

# Financial Scrutiny Unit Briefing

## Landfill Tax (Scotland) Bill – Stage 3

12 December 2013

13/83

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Stage 3 proceedings on the Landfill Tax (Scotland) Bill are scheduled to take place on 17 December 2013.

This briefing summarises the main recommendations made by the Finance Committee in its stage 1 report and the Scottish Government response to these recommendations. It also summarises the amendments passed and discussed at stage 2.

[SPICe briefing 13/32](#) (Burnside and Barlow 2013) provides an overview of the Bill as introduced.



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## INTRODUCTION

The Landfill Tax (Scotland) Bill is a Scottish Government Bill introduced in the Parliament on 17 April 2013 by the Cabinet Secretary for Finance, Employment and Sustainable Growth, John Swinney MSP. The Bill is the second of three related Bills that result from measures enacted in the Scotland Act 2012, providing for new tax-raising powers. If the Bill is passed, the Scottish Landfill Tax will replace the current UK Landfill Tax in April 2015.

[SPICe briefing 13/32](#) (Burnside and Barlow 2013) provides more detail on the provisions in the Bill as introduced.

## PARLIAMENTARY CONSIDERATION

The Finance Committee was appointed lead committee for parliamentary consideration of the Bill. Table 1 lists the key dates for parliamentary consideration of the Bill.

**Table 1: Summary of Parliamentary consideration**

|  |   |
|--|---|
| <b>Bill introduced</b>   | 17 April 2013   |
| Preliminary discussion (in private)  | 24 April 2013   |
| <b>Stage 1 – general principles</b>  |   |
| Finance Committee  | <a href="#">5 June</a> , <a href="#">12 June</a> , <a href="#">19 June</a> , <a href="#">4 September</a> 2013 |
| Public Audit Committee   | <a href="#">1 May</a> , <a href="#">12 June</a> 2013  |
| Delegated Powers & Law Reform Committee (formerly Subordinate Legislation Committee) | <a href="#">21 May</a> , <a href="#">11 June</a> , <a href="#">24 September</a> 2013                          |
| Stage 1 Report: Finance Committee  | <a href="#">12 September</a> 2013   |
| Scottish Government Response   | <a href="#">28 October</a> 2013   |
| Stage 1 Debate   | <a href="#">29 October</a> 2013   |
| Stage 2  | <a href="#">20 November</a> 2013  |
| Bill [as amended at Stage 2]   | <a href="#">Posted online 21 November 2013</a>  |
| Supplementary Delegated Powers Memorandum  | <a href="#">Posted online 5 December 2013</a>   |
| Stage 3 – final consideration plenary  | <a href="#">17 December 2013</a>  |

## STAGE 1: KEY ISSUES

At stage 1, the lead committee is tasked with reporting on the Bill's general principles. During stage 1, the Finance Committee took oral evidence over three meetings. The Committee supported the general principles of the Bill. The main issues raised during stage 1 scrutiny are considered briefly below.

## TAX RATES AND FRAMEWORK

The Government's intention is that the Scottish Landfill tax rates "will mirror the UK rates in 2015-16". However, the Policy Memorandum (PM) states that the tax rates will not be specified on the face of the Bill "to allow flexibility and so that changes to rates can be made in future without the need for primary legislation". There was some concern among witnesses about the lack of certainty about what the landfill tax rates would be beyond 2015-16. The Bill team raised

the point in evidence that there is also no indication of what the UK tax rate will be beyond 2015-16, but accepted that certainty is important to the industry.

## **WASTE TOURISM**

Stage 1 considerations raised the issue of “waste tourism” arising where there are different tax rates in Scotland and the rest of the UK which could result in waste which would normally have stayed in Scotland or England moving across the border. The Bill team said that one of the main factors behind the policy of mirroring the UK rate was to “minimise cross-border movement” of waste. The Bill team said that the committee “would be surprised at how small the differential in tax rates would have to be for it to be cost effective to move waste” and that, “initially, we would want to mirror the UK structure and rates closely”. This approach was generally welcomed in evidence given to the Committee.

