

Landfill Tax (Scotland) Bill

SUPPLEMENTARY DELEGATED POWERS MEMORANDUM

Purpose

1. This Memorandum has been prepared by the Scottish Government to assist the Delegated Powers and Law Reform Committee (“the Committee”) in its consideration of the Landfill Tax (Scotland) Bill (“the Bill”). This Memorandum describes provisions in the Bill conferring power to make subordinate legislation which were amended at Stage 2. The Memorandum supplements the Delegated Powers Memorandum on the Bill as introduced.

PROVISIONS CONFERRING POWER TO MAKE SUBORDINATE LEGISLATION AMENDED AT STAGE 2

Section 11(1) – Power to vary what is a taxable disposal

Power conferred on: The Scottish Ministers

Power exercisable by: Order

Parliamentary procedure: Affirmative procedure

Provision

1. This provision allows for the Scottish Ministers to vary what is categorised as a taxable disposal.

Reason for taking power

2. This power will allow for the Scottish Ministers to make certain materials exempt from Scottish Landfill Tax and for materials sub types of waste to be included in the tax. It may be that the Scottish Ministers wish to exempt, for example, hazardous material where landfill is the only possible destination, in order to encourage correct disposal methods. It is also possible that there may be sub-categories of materials that could be included in a blanket exemption and that this material would have a better value to society if recycled, as opposed to landfilled, and therefore should be encompassed in the tax.

3. This power will also allow the Scottish Ministers to provide that a disposal which is not considered as a taxable disposal to be treated as one. A similar power is contained in section 65(1) of the Finance Act 1996 – see the Landfill Tax (Contaminated Land) Order 1996 (S.I. 1996/1529), the Landfill Tax (Site Restoration and Quarries) Order 1999 (S.I. 1999/2075), the Landfill Tax (Site Restoration, Quarries and Pet Cemeteries) Order 2005 (S.I. 2005/725), the Landfill Tax (Material Removed from Water) Order 2007 (S.I. 2007/2909) and the Landfill Tax (Material from Contaminated Land) (Phasing out of Exemption) Order 2008 (S.I. 2008/2669).

Choice of procedure

4. Following a recommendation by the Finance Committee this procedure has been amended at stage 2 so that all orders made under section 11 are subject to affirmative procedure. Prior to the amendment an order under this section was subject to the provisional affirmative procedure if it produced the result that a disposal, which would otherwise not be a taxable disposal, became a taxable disposal. Where this was not the case, but the order amended primary legislation, affirmative procedure applied. Where neither of those considerations applied, the order was subject to negative procedure.

5. The Finance Committee noted that creating an exemption may prove suitably controversial to merit further scrutiny by Parliament. The Scottish Government accepts this point and has changed the procedure accordingly.

Section 13(4) – Power to determine what materials qualify for the lower rate(s) of tax.

Power conferred on: The Scottish Ministers

Power exercisable by: Order

Parliamentary procedure: Provisional affirmative procedure

Provision

6. This provision allows for the Scottish Ministers to make an order setting out what materials qualify at the lower rate(s). As for UK Landfill Tax we envisage that a Scottish System will initially have two rates, one for ‘active’ materials that break down in landfill sites and one for ‘inert’ material that largely remain the same once landfilled.

Reason for taking power

7. This provision allows for the Scottish Ministers to set what materials should be taxed at the lower rate. The provision is similar to the power in section 42(3) of the Finance Act 1996. See the Landfill Tax (Qualifying Material) Order 1996 (S.I. 1996/1528), the Landfill Tax (Qualifying Material) Order 2011 (S.I. 2011/1017) and the Landfill Tax (Qualifying Material) (Amendment) Order 2012 (S.I. 2012/940).

Choice of procedure

8. The procedure for this order making power was amended at stage 2 following a recommendation from the Finance Committee. All orders under this section are subject to the provisional affirmative procedure. Prior to the amendment an order under this section was subject to provisional affirmative if it removed something from the list of qualifying material or moved material from one category of qualifying material to another. Where that was not the case, negative procedure applied. The Finance Committee recommended that any change to the qualifying material list(s) be subject to affirmative procedure. The Scottish Government notes the Committee’s recommendation and changed the procedure to provisional affirmative in all cases, so that the order can take effect immediately to stop any rush to landfill material following an order being made, whilst also allowing Parliament a higher degree of scrutiny following any change than negative procedure would allow.

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

Power conferred on: The Scottish Ministers

Power exercisable by: Regulations

Parliamentary procedure: Affirmative procedure

Provision

9. The provision allows the Scottish Ministers to make provision (or further provision) about who a ‘controller’ of a site is, the circumstance in which they have to pay Scottish Landfill Tax, the amount of tax which a controller has to pay, their entitlement to the credit scheme and the arrangements by which the controller can pay the tax they are liable for.

Reason for taking power

10. This enabling provision is to allow the Scottish Ministers to determine secondary liability, payment of secondary liability and the administrative arrangements managing this. In some cases, the license or permit holder for the landfill site has no direct involvement in operating the site. Where this is the case, the liability to pay tax is extended to the ‘controller’ of the site. This means that if the person named on the license or permit fails to pay the tax, the controller will be jointly and severally liable for the debt.

11. The controller of a landfill site is a person, other than the holder of an authorisation, who determines what materials are disposed of at the site, or part of the site. A person who is purely acting as an agent or employee of someone else is not a controller.

Choice of procedure

12. The procedure for this order making power was amended at Stage 2 following a recommendation from the Delegated Powers and Law Reform Committee. Prior to the amendment affirmative procedure was considered to be appropriate if the power allows for the amendment of primary legislation. For other provision made, negative procedure applied. The Delegated Powers and Law Reform Committee recommended that any change in the liability of controllers be subject to affirmative procedure to enable a higher level of Parliamentary scrutiny. The Scottish Government accepted this point and has changed the procedure accordingly.

This document relates to the Landfill Tax (Scotland) Bill as amended at Stage 2 (SP Bill 28A)

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