfill sites to pay tax**

<b>Power conferred on:</b>	<b>the Scottish Ministers</b>
<b>Power exercisable by:</b>	<b>regulations</b>
<b>Parliamentary procedure:</b>	<b>the affirmative procedure</b>

13. This power allows the Scottish Ministers to make provision (or further provision) about who a “controller” of a site is and the circumstances in which they have to pay landfill tax. Regulations can also specify the amount of tax payable and a controller’s entitlement to the credit scheme.

14. In its response to the Committee’s Stage 1 report, the Scottish Government accepted the Committee’s recommendation that this power should be subject to the affirmative procedure in all cases. (As originally introduced the power was subject to the negative procedure if it was not used to amend primary legislation.) The Government has amended the Bill accordingly. This addresses the Committee’s concerns.

**15. The Committee finds this power to be acceptable in principle, and is content that it is subject to the affirmative procedure.**

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