## **UNAUTHORISED DISPOSAL TO LANDFILL**

The Bill provides for the imposition of both fines and taxes on unauthorised operators of landfill sites. This is because under the current UK Landfill tax regime, HMRC “does not have the powers to collect tax from unauthorised operators” (PM) and “the related court fines, which are usually smaller than the tax evaded, make unauthorised activity financially attractive” (PM, para 45). This approach was generally welcomed during stage 1 scrutiny, but there was a view expressed that SEPA might “require additional resources to identify and sanction illegal sites”.

## **THE ROLE OF REVENUE SCOTLAND AND SEPA**

The PM to the Bill states that the Scottish Landfill tax will be administered by Revenue Scotland and that Revenue Scotland will work with SEPA on the administration of the tax. A precise delineation of functions between Revenue Scotland and SEPA is not contained in the Bill and the Committee expressed concern at this. Another issue to arise during scrutiny was the potential for “skills gaps” emerging within SEPA which it was claimed by North Ayrshire Council is “an experienced environmental regulator rather than a tax assessor”. As such, the Committee noted that it would “monitor and scrutinise the implementation and delivery of Landfill Tax” and “invites Revenue Scotland and SEPA to report to it both orally and in writing on a six-monthly basis”.

## **THE BLOCK GRANT ADJUSTMENT**

The issue of the Block Grant Adjustment (BGA) arose during scrutiny of the Bill as it was of relevance to the Committee’s wider budgetary remit and the work it was doing on Scotland Act Implementation, specifically on the size of the one-off BGA arising from the devolution of this tax. The concern relates to the size of the one-off BGA given that the policy ambition of the Scottish Government is to see declining receipts from the tax. If receipts from the tax continue to fall, there is concern that the one-off reduction in the Scottish Block Grant will be a permanent shortfall in the budget.

## **LANDFILL COMMUNITIES FUND**

The Landfill Communities Fund (LCF) was established in 1996 to provide funding for community or environmental projects in the “vicinity of landfill sites”. There was general support for this fund and its continuation when Landfill tax is devolved. Most of the debate centred on the 10-mile

eligibility radius. The guidance for the existing LCF states that an environmental project should be no more than 10 miles from a Landfill site (whether active or not) in order to be eligible to receive funding. In stage 1 evidence, the Committee heard conflicting views on the 10-mile radius issue. Some, like SEPA, argued that there should not be a fixed area for LCF eligibility as people outwith a 10-mile radius can be affected. Others, like the Scottish Environmental Services Association (SESA) argued that extending the eligibility area criteria would mean that there was less funding available for people most directly impacted by landfill. The Bill team and Cabinet Secretary both stated that the 10-mile radius issue needed further consideration. The Committee concluded that it was “supportive of the principle that those communities most affected by landfill sites should be the ones to benefit most from the fund.”

## **COMMITTEE RECOMMENDATIONS**

On completion of stage 1 evidence gathering, the Committee reported its support for the Bill’s general principles, while emphasising its intention to closely monitor the implementation and delivery of a Scottish Landfill tax. Table 2 draws out the key recommendations made by the Committee in its stage 1 report, and the Scottish Government’s response to these recommendations.

**Table 2: Recommendations in Stage 1 Report and Scottish Government response**

| Committee recommendations   | Scottish Government response  |
|---|---|
| <p>The Committee notes the concerns of witnesses regarding the desire for greater certainty in relation to the setting of future tax rates and invites the Government to clarify the reasons why there is a need to wait until around September 2014 to set future rates.</p> <p><b>Paragraph 21</b></p>  | <p>The Scottish Government will consider the evidence provided to the Committee regarding the desire for greater certainty in relation to the setting of future tax rates. The setting of tax rates and bands will form a key component of the Scottish budget process from 2015-16, as the forecast revenue generated from the devolved taxes will be one determinant of the overall financial resources available to the Scottish Government in the fiscal year in question. It is important that decisions on rates and bands are taken as part of the wider budget process so that the impact on revenues can be appropriately considered.</p> <p>The Scottish Government looks forward to imminent discussions with the Committee on the changes which will be required to the Scottish draft Budget scrutiny process to reflect the expanded fiscal powers devolved by the Scotland Act 2012.</p> <p>The Government notes that certainty to industry is important for planning and investment decisions. It is important to note that no announcement has been made about what UK rates will be charged after 2015, other than that the standard rate will not be lower than £80 per tonne until 2020 at least. The Scottish Government has already stated that the Scottish rates to be introduced from April 2015 will not be lower than the UK rates in force at that point. The Scottish Government appreciates the necessity to prevent ‘waste tourism’ and discussions will continue with the UK government on this matter.</p> |
| <p>The Committee also asks the Government to provide greater clarity regarding the period to be covered when the rates are announced and whether there will be an escalator.</p> <p><b>Paragraph 22</b></p>   | <p>Ministers have indicated that they will bring forward proposals on the rates of tax to apply in Scotland from April 2015 as part of the draft Budget process in respect of 2015-16. Once approved by Parliament, the rates will apply until a subsequent order is laid. In advance of each annual draft Budget process, consideration will be given to whether rates should be adjusted taking into account all relevant factors including tax rates applying south of the Border.</p>   |
| <p>The Committee notes that the Government’s scope to make substantial changes to the rates and structure of landfill tax in Scotland is limited by the implications for waste tourism. The Committee asks whether the Government has commissioned any research or conducted any analysis on the likely impact of any changes to the structure and rates of landfill tax in Scotland on</p> | <p>The Government commissioned work from Zero Waste Scotland and from Eunomia Ltd to provide the evidence base for elements of the Financial Memorandum and the BRIA. A summary of this work can be found in the paper, ‘<i>Scotland Landfill Tax Bill 2012: An Economic Assessment</i>’, which can be found on Zero Waste Scotland’s website: <a href="http://www.zerowastescotland.org.uk/LandfillTaxEconomicAssessment">http://www.zerowastescotland.org.uk/LandfillTaxEconomicAssessment</a>. This study looked at changes to rates and the potential impact on ‘waste tourism’.</p>  |

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| <p>waste moving between Scotland and England.<br/><b>Paragraph 29</b></p>  |  |
| <p>The Committee also invites the Government to provide details of what discussions have taken place with the UK Environment Agency on the implications of any changes to landfill tax on waste moving between Scotland and England.<br/><b>Paragraph 30</b></p>   | <p>The Scottish Government has had no direct discussion with the UK Environment Agency on this matter.</p>   |
| <p>The Committee welcomes the introduction of the “provisional affirmative procedure” for the changing of tax rates for both Landfill Tax and LBTT where there is a need to make these changes with immediate effect.</p> <p>However, it is not clear why the Bill also provides for this procedure to be used when there is not a need for Ministers to act quickly. The Committee, therefore, invites the Government to explain why the affirmative procedure should not apply to an order changing the tax rates for both LBTT and Landfill Tax other than in cases where there is a need to introduce the tax changes with immediate effect.<br/><b>Paragraphs 34 and 35</b></p> | <p>The Scottish Government notes the Committee’s observation. The Scottish Government considers the use of provisional affirmative procedure to be appropriate to set the rates and bands of devolved taxes in all cases (after the first such setting) because it provides a balance between Parliamentary scrutiny and the requirement for government to effectively manage its revenues. These issues cannot be considered in isolation from the overall budget scrutiny process, which will change significantly from 2015-16 onwards to enable appropriate scrutiny by Parliament of the exercise of the expanded fiscal powers devolved by the Scotland Act 2012.</p> <p>The Scottish Government looks forward to imminent discussions with the Committee on the changes required to the Scottish draft Budget scrutiny process. These discussions will fully consider scrutiny of the setting of tax rates and bands.</p> |
| <p>The Committee recommends that the introduction of any additional rates is subject to the affirmative procedure.<br/><b>Paragraph 41</b></p>   | <p>The Cabinet Secretary for Finance, Employment and Sustainable Growth has written to the Delegated Powers and Law Reform Committee to advise that the Government proposes to bring forward an amendment at Stage 2 of the Bill to provide that the order-making power in section 13 (5) of the Bill to introduce additional rates will be subject to the provisional affirmative procedure.</p>  |
| <p>The Committee recommends that any adjustment or removal of exemptions is subject to the affirmative procedure.<br/><b>Paragraph 50</b></p>  | <p>The Cabinet Secretary for Finance, Employment and Sustainable Growth has written to the Delegated Powers and Law Reform Committee to advise that the Government proposes to bring forward an amendment at Stage 2 of the Bill to provide that the order-making power in section 11 (1) of the Bill to adjust or remove exemptions will be subject to the provisional affirmative procedure.</p>   |

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|---|--|
| <p>The Committee invites the Government to respond to the suggestion that there should be a lower rate of tax on island wastes for materials for which no viable recycling or recovery routes are available.</p> <p><b>Paragraph 55</b></p>               | <p>Island landfill sites do not have to meet as stringent conditions as those in mainland Scotland in order to meet the European Landfill Directive requirements (as a result of a derogation applying to the Directive). Consequently landfill costs are already potentially cheaper than on the mainland.</p> <p>An island landfill site may utilise up to 52 exemptions from the Waste Management (Scotland) Regulations 2011. If an exemption is registered, disposal to such a site would not be a taxable deposit and there would be no landfill tax liability. Other waste processing activities may also be licensed or permitted.</p> <p>If island landfill sites were subject to a lower rate of tax, transport companies could back-haul waste from the mainland to the islands for financial gain. This would result in reduced landfilling capacity in the islands and an increase in the environmental impact on fragile island ecosystems.</p> <p>Island landfill sites currently pay landfill tax at the same rate as the rest of the UK and waste activities in the islands are regulated in the same way. However the derogation noted above from some Landfill Directive requirements applies to island sites. The Government has no plans to change this position.</p> |
| <p>The Committee asks the Government to clarify whether the resources which have been allocated to Revenue Scotland for compliance activity include additional resources for SEPA to identify and deal with illegal sites.</p> <p><b>Paragraph 68</b></p> | <p>Revenue Scotland's resources will be used to pursue appropriate care and management of the two devolved taxes. This includes undertaking compliance activity. On Landfill Tax, SEPA's expertise will be invaluable and Revenue Scotland expects to allocate some of the funding available for compliance activity to SEPA to support its work.</p> <p>Provisions within the SLfT Bill would, if enacted, allow for the imposition of a tax charge based on liability arising from illegal landfill. Identifying and dealing with illegal landfill sites is currently part of SEPA's current environmental activities, for which they receive grant funding, and in future will be part of their tax compliance activity.</p>  |
| <p>The Committee invites the Government to clarify whether any extra revenues raised as a result of the power to impose tax on illegal landfill sites might be used to assist SEPA in identifying illegal sites.</p> <p><b>Paragraph 69</b></p>           | <p>Tax revenues raised from the imposition of Landfill Tax, including tax on disposals to illegal landfill sites, will be paid into the Scottish Consolidated Fund from which public sector activities, including those of SEPA, are funded. SEPA will receive funding in respect of tax administration functions it will carry out on behalf of Revenue Scotland. Funding will take account of a range of factors, including compliance activity.</p>   |
| <p>The Committee recognises that Landfill Tax is not due to be implemented until April 2015 but is</p>  | <p>The forthcoming Revenue Scotland and Tax Powers Bill will set out a clear statutory framework which provides for the delegation of some or all of Revenue Scotland's powers and</p>   |

nevertheless concerned about the current lack of clarity regarding the respective roles of Revenue Scotland and SEPA and recommends that this be addressed as a matter of urgency.

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

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

**Paragraphs 80-82**

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

The Committee invites the Government to provide a year-on-year breakdown of the estimated decline in landfill tax receipts between 2015 and 2025 and asks whether the possibility of recycling rates plateauing was considered during the forecasting exercise.

**Paragraphs 90-91**

functions to SEPA in relation to the collection and management of Scottish Landfill Tax, and we look forward to the Committee's views on these provisions in due course. Other aspects are operational decisions and are part of the ongoing planning and development for April 2015 delivery and will be taken forward in a timely fashion.

The Cabinet Secretary for Finance, Employment and Sustainable Growth has written to the Delegated Powers and Law Reform Committee accepting Committee's strong recommendation "that the Scottish Government improve the transparency and accountability of the delegation of functions from the Tax Authority to SEPA by requiring publication of any such delegation". The Scottish Government will reflect on how best to give effect to this in the forthcoming Revenue Scotland and Tax Powers Bill.

The Scottish Government forecast a fall in Landfill Tax receipts are set out below. The list is indexed with 100 representing tax receipts in 2015. The table shows a 74% drop in receipts between 2015-16 to 2024-25.

| Year    | Index |
|---------|-------|
| 2015-16 | 100   |
| 2016-17 | 90    |
| 2017-18 | 81    |
| 2018-19 | 73    |
| 2019-20 | 64    |
| 2020-21 | 56    |
| 2021-22 | 48    |
| 2022-23 | 40    |
| 2023-24 | 33    |
| 2024-25 | 26    |

This forecast has been produced internally by the Scottish Government and has not been independently verified. It assumes that Scotland reaches its Zero Waste targets and landfill will plateau post 2025. It also assumes that active waste disposal falls from 1.6m tonnes to 326,500 tonnes and that the volume of waste subject to the lower rate falls from 833,000 tonnes to 324,000 tonnes. Tax rates are assumed to remain as they are at present. No allowance has been made for receipts from taxing illegal landfilling at this stage.

|   |   |
|---|---|
| <p>The Committee welcomes the retention of the existing landfill tax credit system, supports the 10% increase and invites the Government to confirm that this will result in a new cap of 7.48.</p> <p><b>Paragraph 111</b></p> | <p>The Scottish Government notes the Committee's response. The new cap will be one tenth more than the UK cap at the point of implementation in 2015 and revised so this proportion is maintained for three years thereafter. If the UK credit cap remains at 6.8% then this would mean a cap of 7.48% in Scotland.</p> |
| <p>The Committee is supportive of the principle that those communities most affected by landfill sites should be the ones to benefit most from the fund.</p> <p><b>Paragraph 112</b></p>  | <p>The Scottish Government welcomes the Committee's response and is working to ensure this principle is reflected in the future design of the fund.</p>   |
| <p>The Committee recommends that the subordinate legislation detailing the Fund's regulatory and administrative arrangements should be subject to the affirmative procedure.</p> <p><b>Paragraph 113</b></p>                    | <p>The Scottish Government notes the Committee's recommendation and will consider further whether to amend the Bill in this regard.</p>   |
| <p>The Committee invites the Government to provide it with regular updates of its progress with regard to the Scottish LCF.</p> <p><b>Paragraph 114</b></p>   | <p>The Scottish Government is happy to provide regular updates on progress on establishing the Scottish LCF.</p>  |
| <p>The Committee supports the general principles of the Bill and emphasises that it will seek to monitor closely the implementation and delivery of the Scottish Landfill Tax.</p> <p><b>Paragraph 115</b></p>                  | <p>The Scottish Government welcomes the Committee's report and has noted all its points in relation to the Landfill Tax (Scotland) Bill.</p>  |
|   |   |

## **STAGE 2 AMENDMENTS**

Stage 2 offers an opportunity for any member of Parliament to propose textual amendments to a bill, although only members of the lead committee taking forward the bill can vote on any amendments that are lodged.

Stage 2 was considered at the meeting of the Finance Committee on 20 November 2013. A total of 9 amendments were lodged. Of these:

- 7 were agreed without division
- 2 were withdrawn

### **AMENDMENTS AGREED**

Amendments 1, 3 and 7 relate to section 17 of the Bill, “liability of controllers of landfill sites”. They were lodged by John Swinney in response to a recommendation in the Delegated Powers and Law Reform Committee’s stage 1 report, which identified that regulations made under 17 of the Bill could increase the scope of the tax. Amendments 1, 3 and 7 mean that regulations made under section 17 that would change the liability of landfill site controllers will be subject to the affirmative procedure.

Amendments 2, 4 and 6 were lodged in response to a Finance Committee recommendation in its Stage 1 report, namely that the “Taxable disposals: power to vary” in section 11 is subject to the affirmative procedure. In speaking to this amendment in his name, John Swinney stated that “creating an exemption [on the power to vary taxable disposals] may prove suitably controversial to merit further scrutiny. Therefore the amendments [2, 4 and 6] will make all orders under section 11 of the Bill subject to affirmative procedure.”

Amendment 5 relates to section 13(4) of the Bill, which provides for the setting of additional rates of tax. The amendment makes all orders under section 13(4) subject to the provisional affirmative procedure. The Finance Committee had recommended that the setting of additional rates of tax be subject to the affirmative procedure, but John Swinney in speaking to the amendment stated:

“I note the Finance Committee’s recommendation that the power should be subject to the affirmative procedure. However to stop contractors and operators taking advantage of any change and perhaps rushing materials to landfill, amendment 5 seeks to apply the provisional affirmative procedure in order that any change can take immediate effect”.

### **AMENDMENTS WITHDRAWN**

Amendments in the name of Bruce Crawford (amendment 8) and Michael McMahon (amendment 9) were moved and then, by agreement, withdrawn.

Amendment 8 sought to amend section 11 of the Bill to allow for exemptions to be given by certificate when costs fall on “persons whom the Tax Authority considers were not responsible for the land becoming contaminated.” Although members were sympathetic to the intentions of this amendment (which arose from a specific constituency case), it was felt that the proposed exemption could already be provided by regulations under the current wording of section 11, and there was a concern that an extension of the exemption could be a way out of tax for anyone who owned contaminated land.

Amendment 9 sought to place a restriction on the use of Landfill Communities Fund (LCF) monies where no direct connection can be made between the area that is benefitting from the spend and it being “in the vicinity of a landfill site”. The amendment proposes that only areas within the vicinity of a landfill site should receive money from the tax credit scheme or LCF. There was agreement between Committee members and the Cabinet Secretary that communities that suffer from landfill sites should have access to the LCF, but there was concern that the word “vicinity” was not tightly enough defined. On the basis of the discussion, and subject to further discussions with the Cabinet Secretary, Michael McMahon agreed to not press his amendment at Stage 2.

### **STAGE 3**

As at the deadline for Stage 3 amendment (1630 on 11 December) one Stage 3 amendment had been lodged in the name of Michael McMahon. It was as follows:

In section 20, page 11, line 21, at end insert

<( ) Where regulations specify conditions under subsection (2), the regulations must include provision requiring—

- (a) the Tax Authority to approve as environmental bodies only such bodies as appear to it to carry out, or propose to carry out, activities in a locality that appears to the Tax Authority to have been affected by the operations of a landfill site or a former landfill site, and
- (b) that the matters concerned with the protection of the environment on which sums are to be expended are those matters that appear to the Tax Authority to contribute to the protection of the environment in a locality that appears to the Tax Authority to have been affected by the operations of a landfill site or a former landfill site.>

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